

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48070; File No. SR-NASD-2003-62]

### Self-Regulatory Organizations; Order Granting Accelerated Approval to Proposed Rule Change and Amendment No. 1 Thereto, by the National Association of Securities Dealers, Inc. To Allow Internet Access to the Primex Auction System and To Specify Charges for Such Access

June 20, 2003.

#### I. Introduction

On March 31, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend NASD Rule 5012 to enable access to the Primex Auction System ("Primex") via the Internet and to amend NASD Rule 7010(r) to specify the fees that the NASD would charge for such access. NASD filed Amendment No. 1 to the proposal on May 16, 2003.<sup>3</sup> The proposed rule change, as amended, was published for comment in the **Federal Register** on May 29, 2003.<sup>4</sup> The Commission received no comments on the proposal. This order approves the proposed rule change, as amended, on an accelerated basis.

#### II. Description of Proposed Rule Change

Currently, any firm wishing to connect to Primex and take full advantage of its functionality must purchase an Auction Control Box ("ACB") server and maintain a dedicated T1 circuit between its premises and the Primex system on Nasdaq's premises. To provide firms with a lower cost full-access alternative, Nasdaq intends to introduce the option of accessing Primex through the Internet. Interested firms would be able to connect to Primex via their existing Internet link and would not need either to purchase an ACB server or maintain a separate dedicated circuit between their own premises and Primex.

A participant wishing to connect to Primex over the Internet would need to obtain Internet access from an Internet Service Provider ("ISP") and a telecommunications circuit linking the participant's premises with the ISP's point of presence from a local telecommunications provider ("Telco"). The required bandwidth of the needed ISP port and Telco circuit, and the corresponding costs, would be dictated by each participant's specific overall Internet usage requirements, which includes applications unrelated to Primex (e.g., email, web access, etc.). The monthly logon fees that Nasdaq itself proposes to charge for Internet access to the Primex are also lower than the current logon fees for Primex access via a dedicated line.

Nasdaq has represented that Primex users that choose to access Primex over the Internet will generally enjoy the same "look and feel" experience as the users of the existing dedicated circuit mode of access. Further, Nasdaq has represented that Primex users that choose to access Primex over the Internet will also have access to the same functionality as they would over a dedicated circuit. In particular, Internet users will be able to enter orders, enter predefined relative indications ("PRIs"), respond to auctions, view orders, executions and PRIs, and withdraw PRIs.

A firm that wishes to enable its employees to access Primex over the Internet will need to coordinate requests for user authorization with Nasdaq. Such a firm's designated security administrator will be required to provide Nasdaq with written authorization and required enrollment information. Once Nasdaq has the needed information, it will enroll the user for Internet access to Primex and provide to the user, by a secure method, certain information required to enable such access. The firm's security administrator will also be expected to give Nasdaq timely notification to disenroll any previously enrolled user who is no longer eligible for (or no longer needs) Internet access to Primex.

Nasdaq has represented that it may, from time to time, change the enrollment/disenrollment requirements, methods and procedures and will advise the participating firms accordingly. Nasdaq has committed to work with participating firms' designated security administrators to help implement user enrollment/disenrollment and to assist with the security procedures related to accessing Primex over the Internet.<sup>5</sup>

Nasdaq believes that, in its current configuration, Primex will at all times have adequate capacity to handle the expected volume of Internet connections and to accommodate a robust growth in volume with no degradation in the quality of service. Nasdaq has represented that Primex currently has the capacity to handle up to five times as many simultaneous connections over the Internet as Nasdaq's initial peak time estimates suggest may actually occur.

#### III. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities association.<sup>6</sup> Specifically, the Commission finds that the proposal is consistent with the requirements of section 15A of the Act,<sup>7</sup> in general, and section 15A(b)(6) of the Act,<sup>8</sup> in particular, which requires that the rules of the NASD be designed to promote just and equitable principles of trade; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Commission believes that the proposal will enable additional market participants to access Primex, thereby enhancing the depth of the market represented in Primex.

Further, in finding the proposal consistent with section 15A(b)(6) of the Act,<sup>9</sup> the Commission considered security issues involving Internet access to Primex. In this respect, the Commission believes that the procedures that NASD has represented it will implement for user enrollment for Internet access to Primex provide an acceptable level of security. In addition, the Commission notes that Nasdaq has represented that it will keep the Commission staff apprised of any modifications in or updates to Primex user enrollment-related procedures when such modifications or updates substantially affect the security of Internet access to Primex.<sup>10</sup>

Primex user enrollment-related procedures when such modifications or updates substantially affect the security of Internet access to Primex.

<sup>6</sup> In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78o-3(b)(6).

<sup>8</sup> 15 U.S.C. 78o-3(b)(6).

<sup>9</sup> *Id.*

<sup>10</sup> See *supra* note 5.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> In Amendment No. 1, the Amex filed a new Form 19b-4, which replaced the original filing in its entirety. See letter from Alex Kogan, Associate General Counsel, Nasdaq to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated May 15, 2003.

<sup>4</sup> Securities Exchange Act Release No. 47906 (May 22, 2003), 68 FR 32144.

<sup>5</sup> Nasdaq has agreed to keep the Commission staff apprised of any modifications in or updates to