

Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act,<sup>8</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>9</sup> At any time within 60 days of the filing of the proposed rule change, as amended, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Nasdaq has requested that the Commission waive the 30-day operative delay. Nasdaq believes the proposed rule change clarifies a functionality that is already available to UTP Exchanges. In particular, as already set forth in NASD Rule 4710(e), the proposed rule change makes clear that a UTP Exchange participating in the SuperMontage may enter Non-Attributable Quotes/Orders for their agency customers into the system using the SIZE MMID.<sup>10</sup>

The Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day operative delay.<sup>11</sup> The Commission notes that this proposal merely clarifies the ability of UTP Exchanges to enter Non-Attributable Quotes/Orders, as currently permitted by the system.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be

available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD-2003-05 and should be submitted by March 21, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-3944 Filed 2-18-03; 8:45 am]

BILLING CODE 8010-01-P

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47351; File No. SR-NASD-2002-60]

#### Self-Regulatory Organizations; Order Granting Approval of a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1, 2, and 3 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Permanent Approval of the Primex Auction System®

February 11, 2003.

#### I. Introduction

On May 1, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change, 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> requesting permanent approval of the Primex Auction System® ("Primex" or "System"). The proposed rule change was published for public comment in the *Federal Register* on May 31, 2002.<sup>3</sup> On May 28, 2002, Nasdaq filed Amendment No. 1 to the proposed rule change.<sup>4</sup> The comment period expired

on June 21, 2002.<sup>5</sup> On July 25, 2002, the Commission received one comment letter on the Original Proposal.<sup>6</sup> On October 7, 2002, Nasdaq filed a response to the NYSE Comment Letter.<sup>7</sup> On November 1, 2002, Nasdaq filed Amendment No. 2 to the proposed rule change.<sup>8</sup> On February 4, 2003, Nasdaq filed Amendment No. 3 to the proposed rule change.<sup>9</sup>

This order approves the proposed rule change. In addition, the Commission is publishing this notice to solicit comments on Amendment Nos. 1, 2, and 3 from interested persons, and approving Amendment Nos. 1, 2, and 3 on an accelerated basis.

forth in proposed NASD Rule 5014(b). Market Orders for at least 10,000 shares or \$200,000 in market value are also eligible for a zero second Auction, regardless of whether or not match parameters are attached."

<sup>5</sup> Nasdaq has granted the Commission several extensions of time to consider Nasdaq's proposal, the most recent extending the time period until February 14, 2003.

<sup>6</sup> See letter from Darla C. Stuckey, Corporate Secretary, New York Stock Exchange, Inc. ("NYSE"), to Jonathan G. Katz, Secretary, Commission, dated July 24, 2002 ("NYSE Comment Letter").

<sup>7</sup> See letter from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, to Jonathan G. Katz, Secretary, Commission, dated October 7, 2002 ("Nasdaq Response Letter").

<sup>8</sup> See letter from Peter R. Geraghty, Associate Vice President and Associate General Counsel, Nasdaq, to Katherine England, Assistant Director, Division, Commission, dated October 31, 2002 ("Amendment No. 2"). In Amendment No. 2, Nasdaq seeks permanent approval of the following changes to Nasdaq's application of Primex: (1) Elimination of the end-of-day anonymity feature; (2) implementation of a system change to prohibit appropriately marked orders from executing in violation of the NASD short sale rule; (3) amendments to proposed NASD Rule 5020 to reflect that Nasdaq delayed for an additional calendar quarter the rule requiring Primex Auction Market Makers ("PAMMs") to submit a certain percentage of their orders to Primex; (4) amendments to proposed NASD Rule 5016 to reflect that orders not fully executed in Primex can be forwarded to the SuperMontage version ("SuperMontage") of the Nasdaq National Market Execution System ("NNMS"); and (5) the addition of two new conditions that can be attached to orders submitted to Primex: an Anti-Internalization Qualifier and an All or None condition.

<sup>9</sup> See letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine England, Assistant Director, Division, Commission, dated February 3, 2003 ("Amendment No. 3"). In Amendment No. 3, Nasdaq seeks permanent approval to (1) change the minimum size requirement for Predetermined Relative Indications from a tiered structure depending on the amount of price improvement, to a standard minimum size requirement of 100 shares; (2) reprogram the System to reject trading interest marked as "short" or "short exempt" in any exchange-listed security eligible for participation in the InterMarket Trading System; and (3) modify proposed NASD Rule 5017 to be consistent with the system change relating to short sales set forth in Amendment No. 2. Telephone call among Peter R. Geraghty, Associate Vice President and Associate General Counsel, Nasdaq; Gordon Fuller, Counsel to the Assistant Director, Division, Commission, and Jennifer Lewis, Attorney, Division, Commission, on February 7, 2003.

<sup>12</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 45983 (May 23, 2002), 67 FR 38152 ("Original Proposal").

<sup>4</sup> See letter from Peter R. Geraghty, Associate Vice President and Associate General Counsel, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated May 1, 2002 ("Amendment No. 1"). In Amendment No. 1, Nasdaq removed the following language inadvertently included in proposed NASD Rule 5013(c)(2): "Participants that are Primex Auction Market Makers for a security may submit Market Orders in that security for an immediate (i.e., "zero second") Auction, provided the Participant attaches certain match parameters as set

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> See Amendment No. 1, *supra* note 3.

<sup>11</sup> For purposes of only accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).