

*immediate or cancel orders. Routing identifiers are not displayed, exposed or communicated to any other Participant in the Application.*

(b) No changes.

#### 5020. Market Maker Participation

(a) No Change.

(b) With respect to each security in which a Participant is registered as a Primex Auction Market Maker, the Participant shall:

(1) No Change.

(2) No Change.

(3) submit to the Application a minimum of 80%\* of the number of its Mandatory Eligible Orders (including customer orders of another broker-dealer that has directed such orders to the Participant) as soon as practicable upon receipt by the Participant, for the purpose of exposing such orders to the Primex Crowd. Mandatory Eligible Orders do not include:

\* \* \* \* \*

#### 5021. [Anonymity, Execution,] Reporting[,] and Clearing

(a) [Anonymity—The Application will process all activity among Participants

\*The 80% test will be applied on a quarterly basis, and will be phased in as follows: For the calendar quarters commencing on October 1, 2001; January 1, 2002; April 1, 2002; [and] July 1, 2002, and October 1, 2002, any participant may register in any eligible security as a Primex Auction Market Maker and maintain that status during such calendar quarters without regard to the percentage of its orders it submits to the System for such security during that time, provided it also satisfies all other requirements of a Primex Auction Market Maker pursuant to these rules.

Beginning with the calendar quarter that commences on [October 1, 2002] *January 1, 2003*, a participant previously registered as a Primex Auction Market Maker for a particular security may maintain its status as such until [December 31, 2002] *March 30, 2003* only if it submitted at least 50% of its Mandatory Eligible Orders during the calendar quarter that commences on [July] *October 1, 2002* (or during such portion of the calendar quarter that commences on [July] *October 1, 2002* in which the participant was so registered if the participant registered in mid quarter), provided it also satisfies all other requirements of a Primex Auction Market Maker pursuant to these rules. A participant that is newly registering as a Primex Auction Market Maker for a particular security any time after the start of the calendar quarter that commences on [October 1, 2002] *January 1, 2003* may maintain its status as such until the end of the calendar quarter in which it registered without regard to the percentage of its orders it submits to the System for such security during that time.

Beginning with the calendar quarter that commences on [January] *April 1, 2003*, and each calendar quarter thereafter, a participant previously registered as a Primex Auction Market Maker for a particular security may maintain its status as such until the end of that calendar quarter only if it submitted at least 80% of its Mandatory Eligible Orders during the previous calendar quarter (or during the portion of such previous calendar quarter in which it was so registered if the participant registered in mid quarter), provided it also satisfies all other requirements of a Primex Auction Market Maker pursuant to these rules.

on an anonymous basis until the end of the day.] After facilitating an execution, the Application will send an execution report to all Participants involved as soon as practicable. The execution report will indicate the details of the transaction, and [but will not] contain the identity of the contra-party. [At the end of each trading day, the actual contra-party for executions obtained within the Application will be made available to the Participants involved through Nasdaq's systems. For regulatory and other necessary purposes, the NASD and Nasdaq will have the ability to determine the identity of the actual contra-parties at any time.]

(b) [Tape Reporting and Clearing—]Matches within the Application are executed and reported through Nasdaq systems for public tape reporting and forwarding to NSCC for clearing, where necessary. Participants (or their clearing brokers) are the parties responsible for the clearance and settlement of all trades executed through the Application. Once a transaction is executed, Participants do not have the ability within the Application to modify or reallocate any portion of the execution to a clearing broker other than the clearing broker that the Application associates with the [Participant] transaction at the time of execution. Neither the NASD (and its affiliates) nor any operator or administrator of the Primex Auction System shall be directly or indirectly a party to any transaction entered into, matched, or otherwise effected through the Application[, notwithstanding that, for the remainder of the trading day after a transaction, the actual contra-parties have not had their identities disclosed to each other by the Application].

\* \* \* \* \*

Nasdaq represents that it eliminated the end-of day anonymity feature to respond to concerns raised by clearing firms, and to harmonize the anonymity features of Primex and SuperMontage. Nasdaq represents that Primex continues to offer pre-trade anonymity, which also is a feature of SuperMontage.

Nasdaq states that Primex originally was designed with an anonymity feature that masked until the end of the day the identity of parties trading in the System. When a match occurred in Primex, the parties would be notified that they executed a trade, but they would not know the identity of their counterparty until the end of the day.<sup>22</sup> At the end of the day, the System would send

<sup>22</sup> The anonymity feature only masked the identity from the parties to the trade. Nasdaq staff could obtain the identity of the parties immediately.

messages to the parties revealing the identities of their counterparties. A participant would receive a message for each trade executed in the System. Nasdaq represents that the messages formats were unique to Primex, which required Primex users to program their internal systems to recognize the messages. Nasdaq believes this additional programming requirement created a disincentive for firms to participate in Primex. Nasdaq states that, in particular, clearing firms expressed a concern about the additional programming requirements, and some chose not to make the changes and thus not participate in Primex. Nasdaq states that when a clearing firm chose not to participate, its correspondent firms also could not participate.

Nasdaq represents that it eliminated the anonymity feature to remove this disincentive. With the end-of-day anonymity feature removed, the parties to a trade will be informed of their counterparty's identity immediately upon a match. Therefore, the need for the messages at the end of the day is eliminated. Nasdaq expects this change will result in greater participation in Primex.

To further encourage participation in Primex, Nasdaq represents that it added a feature to assist members in complying with the NASD short sale rule. Specifically, Nasdaq represents that the System has been reprogrammed to prevent appropriately marked orders from executing in violation of this rule. An order that is marked to indicate that it is short sale, for which no exemption from the short sale rule is available (e.g., the market maker exemption), will not execute at or below the current best bid when the current best bid as displayed by Nasdaq is below the preceding best bid in the security.

Primex also has been modified to account for Nasdaq simultaneously operating SuperSoes and SuperMontage. Primex always provided members an option to have certain orders routed to other Nasdaq execution systems after exposure in Primex.<sup>23</sup> Nasdaq represents that, when Primex began operation, the SuperSoes version of NNMS was the only system to which orders in Nasdaq-listed stocks could be forwarded. Recently, however, Nasdaq began to phase in the SuperMontage version of NNMS on a security-by-security basis. As such, until the phase-in is complete, Nasdaq simultaneously will operate SuperSoes and SuperMontage. Accordingly, Primex has the functionality to route orders to

<sup>23</sup> See proposed NASD Rule 5016.