

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>26</sup>

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02-5816 Filed 3-8-02; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45285A; File No. SR-NASD-2001-93]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Fees Associated with the Nasdaq Application of the Primex Auction System<sup>TM</sup>; Correction

March 5, 2002.

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> notice is hereby given that on December 17, 2001, the National Association of Securities Dealers, Inc., ("NASD" or "Association") through its subsidiary The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has designated this proposal as one constituting a fee filing under section 19(b)(3)(A) of the Act, which renders the rule effective upon the Commission's receipt of this filing. Nasdaq will not assess fees pursuant to this fee schedule for approximately the first three months after the Nasdaq application of the Primex Auction System ("Primex" or "System") is operational.<sup>3</sup> Nasdaq intends to begin assessing fees pursuant to this fee schedule beginning on April 1, 2002. However, Nasdaq will issue a Head Trader Alert to notify users of the exact date it will begin assessing fees.

On December 17, 2001, Nasdaq filed Amendment No. 1 to the proposed rule change.<sup>4</sup> Amendment No. 1 corrects the

numbering of the footnotes in the narrative portion of the filing and changes the text of the fee schedule to provide that revenue sharing amounts will be paid on a monthly basis. The changes made by Amendment No. 1 were inadvertently omitted from the notice regarding filing and immediate effectiveness of the proposed rule change that the Commission published on January 24, 2002.<sup>5</sup> Accordingly, the Commission is publishing this corrected notice to solicit comments on the proposed rule change, as amended, from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to amend NASD Rule 7010 to establish the fee schedule for Nasdaq's application of the Primex Auction System.<sup>TM</sup> Below is the text of the proposed rule change, as amended. Proposed new language is in *italics*.

##### 7010. System Services

(a)-(q) No changes.

(r) *Nasdaq Application of the Primex Auction System<sup>TM</sup>*

*The following charges shall apply to the use of the Nasdaq Application of the Primex Auction System:*

(1) *Transaction Charges:*

*Execution Services—for all*

*participants:*

- *Order entry—No fee*
- *Auction Response—per share, per execution—\$5.00 maximum).\** *\$.01*

*Matching Rights—Primex Auction*

*Market Makers (PAMMs) only:*

- *50 Percent Match—No fee*
- *Two-Cent Match (per share, per retained order—\$2.50 Maximum).\*\**

*\$.0025*

*Revenue Sharing—PAMMs only*

- *Each order executed:\*\*\*—1/3 of transaction fee*

(2) *Monthly Access fees*

##### *Software*

- *Workstation license or unique logon—Per workstation logon*

Special Counsel, Division of Market Regulation ("Division"), Commission, dated December 17, 2001.

<sup>5</sup> See Securities Exchange Act Release No. 45285 (January 15, 2002), 67 FR 3521.

<sup>\*</sup> *This fee applies to both Indications and "real-time" Responses. When two orders match directly, a fee is charged to the party that entered the second order.*

<sup>\*\*</sup> *This fee is charged in the event a PAMM attaches its matching right to an order, and the crowd offers two cents or less price improvement to that order.*

<sup>\*\*\*</sup> *Paid to a PAMM when it enters an order that interacts with crowd interest in the system. Revenue sharing applies only to orders in those securities in which the firm is registered as a PAMM. The revenue sharing amounts will be paid on a monthly basis.*

*Stations/logons 1—10—\$200*

*Stations/logons 11—25—\$100*

*Stations/logons 26 and above—\$50*

• *Proprietary interface license Per license—*

*API specification \$500—*

*FIX (customized protocol)—\$500*

##### *Network*

• *Dedicated line—Per line—*

*256K primary with backup—\$1,564*

• *Installation/Uninstall—\$1,000 per*

*Nasdaq Staff site visit*

\* \* \* \* \*

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

On August 17, 2001, Nasdaq filed a Form PILOT to commence operation of the Primex system.<sup>6</sup> The System is designed to replicate, in an electronic form, the competitive trading crowd that is associated with an auction market. The System is completely voluntary and available to any NASD member in good standing. Non-NASD members can access the System through an NASD member that subscribes to Primex. Members that desire access to the System must execute the necessary agreements with Nasdaq. Members granted access to the System are referred to as Participants. There are two types of Participants in Primex: (1) Crowd Participants, and (2) Primex Auction Market Makers ("PAMMs.")

By becoming a Participant, members automatically receive the right to trade as Crowd Participants. Crowd Participants can view all orders exposed in the System; interact with any order put to auction by responding to the auction using all of the System's response tools; submit orders to be

<sup>6</sup> The Form PILOT was amended on November 26, 2001. See Letter from Peter R. Geraghty, Associate General Counsel, Nasdaq, to John Polise, Senior Special Counsel, Division, Commission, dated November 26, 2001.

<sup>26</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> As described above, Nasdaq will not assess any fees pursuant to the fee schedule during the initial few months the System is operating, which also means Nasdaq will not share any transaction fees in accordance with the fee schedule during such period. However, Primex Trading N.A., L.L.C., an entity independent of Nasdaq and the licensor of the System, has indicated it will pay any revenue sharing amounts earned by participants during such period.

<sup>4</sup> See letter from Peter R. Geraghty, Associate General Counsel, Nasdaq, to John Polise, Senior

auctioned; and trade as principal, agent, or riskless principal. Crowd Participants can interact with orders being auctioned by submitting Indications, which are instructions to the System that can reside within the System and automatically respond in a certain manner to an auction if and when orders put to auction are available, or by submitting a Response. A Response is an individual instruction that is entered and responds in "real time" to orders being auctioned. A firm that elects to register as a PAMM has the same rights and entitlements as Crowd Participants, but because they elect to meet other additional qualifications,<sup>7</sup> PAMMS are entitled to additional privileges. For example, PAMMS are entitled to use the System's automated Match Parameters allowing them to participate in the execution of their own customer orders submitted to the System (e.g., the Two Cent Match Parameter<sup>8</sup> or the 50% Match Parameter<sup>9</sup>). PAMMS also are entitled to revenue sharing, allowing PAMMS to share in the transaction fee paid by other participants when such participants execute against an order submitted to auction by a PAMM.

Nasdaq will impose monthly fees to access the System. These fees vary based on the method chosen by the Participant to access the System. The System will operate on a network that is independent from Nasdaq's other existing systems (e.g., SuperSoes<sub>SM</sub>).

<sup>7</sup> The requirements to be become and maintain registration as a PAMM are contained in NASD Rule 5020. In general, a PAMM for a particular security eligible for trading in the System must be either: (1) A Nasdaq market maker in the security, if the security is listed on Nasdaq; or (2) a Consolidated Quotation System market maker, if the security is listed on an exchange. PAMMS may retain their PAMM status for a prospective calendar quarter provided they had qualified by submitting to the System a minimum percentage of certain order-types in the previous calendar quarter, as detailed in NASD Rule 5020. There never is any requirement for participants to register as a PAMM or to submit any amount of orders at any time.

<sup>8</sup> A complete description of the matching parameters and their operation are contained in NASD Rule 5014. Generally, however, when a PAMM submits an order to the System with the Two Cent Match parameter, and there is interest from the Crowd that can satisfy the order, the order entered with the Two Cent Match will be executed against such interest by the Crowd during its exposure, provided that such Crowd interest offers to provide price improvement greater than two cents superior to the best quote publicly displayed in the National Best Bid/Quote ("NBBO") at the time such Crowd interest is available.

<sup>9</sup> Generally, when a PAMM submits an order to the System with the 50% Match parameter, the order will be executed against any interest by the Crowd that satisfies the order during its exposure at the price(s) and size of such Crowd interest, for no more than 50% of the order. Any execution with the Crowd will immediately cause the System to provide the order with an additional execution of like size and price against the PAMM that entered the order.

Primex Participants will be charged a monthly fee for this independent network. In addition, Participants will be charged for each visit by Nasdaq staff to install, or uninstall, software or hardware necessary to access the System.

In addition to monthly charges, Nasdaq will impose fees based on orders executed through the System. As set forth in the schedule of fees, no fee is charged for submitting an order to auction, and in general no fee is charged to have such orders executed.<sup>10</sup> Execution fees are only charged against Participants that extract liquidity by responding to, and executing against, orders submitted for auction. This execution fee is a penny per share with a maximum charge of \$5.00 per execution. Accordingly, the fee would be charged to a Participant for any execution resulting from that Participant's Indication or real-time Response that interacted with an order put to auction.

In addition, and as discussed above, PAMMS have the option of attaching certain matching rights on orders they submit to the System. Nasdaq will impose a fee when a PAMM utilizes the Two-Cent Match feature and retains an order for execution. In such circumstances, the PAMM will be charged \$.0025 per share, with a \$2.50 maximum per retained order. If the PAMM does not retain the order because the order is executed against the Crowd Participant(s) who has offered more than two cents of price improvement, there is no charge to the PAMM. Instead, Nasdaq will share with the PAMM one-third of the transaction fee collected for such transaction. Nasdaq has decided to share the transaction fee in these circumstances to encourage PAMMS to submit orders for auction in the System. The revenue sharing amounts will be paid on a monthly basis.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(5) of the Act<sup>11</sup> in that the proposed fees provide for the equitable allocation of reasonable fees among members. The fees apply equally to all Participants in the System, based upon the category the member has chosen to participate in the System. All members in the same category of

<sup>10</sup> The one exception is where an order submitted to auction directly meets and interacts with another order submitted to auction, in which case the second order is treated as a Response, and is charged a fee accordingly.

<sup>11</sup> 15 U.S.C. 78k-1(b)(5).

Participant (e.g., PAMM) are subject to the same fees.

## B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

## C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, as amended, has become effective upon filing pursuant to section 19(b)(3)(A) of the Act<sup>12</sup> and paragraph (f)(2) of Rule 19b-4 thereunder<sup>13</sup> in that it establishes the fee schedule for the use of a Nasdaq system.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the 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.

## 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 amended 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 the file

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(2).

number SR-NASD-2001-93 and should be submitted by April 1, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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## DEPARTMENT OF STATE

[Public Notice 3941]

### Culturally Significant Objects Imported for Exhibition Determinations: "The Art and Politics of Arthur Szyk"

**AGENCY:** United States Department of State.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999 (64 FR 56014), and Delegation of Authority No. 236 of October 19, 1999 (64 FR 57920), as amended, I hereby determine that the objects to be included in the exhibition, "The Art and Politics of Arthur Szyk," imported from abroad for temporary exhibition within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with a foreign lender. I also determine that the exhibition or display of the exhibit objects at the United States Holocaust Memorial Museum, Washington, DC, from on or about April 11, 2002, to on or about October 14, 2002, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619-5997, and the address is United States Department of State, SA-44, Room 700, 301 4th Street, SW., Washington, DC 20547-0001.

Dated: March 1, 2002.

**Patricia S. Harrison,**

*Assistant Secretary for Educational and Cultural Affairs, United States Department of State.*

[FR Doc. 02-5769 Filed 3-8-02; 8:45 am]

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## DEPARTMENT OF STATE

[Public Notice 3942]

### Notice of Proposal To Extend U.S.-Guatemala Memorandum of Understanding

**AGENCY:** Department of State.

**ACTION:** Notice of Proposal to Extend U.S.-Guatemala.

### Memorandum of Understanding

The Government of the Republic of Guatemala has indicated its interest in an extension of the *Memorandum of Understanding between the Government of the United States of America and the Government of the Republic of Guatemala Concerning the Imposition of Import Restrictions on Archaeological Objects and Materials from the Pre-Columbian Cultures of Guatemala*, signed on September 29, 1997. Pursuant to the authority vested in the president's designee under Department of State Delegation of Authority No. 236-3, and pursuant to the requirement under 19 U.S.C. 2602(f)(1), an extension of this MOU is hereby proposed. Pursuant to 19 U.S.C. 2602(f)(2), the views and recommendations of the Cultural Property Advisory Committee regarding this proposal will be requested.

A copy of this Memorandum of Understanding, the designated list of restricted categories of material, and related information can be found at the following Web site: <http://exchanges.state.gov/education/culprop>.

Dated: March 5, 2002.

**Patricia S. Harrison,**

*Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. 02-5767 Filed 3-8-02; 8:45 am]

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## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Determinations Under the African Growth and Opportunity Act

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice.

**SUMMARY:** The United States Trade Representative (USTR) has determined

that Cameroon has adopted an effective visa system and related procedures to prevent unlawful transshipment and the use of counterfeit documents in connection with shipments of textile and apparel articles and has implemented and follows, or is making substantial progress toward implementing and following, the customs procedures required by the African Growth and Opportunity Act (AGOA). Therefore, imports of eligible products from Cameroon qualify for the textile and apparel benefits provided under the AGOA.

**DATES:** Effective March 1, 2002.

**FOR FURTHER INFORMATION CONTACT:**

Chris Moore, Director for African Affairs, Office of the United States Trade Representative, (202) 395-9514.

**SUPPLEMENTARY INFORMATION:** The AGOA (Title I of the Trade and Development Act of 2000, Pub. L. 106-200) provides preferential tariff treatment for imports of certain textile and apparel products of beneficiary sub-Saharan African countries. The textile and apparel trade benefits under the AGOA are available to imports of eligible products from countries that the President designates as "beneficiary sub-Saharan African countries," provided that these countries (1) have adopted an effective visa system and related procedures to prevent unlawful transshipment and the use of counterfeit documents, and (2) have implemented and follow, or are making substantial progress toward implementing and following, certain customs procedures that assist the Customs Service in verifying the origin of the products.

In Proclamation 7350 (Oct. 2, 2000), the President designated Cameroon as a "beneficiary sub-Saharan African country." Proclamation 7350 delegated to the United States Trade Representative the authority to determine whether designated countries have met the two requirements described above. The President directed the USTR to announce any such determinations in the **Federal Register** and to implement them through modifications of the Harmonized Tariff Schedule of the United States (HTS). Based on actions that Cameroon has taken, I have determined that Cameroon has satisfied these two requirements.

Accordingly, pursuant to the authority vested in the USTR by Proclamation 7350, U.S. note 7(a) to subchapter II of chapter 98 of the HTS and U.S. note 1 to subchapter XIX of chapter 98 of the HTS are each modified by inserting "Cameroon" in alphabetical sequence in the list of countries. The foregoing modifications to the HTS are

<sup>14</sup> 17 CFR 200.30-3(a)(12).