

emergency as quickly as possible after receipt of credible evidence that a market emergency exists.

- At least one hour's advance notice of a special meeting on a market emergency will be sent to each Board member by telephone and e-mail.

- The Executive Director, or his or her designee, will consult with the SEC prior to each special meeting if this is possible. (Note that consultation with SEC would be required by the interpretation of Rule G-17 governing trading halts. Thus, consultation with the SEC would have to occur prior to any formal declaration of market emergency even if it does not occur prior to the meeting.)

- The quorum of ten members generally necessary for a Board meeting is replaced for special meetings on market emergencies with a quorum of five members. The general requirement that a member be present from each of the three statutory categories (securities firm, bank dealer, public member) does not apply.

- The requirement in the proposed rule change that all Board members be sent a notice of the special meeting by both telephone and e-mail is to ensure that as many Board members as possible, including those from all three statutory categories, can be included in the meeting. While the five-person quorum requirement does not contain any distributional requirements, Board staff shall endeavor, to the extent circumstances permit, to have at least one broker-dealer, one bank, and one issuer representative at the special meetings. To that end, Board staff shall obtain from each Board member contract information that will help ensure the ability of the staff to get notice of a special meeting to such persons in market emergency situations.

- Board action at a meeting on a market emergency is limited to declaring a market emergency or ending a declared market emergency.

- A majority vote of members attending the meeting (not necessarily a majority of the Board) is required to take action.

- Once a market emergency has been declared, the Executive Director, or his or her designee, will schedule additional special conference call meetings on the market emergency within 24 hours after any request to do so by a Board member.

## (2) Basis

The MSRB believes the proposed rule change is consistent with section 15B(b)(2)(C) of the Exchange Act, which provides that the MSRB's rules:

\* \* \* be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade \* \* \* and to protect investors and the public interest. \* \* \*

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

The MSRB does not believe that the proposed rule change will impose any burden on competition in that it applies equally to all dealers in municipal securities.

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

Written comments were neither solicited nor received.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the SEC may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the SEC will:

- By order approve such proposed rule change, or
- Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the forgoing, including whether the proposed rule is consistent with the Exchange Act. Persons making written submission 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 SEC, and all written communications relating to the proposed rule change between the SEC 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 SEC's Public Reference Room. Copies of the filing will also be available for inspection and copying at the MSRB's principal offices. All submissions should refer to File No. SR-MSRB-2002-14 and should be submitted by February 14, 2003.

<sup>5</sup> 15 U.S.C. 78o-4(b)(2)(c).

For the SEC by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47208; File No. SR-NASD 2002-157]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Regarding ACT Risk Management

January 16, 2003.

## I. Introduction

On October 31, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary The Nasdaq Stock Market, Inc. ("Nasdaq"), submitted to the Securities and Exchange Commission ("SEC" or "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 regarding the risk management function provided by Nasdaq's Automated Confirmation Transaction Service. The proposed rule change was published for public comment in the **Federal Register** on December 16, 2002.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposal.

## II. Description of the Proposed Rule Change

Nasdaq proposed changes to NASD Rule 6150 regarding the risk management function provided by Nasdaq's Automated Confirmation Transaction Service ("ACT"). Upon approval of the proposed rule change, Nasdaq will permit members to voluntarily utilize the ACT risk management function, provided that they utilize another risk management tool of equal quality and that they and the correspondent firms for whom they clear trades continue to report clearing-eligible trades to ACT in compliance with applicable ACT rules.

## III. Discussion

The Commission finds that the proposed rule change is consistent with

<sup>6</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> Securities Exchange Act Release No. 46948 (December 4, 2002), 67 FR 77117.

section 15A of the Act<sup>4</sup> and the rules and regulations thereunder applicable to a national securities association. In particular, the Commission finds that the proposed rule change is consistent with section 15A(b)(6) of the Act<sup>5</sup> which requires, among other things, that the rules of the association be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and in general, to protect investors and the public interest.<sup>6</sup>

The ability of NASD clearing members to adequately assess the risk of their correspondent firms is critical to the protection of investors and the public interest, as required by the Act. Therefore, the Commission finds that the proposed rule change is consistent with the Act because the proposal seeks to ensure that all NASD clearing members retain the ability to monitor the trading activities and risk exposures of their correspondent firms, either by using the ACT risk management program, or another risk management tool comparable to ACT's risk management program. The proposed rule change also fosters cooperation and coordination with persons engaged in the regulating, clearing, settling, and processing of information with respect to and facilitating transactions in securities because it ensures that NASD clearing members utilize a risk management tool that monitors the acceptable levels of credit and risk exposure for correspondent firms, which helps to ensure the rapid and reliable comparison and settlement of transactions.

#### IV. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>7</sup> that the proposed rule change (SR-NYSE-2002-57) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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<sup>4</sup> 15 U.S.C. 78o-3.

<sup>5</sup> 15 U.S.C. 78o-3(b)(6).

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

<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47191; File No. SR-NASD-2003-4]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed rule Change by the National Association of Securities Dealers, Inc. Relating to the Primex Auction System®

January 15, 2003.

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 January 14, 2003, the National Association of Securities Dealers, Inc., through its subsidiary The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("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 effective upon filing pursuant to section 19(b)(3)(A)(iii) of the Act,<sup>3</sup> and subparagraph (f)(2) of Rule 19b-5.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Nasdaq is filing a proposed rule change to continue operating Nasdaq's application of the Primex Auction System® ("Primex" or "System") as a Pilot Trading System pursuant to Rule 19b-5 of the Act,<sup>5</sup> until February 14, 2003, or until the Commission permanently approves Primex, whichever period is shorter. Pursuant to paragraph (f) of Rule 19b-5,<sup>6</sup> Nasdaq is filing this proposed rule change as effective immediately. This filing does not propose any rule language changes.

#### 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 Section 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

The Primex Auction System is a facility of Nasdaq that has been operating as a Pilot Trading System ("PTS"), as defined in Paragraph (c)(2) of Rule 19b-5 of the Act.<sup>7</sup> As such, Nasdaq was not required to file a proposed rule change under Rule 19b-4 of the Act<sup>8</sup> as long as the Primex maintained its status as a PTS. Under paragraph (c)(2) of rule 16b-5, a system must comply with three criteria to maintain its status as a PTS.<sup>9</sup> One such criteria is that, for each security traded in the PTS, the PTS can not trade more than one percent of the average daily consolidated trading volume of any such security, during at least two of the last four consecutive calendar months. Nasdaq represents that Primex exceeded this threshold for many securities. Therefore Nasdaq filed a proposed rule change seeking permanent approval of Primex.<sup>10</sup> Nasdaq also filed a proposed rule change to continue operating the System or up to six months while the Commission considered granting permanent approval.<sup>11</sup> This six-month period expired on October 31, 2002. On October 31, 2002, Nasdaq filed a proposed rule change, which was effective upon filing, to continue to operate Primex as a PTS until November 30, 2002.<sup>12</sup> On November 26, 2002, Nasdaq filed a proposed rule change, which was effective upon filing, to continue to operate Primex as a PTS

<sup>7</sup> 17 CFR 240.19b-5(c)(2).

<sup>8</sup> 17 CFR 240.19b-4.

<sup>9</sup> Pursuant to Rule 129b-5(c)(92), to qualify as a Pilot Trading System, a system must: (1) Be in operation for less than two years; (2) with respect to each security traded on such Pilot Trading System, during at least two of the last four consecutive calendar months, has traded no more than one percent of the average daily trading volume, in the United States; and (3) with respect to all securities traded on such Pilot Trading System, during at least two of the last four consecutive calendar months, has traded no more than 20 percent of the average daily trading volume of all trading systems operated by the self-regulatory organization.

<sup>10</sup> Securities Exchange Act Release No. 45983 (May 23, 2002) 67 FR 38152 (May 31, 2002).

<sup>11</sup> Securities Exchange Act Release No. 45982 (May 23, 2002) 67 FR 38163 (May 31, 2002).

<sup>12</sup> Securities Exchange Act Release No. 46756 (October 31, 2002), 67 FR 68221 (November 8, 2002).

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

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

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

<sup>4</sup> 17 CFR 240.19b-5(f)(2).

<sup>5</sup> 17 CFR 240.19b-5.

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