

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).

until January 15, 2003.<sup>13</sup> The Commission is still considering Nasdaq's filing seeking permanent approval of Primex. Accordingly, Nasdaq is filing this proposed rule change to continue operating Primex as a PTS until February 14, 2003, or until the Commission grants permanent approval, which ever period is shorter. Primex continues to operate in the manner described in the Form Pilot filing, as amended.<sup>14</sup>

## 2. Statutory Basis

Nasdaq believes the proposed rule change is consistent with the provisions of sections 15A(b)(6)<sup>15</sup> and 11A(a)(1) of the Act.<sup>16</sup> Section 15A(b)(6) of the Act<sup>17</sup> requires the rules of the NASD to be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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 not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Section 11A(a)(1) of the Act<sup>18</sup> sets forth a finding of Congress that new data processing and communications techniques create opportunity for more efficient and effective market operations.

Nasdaq believes this proposed rule change is consistent with the NASD's obligations under the Act, as well as the finding of Congress, because it will allow Nasdaq to continue operating Primex while the Commission considers permanent approval. Among other things, the System provides members with an additional electronic, execution system, which is designed to provide members with flexibility in executing orders and the opportunity to obtain price improvement. To ensure the protection of investors, orders will not be executed at prices inferior to the National Best Bid or Offer.

### *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, as amended.

### *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 has become effective upon filing pursuant to section 19(b)(3)(A)(iii) of the Act,<sup>19</sup> and subparagraph (f)(2) of Rule 19b-5 thereunder,<sup>20</sup> because the proposal will permit Nasdaq to continue operating Primex as a PTS while the Commission considers granting permanent approval. The proposal does not modify any rule or the operation of Primex.

At any time within 60 days of the filing of a rule change pursuant to section 19(b)(3)(A) of the Act,<sup>21</sup> 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 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 No. SR-NASD-2003-4 and should be submitted by February 14, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>22</sup>

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

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## STATE DEPARTMENT

[Public Notice 4220]

### **Overseas Security Advisory Council (OSAC) Meeting Notice: Closed Meeting**

The Department of State announces a meeting of the U.S. State Department—Overseas Security Advisory Council on February 25 and 26, at the Biscayne Bay Marriott, Miami, Florida. Pursuant to Section 10 (d) of the Federal Advisory Committee Act and 5 U.S.C. 552b, (c)(1) and (4), it has been determined the meeting will be closed to the public. Matters relative to classified national security information as well as privileged commercial information will be discussed. The agenda will include updated committee reports, a world threat overview and a round table discussion that calls for the discussion of classified and corporate proprietary/security information as well as private sector physical and procedural security policies and protective programs at sensitive U.S. Government and private sector locations overseas.

For more information contact Marsha Thurman, Overseas Security Advisory Council, Department of State, Washington, DC 20522-1003, phone: 202-663-0533.

Dated: January 9, 2003.

**Peter E. Bergin,**

*Director of the Diplomatic Security Service,  
Department of State.*

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<sup>13</sup> Securities Exchange Act Release No. 46924 (November 27, 2002), 67 FR 72715 (December 6, 2002).

<sup>14</sup> Form Pilot—NASD-2001-01

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

<sup>16</sup> 15 U.S.C. 78k-1(a)(1).

<sup>17</sup> 15 U.S.C. 78o-3(b)(6).

<sup>18</sup> 15 U.S.C. 78k-1(a)(1).

<sup>19</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>20</sup> 17 CFR 240.19b-4(f)(5).

<sup>21</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>22</sup> 17 CFR 200.30-3(a)(12).