

Federal Register on August 27, 2002.² No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

Under NSCC's current rules, each member, except for a Mutual Fund/Insurance Services Member, is required to maintain a minimum contribution to the clearing fund of \$10,000. The first \$10,000 of a member's contribution must be in cash, and if all or a part of the member's contribution is collateralized with letters of credit, the greater of \$50,000 or ten percent of the member's contribution up to a maximum of \$1,000,000 is required to be in cash.

To assure NSCC of more cash to meet any liquidity needs, NSCC is modifying rule 4 (Clearing Fund) and procedure XV (Clearing Fund Formula and Other Matters) of its rules and procedures to require that, except with respect to a Mutual Fund/Insurance Services Member: (1) The first 40%, but no less than \$10,000, of a member's required deposit to the clearing fund must be in cash and (2) with respect to the remaining amount, no more than 25% of the required deposit may be collateralized with a letter of credit. Mutual Fund/Insurance Services Members' clearing fund requirements will remain unchanged.

Based on NSCC's current calculations, increasing the percentage of cash that must be deposited to the clearing fund will impact approximately 48 member firms. Reducing the permitted use of letters of credit will affect 21 of the approximately 33 member firms that post letters of credit. NSCC will implement these clearing fund changes no earlier than 30 days after the Commission approves the proposed rule change.

III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.³ By increasing the minimum percentage of cash that NSCC members must deposit to meet their required deposits to the clearing fund and by lowering the maximum percentage of their required clearing fund deposit that may be collateralized with letters of credit, the rule change

will result in NSCC maintaining a higher percentage of cash in its clearing fund which will make the clearing fund more liquid. This will result in NSCC being in a better position to address any situation in which the clearing fund is called into play. As a consequence, NSCC will be better able to provide for the safeguarding of funds and securities under its custody or control or for which it is responsible.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of section 17A(b)(3)(F) of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-NSCC-2002-05) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁴

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02-30888 Filed 12-5-02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46924; File No. SR-NASD-2002-170]

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®

November 27, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and rule 19b-4 thereunder,² notice is hereby given that on November 26, 2002, 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,³ and

subparagraph (f)(2) of rule 19b-5.⁴ 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,⁵ until January 15, 2003, or until the Commission permanently approves Primex, whichever period is shorter. Pursuant to paragraph (f) of rule 19b-5,⁶ 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 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

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.⁷ As such, Nasdaq was not required to file a proposed rule change under rule 19b-4 of the Act⁸ as long as the Primex maintained its status as a PTS. Under paragraph (c)(2) of rule 19b-5, a system must comply with three criteria to maintain its status as a PTS.⁹ One such

⁴ 17 CFR 240.19b-5(f)(2).

⁵ 17 CFR 240.19b-5.

⁶ 17 CFR 240.19b-4(f).

⁷ 17 CFR 240.19b-5(c)(2).

⁸ 17 CFR 240.19b-4.

⁹ Pursuant to rule 19b-5(c)(2), 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

² Securities Exchange Act Release No. 46389, (August 21, 2002), 67 FR 55053 (August 27, 2002).

³ 15 U.S.C. 78q-1(b)(3)(F).

⁴ 17 CFR 200.30-3(a)(12).

⁵ 15 U.S.C. 78s(b)(1).

⁶ 17 CFR 240.19b-4.

⁷ 15 U.S.C. 78s(b)(3)(A)(iii).

criteria is that, for each security traded in the PTS, the PTS cannot 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.¹⁰ Nasdaq also filed a proposed rule change to continue operating the System for up to six months while the Commission considered granting permanent approval.¹¹ 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, 2002.¹² 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 January 15, 2003, or until the Commission grants permanent approval, whichever period is shorter. Primex continues to operate in the manner described in the form PILOT filing, as amended.¹³

2. Statutory Basis

Nasdaq believes the proposed rule change is consistent with the provisions of sections 15A(b)(6)¹⁴ and 11A(a)(1) of the Act.¹⁵ Section 15A(b)(6) of the Act¹⁶ 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 Act¹⁷ sets forth a finding of Congress that new data

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.

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

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

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

¹³ Form PILOT-NASD-2001-01.

¹⁴ 15 U.S.C. 78o-3(b)(6).

¹⁵ 15 U.S.C. 78k-1(a)(1).

¹⁶ 15 U.S.C. 78o-3(b)(6).

¹⁷ 15 U.S.C. 78k-1(a)(1).

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,¹⁸ and subparagraph (f)(2) of rule 19b-5 thereunder,¹⁹ 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,²⁰ 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-2002-170 and should be submitted by December 27, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²¹

Jill M. Peterson,

Assistant Secretary.

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SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Submit comments on or before February 4, 2003.

ADDRESSES: Send all comments regarding whether these information collections are necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collections, to Cynthia Pitts, Program Analyst, Office of Disaster Assistance, Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington DC 20416

FOR FURTHER INFORMATION CONTACT: Cynthia Pitts, Program Analyst, (202) 205-7570 or Curtis B. Rich, Management Analyst, (202) 205-7030.

¹⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁹ 17 CFR 240.19b-4(f)(5).

²⁰ 15 U.S.C. 78s(b)(3)(A).

²¹ 17 CFR 200.30-3(a)(12).