

#### d. Same Functionality

Nasdaq represents that Primex users that choose to access Primex over the Internet will also have access to the same functionality as they would over a dedicated circuit. In particular, Internet users will be able to enter orders, enter predefined relative indications ("PRIs"), respond to auctions, view orders, executions and PRIs, and withdraw PRIs. Once the Internet user's identity and authority to access the system is established, he/she should be able to take full advantage of Primex, while benefiting from the lower cost of the connection.

#### e. Security

A firm that wishes to enable its employees to access Primex over the Internet will need to coordinate requests for user authorization with Nasdaq. Such a firm's designated security administrator will provide Nasdaq with written authorization and required enrollment information. Once Nasdaq has the needed information, it will enroll the user for Internet access to Primex and provide to the user, by a secure method, certain information required to enable such access. The firm's security administrator will also be expected to give Nasdaq timely notification to disenroll any previously enrolled user who is no longer eligible for (or no longer needs) Internet access to Primex.

Nasdaq may, from time to time, change the enrollment/disenrollment requirements, methods and procedures and will advise the participating firms accordingly. Nasdaq will work with participating firms' designated security administrators to help implement user enrollment/disenrollment and to assist with the security procedures related to accessing Primex over the Internet.<sup>4</sup>

#### f. Capacity and Connection Quality

Nasdaq believes that, in its current configuration, Primex will at all times have adequate capacity to handle the expected volume of Internet connections and to accommodate a robust growth in volume with no degradation in the quality of service. Primex currently has the capacity to handle up to five times as many simultaneous connections over the Internet as Nasdaq's initial peak time estimates suggest may actually occur. Nasdaq is able to add further capacity, so as to meet any reasonably possible

<sup>4</sup> Nasdaq will keep the Commission staff apprised of any modifications in or updates to Primex user enrollment-related procedures when such modifications or updates substantially affect the security of Internet access to Primex.

surge in demand, within a matter of days.

The quality of any user's connection to Primex will, obviously, also depend on the quality of that user's Internet connection, including the nature and adequacy of the connection to the user's chosen ISP, the robustness of that ISP's network and interconnections, and the robustness of the interconnected networks. Nasdaq expects that the degree to which Primex participants choose to rely on Internet access would be consistent with the quality of Internet service such participants are able to obtain.

#### 2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of section 15A of the Act,<sup>5</sup> in general and with section 15A(b)(5) of the Act,<sup>6</sup> in particular, which requires that the rules of the NASD provide for equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. The proposed modification to provide a lower-cost option for accessing the Primex Auction System supports efficient use of existing systems and ensures that the associated costs are allocated equitably. Nasdaq believes that the proposed fees, which are lower than the current fees for accessing the Primex Auction System, are reasonable and equitable.

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

Nasdaq does not believe that the proposed rule change, as amended, 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 on the proposed rule change were neither solicited nor received.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission 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

<sup>5</sup> 15 U.S.C. 78o-3.

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

(ii) as to which the NASD consents, the Commission will:

(A) By order approve such proposed rule change, as amended, or

(B) Institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

#### 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 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 filings will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-2003-62 and should be submitted by June 19, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-13447 Filed 5-28-03; 8:45 am]

BILLING CODE 8010-01-P

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47909; File No. SR-NASD-2003-82]

#### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Extend a Pilot Amendment to NASD Rule 4120 Regarding Nasdaq's Authority To Initiate and Continue Trading Halts

May 22, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934

<sup>7</sup> 17 CFR 200.30-3(a)(12).

(“Act”),<sup>1</sup> and rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 12, 2003, the National Association of Securities Dealers, Inc. (“NASD”), 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 and II below, which items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to section 19(b)(3)(A) of the Act,<sup>3</sup> and rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission.<sup>5</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 proposes to extend a pilot amendment to NASD rule 4120, which clarified Nasdaq's authority to initiate and continue trading halts in circumstances where Nasdaq believes that extraordinary market activity in a security listed on Nasdaq may be caused by the misuse or malfunction of an electronic quotation, communication, reporting, or execution system operated by, or linked to, Nasdaq. The purpose of this filing is to extend the pilot until August 15, 2003. Accordingly, there is no new proposed rule language. Nasdaq is making no substantive changes to the pilot, other than to extend its operation through August 15, 2003.

### **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 May 11, 2001, Nasdaq filed with the Commission a proposed rule change to clarify Nasdaq's authority to initiate and continue trading halts in circumstances where Nasdaq believes that extraordinary market activity in a security listed on Nasdaq may be caused by the misuse or malfunction of an electronic quotation, communication, reporting, or execution system operated by, or linked to, Nasdaq.<sup>6</sup> On July 27, 2001, Nasdaq filed Amendment No. 1 to the proposed rule change, which requested that the Commission approve the proposed rule change on a three-month pilot basis expiring on October 27, 2001.<sup>7</sup> Also on July 27, 2001, the Commission approved the proposed rule change and Amendment No. 1.<sup>8</sup> Since that time, the pilot period for the rule has been extended on several occasions.<sup>9</sup>

As a result of the decentralized and electronic nature of the market operated by Nasdaq, the price and volume of transactions in a Nasdaq-listed security may be affected by the misuse or malfunction of electronic systems, including systems that are linked to, but not operated by, Nasdaq. In circumstances where misuse or malfunction results in extraordinary market activity, Nasdaq believes that it may be appropriate to halt trading in an affected security until the system problem can be rectified. In the period during which the rule change has been in effect, Nasdaq has not had occasion to initiate a trading halt under the rule. Nevertheless, Nasdaq believes that the rule is an important component of its authority to maintain the fairness and orderly structure of the Nasdaq market. Accordingly, Nasdaq believes that the

rule should remain in effect on an uninterrupted basis.

##### **2. Statutory Basis**

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,<sup>10</sup> including section 15A(b)(6),<sup>11</sup> which requires, among other things, that a registered national securities association's rules be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and, in general, protect investors and the public interest. Nasdaq believes the proposed rule change provides Nasdaq with clearer authority to respond to and alleviate market disruptions and thereby protect investors and the public interest.

#### *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*

In a letter dated July 27, 2001, Instinet Corporation (“Instinet”) commented on the proposed rule change as originally proposed and currently in effect.<sup>12</sup> Nasdaq has filed a proposed rule change to modify the rule in certain respects and to make the proposed rule change permanent.<sup>13</sup> Nasdaq believes that the amendments to the rule proposed in SR-NASD-2001-75 respond to the concerns expressed by Instinet without impairing the flexibility that the rule must retain in order for the rule to assist Nasdaq in meeting its overarching responsibility to maintain the fairness and orderly structure of the Nasdaq market. On October 2, 2002, the American Stock Exchange (“Amex”) submitted a letter comment on SR-NASD-2001-75.<sup>14</sup> On April 11, 2003, Nasdaq filed an amendment to SR-NASD-2001-75 that responds to the

<sup>6</sup> See Securities Exchange Act Release No. 44307 (May 15, 2001), 66 FR 28209 (May 22, 2001)(SR-NASD-2001-37).

<sup>7</sup> See July 27, 2001, letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Alton Harvey, Division of Market Regulation (“Division”), Commission.

<sup>8</sup> See Securities Exchange Act Release No. 44609 (July 27, 2001), 66 FR 40761 (August 3, 2001)(SR-NASD-2001-37).

<sup>9</sup> See Securities Exchange Act Release Nos. 44870 (September 28, 2001), 66 FR 50701 (October 4, 2001)(SR-NASD-2001-60); 45344 (January 28, 2002), 67 FR 5022 (February 3, 2002)(SR-NASD-2002-14); 45851 (April 30, 2002), 67 FR 31858 (May 10, 2002)(SR-NASD-2002-57); 46559 (September 26, 2002), 67 FR 63003 (October 9, 2002)(SR-NASD-2002-125); and 46851 (November 19, 2002), 67 FR 70794 (November 26, 2002)(SR-NASD-2002-159).

<sup>10</sup> 15 U.S.C. 78o-3.

<sup>11</sup> 15 U.S.C. 78o-3(b)(6).

<sup>12</sup> See July 27, 2001, letter from Jon Kroeper, First Vice President, Regulatory Policy/Strategy, Instinet, to Jonathan G. Katz, Secretary, Commission.

<sup>13</sup> See Securities Exchange Act Release No. 45355 (January 29, 2002), 67 FR 5351 (February 5, 2002)(SR-NASD-2001-75).

<sup>14</sup> See October 2, 2002, letter from Richard T. Chase, Executive Vice President, Member Firm Regulation, Amex, to Jonathan G. Katz, Secretary, Commission.

<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).

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

<sup>5</sup> Nasdaq asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay. See rule 19b-4(f)(6)(iii), 17 CFR 240.19b-4(f)(6)(iii).

Amex's comments.<sup>15</sup> Pending final Commission action on SR-NASD-2001-75, however, Nasdaq believes that the pilot period of the current rule should be extended to allow the rule to remain in effect on an uninterrupted basis.

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

Because the foregoing proposed rule change does not:

- (i) Significantly affect the protection of investors or the public interest;
- (ii) Impose any significant burden on competition; and
- (iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act<sup>16</sup> and rule 19b-4(f)(6) thereunder.<sup>17</sup> At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such 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.

Nasdaq has asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay. The Commission believes waiving the five-day pre-filing notice requirement and the 30-day operative delay is consistent with the protection of investors and the public interest. Such waivers will allow the pilot to operate without interruption through August 15, 2003. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.<sup>18</sup>

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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 number SR-NASD-2003-82 and should be submitted by June 19, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>19</sup>

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

[FR Doc. 03-13448 Filed 5-28-03; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47912; File Nos. SR-NYSE-2002-49; SR-NASD-2002-154]

### Self-Regulatory Organizations: Notice of Filing of Amendment No. 2 to Proposed Rule Changes by the New York Stock Exchange, Inc. Relating to Exchange Rules 344 ("Supervisory Analysts"), 345A ("Continuing Education for Registered Persons"), 351 ("Reporting Requirements") and 472 ("Communications With the Public") and by the National Association of Securities Dealers, Inc. Relating to NASD Rule 2711 ("Research Analysts and Research Reports")

May 22, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 16, 2003, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") Amendment No. 2 to its proposed rule change ("NYSE Amendment No. 2"), which it originally filed on October 9, 2002 and subsequently amended on December 4, 2002.<sup>3</sup>

On May 20, 2003, the National Association of Securities Dealers, Inc. ("NASD") filed Amendment No. 2 to its proposed rule change ("NASD Amendment No. 2"), which it originally filed on October 25, 2002 and subsequently amended on December 18, 2002.<sup>4</sup> The proposed rule changes, incorporating NYSE Amendment No. 1 and NASD Amendment No. 1, were published for comment in the **Federal Register** on January 7, 2003.<sup>5</sup>

NYSE Amendment No. 2 and NASD Amendment No. 2 are described in Items I, II, and III below, which Items have been prepared by the respective self-regulatory organizations ("SROs"). The Commission is publishing this notice to solicit comments on NYSE Amendment No. 2 and NASD Amendment No. 2 from interested persons.

### I. Self-Regulatory Organizations' Statements of the Terms of Substance of the Proposed Rule Changes

The NYSE is filing with the SEC proposed amendments to NYSE Rule 472 ("Communications with the Public") to conform to the requirements of the Sarbanes-Oxley Act of 2002 ("SOA"),<sup>6</sup> and providing for an interpretation to the public appearance and print media disclosure requirements of NYSE Rule 472.

NASD is submitting an amendment to SR-NASD-2002-154, a proposed rule change to strengthen rules that govern analyst conflicts of interest by amending NASD Rules 1120 and 2711 and creating a new NASD Rule 1050. NASD Amendment No. 2 would implement provisions of the SOA related to analyst conflicts of interest, create an exemption from some provisions of NASD Rule 2711 for certain smaller firms, and make certain other changes to the current rule.

Below is the text of the proposed rule changes. Proposed new language is in

SR-NASD-2002-154), and proposed effective dates for the various rule provisions.

<sup>4</sup> See Letter from Philip Shaikun, Assistant General Counsel, NASD, to Katherine A. England, Assistant Director, Division, Commission ("NASD Amendment No. 1"). NASD Amendment No. 1 clarified that only research analysts who are directly responsible for the preparation of research reports would be required to register with NASD and pass a qualification examination (See proposed NASD Rule 1050). NASD Amendment No. 1 also conformed NASD's proposed research analyst compensation provisions to comparable NYSE provisions. NASD Amendment No. 1 also amended the definition of "research report" to conform to the definition in the Sarbanes-Oxley Act of 2002. NASD Amendment No. 1 also revised certain language that was contained in the discussion of the proposed amendment concerning print media interviews and articles.

<sup>5</sup> See Securities Exchange Act Release No. 47110 (December 31, 2002), 68 FR 826 ("Original Notice").

<sup>6</sup> Pub. L. 107-204, 116 Stat. 745 (2002).

<sup>15</sup> See April 11, 2003 letter from John M. Yetter, Assistant General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission.

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

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

<sup>18</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>19</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> See Letter from Darla Stuckey, Corporate Secretary, NYSE, to James A. Brigagliano, Assistant Director, Division of Market Regulation ("Division"), Commission ("NYSE Amendment No. 1"). NYSE Amendment No. 1 conformed aspects of the proposed NYSE rules to those of NASD (See