

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-47943; File No. SR-NASD-2003-84]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, and Amendment No. 1 Thereto, by the National Association of Securities Dealers, Inc. To Amend the Fee Schedule for the Nasdaq Application of the Primex Auction System**

May 29, 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 May 13, 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, II, and III below, which Items have been prepared by Nasdaq. On May 23, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> Nasdaq has designated this proposal as one establishing or changing a due, fee or other charge imposed by the Nasdaq under section 19(b)(3)(A)(ii) of the Act<sup>4</sup> and Rule 19b-4(f)(2) thereunder,<sup>5</sup> which renders the rule immediately effective upon filing with the Commission. Nasdaq plans to begin assessing fees pursuant to the revised fee schedule beginning on June 1, 2003. The Commission is publishing this 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 proposes to amend NASD Rule 7010(r) to modify the fee schedule for the Nasdaq Application of the Primex Auction System ("Primex").

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

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

<sup>3</sup> See letter from Eleni Constantine, Office of General Counsel, Nasdaq to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 22, 2003 ("Amendment No. 1"). In Amendment No. 1, the Exchange made typographical corrections to the rule text originally submitted in the proposed rule change.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>5</sup> 17 CFR 240.19b-4(f)(2). For purposes of determining the effective date and calculating the sixty-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on May 23, 2003, the date Nasdaq filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

Nasdaq will make the new fees effective June 1, 2003.

The text of the proposed rule change, as amended, is below. Proposed additions are in *italics* and proposed deletions are in [brackets.]

\* \* \* \* \*

Rule 7010(r). Nasdaq Application of the Primex Auction System

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

|                                      |   |
|--------------------------------------|---|
| (1) [No change.]                     |   |
| (2) Monthly Access fees.             |   |
| Software:                            |   |
| Workstation license or unique logon: | Per workstation logon:                            |
| <i>Stations/logons 1</i> .....       | <i>No charge if firm uses a dedicated circuit</i> |
| <i>Stations/logons 2-11</i> .....    | <i>\$100</i>                                      |
| <i>Stations/logons 11 and above.</i> | <i>\$50</i>                                       |
| [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) Network:   | \$500   |
| Dedicated line:                      | Per line:   |
| 256K .....                           | \$1,781   |
| 64K with non-guaranteed 256K.        | \$1,564   |
| burst capacity .....                 |   |
| 56K .....                            | \$712   |
| 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 had 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 amendments modify NASD Rule 7010(r), which establishes the fee

schedule for Primex. Specifically, the amendments reduce the monthly access fee for workstation logons so that the first workstation per firm is free, workstations 2 to 11 are charged \$100 and workstations 11 and up are charged \$50.

While the fee schedule for Primex was filed initially in December 2001, the prices for the fee schedule were determined in 2000.<sup>6</sup> Nasdaq represents that since that time transaction prices in the overall market have decreased and, as a result, the Primex fee schedule is no longer competitive. This proposal responds to the developments in the market and reduces the workstation fee.

Customers choosing to connect to the Primex Auction System have several options including programming their own interface using Computer to Computer Interface (CTCI), Application Programming Interface (API) or FIX (a customized protocol), or using the Primex workstation available over a dedicated network.

Since Primex was launched in December 2001, the monthly charges for the Primex workstation logons have been as follows:

- Workstation logons 1-10 (per firm)—\$200
- Workstation logons 11-25 (per firm)—\$100
- Workstation logons 26 and up—\$50

Since the product launch, firms have complained that the workstation charges are too high and a disincentive for participation in the system. Primex's current transaction charge structure is based on the interaction of orders and Predefined Relative Indications (PRIs) residing in the system. Although there are currently 40,000 to 50,000 orders flowing through the system on a daily basis, PRI submission has remained limited. The workstation is a user-friendly and easy way to submit PRIs into the system, and Primex and Nasdaq staff believe that the proposed reduction in logon charges will encourage more use of the workstation and PRIs.

**2. Statutory Basis**

Nasdaq believes that the proposed rule change, as amended, is consistent

<sup>6</sup> See Securities Exchange Act Release No. 45285 (Jan. 15, 2002), 67 FR 3521 (Jan. 24, 2002) (SR-NASD-2001-93). In this filing, which established the original fee schedule for Primex, Nasdaq indicated it would not charge any fees during the initial few months Primex was operating, and that it would notify members through a Head Trader Alert when it would begin assessing fees. Nasdaq began assessing fees on August 1, 2002 according to a revised fee schedule. Thus, fees were never charged under the original fee schedule. See Securities Exchange Act Release No. 46361 (August 15, 2002), 67 FR 54246 (August 21, 2002) (SR-NASD-2002-102).

with the provisions of section 15A of the Act,<sup>7</sup> in general and with section 15A(b)(5) of the Act,<sup>8</sup> in particular, in that it provides for the equitable allocation of reasonable fees among members. The Nasdaq represents that the fee reduction recognizes the changes in pricing that have occurred in the market and are designed to make the fees for Primex competitive with other trading venues. In addition, the Nasdaq represents that the workstation fees will be charged consistently to all members that choose that particular connection option.

*B. 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 pursuant to section 19(b)(3)(A)(ii) of the Act<sup>9</sup> and Rule 19b-4(f)(2) thereunder<sup>10</sup> because it establishes or changes a due, fee, or other charge for use of a Nasdaq system. At any time within 60 days after the filing of this proposed rule change, the Commission may summarily abrogate the rule change, as amended, 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 proposed rule change, as amended, 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 also will be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-2003-84 and should be submitted by June 26, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-47938; File No. SR-Phlx-2003-22]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Elimination of the Prospectus Delivery Requirement**

May 28, 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 May 5, 2003, the Philadelphia Stock Exchange LLC ("Phlx" or "Exchange") 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 the Exchange. The proposed rule change has been filed by Phlx as a "non-controversial" rule change under Rule 19b-4(f)(6) under the Act.<sup>3</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**

Phlx proposes to eliminate all references in its rules to "prospectus" in connection with options trading, due to the fact that standardized options issued by The Options Clearing Corporation (the "OCC") have become exempt from the Securities Act of 1933 ("Securities Act") (except for its antifraud provisions) and from the registration provisions of the Act<sup>4</sup>.

<sup>11</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> 17 CFR 240.19b-4(f)(6).

<sup>4</sup> See Exemption for Standardized Options From Provisions of the Securities Act of 1933 and From

Phlx Rule 1029(b) requires that every member and member organization deliver a current OCC Prospectus to each customer on request (the "Prospectus Delivery Requirement"). The Exchange is proposing to delete Phlx Rule 1029(b) and renumber current Phlx Rule 1029(c) as Phlx Rule 1029(b). A conforming change is being made to the title of Phlx Rule 1029 and to Commentary .03 to eliminate references to a prospectus.

Other Phlx rules refer tangentially to the Prospectus Delivery Requirement, such as Phlx Rules 213 and 454 (each of which refer to exchange-traded options "covered by a prospectus") and Commentary .05 to Phlx Rule 1024 (which makes reference to Phlx Rule 1029).<sup>5</sup> The Exchange is proposing to delete references to a prospectus in each of these rules. The text of the proposed rule change is available at the Exchange and at the Commission.

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

In its filing with the Commission, the Exchange 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. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

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

**1. Purpose**

The purpose of the proposed rule change is to eliminate all references to a "prospectus" in connection with options trading on the Exchange due to the fact that standardized options issued by the OCC have become exempt from the Securities Act (except for its

the Registration Requirements of the Securities Exchange Act of 1934, Securities Act Release No. 8171 and Securities Exchange Act Release No. 47082 (December 23, 2002), 68 FR 188 (January 2, 2003).

<sup>5</sup> Phlx Rule 784 refers to a prospectus in respect of "options." However, the Exchange represents that the rule is not applied to standardized options, so Phlx is not proposing to amend the language in Phlx Rule 784. Information about standardized options positions held by members and member organizations, that is also requested by Phlx Rule 784 in respect of options, is instead obtained by the Exchange pursuant to Phlx Rule 1003.

<sup>7</sup> 15 U.S.C. 78o-3.

<sup>8</sup> 15 U.S.C. 78o-3(b)(5).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).