



April 30, 2003

Jonathan G. Katz
Secretary
U.S. Securities and Exchange Commission
450 Fifth Street
Washington, D.C. 20549-0609

Re: Primex Auction System (SR-NASD-2003-58)

Dear Mr. Katz:

The Nasdaq Stock Market (“Nasdaq”) has filed to eliminate the recently approved requirement that a Primex Auction Market Maker (“PAMM”) direct 80 percent of its retail-size order flow to Primex (the “Percentage Test”) as a precondition for retaining its status as a PAMM. PAMM status entitles a **Nasdaq** member to displace other public interest residing in Primex with price/time priority **and** to **share** in certain Primex revenues.¹

In our July 24, 2002 letter, we criticized the Percentage Test, in **part**, because it compromises the ability of broker-dealers to comply with their best execution obligations, contrary to the goals of Section 11A and Nasdaq’s obligations under Section 15A(b)(9) of the Exchange Act. Eliminating the Percentage **Test** removes a member’s incentive to send significant retail order flow to **Primex**, regardless of whether that decision is in the best interest of the member’s customer. For that reason, the NYSE supports Nasdaq’s proposed rule change.

However, eliminating the Percentage Test also makes any Nasdaq market-maker or ITS/CAES Market Maker eligible to register as a PAMM and, therefore, entitles it to jump ahead of public trading interest residing in Primex. **As** we noted in our July letter, PAMMs, despite the name, are not market makers. They have no market making responsibilities in Primex. To register **as** a PAMM for a particular security, a Nasdaq member need only register as a Nasdaq or ITS/CAES market maker for that security. Nasdaq rules require that market makers maintain two-sided quotes for the security **within Nasdaq’s regular trading systems, but not within Prima**. We are now **left** to wonder what are the “obligations” of a PAMM that justify giving the PAMM the right to displace public orders with price/time priority in Primex.

¹ Release No. 34-47645 (SR-NASD-2003-58) (**April 8, 2003**). **On** February 11, 2003, the **Commission** permanently approved Primex in Release No. 34-47351 (**SR-NASD-2002-60**). The NYSE submitted a comment letter on the filing. See letter dated July 24, 2002, to Mr. Jonathan G. Katz, Secretary, Commission, from Darla C. Stuckey, Corporate **Secretary, NYSE**.

We appreciate this opportunity to comment on these important issues. We would be pleased to respond to any questions you may have.

Sincerely yours,

A handwritten signature in black ink that reads "Darla C. Stuckey". The signature is written in a cursive style with a large, prominent initial "D".

cc: Chairman William H. Donaldson
Commissioner Paul S. Atkins
Commissioner Roel C. Campos
Commissioner Cynthia A. Glassman
Commissioner Harvey J. Goldschmid
Annette L. Nazareth, Director, Division of Market Regulation
Robert L.D. Colby, Deputy Director, Division of Market Regulation
Elizabeth King, Associate Director, Division of Market Regulation
Rebekah Liu, Special Counsel, Division of Market Regulation