these proceedings but may help the Board and/or parties in their deliberations as to the proper boundaries of the issues to be considered. During this prehearing conference, such persons may make oral limited appearance statements, on Wednesday morning, February 1, 1995, from 9:00 a.m. to 11:00 a.m. If more persons than can be accommodated during this period wish to make statements, and to the extent that time may be available after the conclusion of the substantive portions of the conference, the Board may elect to hear additional statements. Written statements, or requests to make oral limited appearance statements, should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington D.C. 20555, Attn: Docketing and Service Branch. A copy of such statement or request should be served on the Chairman of this Atomic Safety and Licensing Board, T3 F23, U.S. Nuclear Regulatory Commission, Washington D.C. 20555.

Documents relating to this proceeding are available for public inspection at the Commission's Public Document Room, 2120 L St. N.W., Washington D.C. 20555.

For the Atomic Safety and Licensing Board.

Charles Bechnoefer,

Chairman Administrative Judge.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35221; File No. S7–24–89]

Joint Industry Plan; Order Approving Amendment No. 2 to Reporting Plan for Nasdaq/National Market Securities Traded on an Exchange on an Unlisted or Listed Basis, Submitted by the National Association of Securities Dealers, Inc., and the Boston, Chicago and Philadelphia Stock Exchanges

January 11, 1995.

On January 9, 1995, the National Association of Securities Dealers, Inc., and the Boston, Chicago, and Philadelphia Stock Exchanges (collectively, ''Participants'') [1] submitted to the Commission Amendment No. 2 to a joint transaction reporting plan (''Plan'') for Nasdaq/National Market securities traded on an exchange on an unlisted or listed basis.[2] The Commission is approving the proposed amendment to the Plan and trading pursuant to the Plan on a temporary basis to expire on August 12, 1995. The Commission also is soliciting comment, among other matters, on whether exchanges should be permitted to extend UTP to more than 100 OTC securities at any given time.

I. Extension of the Pilot Program

The Commission originally approved the Plan on June 26, 1990.[3] The Plan governs the collection, consolidation and dissemination of quotation and transaction information for Nasdaq/National Market securities listed on an exchange or traded on an exchange pursuant to UTP. The Commission originally approved trading pursuant to the Plan on a one-year pilot basis, with the pilot period to commence when transaction reporting pursuant to the Plan commenced. Thereafter, the Commission extended the effectiveness of the Plan through January 12, 1995, as requested by the Participants in Amendment No. 1 to the Plan.[4] Accordingly, the pilot period commenced on July 12, 1993, and most recently was scheduled to expire on January 12, 1995.

As originally approved by the Commission, the Plan required the Participants to complete their negotiations regarding revenue sharing during the one-year pilot period. The Participants, however, have not yet come to an agreement concerning revenue sharing for transactions effected pursuant to the Plan. Proposed Amendment No. 2 to the Plan extends this negotiation period for an additional seven months.[5] The Commission believes it is appropriate to extend the effectiveness of the pilot program, particularly in light of the reported recent progress made by the Participants concerning financial matters. At the same time, however, the Commission expects the Participants to conclude those negotiations before January 31, 1995, and expects the Participants to submit to the Commission a proposed amendment to the Plan concerning finances before February 15, 1995.

II. Extension of Certain Exemptive Relief

In conjunction with the Plan, on a temporary basis scheduled to expire on July 12, 1995, the Commission granted an exemption from Rule 11Ac1–2 under the Act regarding the calculated best bid and offer (''BBO''), and granted the BSE an exemption from the provision of Rule 11Aa3–1 under the Act that requires transaction reporting plans to include market identifiers for transaction reports and last sale data. At the request of the Participants, this order extends these exemptions through August 12, 1995, provided that the Plan continues in effect through that date pursuant to a Commission order.[6] The Commission continues to believe that exemptive relief from these provisions is appropriate through August 12, 1995, but at that time, the Commission will

[1] The signatories to the Plan, i.e., the National Association of Securities Dealers, Inc. (''NASD''), and the Chicago Stock Exchange, Inc. (''Chx'') (previously, the Midwest Stock Exchange Inc.), Philadelphia Stock Exchange, Inc. (''Phlx''), and the Boston Stock Exchange, Inc. (''BSE''), are the ''Participants.'' The BSE, however, joined the Plan as a ''Limited Participant,'' and reports quotation information and transaction reports only in Nasdaq/National Market (previously referred to as ''Nasdaq/NMS'') securities listed on the BSE. Originally, the American Stock Exchange, Inc., was a Participant to the Plan, but did not trade securities pursuant to the Plan, and withdrew from participation in the Plan in August 1994.

[2] The Commission notes that Section 12(f) of the Act describes the circumstances under which an exchange may trade by security that is not listed on the exchange, i.e., by extending unlisted trading privileges (''UTP'') to the security. Section 12(f) was amended on October 22, 1994, 15 U.S.C. 12(f) (1991) (as amended 1994). Prior to the amendment, Section 12(f) required exchanges to apply to the Commission before extending UTP to any security. In order to approve an exchange UTP application for a registered security not listed on any exchange (''OTC/UTP''), Section 12(f) required the Commission to determine that various criteria had been met concerning fair and orderly markets, the protection of investors, and certain national market initiatives. These requirements worked in conjunction with the Plan currently under review. The recent amendment to Section 12(f), among other matters, removes the application requirement and permits OTC/UTP only pursuant to a Commission order or rule. The order or rule is to be issued or promulgated under essentially the same standards that previously applied to Commission review of UTP applications. The present orders serves to meet this Section 12(f) requirement.

[3] *See* Securities Exchange Act Release No. 28146 (June 26, 1990), 55 FR 27917 (''1990 Approval Order''). For a detailed discussion of history of UTP in OTC securities, and the events that led to the present plan and pilot program, *see* 1994 Extension Order, *infra* note 4.

[4] See Securities Exchange Act Release No. 34371 (July 13, 1994), 59 FR 37103 (''1994 Extension Order'').

[5] In the present filing with the Commission, the NASD states that the parties have made substantial progress in their negotiations but have not concluded them and that, in order to conclude the negotiations and provide sufficient time for approval by their governing boards and the Commission, the parties believe that an additional seven months will be required. See letter from T. Grant Callery, Vice President and General Counsel, NASD, to Jonathan G. Katz, Secretary, Commission, dated January 9, 1995.

[6] The Commission notes that the present filing does not make clear that the two exemptions were previously scheduled to expire on July 12, 1995. Nevertheless, the filing requests an ''identical extension'' of the relevant exemptions along with their request that the effectiveness of the Plan be extended through August 12, 1995. Accordingly, this order extends the effectiveness of the relevant exemptions from July 12, 1995, through August 12, 1995. See id.

review the exemptive relief in light of any comments received.

III. Outstanding Issues

In the 1994 Extension Order, the Commission noted several areas of unresolved issues concerning the Plan.[7] These issues include, among other matters, whether the Commission should continue to limit the number of OTC securities that may be traded on exchanges pursuant to UTP. Currently, exchanges may extend UTP up to a maximum of 100 securities.[8] To date, the Commission has solicited comment on this and other matters and has not received evidence that expanding the number of securities would have a negative effect on the markets or the protection of investors. Moreover, the Commission recently received a letter from the Chx requesting that the Commission expand the number of eligible securities from 100 to 500.[9]

Accordingly, the Commission solicits comment specifically on whether it is appropriate to permit exchanges to extend UTP to a maximum of 500 OTC securities for an interim period, and whether all NNM securities should be available for extensions of UTP if the Commission determines that permanent approval of the Plan is appropriate. The Commission preliminarily believes that, after consideration of comments received, it may be appropriate to expand the number of eligible securities prior to the Commission's review of other matters associated with the Plan in August 1995.

The Commission also notes other areas for commenters to address: (1) Whether the BBO calculation for the relevant securities should be based on price and time only (as currently is the case) or if the calculation should include size of the quoted bid or offer; and (2) whether there is a need for an intermarket linkage for order routing and execution and an accompanying trade-through rule.

IV. Solicitation of Comment

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed plan amendment that are filed with the Commission, and all written communications relating to the proposed plan amendment 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 at the Commission's Public Reference Room. All submissions should refer to File No. S7–24–89 and should be submitted by February 9, 1995.

VI. Conclusion

The Commission finds that proposed Amendment No. 2 to the Plan to extend the financial negotiation period for an additional seven months is appropriate and in furtherance of Section 11A of the Act. The Commission also finds that extensions of the exemptive relief requested through August 12, 1995, and described above, also is consistent with the Act and the rules thereunder. Specifically, the Commission believes that these extensions should serve to provide the Participants with more time to conclude their financial negotiations and to evaluate the effects of the pilot program and report their findings to the Commission. This, in turn, should further the objects of the Act in general, and specifically those set forth in Section 12(f) and 11A of the Act and in Rules 11Aa3–1 and 11Aa3–2 thereunder.

It is therefore ordered, pursuant to Sections 12(f) and 11A of the Act and paragraph (c)(2) of Rule 11Aa3–2 thereunder, that Amendment No. 2 to the Joint Transaction Reporting Plan for Nasdaq/National Market securities traded on an exchange on an unlisted or listed basis is hereby approved, and trading pursuant to the Plan is hereby approved on a temporary basis through August 12, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(29).

Margaret H. McFarland,

Deputy Secretary.

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BILLING CODE 8010–01–M

[7] In the 1994 Extension Order, the Commission requested views on numerous issues presented by the pilot program, and requested that the Participants submit reports to the Commission on those issues by September 30, 1994. See *Supra* note 4. The Commission received a report from the Philadelphia Stock Exchange as an attachment to its proposed rule change requesting an extension of the Phlx's pilot procedures for OTC/UTP. See letter from William W. Uchimoto, General Counsel, Phlx, to Elizabeth Prout, Division of Market Regulation, Commission, dated December 21, 1994 (attachment to File No. SR–PHLX–94–70). The other Participants have not complied with the Commission order, and must respond to the Commission request immediately.

[8] Prior to 1985, the Commission generally did not permit exchanges to extend UTP to OTC securities. In 1985, the Commission determined that it would be appropriate to permit exchanges, on a temporary basis and subject to certain limitations, to extend UTP up to a maximum of 25 OTC securities. These limitations included the requirement that the NASD and exchanges seeking to extend UTP to OTC securities enter into a plan for consolidated transaction and quotation dissemination. See Securities Exchange Act Release No. 22412 (September 16, 1985), 50 FR 38640. In 1986, the Midwest Stock Exchange (currently the Chicago Stock Exchange, or ''Chx'') entered into an interim plan which subsequently was superseded by the Plan currently operating on a pilot basis. In 1990, the Commission expanded the maximum number of eligible securities to 100. See 1990 Approval Order, *supra* note 3.

[9] See letter from George T. Simon, Foley & Lardner, to Katherine England, Assistant Director, Commission, dated January 9, 1995. This letter also concludes that, when the Plan is finally approved, all NNM stocks would be eligible for trading.

[Release No. 34–35211; File Nos. SR–Amex–94–12, SR–CBOE–94–27; and SR–PSE–94–23]

Self-Regulatory Organizations; Order Approving Proposed Rule Changes by the American Stock Exchange, Inc., the Chicago Board Option Exchange, Inc., and Pacific Stock Exchange, Inc.; Relating to Short Sales of Nasdaq/NM Securities of Companies Involved in a Merger or Acquisition

January 10, 1995.

I. Introduction

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] on October 14, 1994, the American Stock Exchange, Inc. (''Amex''), on August 4, 1994, the Chicago board Options Exchange, Inc. (''CBOE''), and on August 8, 1994, the Pacific Stock Exchange, Inc. (''PSE''), respectively (each individually referred to herein as an ''Exchange'' and two or more collectively referred to as ''Exchange''), submitted to the Securities and Exchange Commission (''Commission'') proposed rule changes relating to extending the market maker exemption from the NASD's short sale rule to Nasdaq National Market (''Nasdaq/NM'' or ''NM'') securities involved in merger and acquisition (''NSA'') transactions. On September 29, 1994, the CBOE filed Amendment No. 1 to its proposal,[3] and on October 14, 1994, the PSE filed Amendment No. 1 to its proposal.[4] The

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1993).

[3] In Amendment No. 1, the CBOE adds the requirement that for a short sale in a Nasdaq/NM security involved in an M&A to qualify as an exempt hedge transaction pursuant to the current proposal, the M&A must be publicly announced. See letter from Michael L. Meyer, Schiff Hardin & Waite, to Francois Mazur, Attorney, Division of Market Regulation (''Division''), Commission, dated September 29, 1994 (''CBOE Amendment No. 1'').

[4] In Amendment No. 1, the PSE adds the requirement that for a short sale in a Nasdag/NM

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