

5. The Adviser will provide the Board, no less frequently than quarterly, information about the Adviser's profitability on a per-Portfolio basis. Such information will reflect the impact on profitability of the hiring or termination of any Manager during the applicable quarter.

6. Whenever a Manager is hired or terminated, the Adviser will provide the board information showing the expected impact on the Adviser's profitability.

7. When a Manager change is proposed for a Portfolio with an Affiliated Manager, the Fund's directors, including a majority of the Independent Directors, will make a separate finding, reflected in the Fund's board minutes, that the change is in the best interests of the Portfolio and variable contract owners with assets allocated to any sub-account of a separate account for which a Portfolio serves as a funding medium and does not involve a conflict of interest from which the Adviser or the Affiliated Manager derives an inappropriate advantage.

8. Before a Portfolio may rely on the order requested hereby, the operation of the Portfolio in the manner described in the application will be approved by a majority of its outstanding voting securities, as defined in the Act, pursuant to voting instructions provided by variable contract owners with assets allocated to any sub-account of a registered separate account for which a Portfolio serves as a funding medium or, in the case of a new Portfolio whose shareholders (*i.e.*, separate accounts) purchased shares on the basis of a prospectus containing the disclosure contemplated by condition 11 below, by the sole initial shareholder(s) before offering shares of that new Portfolio to variable contract owners through a separate account.

9. The Adviser will provide general management services to the Fund and its Portfolios, including overall supervisory responsibility for the general management and investment of each Portfolio's securities portfolio, and, subject to review and approval by the Board, will: (a) set the Portfolios' overall investment strategies; (b) select Managers; (c) when appropriate, allocate and reallocate a Portfolio's assets among multiple Managers; (d) monitor and evaluate the performance of Managers; and (e) ensure that the Managers comply with the Portfolio's investment objectives, policies, and restrictions.

10. Within 60 days of the hiring of any new Manager, variable contract owners with assets allocated to any registered separate account for which the Fund serves as a funding medium will be furnished all information about

a new Manager or Portfolio Manager Agreement that would be included in a proxy statement, except as modified by the order to permit Limited Fee Disclosure. Such information will include Limited Fee Disclosure and any change in such disclosure caused by the addition of a new Manager. The Adviser will meet this condition by providing such variable contract owners with an information statement meeting the requirements of Regulation 14C and Schedule 14C under the Exchange Act. The information statement also will meet the requirements of Item 22 of Schedule 14A under the Exchange Act.

11. The Fund will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to the application. In addition, the Fund will hold itself out to the public as employing the "Manager of Managers Strategy" described in the application. The prospectus relating to the Fund will prominently disclose that the Adviser has ultimate responsibility for the investment performance of each Portfolio employing subadvisers due to its responsibility to oversee the Managers and recommend their hiring, termination, and replacement.

12. No director or officer of the Fund or director or officer of the Adviser will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by that director or officer) any interest in a Manager, except for: (a) ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Manager or any entity that controls, is controlled by, or is under common control with a Manager.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39505; File No. S7-24-89]

Joint Industry Plan; Solicitation of Comments and Order Approving Request To Extend Temporary Effectiveness of 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., the Boston Stock Exchange, Inc., the Chicago Stock Exchange, Inc. and the Philadelphia Stock Exchange, Inc.

December 31, 1997.

I. Introduction

On December 30, 1997, the National Association of Securities Dealers, Inc. ("NASD"), on behalf of itself and the Boston Stock Exchange, Inc. ("BSE"), the Chicago Stock Exchange, Inc. ("CHX"), and the Philadelphia Stock Exchange, Inc. ("Phlx") submitted to the Securities and Exchange Commission ("Commission" or "SEC") a proposal to extend the operation of a joint transaction reporting plan ("Plan")¹ for Nasdaq/National Market ("Nasdaq/NM") (previously referred to as Nasdaq/NMS) securities traded on an exchange on an unlisted or listed basis.² The proposal would extend the effectiveness of the Plan, as amended by Revised Amendment No. 9, as defined in footnote 3, through June 30, 1998.³ The

¹ See Letter from Robert E. Aber, Vice President and General Counsel, Nasdaq, to Jonathan G. Katz, Secretary, Commission, dated December 30, 1997 ("December 1997 Extension Request"). The December 1997 Extension Request also requests the Commission continue to provide exemptive relief, previously granted in connection with the Plan on a temporary basis, from Rules 11Ac1-2 and 11Aa3-1 under the Securities Exchange Act of 1934, as amended ("Act"). 15 U.S.C. 78a *et seq.* The signatories to the Plan are the Participants for purposes of this release, however, the BSE joined the Plan as a "limited participant" and reports quotation information and transaction reports only in Nasdaq/NM securities listed on the BSE. Originally, the American Stock Exchange, Inc. ("Amex") was a participant but withdrew its participation from the Plan in August 1994.

² Section 12 of the Act generally requires an exchange to trade only those securities that the exchange lists, except that Section 12(f) of the Act permits unlisted trading privileges ("UTP") under certain circumstances. For example, Section 12(f), among other things, permits exchanges to trade certain securities that are traded over-the-counter ("OTC/UTP"), but only pursuant to a Commission order or rule. The present order fulfills this Section 12(f) requirement. For a more complete discussion of the Section 12(f) requirement, see November 1995 Extension Order, *infra* note 8.

³ On March 18, 1996, the Commission solicited comment on a revenue sharing agreement among the Participants. See March 1996 Extension Order, *infra* note 8. Thereafter the Participants submitted

Continued

Commission also is extending certain exemptive relief as described below. The December 1997 Extension Request also requests that the Commission approve the Plan, as amended, on a permanent basis on or before June 30, 1998. During the six-month extension of the Plan, the Commission will determine whether to approve the proposed Plan, as amended, on a permanent basis.

II. Background

The Plan governs the collection, consolidation and dissemination of quotation and transaction information for Nasdaq/NM securities listed on an exchange or traded on an exchange pursuant to a grant of UTP.⁴ The Commission 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. The Commission originally approved the Plan on June 26, 1990.⁵ Accordingly, the pilot period commenced on July 12, 1993 and was scheduled to expire on July 12, 1994.⁶ The Plan has since been in operation on an extended pilot basis.⁷

certain technical revisions to the revenue sharing agreement ("Revised Amendment No. 9"). See Letter from Robert E. Aber, Vice President and General Counsel, Nasdaq, to Jonathan G. Katz, Secretary, Commission, dated September 13, 1996. See also September 1996 Extension Order, *infra* note 8.

⁴ See Section 12(f)(2) of the Act.

⁵ See Securities Exchange Act Release No. 28146 (June 26, 1990), 55 FR 27917 (July 6, 1990) ("1990 Plan Approval Order").

⁶ See letter from David T. Rusoff, Foley & Lardner, to Betsy Prout, Division of Market Regulation ("Division"), SEC, dated May 9, 1994.

⁷ See Securities Exchange Act Release No. 34371 (July 13, 1994), 59 FR 37103 (July 20, 1994); Securities Exchange Act Release No. 35221 (January 11, 1995), 60 FR 3886 (January 19, 1995); Securities Exchange Act Release No. 36102 (August 14, 1995), 60 FR 43626 (August 22, 1995); Securities Exchange Act Release No. 36226 (September 13, 1995), 60 FR 49029 (September 21, 1995); Securities Exchange Act Release No. 36368 (October 13, 1995), 60 FR 54091 (October 19, 1995); Securities Exchange Act Release No. 36481 (November 13, 1995), 60 FR 58119 (November 24, 1995) ("November 1995 Extension Order"); Securities Exchange Act Release No. 36589 (December 13, 1995), 60 FR 65696 (December 20); Securities Exchange Act Release No. 36650 (December 28, 1995), 61 FR 358 (January 4, 1996); Securities Exchange Act Release No. 36934 (March 6, 1996), 61 FR 10408 (March 13, 1996); Securities Exchange Act Release No. 36985 (March 18, 1996), 61 FR 12122 (March 25, 1996) ("March 18, 1996 Extension Order"); Securities Exchange Act Release No. 37689 (September 16, 1996), 61 FR 50058 (September 24, 1996) ("September 1996 Extension order"); Securities Exchange Act Release No. 37772 (October 1, 1996), 61 FR 52980 (October 9, 1996); Securities Exchange Act Release No. 38457 (March 31, 1997), 62 FR 16880 (April 8, 1997); Securities Exchange Act Release No. 38794 (June 30, 1997) 62 FR 36586 (July 8, 1997).

III. Description of the Plan

The Plan provides for the collection from Plan Participants and the consolidation and dissemination to vendors subscribers and others of quotation and transaction information in "eligible securities."⁸ The Plan contains various provisions concerning its operation, including: Implementation of the Plan; Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information; Reporting Requirements (including hours of operation); Standards and Methods of Ensuring Promptness, Accuracy and Completeness of Transaction Reports; Terms and Conditions Access; Description of Operation of Facility Contemplated by the Plan; Method and Frequency of Processor Evaluation; Written Understandings of Agreements Relating to Interpretation of, or Participation in, the Plan; Calculation of the Best Bid and Offer ("BBO"); Dispute Resolution; and Method of Determination and Imposition, and Amount of, Fees and Charges.⁹

IV. Exemptive Relief

In conjunction with the Plan, on a temporary basis scheduled to expire on December 31, 1997, the Commission granted an exemption to vendors from Rule 11Ac1-2 under the Act regarding the calculation of the BBO¹⁰ 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. As discussed further below in the *Summary of Comments*, the Participants request in the December 1997 Extension Request that the Commission grant an extension of the exemptive relief described above to vendors until the BBO calculation issue is resolved. Additionally, in the December 1997 Extension Request, the

⁸ The Plan defines "eligible security" as any Nasdaq/NM security as to which unlisted trading privileges have been granted to a national securities exchange pursuant to Section 12(f) of the Act or which is listed on a national securities exchange.

⁹ The full text of the Plan, as well as a "Concept Paper" describing the requirements of the Plan, are contained in the original filing which is available for inspection and copying in the Commission's public reference room.

¹⁰ Rule 11Ac1-2 under the Act requires that the best bid or best offer be computed on a price/size/time algorithm in certain circumstances. Specifically, Rule 11Ac1-2 under the Act provides that "in the event two or more reporting market centers make available identical bids or offers for a reported security, the best bid or offer * * * shall be computed by ranking all such identical bids or offers * * * first by size * * * then by time." The exemption permits vendors to display the BBO for Nasdaq securities subject to the Plan on a price/time/size basis.

Participants also request that the Commission grant an extension of the exemptive relief described above to the BSE for as long as the BSE is a Limited Participant under the Plan.

V. Summary of Comments

In the June 1997 Extension Order, the Commission requested comment on the following issues: whether the BBO calculation for securities traded pursuant to the Plan should be based on a price/time/size methodology or a price/size/time methodology; whether there is a need for an intermarket linkage for order routing and execution; and whether there is a need for a trade through rule. With respect to the BBO calculation issue, the Nasdaq Board approved a recommendation to modify the methodology for calculating the BBO on Nasdaq in order to prioritize quotes based on a price/size/time algorithm instead of the current price/time/size algorithm, provided that Nasdaq market makers are subject to a minimum quote size requirement of 100 shares for at least 1,000 Nasdaq securities. In furtherance of this goal, on October 29, 1997, the Commission approved an NASD proposal to extend and expand the "Actual Size Rule"¹¹ to a total of 150 securities from 100 securities.¹² In addition, the NASD has submitted a proposed rule change to establish an integrated order delivery and execution system for directed orders and non-directed orders.¹³

With respect to the intermarket linkage issue, the Nasdaq Board approved a recommendation to provide specialists on an exchange trading Nasdaq securities on a UTP basis access to SOES, or its successor system, to the same extent that registered Nasdaq market makers have access to SOES, provided that: Nasdaq market makers are afforded virtually identical access to the automated execution system operated by such UTP exchange and the

¹¹ See Securities and Exchange Act Release No. 39285 (October 29, 1997), 62 FR 59932 (November 5, 1997).

¹² See Securities Exchange Release No. 38513 (April 15, 1997), 62 FR 19369 (April 21, 1997). Under the Actual Size Rule, market makers in certain Nasdaq securities are subject to a minimum quotation size requirement of 100 shares instead of the applicable small order execution system ("SOES") tier size for that security.

¹³ SR-NASD-97-93, filed December 19, 1997. Directed orders are those that an order-entry firm chooses to send to a specific market maker, electronic communications network ("ECN") or UTP exchange for delivery and execution. Non-directed orders are those that are not sent to a particular market maker or ECN. In other words, when the broker-dealer entering the order does not specify the particular market maker, ECN or UTP exchange it wants to access, the order will be sent to the next available executing participant quoting at the best price displayed in Nasdaq.

order execution algorithms of the exchange's automated execution system are virtually identical to SOES or its successor system.

In addition, in early 1998 the CHX intends to replace its existing system and begin using a system commonly known as BRASS, developed by Automated Securities Clearance, Limited ("ASC"), in order to access securities subject to the Plan. BRASS is a trade support and order routing system which offers subscribers, generally broker-dealers, software and hardware to enable them to perform various functions. ASC grants its subscribers a license to operate the BRASS software through a customized computer terminal purchased from ASC or by running the BRASS software on their own terminals. In the case of the CHX, ASC has specifically customized BRASS to meet the special needs of the CHX. Among other things, Nasdaq market makers that already subscribe to BRASS will be able to route OTC/UTP orders to specialists on the CHX floor through a SelectNet linkage with BRASS workstations on the CHX floor. Conversely, CHX specialists will be able to route orders into SelectNet through their BRASS workstations.¹⁴ The Commission notes that ASC will be subject to the Commission's inspection and examination procedures with regards to the specific customized BRASS system that ASC will provide to the CHX because ASC will be operating a facility of an exchange.

With respect to the need for a trade through rule, the NASD continues to maintain in the December 1997 Extension Request that it would be more appropriate to address this issue once the issue of electronic access to Nasdaq market makers' quotes has been resolved. The CHX, however, believes that a trade through rule is currently necessary.¹⁵

The Commission continues to solicit comment regarding the BBO calculation and the trade through rule and also solicits comment on the CHX's use of the BRASS system.

VI. Discussion

The Commission finds that an extension of temporary approval of the operation of the Plan, as amended, through June 30, 1998, is appropriate and in furtherance of Section 11A of the Act. The Commission believes that such extension will provide the Participants

with additional time to seek Commission approval of pending proposals concerning the BBO calculation¹⁶ and to begin to make reasonable proposals concerning a trade through rule to facilitate the trading of OTC securities pursuant to UTP. While the Commission continues to solicit comment on these matters, the Commission believes that these matters should be addressed directly by the Participants on or before March 31, 1998 so that the Commission may have ample time to determine whether to approve the Plan on a permanent basis by June 30, 1998.

The Commission also finds that it is appropriate to extend the exemptive relief from Rule 11Ac1-2 under the Act until the earlier of June 30, 1998 or until such time as the calculation methodology for the BBO is based on a price/size/time algorithm pursuant to a mutual agreement among the Participants approved by the Commission. The Commission further finds that it is appropriate to extend the exemptive relief from Rule 11Aa3-1 under the Act, that requires transaction reporting plans to include market identifiers for transaction reports and last sale data, to the BSE through June 30, 1998. The Commission believes that the extensions of the exemptive relief provided to vendors and the BSE, respectively, are consistent with the Act, the Rules thereunder, and specifically with the objectives set forth in Sections 12(f) and 11A of the Act and in Rules 11Aa3-1 and 11Aa3-2 thereunder.

VII. Solicitation of Comments

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, N.W., Washington, D.C. 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 January 30, 1998.

VIII. Conclusion

It is therefore ordered, pursuant to Sections 12(f) and 11A of the Act and paragraph (c)(2) of Rule 11Aa3-2 thereunder, that the Participants' request to extend the effectiveness of the Joint Transaction Reporting Plan, as amended, for Nasdaq/National Market securities traded on an exchange on an unlisted or listed basis through June 30, 1998, and certain exemptive relief until June 30, 1998, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-39512; File No. SR-CHX-97-34)

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to the Trading of Nasdaq/NM Securities on the CHX

December 31, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on December 11, 1997, the Chicago Stock Exchange, Incorporated ("CHX" 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organizations Statement of the Terms of Substance of the Proposed Rule Change

The Exchange requests a three month extension of the pilot program relating to the trading of Nasdaq/NM securities on the Exchange that is currently due to expire at the end of December, 1997. Specifically, the pilot program amended Article XX, Rule 37 and Article XX, Rule 43 of the Exchange's Rules and the Exchange proposes that the amendments remain in effect on a pilot basis through March 31, 1998.

¹⁴ See December 1997 Extension Request and Letter from George T. Simon, Foley & Lardner to Howard L. Kramer, Senior Associate Director, Division, SEC, dated December 12, 1997 ("CHX Letter").

¹⁵ See CHX Letter *id.*

¹⁶ See e.g., SR-NASD-97-93, *supra* note 12.

¹⁷ 17 CFR 200.30-3(a)(29).

¹ 15 U.S.C. § 78s(b)(1).