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**Filing Dates:** The application was filed on March 15, 2001, and amended on May 1, 2001.

**Applicant's Address:** 5750 Wilshire Boulevard, Suite 560, Los Angeles, CA 90036.

**Allied Owners Action Fund Inc. [File No. 811-9551]**

**Summary:** Applicant seeks an order declaring that it has ceased to be an investment company. On March 26, 2001, applicant made a liquidating distributing to its shareholders based on net asset value. Applicant incurred no expenses in connection with the liquidation.

**Filing Dates:** The application was filed on April 20, 2001, and amended on May 17, 2001.

**Applicant's Address:** 215 W 91st #112, New York, NY 10024.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-44348; File No. S7-24-89]**

**Joint Industry Plan; Solicitation of Comments and Order Approving Request to Extend Exchange on an Unlisted or Listed Basis, Submitted by the National Association of Securities Dealers, Inc., the Pacific Exchange, Inc. and the Boston, Chicago, Philadelphia, and Cincinnati Stock Exchanges**

May 24, 2001.

**I. Introduction**

On May 23, 2001, the Cincinnati Stock Exchange, Inc. ("CSE") on behalf of itself and the National Association of Securities Dealers, Inc. ("NASD"), the Boston Stock Exchange, Inc. ("BSE"), the Chicago Stock Exchange, Inc. ("CHX"), Pacific Exchange, Inc. ("PCX"), and the Philadelphia Stock Exchange, Inc. ("Phlx") (hereinafter referred to as the "Participants")<sup>1</sup>

<sup>1</sup> The CSE was elected as chair of the Operating Committee for the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Exchange-Listed Nasdaq/National Market System Securities and for Nasdaq/National Market System Securities Traded on Exchange on an Unlisted Trading Privileges Basis ("Plan") by the Participants.

submitted to the Securities and Exchange Commission ("Commission" or "SEC") a proposal to extend the operation of the Plan<sup>2</sup> for Nasdaq/National Market ("Nasdaq/NM") securities traded on an exchange on an unlisted basis.<sup>3</sup> The May 2001 Extension Request would extend the effectiveness of the Plan through July 19, 2001 and also would extend certain exemptive relief as described below. The May 2001 Extension Request does not seek permanent approval of the Plan because the Participants currently are negotiating certain amendments to the Plan for which they will seek approval in the future.<sup>4</sup>

**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.<sup>5</sup> The Commission originally approved the Plan on a pilot basis on June 26, 1990.<sup>6</sup> The parties did not begin trading until July 12, 1993, accordingly, the pilot period commenced on July 12, 1993. The Plan as since been in operation on an extended pilot basis.<sup>7</sup>

<sup>2</sup> See Letter from Jeffrey T. Brown, Vice President Regulation and General Counsel, CSE, to Jonathan G. Katz, Secretary, Commission, dated May 21, 2001 ("May 2001 Extension Request"). 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/National Market 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.

<sup>3</sup> Section 12 of the Securities Exchange Act of 1934 ("Act") generally requires an exchange to trade only those securities that the exchange lists, except that section 12(f) of the Act permits unlisted traded 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 7.

<sup>4</sup> In accordance with the Commission's statements in its order approving the establishment of the Nasdaq Order Display Facility and Order Collector Facility ("SuperMontage"), the Participants represent that they are revising the Plan. See Securities Exchange Act Release No. 43863 (January 19, 2001) 66 FR 8020 (January 26, 2001).

<sup>5</sup> See Section 12(f)(2) of the Act, 15 U.S.C. 7811(f)(2).

<sup>6</sup> See Securities Exchange Act Release No. 28146, 55 FR 27917 (July 6, 1990) ("1990 Plan Approval Order").

<sup>7</sup> See Securities Exchange Act Release Nos. 34371 (July 13, 1994), 59 FR 37103 (July 20, 1994); 35221 (January 11, 1995), 60 FR 3886 (January 19, 1995); 36102 (August 14, 1995), 60 FR 43626 (August 22, 1995); 36226 (September 13, 1995), 60 FR 49029 (September 21, 1995); 36368 (October 13, 1995), 60 FR 54091 (October 19, 1995); 36481 (November 13,

**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."<sup>8</sup> 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; Report Requirements (including hours of operation); Standards and Methods of Ensuring Promptness, Accuracy and Completeness of Transaction Reports; Terms and Conditions of Access; Description of Operation of Facility Contemplated by the Plan; Method and Frequency of Processor Evaluation; Written Understanding 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.<sup>9</sup>

**IV. Exemptive Relief**

In conjunction with the Plan, on a temporary basis, the Commission granted an exemption to vendors from Rule 11 Ac1-2<sup>10</sup> under the Act

1995), 60 FR 58119 (November 24, 1995) ("November 1995 Extension Order"); 36589 (December 13, 1995), 60 FR 65696 (December 20, 1995); 36650 (December 28, 1995), 61 FR 358 (January 4, 1996); 36934 (March 6, 1996), 61 FR 10408 (March 13, 1996); 36985 (March 18, 1996), 61 FR 12122 (March 25, 1996); 37689 (September 16, 1996), 61 FR 50058 (September 24, 1996); 37772 (October 1, 1996), 61 FR 52980 (October 9, 1996); 38457 (March 31, 1997), 62 FR 16880 (April 8, 1997); 38794 (June 30, 1997) 62 FR 365486 (July 8, 1997); 39505 (December 31, 1997) 63 FR 1515 (January 9, 1998); 40151 (July 1, 1998) 63 FR 36979 (July 8, 1998); 40896 (December 31, 1998), 64 FR 1834 (January 12, 1999); 41392 (May 12, 1999), 64 FR 27839 (May 21, 1999) ("May 1999 Approval Order"); 42268 (December 23, 1999), 65 FR 1202 (January 6, 2000); 43005 (June 30, 2000), 65 FR 42411 (July 10, 2000); and 44099 (March 23, 2001), 66 FR 17457 (March 30, 2001).

<sup>8</sup> 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 that is listed on a national securities exchange. On May 12, 1999, in response to a request from the CHX, the Commission expanded the number of eligible Nasdaq/NM securities that may be traded by the CHX pursuant to the Plan from 500 to 1000. See May 1999 Approval Order, *supra* note 7. On November 9, 2000, the Commission notices and requested comment on a proposal by the PCX to expand the maximum number of securities eligible to trade all Nasdaq/NM securities. See Securities Exchange Act Release No. 43545, 65 FR 69581 (November 17, 2000).

<sup>9</sup> 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.

<sup>10</sup> 17 CFR 240.11 Ac1-2.

regarding the calculation of the BBO<sup>11</sup> and granted the BSE an exemption from the provision of Rule 11Aa3-1<sup>12</sup> under the Act that requires transaction reporting plans to include market identifiers for transaction reports and last sale data. In the May 2001 Extension Request, the Participants ask that the Commission grant an extension of the exemptive relief described above to vendors until the BBO calculation issue is fully resolved. In addition, in the May 2001 Extension Request, the Participants request that the Commission grant an extension of the exemptive relief described above to the BSE until July 19, 2001.

#### V. Solicitation of Comment

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether it is consistent with the Act. The Commission continues to solicit comment regarding the BBO calculation, the trade-through rule and any issues presented by changes occurring in the market place. 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 proposal that are filed with the Commission, and all written communications relating to the proposal 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 June 21, 2001.

#### VI. Discussion

The Commission finds that an extension of temporary approval of the operation of the Plan, as amended, through July 19, 2001, is appropriate and in furtherance of Section 11A<sup>13</sup> of the Act.<sup>14</sup> The Commission has

previously stated that a revised Plan must be filed with the Commission by July 19, 2001, or the Commission will amend the Plan directly.<sup>15</sup> The Participants represent in their proposal that they are negotiating certain amendments to be included in an interim plan, which would be effective from the date of Commission approval, and no later than the expiration of this extension on July 19, 2001. The Participants also represent that they are considering a permanent plan (that would include a fully viable alternative exclusive or non-exclusive securities information processor) to be filed with the Commission on July 19, 2001. In light of the current negotiations regarding the existing Plan and the representations of the Participants in their request to the Commission, the Commission approves the requested extension of the Plan until July 19, 2001.

The Commission notes that the revised Plan, which must be filed with the Commission by July 19, 2001, must provide for either (1) a fully viable alternative exclusive securities information processor ("SIP") for all Nasdaq securities, or (2) a fully viable alternative non-exclusive SIP in the event that the Plan does not provide for an exclusive SIP. If the revised Plan provides for an exclusive consolidating SIP, a function currently performed by Nasdaq, the Commission believes that, to avoid conflicts of interest, there should be a presumption that a Plan Participant, and in particular Nasdaq, should not operate such exclusive consolidating SIP. The presumption may be overcome if: (1) The Plan processor is chosen on the basis of bona fide competitive bidding and the Participant submits the successful bid; and (2) any decision to award a contract to a Plan Participant, and any ensuing review or renewal of such contract, is made without that Plan Participant's direct or indirect voting participation. If a Plan Participant is chosen to operate such exclusive SIP, the Commission believes there should be a further presumption that the Participant-operated exclusive SIP shall operate completely separate from any order matching facility operated by that Participant and that any order matching facility operated by that Participant must interact with the plan-operated SIP on the same terms and conditions as any other market center trading Nasdaq listed securities. Further, the Commission will expect the NASD to

competition, and capital formation. 15 U.S.C. 78(c)(f).

<sup>15</sup> See *supra* note 4.

provide direct or indirect access to the alternative SIP, whether exclusive or non-exclusive, by any of its members that qualify, and to disseminate transaction information and individually identified quotation information for these members through the SIP.

In addition, the revised Plan should resolve the issues, which have been pending since the implementation of the Plan, of whether there is a need for an intermarket linkage for order routing and execution, whether there is a need for a trade-through rule to facilitate the trading of OTC securities pursuant to UTP, and how the BBO calculation should be determined for securities traded pursuant to the Plan.

Furthermore, the revised Plan should be open to all SROs, and the Plan should share governance of all matters subject to the Plan equitably among the SRO Participants. The Plan also should provide for sharing of market data revenues among SRO Participants. Finally, the Plan should provide a role for participation in decision making to non-SROs, that have direct or indirect access to the alternative SIP provided by the NASD. The Commission expects the parties to continue to negotiate in good faith on the above matters<sup>16</sup> as well as any other issues that arise during Plan negotiations.

The Commission also finds that it is appropriate to extend the exemptive relief from Rule 11Ac1-2<sup>17</sup> under the Act until the earlier of July 19, 2001, or until such time as the calculation methodology of the BBO is based on 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<sup>18</sup> under the Act to the BSE through July 19, 2001. The Commission believes that the temporary 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)<sup>19</sup> and 11A<sup>20</sup> of the Act and in Rules 11Aa3-1<sup>21</sup> and 11Aa3-2<sup>22</sup> thereunder.

<sup>16</sup> See also discussion in the SuperMontage order, *supra* note 4.

<sup>17</sup> 17 CFR 11Ac1-2.

<sup>18</sup> 17 CFR 11Aa3-1.

<sup>19</sup> 15 U.S.C. 781(f).

<sup>20</sup> 15 U.S.C. 78k-1.

<sup>21</sup> 17 CFR 240.11Aa3-1.

<sup>22</sup> 17 CFR 240.11Aa3-2.

<sup>11</sup> Rule 11 Ac1-2 under the Act requires that the best bid or best offer to be computed on a price/size/time algorithm in certain circumstances. Specifically, Rule 11 Ac1-2 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.

<sup>12</sup> 17 CFR 11 Aa3-1.

<sup>13</sup> 15 U.S.C. 78k-1.

<sup>14</sup> In approving this extension, the Commission has considered the extension's impact on efficiency,

## VII. Conclusion

*It is Therefore Ordered*, pursuant to sections 12(f)<sup>23</sup> and 11A<sup>24</sup> of the Act and paragraph (c)(2) of Rule 11Aa3-2<sup>25</sup> thereunder, that the Participants' request to extend the effectiveness of the Plan, as amended, for Nasdaq/NM securities traded on an exchange on an unlisted or listed basis through July 19, 2001, and certain exemptive relief through July 19, 2001, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>26</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44347; File No. SR-OPRA-2001-02]

### Options Price Reporting Authority; Notice of Filing of Amendment to OPRA Plan to Permit Exchanges to Disseminate Unconsolidated Market Information to Certain of Their Members

May 24, 2001.

Pursuant to section 11A of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 11Aa3-2 thereunder,<sup>2</sup> notice is hereby given that on April 12, 2001, the Options Price Reporting Authority ("OPRA"),<sup>3</sup> submitted to the Securities and Exchange Commission ("SEC" or "Commission") an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("OPRA Plan").

The amendment would permit options exchanges to disseminate unconsolidated market information to certain of their members under certain circumstances.

### I. Description and Purpose of the Amendment

The purpose of the proposed amendment is to change the provision of the OPRA Plan that requires the parties to use the OPRA System as the exclusion means for the dissemination of options last sale reports and quotation information (the "exclusivity clause"). The proposed amendment, in part, would modify the exclusivity clause to incorporate two conditional, temporary exemptions from the exclusivity clause that the Commission previously granted to the ISE and the CBOE.<sup>4</sup> These exemptions, which expire on May 26, 2001, and which the Commission is extending today until September 1, 2001,<sup>5</sup> permit these two exchanges to disseminate to all of their members, but not to other persons, unconsolidated market information pertaining to options traded in their respective markets by means of communication networks other than the OPRA System, subject to conditions.

The proposed amendment would modify the exclusivity clause so that each OPRA participant could disseminate its own market information by means of communication networks separate from the OPRA System under the following conditions. First, an OPRA participant could disseminate its own market information through means separate from the OPRA System only to other OPRA participants and to its members to display on terminals or workstations used by persons associated with such members who are authorized to enter or transmit orders or quotations in the options market maintained by the OPRA participant.<sup>6</sup> This condition means that an exchange's market information could not be furnished to a customer of a member, whether over a terminal sponsored by a member or otherwise. Second, each member to which an OPRA participant disseminates its market information would be required to have equivalent

access to consolidated options market information disseminated by OPRA for the same classes or series of options that are included in the market information.<sup>7</sup> Access would be deemed to be "equivalent" if the information were equally accessible on the same terminal or workstation. Both of these conditions are consistent with conditions set forth by the Commission in the exemption letters to the ISE and CBOE.

Finally, the proposed amendment would prohibit OPRA participants from disseminating their market information through means other than the OPRA System on a more timely basis than the same information is furnished to the OPRA System for inclusion in the consolidated information disseminated by OPRA.<sup>8</sup> While this condition is similar to one set forth in the exemption letters, the proposed amendment differs materially from that in the exemption letters because it would not consider market information to be disseminated more timely than information is furnished to the OPRA System simply because the market information includes additional or more frequently updated information, so long as it does not include additional or more frequently updated price information in respect of the best bid or best offer for any series of options as compared with price information furnished to OPRA. Accordingly, the proposed amendment would permit an OPRA participant to provide market information through a network separate from the OPRA System that is in addition to or different from the information furnished to the OPRA System, including information concerning orders and quotations in the OPRA participants' market that do not represent the best bid and offer and size information that is not furnished to OPRA.

The Quote Rule<sup>9</sup> requires that if an exchange collects from responsible brokers or dealers quotation sizes and aggregate quotation sizes in listed options, such exchange must make available the aggregate quotation sizes associated with the best bid and offer to quotation vendors. The Commission believes, and OPRA acknowledges, that, absent an exemption from the Quote Rule, an exchange may not make available aggregate quote size through a network separate from the OPRA System (*i.e.*, make available to a quotation vendor) without also making such information available to other

<sup>23</sup> 15 U.S.C. 781(f).

<sup>24</sup> 15 U.S.C. 78k-1.

<sup>25</sup> 17 CFR 240.11Aa3-2(c)(2).

<sup>26</sup> 17 CFR 200.30-3(a)(29).

<sup>1</sup> 15 U.S.C. 78k-1.

<sup>2</sup> 17 CFR 240.11Aa3-2.

<sup>3</sup> OPRA is a national market system plan approved by the Commission pursuant to Section 11A of the Exchange Act, 15 U.S.C. 78k-1, and Rule 11Aa3-2 thereunder, 17 CFR 240.11Aa3-2. See Securities Exchange Act Release No. 17638 (March 18, 1981). The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the participant exchanges. The five categories to the OPRA Plan that currently operate an options market are the American Stock Exchange, the Chicago Board Options Exchange ("CBOE"), the International Securities Exchange ("ISE"), the Pacific Exchange, and the Philadelphia Stock Exchange. The New York Stock Exchange is a signatory to the OPRA Plan, but sold its options business to the Chicago Board Options Exchange in 1997. See Securities Exchange Act Release No. 38542 (April 23, 1997), 62 FR 23521 (April 30, 1997).

<sup>4</sup> See Letters from Robert L.D. Colby, Deputy Director, Division of Market Regulation, Commission, to Michael J. Simon, Senior Vice President and General Counsel, ISE, dated May 25, 2000 and Edward J. Joyce, President, CBOE, dated November 6, 2000.

<sup>5</sup> See Letters from Robert L.D. Colby, Deputy Director, Division of Market Regulation, Commission, to Michael J. Simon, Senior Vice President and General Counsel, ISE, and Edward J. Joyce, President, CBOE, dated May 24, 2001.

<sup>6</sup> See proposed OPRA Plan amendment, Section V.(c)(iii)(A).

<sup>7</sup> See proposed OPRA Plan amendment, Section V.(c)(iii)(B).

<sup>8</sup> See proposed OPRA Plan amendment, Section V.(c)(iii)(C).

<sup>9</sup> Exchange Act Rule 11Ac1-1, 17 CFR 240.11Ac1-1.