Nasdaq market makers that simultaneously receive executions through SuperSOES. Additionally, according to Nasdaq, permitting UTP Exchanges to access Nasdaq via SelectNet could disrupt and slow the market. To improve the trading environment for all of Nasdaq's market participants, and to avoid potential market disruptions, Nasdaq is proposing to require UTP Exchanges that choose to participate in Nasdaq to accept automatic executions through SuperSOES.

III. Summary of Comments

The Commission received two comment letters on the proposal: One from the Knight Trading Group, Inc. (''Knight''),[7] and one from the Philadelphia Stock Exchange, Inc. (''Phlx'').[8] In Knight's letter, Knight expresses general support for Nasdaq's proposal and agrees with the reasons set forth by Nasdaq as the basis for the proposed amendment.[9]

In the Phlx letter, the Phlx argues generally that the proposed rule change is an anti-competitive attempt to require UTP Exchanges to be subject to automatic execution in Nasdaq's NNMS. Phlx contends that such participation would have an adverse effect on the attractiveness of UTP Exchanges as alternative trading venues for Nasdaq securities.

Specifically, the Phlx believes that forcing UTP Exchanges to accept automatic executions will make it difficult for UTP Exchanges to attract Electronic Communication Networks (''ECNs'') as direct participants, impose per share trade execution fees on the UTP Exchanges for their orders executed through NNMS, and force the UTP Exchanges to relinquish any claim over inter-market trades executed through the NNMS (either as indications of the UTP Exchange's liquidity or to receive market data revenues).

The Phlx states that Nasdaq's justifications for the proposed rule change are without merit. The Phlx believes that imposing a short time window within which Nasdaq market makers would be required to respond could solve Nasdaq's dual liability concern. Furthermore, the Phlx states that Nasdaq has offered no empirical data to substantiate the claim that non-automatic execution participation by UTP Exchanges results in deleterious order queuing.

Finally, the Phlx asserts that requiring UTP Exchanges to participate in NNMS will funnel trading activity away from the UTP Exchanges, and, thus, remove the opportunity for price improvement, the hallmark of an auction market. The Phlx notes that requiring UTP Exchange participation in NNMS will expose UTP Exchange specialists to the same dual liability that Nasdaq currently seeks to avoid for its market makers. The Phlx proposes that an inter-market linkage plan for Nasdaq securities be developed, and, until such a plan is developed, the Phlx proposes that the status quo be maintained by allowing UTP Exchanges access to Nasdaq markets via SelectNet.

IV. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, [10] and, in particular, the requirements of Section 15A of the Act [11] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 15A(b)(6) of the Act.[12] Section 15A(b)(6) [13] requires, among other things, that the NASD's rules be designed to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change is not inconsistent with the objectives of this section of the Act. Specifically, requiring UTP Exchanges that choose to participate in the Nasdaq market also to participate in SuperSOES could help reduce the potential for order queuing and for system stoppages within the Nasdaq Stock Market, when a UTP Exchange's quote is alone at the best bid or best offer.

Moreover, the Commission notes that Nasdaq is not required to grant competitors access to Nasdaq's proprietary systems. To the extent Nasdaq chooses to grant access to its proprietary systems, Nasdaq may impose reasonable terms and conditions, such as requiring use of SuperSOES for access to SelectNet. Nasdaq may not impose terms and conditions that place an unfair burden on competition or impose terms and conditions that result in unfair discrimination. Finally, UTP Exchanges may choose to participate in SuperSOES on a voluntary basis; nothing in this rule change would require them to accept automatic executions from Nasdaq.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (File No. SR–NASD–2001–69) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–8997 Filed 4–12–02; 8:45 am]

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[7] *See* letter from Michael T. Dorsey, Senior Vice President, General Counsel and Secretary, Knight, to Jonathan G. Katz, Secretary, Commission, dated February 21, 2002.

[8] *See* letter from Meyer S. Frucher, Chairman and Chief Executive Officer, Phlx, to Jonathan G. Katz, Secretary, Commission, dated February 25, 2002.

[9] Knight incorporated by reference the comment letters it submitted in connection with the following releases: Securities Exchange Act Release Nos. 45182 (December 20, 2001), 66 FR 67609 (December 31, 2001); and 45081 (November 19, 2001), 66 FR 59273 (November 27, 2001). The Commission notes that the comments incorporated by reference were addressed in the approval orders in the respective releases.

[10] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78*o*–3.

[12] 15 U.S.C. 78*o*–3(b)(6).

[13] *Id.*

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45702; File No. SR–NASD–2002–35]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Amending NASD Rules 6110 and 6120 Relating to UTP Exchange Usage of ACT

April 5, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4under,[2] notice is hereby given that on March 7, 2002, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to amend NASD Rules 6110, Definitions, and 6120, Participation in ACT, regarding the Automated Confirmation Transaction System (''ACT''). The proposed rule change would permit Nasdaq to grant access to ACT to national securities exchanges that trade Nasdaq securities on an unlisted trading privileges basis (''UTP Exchanges'').[3]

Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

6110. Definitions

(a)–(o) No Change.

(p) The terms ''Participant,'' ''ACT Order Entry Firm,'' ''correspondent executing broker/dealer,'' ''correspondent executing broker,'' ''introducing broker/dealer,'' ''introducing broker,'' ''clearing broker/dealer,'' and ''clearing broker'' shall also include, where appropriate, the Non-Member Clearing Organizations *and UTP Exchanges* listed in Rule 6120(a)(5) *and (a)(6)* below and their qualifying members.

6120. Participation in ACT

(a) Mandatory Participation for Clearing Agency Members

(1)–(5) No Change.

(6) Upon compliance with the conditions specified in subparagraphs (A)–(E) below, access to and participation in ACT may be granted to a national securities exchange that trades Nasdaq National Market or SmallCap securities on an unlisted trading privileges basis (''UTP Exchange''). The terms and conditions of such access and participation, including available functionality and applicable rules and fees, shall be set forth in and governed by a UTP Exchange ACT Participant Application Agreement. Such access may be made available on terms that differ from the terms applicable to members but that do not unreasonably discriminate among national securities exchanges.

(A) Execution of, and continuing compliance with, a UTP Exchange ACT Participant Application Agreement;

(B) Continuing compliance with UTP Exchange ACT Participant Application Agreement and all applicable rules and operating procedures of the Association and the Commission;

(C) Maintenance of the physical security of the equipment located on the premises of the UTP Exchange to prevent the unauthorized entry of information into ACT;

(D) Acceptance and settlement of each trade that ACT identifies as having been effected by itself or any of its correspondents on the regularly scheduled settlement date; and

(E) A UTP Exchange shall not permit its members to have direct access to ACT without the express written consent of the Association.

[(6)] *(7)* Each ACT Participant shall be obligated to inform the Association of non-compliance with any of the participation requirements set forth above.

* * * * *

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 NASD included statements concerning the purpose of and the 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 NASD 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 NASD is proposing to offer UTP Exchanges the ability to participate in Nasdaq's proprietary trade reporting and comparison system, ACT, according to terms established by Nasdaq. Under this proposed rule filing, exchanges that choose to use Nasdaq's ACT system will sign a contract with Nasdaq setting forth the terms and conditions of usage of ACT, including available functionality and applicable rules and fees. UTP Exchange access to ACT may be made available on terms that differ from the terms applicable to NASD members[4] but that do not unreasonably discriminate among UTP Exchanges.

Background

During three decades of operation, Nasdaq has evolved into one of the largest, most liquid markets in the world and a powerful driver of the U.S. economy. As a market, Nasdaq builds and operates systems that enable its members to execute and report trades in Nasdaq-listed and over-the-counter securities, consistent with Section 15A of the Act. Among the systems that provide the core functionality of the Nasdaq market are its quotation display device, the Nasdaq Workstation II (''NWII''),[5] its execution systems—the Nasdaq National Market Execution System (''SuperSOES'') and SelectNet—and its trade reporting system, ACT. The NWII, SuperSOES, SelectNet, and ACT are examples of Nasdaq proprietary systems.

Nasdaq is also an exclusive securities information processor (''SIP'') under Section 11A of the Act. Pursuant to the Securities Act Amendments of 1975, Nasdaq negotiated and executed a national market system plan, the ''Nasdaq UTP Plan,'' for quoting and trading of Nasdaq National Market stocks by securities markets that chose to participate in the Nasdaq UTP Plan. As the SIP for the Nasdaq UTP Plan, Nasdaq operates facilities to collect, consolidate, and disseminate quotations and last sale reports of all markets quoting and trading Nasdaq-listed securities. The Plan-sponsored mechanism for entering quotations and last sale reports is a computer-to-computer interface commonly referred to as ''the UTP Line.''[6] The Plan does not grant participants access to Nasdaq's proprietary execution facilities, but simply requires that UTP Exchange specialists have access to and be accessible by Nasdaq members via the

[3] The NASD requested that the Commission make various technical corrections to the proposed rule language and delete an inaccurate reference to the Boston Stock Exchange, Inc. (''BSE'') in footnote 8. Telephone discussion between Katherine England, Assistant Director, Division of Market Regulation, SEC, and Jeffrey S. Davis, Associate General Counsel, Office of General Counsel, Nasdaq (April 5, 2002).

[4] Until Nasdaq registers as an exchange, all NASD member firms are members of The Nasdaq Stock Market, Inc., after which time, Nasdaq member firms are expected to be a subset to the NASD membership. For this filing, because Nasdaq is not yet an exchange, ''Nasdaq members'' are NASD members that participate in the Nasdaq Stock Market.

[5] As a market, Nasdaq offers two proprietary routes of entry into its proprietary systems: The Application Programming Interface (''API''), and the Computer-to-Computer Interface (''CTCI''). Both interfaces exist as part of Nasdaq's proprietary Enterprise Wide Network, a network provided through an extensive contract with MCI WorldCom. Both interfaces rely on a multiple T1 connection into Nasdaq's Unisys system for quote updates and Tandem system for SuperSOES, SelectNet, and ACT messages. All participants who depend on Nasdaq's API/CTCI interface are subject to SEC-approved pricing for those services provided over that interface.

[6] The UTP Interface is a TCP/IP connection into Nasdaq's Tandem mainframe. All quote messages are then passed to Nasdaq's Unisys mainframe for processing and dissemination. All trade messages are processed in the Tandem mainframe and disseminated out on the Nasdaq Trade Dissemination Service datafeed. In the coming months, the Nasdaq SIP is migrating all UTP quote and trade messages to a new Tandem environment.

telephone.[7] Thus, the SIP facilities are separate and distinct from Nasdaq's proprietary systems.

Nasdaq will continue to maintain a technological, financial, and regulatory distinction between its role as a market and its role as a SIP. As a SIP, Nasdaq is obligated to provide UTP Exchanges access only to the facilities enumerated in the Nasdaq UTP Plan, namely, the UTP Interface and the telephone. The UTP Interface allows other market centers to send Nasdaq quotes and trade reports for inclusion in the consolidated quote and trade dissemination systems that Nasdaq operates. As a market, Nasdaq is not obligated to provide UTP Exchanges with access to any of Nasdaq's proprietary systems. Therefore, subject to SEC approval where necessary, Nasdaq is entitled to condition the manner in which it will voluntarily make its proprietary systems, including ACT, available to UTP Exchanges that choose to use them.[8] Whether acting as a SIP or a market, Nasdaq will act in a nondiscriminatory manner and will make best efforts to reach a contractual solution with each UTP Exchange that wishes to use the ACT system.

This proposed rule would enable Nasdaq to enter into contracts with UTP Exchanges that will govern the terms of use and applicable fees for the use of ACT by UTP Exchanges. Under the proposal, UTP Exchanges could use ACT services, but would pay a markup over the fees applicable to members' use of ACT. Although the BSE is, to date, the only UTP Exchange that has requested use of ACT to report and clear both Nasdaq system and non-Nasdaq system trades, it is foreseeable that other UTP Exchanges will seek use of ACT as well.

Nasdaq believes it is essential that all UTP Exchanges that use Nasdaq proprietary systems execute a contract defining the terms and conditions of such use, which may be different from the terms and conditions imposed on Nasdaq members.[9] For example, Nasdaq has asked the BSE, as a condition of using ACT, to sign an agreement that requires the BSE ''to take reasonable disciplinary actions against its members for violations of the Nasdaq Requirements, as if such were violations of its own rules.'' It is essential for preserving the integrity of Nasdaq's proprietary systems that those self-regulatory organizations that use those systems agree to ensure that their members (over which Nasdaq typically has no authority) use them in a manner that is consistent with Nasdaq's systems requirements. Similarly, Nasdaq will make ACT available to UTP Exchanges on the basis of contractually agreed charges for such use. Such charges may be different than the charges that Nasdaq members pay for ACT. Nasdaq participants have paid for the maintenance and development of Nasdaq services, such as ACT, over the course of more than two decades. Charging UTP Exchanges or other non-members a higher rate than members for these services reflects the fact that the Nasdaq members have already borne the costs to build and enhance the service over time. The fact that the charges are set through arms-length contract negotiations with UTP Exchanges and other non-members allows for the flexibility to address each particular situation and agree on an appropriate response.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6)[10] of the Act, which requires, among other things, that the NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. The NASD believes that the proposed rule responds to the request of a UTP Exchange for access to trade reporting and comparison functionality to facilitate submission of transaction reports to the SIP for Nasdaq securities, and ultimately, for dissemination to the public. Moreover, the NASD believes that the proposed rule would permit Nasdaq to distinguish among Nasdaq members and non-members in order to promote behavior that benefits both the market structure that Nasdaq offers to investors and Nasdaq as a business. Such distinctions would be based upon the voluntary agreement of independent self-regulatory organizations that have equal standing to negotiate arms-length agreements. As the Commission has noted in the context of another self-regulatory organization's fees, the Act ''prohibits unfair discrimination,' not discrimination' simpliciter * * *.''[11]

The NASD further believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5)[12] of the Act, which requires that the rules of the NASD provide for the equitable allocation of reasonable fees, dues, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. 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)[13] of the Act and Rule 19b–4(f)(3) thereunder[14] as being concerned solely with the administration of the NASD. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change 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.[15]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule

[7] The SEC established this policy in its 1985 report, *Unlisted Trading Privileges in Over-the-Counter Securities*, Exchange Act Release No. 22412 (September 16, 1985), 50 FR 38640 (September 24, 1985), fn. 89 and accompanying text. The SEC rejected calls for a ''more sophisticated intermarket trading linkage'' similar to ITS/CAES, but urged the participants to develop suitable access mechanisms, such as the UTP Line that was later developed.

[8] Nasdaq has voluntarily permitted UTP Exchanges to participate in SuperSOES and has filed rules defining the manner in which those exchanges may use this system. In fact, Nasdaq is filing a rule proposal to make SuperSOES the exclusive Nasdaq proprietary execution system available for UTP Exchanges to quote and trade Nasdaq securities on Nasdaq.

[9] Nasdaq does not impose a monthly fee for access to the UTP Interface. The UTP Interface is installed and maintained by an independent vendor.

[10] 15 U.S.C. 78*o*3(b)(6)

[11] Exchange Act Release No. 37250 (May 29, 1996), 61 FR 28629 (June 6, 1996) (quoting *Timpinaro* v. *SEC,* 2 F.3d 453, 456 (D.C. Cir. 1993).

[12] 15 U.S.C. 78*o*–3(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(3).

[15] *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

change 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 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 will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–35 and should be submitted by May 6, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–8998 Filed 4–12–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45709; File No. SR–NASD–2001–46]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to Electronic Filings With the Corporate Financing Department

April 9, 2002.

I. Introduction

On August 6, 2001, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly owned subsidiary, NASD Regulation, Inc. (''NASD Regulation''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b-4 thereunder,[2] a proposed rule change amending NASD Conduct Rule 2710 to require electronic filings. The proposed rule change was published for comment in the **Federal Register** on August 24, 2001.[3] NASD Regulation filed Amendment No. 1 to the proposed rule change on March 4, 2002.[4] The Commission received three comments on the proposal. This order approves the proposal and issues notice of, and grants accelerated approval to, Amendment No. 1.

II. Description of the Proposal

NASD Regulation is proposing to amend NASD Rule 2710(b)(6) to require members to file information required by subparagraph (b)(6) with the NASD Regulation's Corporate Financing Department (''Department'') through its electronic filing system, the Corporate Offerings Business Regulatory Analysis System (''COBRA'').[5] The obligation to file information electronically would apply to all offerings subject to the rule's filing requirements, regardless of whether the offering is exempt from registration with the SEC or is submitted confidentially to the SEC for review.

NASD Regulation also is proposing to adopt new subparagraph (b)(5)(B) of Rule 2710 to provide that all documents that are filed with the SEC through the EDGAR system will be treated as filed with the Association. Members that do not file documents with the SEC through EDGAR would remain obligated to continue to submit multiple copies of any required documents in paper format. However, NASD Regulation is proposing to amend NASD Rule 2710(b)(5)(A)(ii) and (iii) to reduce the number of required copies of these documents from five to three.

NASD Regulation has hosted several training sessions to provide opportunities for members and their counsel to learn how to file offerings using COBRA. In addition, NASD Regulation has stated that certain Department staff members are dedicated to assisting filers when they access and navigate the system. According to NASD Regulation, before and following Commission approval of the proposed rule change, the Department will provide additional training sessions and provide continuing support and assistance to members and their counsel who have questions and are unfamiliar with the system.

NASD Regulation has stated that the NASD will publish a Notice To Members within 30 days of Commission approval announcing the proposed rule change and providing an effective date within 60 days of Commission approval.

III. Summary of Comments and NASD Regulation's Response

The Commission received three comment letters on the proposed rule change.[6] The commenters concerns with the proposal, and NASD Regulations response to these concerns, are summarized below.

Increased Costs and Less Efficiency

The Commenters were concerned that the mandatory use of COBRA generally would be more costly and less efficient than the current process of manual filings. NASD Regulation does not believe that these concerns are justified.

NASD Regulation believes that mandatory COBRA filing will reduce overall costs and enhance the efficiency of the Department's operations in several important ways. Electronic filing eliminates the need for the Department to handle and process thousands of packages that otherwise would be sent through the U.S. Postal Service or other couriers. Additionally, direct electronic filing into COBRA eliminates the need for analysts to input data from paper filings into COBRA. Electronic filing also mitigates against the possibility that paper records will be lost, such as in the event of a catastrophe. Further, COBRA eliminates the need for members to file registration statements with the Department if they have been filed with the SEC using EDGAR. Filers simply need to provide the Department with the EDGAR accession number in the COBRA Basic Information. This feature reduces members' printing and delivery expenses. For these reasons, NASD Regulation believes that members can expect to receive a speedier review of their electronic filings under COBRA.

The NASD states that the Department has worked with the legal community and NASD members for over four years to ensure that COBRA is as user-friendly and efficient as possible. NASD has three staff members available to train

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[16] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 44720 (August 17, 2001), 66 FR 44657.

[4] Letter from Patrice M. Gliniecki, Vice President and Acting General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated March 1, 2002 (''Amendment No. 1''). Amendment No. 1 responds to the concerns of commenters and makes a minor clarification to proposed Rule 2710(b)(6)(A)(vii).

[5] On April 30, 2001, the Department deployed a web-based application of COBRA, which consists of an internal software application used by the Department and ''Web COBRADesk,'' a user interface that permits members and their counsel to file offerings of direct participation program securities.

[6] Letter from Edward M. Alterman, Fried, Frank, Harris, Shriver & Jacobson (''Fried'') to Jonathan G. Katz, Secretary, Commission, dated September 24, 2001; Letter from Mark T. Lab, Simpson Thacher & Bartlett (''Simpson'') to Jonathan G. Katz, Secretary, Commission, dated October 1, 2001; and Letter from Martin R. Miller, Willkie Farr & Gallagher (''Wilkie'') to Jonathan G. Katz, Secretary, Commission, dated October 4, 2001 (collectively, the ''Commenters'').