

with the Manager (included in the term "Manager"), (b) uses the multi-manager structure described in the application for the Prior Order, and (c) complies with the terms and conditions of the Prior Order, as amended by the requested order (included in the term "Fund").<sup>3</sup> If the name of any Fund contains the name of a Sub-Adviser, the name of the Manager will precede the name of the Sub-Adviser.

3. Applicants agree that any order granting the requested relief will be subject to the conditions in the Prior Order, except that conditions 3 and 4 of the Prior Order will be modified as follows to reflect recent Commission precedent:

3. Within 90 days of the hiring of a new Sub-Adviser, the Manager will furnish shareholders of the applicable Fund all information about the new Sub-Adviser that would be included in a proxy statement. To meet this condition, the Manager will provide shareholders of the applicable Fund with an information statement meeting the requirements of Regulation 14C, Schedule 14C, and Item 22 of Schedule 14A under the Securities Exchange Act of 1934.

4. Each Fund's prospectus will disclose the existence, substance, and effect of the requested order. In addition, each Fund will hold itself out as employing the management structure described in the application. The prospectus will prominently disclose that the Manager has ultimate responsibility, subject to oversight by the Trustees, to oversee the Sub-Advisers and recommend their hiring, termination and replacement.

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

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 03-20956 Filed 8-15-03; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48318; File No. S7-24-89]

### Joint Industry Plan; Solicitation of Comments and Order Granting Summary Effectiveness to Request to Extend Operation of the Reporting Plan for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis, Submitted by the National Association of Securities Dealers, Inc., the Boston Stock Exchange, Inc., the Chicago Stock Exchange, Inc., the Cincinnati Stock Exchange, Inc., the Pacific Exchange, Inc., the American Stock Exchange LLC, and the Philadelphia Stock Exchange, Inc.

August 12, 2003.

#### I. Introduction and Description

On August 8, 2003, the Cincinnati Stock Exchange, Inc. ("CSE") on behalf of itself and the National Association of Securities Dealers, Inc. ("NASD"), the American Stock Exchange LLC ("Amex"), the Boston Stock Exchange, Inc. ("BSE"), the Chicago Stock Exchange, Inc. ("CHX"), the Pacific Exchange, Inc. ("PCX"), and the Philadelphia Stock Exchange, Inc. ("PHLX") (hereinafter referred to collectively as "Participants"),<sup>1</sup> as members of the operating committee ("Operating Committee" or "Committee") of the Plan submitted to the Securities and Exchange Commission ("SEC" or "Commission") a request to extend the operation of the Plan and also to extend certain exemptive relief as described below.<sup>2</sup>

The Nasdaq UTP Plan governs the collection, processing, and dissemination on a consolidated basis of quotation and last sale information for each of its Participants. This consolidated information informs investors of the current quotation and recent trade prices of Nasdaq Stock Market, Inc. ("Nasdaq") securities. It enables investors to ascertain from one data source the current prices in all the markets trading Nasdaq securities. The Plan serves as the required transaction reporting plan for its Participants, which is a prerequisite for their trading

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

<sup>2</sup> See letter from Jeffrey T. Brown, Chairman, Plan Operating Committee, to Jonathan G. Katz, Secretary, Commission, dated August 8, 2003.

Nasdaq securities. Currently, the Plan is scheduled to expire on August 19, 2003.

This order grants summary effectiveness, pursuant to Rule 11Aa3-2(c)(4) under the Securities Exchange Act of 1934 ("Act"),<sup>3</sup> to the request to extend operation of the Plan and to the request to extend certain exemptive relief ("Date Extension").<sup>4</sup> Pursuant to Rule 11Aa3-2(c)(4) under the Act,<sup>5</sup> the Date Extension will be effective summarily upon publication in the **Federal Register** on a temporary basis not to exceed 120 days.

#### II. Exemptive Relief

While both Nasdaq and the NASD operate under the umbrella of a single Plan Participant, the submission of two distinct best bids and offers ("BBOs") could be deemed inconsistent with Section VI.C.1 of the Plan.<sup>6</sup> Pursuant to the 13th Amendment of the Plan and Rule 11Aa3-2(a),<sup>7</sup> Nasdaq cannot be granted Plan Participant status until it is registered as a national securities exchange. While Nasdaq submits a distinct BBO from the NASD and until Nasdaq is registered as a national securities exchange, the NASD will submit quotes to the Plan's Securities Information Processor ("SIP") in a manner different than specified in Section VI.C.1. of the Plan and, thus, in conflict with Commission Rule 11Aa3-2(d).<sup>8</sup>

<sup>3</sup> 17 CFR 240.11Aa3-2(c)(4).

<sup>4</sup> As discussed in the order granting partial temporary approval of Amendment No. 13 to the Plan, see Securities Exchange Act Release No. 46729 (October 25, 2002), 67 FR 66685 (November 1, 2002) ("Partial Approval"), proposed amendments to the Plan had been segregated into four categories: (1) Category 1, "Effective Upon Nasdaq's Exchange Registration;" (2) Category 2, "Effective Upon Launch of the Internal SIP;" (3) Category 3, "Effective Upon End of Parallel Period—Elimination of the Legacy SIP;" and (4) Category 4, "Timing Not An Issue." Through the Partial Approval, the Commission approved the Category 2, 3, and 4 amendments on a pilot basis, but did not approve the Category 1 amendments. Therefore, the Plan the Commission extends today is the Plan, as modified, by all changes previously approved. In the Partial Approval, the Commission explicitly noted its intention to address the Category 1 amendments through separate action when the Commission acts on the Nasdaq exchange registration application. This order does not approve the Category 1 amendments and the Commission reiterates its intent to act upon the Category 1 amendments through separate action in conjunction with the Nasdaq exchange registration application.

<sup>5</sup> 17 CFR 240.11Aa3-2(c)(4).

<sup>6</sup> Section VI.C.1. of the Plan, as approved by the Operating Committee in the 13th Amendment, states that "[t]he Processor shall disseminate on the UTP Quote Data Feed the best bid and offer information supplied by each Participant, including the NASD \* \* \*."

<sup>7</sup> 17 CFR 240.11Aa3-2(a).

<sup>8</sup> 17 CFR 240.11Aa3-2(d). Commission Rule 11Aa3-2(d) requires a self-regulatory organization participant of national market system plan to comply with the terms of that plan.

<sup>3</sup> The Managers Funds, Managers Trust I and Managers Trust II are the only entities that currently intend to rely on the requested order.

As discussed at length in the notice of the 13th Amendment,<sup>9</sup> the Commission had determined to relieve the potential conflict among the SuperMontage approval order,<sup>10</sup> Rule 11Aa3-2,<sup>11</sup> and the Plan, by granting the NASD an exemption under Rule 11Aa3-2(f)<sup>12</sup> from compliance with Section VI.C.1. of the Plan as required by Rule 11Aa3-2(d)<sup>13</sup> until such time as Nasdaq is registered as a national securities exchange. The Plan Participants have requested an extension of such exemptive relief.

### III. Discussion

The Commission finds that extending the operation of the Plan is consistent with the requirements of the Act and the rules and regulations thereunder, and, in particular, section 12(f)<sup>14</sup> and section 11A(a)(1)<sup>15</sup> of the Act and Rules 11Aa3-1 and 11Aa3-2 thereunder.<sup>16</sup> Section 11A of the Act directs the Commission to facilitate the development of a national market system for securities, "having due regard for the public interest, the protection of investors, and the maintenance of fair and orderly markets," and cites as an objective of that system the "fair competition \* \* \* between exchange markets and markets other than exchange markets."<sup>17</sup> When the Commission first approved of the Plan on a pilot basis, it found that the Plan "should enhance market efficiency and fair competition, avoid investor confusion, and facilitate surveillance of concurrent exchange and OTC trading."<sup>18</sup> The Plan has been in existence since 1990 and Participants have been trading Nasdaq securities under the Plan since 1993.

The Commission finds that extending the operation of the Plan through summary effectiveness furthers the goals

described above by preventing the lapsing of the sole effective transaction reporting plan for Nasdaq securities traded by exchanges pursuant to unlisted trading privileges. The Commission believes that the Plan is currently a critical component of the national market system and that the Plan's expiration would have a serious, detrimental impact on the further development of the national market system.

The Commission also finds that it is appropriate to grant summary effectiveness to the request to extend the exemption under Rule 11Aa3-2(f)<sup>19</sup> from compliance with Section VI.C.1. of the Plan as required by Rule 11Aa3-2(d).<sup>20</sup> The Commission believes that the Plan is a critical component of the national market system and that the requested exemptive relief is necessary to assure the effective operation of the Plan. The Commission believes that the requested exemptive relief extension is consistent with the Act, the Rules thereunder, and, specifically, with the objectives set forth in sections 12(f) and 11A of the Act<sup>21</sup> and Rules 11Aa3-1 and 11Aa3-2 thereunder.<sup>22</sup>

### IV. Solicitation of Comments

The Commission seeks general comments on the extension of the operation of the Plan and the extension of exemptive relief. Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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 amendment 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 in the Commission's Public Reference Room. Copies of the amendment will also be available for inspection and copying at the Office of the Secretary of the Committee, currently located at the CSE, One Financial Place, 440 South LaSalle St., Suite 2600, Chicago, IL 60126. All submissions should refer to

File No S7-24-89 and be submitted by September 8, 2003.

### V. Conclusion

*It is therefore ordered*, pursuant to sections 12(f) and 11A of the Act<sup>23</sup> and paragraph (c)(4) of Rule 11Aa3-2<sup>24</sup> thereunder, that the operation of the Plan be, and hereby is, extended and that certain exemptive relief also be extended both for a period not to exceed 120 days from the date of publication of this Date Extension in the **Federal Register**.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>25</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 03-21035 Filed 8-15-03; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48295; File No. SR-CSE-2003-08]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Cincinnati Stock Exchange, Inc. Relating to Its Schedule of Fees

August 7, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 21, 2003, the Cincinnati Stock Exchange, Inc. ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which the CSE has prepared. The CSE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act,<sup>3</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange hereby proposes to amend its schedule of fees to address recent developments in the cost of doing

<sup>9</sup> See Securities Exchange Act Release No. 46139 (June 28, 2001 [sic]), 67 FR 44888 (July 5, 2002) ("13th Amendment Notice").

<sup>10</sup> See Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001).

<sup>11</sup> 17 CFR 240.11Aa3-2.

<sup>12</sup> 17 CFR 240.11Aa3-2(f).

<sup>13</sup> 17 CFR 240.11Aa3-2(d).

<sup>14</sup> 15 U.S.C. 78l(f). The Commission finds that extending the Plan is consistent with fair and orderly markets, the protection of investors and the public interest, and otherwise in furtherance of the purposes of the Act. The Commission has taken into account the public trading activity in securities traded pursuant to the Plan, the character of the trading, the impact of the trading of such securities on existing markets, and the desirability of removing impediments to, and the progress that has been made toward the development of a national market system.

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

<sup>16</sup> 17 CFR 240.11Aa3-1 and 17 CFR 240.11Aa3-2.

<sup>17</sup> 15 U.S.C. 78k-1(a).

<sup>18</sup> See Securities Exchange Act Release No. 28146 (June 26, 1990), 55 FR 27917 (July 6, 1990).

<sup>19</sup> 17 CFR 240.11Aa3-2(f).

<sup>20</sup> 17 CFR 240.11Aa3-2(d).

<sup>21</sup> 15 U.S.C. 78l(f) and 15 U.S.C. 78k-1.

<sup>22</sup> 17 CFR 240.11Aa3-1 and 11Aa3-2.

<sup>23</sup> 15 U.S.C. 78l(f) and 15 U.S.C. 78k-1.

<sup>24</sup> 17 CFR 240.11Aa3-2(c)(4).

<sup>25</sup> 17 CFR 200.30-3(a)(27).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).