

facility may be slightly higher as a result of the need to continue surveillance and maintenance activities; however, the facility will continue to implement NRC-approved, radiation safety procedures for handling radioactive materials. Thus, the dose to workers under the no action alternative will remain within acceptable regulatory limits.

The NRC has determined that denial of the proposed amendment will not have a significant impact on effluent releases, environmental monitoring, water resources, geology, soils, air quality, demography, biota, or cultural or historic resources at or near the GNF site.

Based on its review, the NRC has concluded that the environmental impacts associated with the proposed action are insignificant and, therefore, do not warrant denial of the proposed license amendment. The NRC has determined that the proposed action, approval of the license amendment as described, is the appropriate alternative for selection. Based on an evaluation of the environmental impacts of the proposed license amendment, the NRC has determined that the proper action is to issue a FONSI in the **Federal Register**.

#### *Agencies and Persons Contacted*

On May 6, 2004, the NRC staff provided the draft EA and FONSI to staff from the North Carolina Department of Environmental and Natural Resources (DENR). On May 7, 2004, the DENR Radiation Protection Section responded that it had no comments.

The NRC staff has determined that the proposed action is not a type of activity that has potential to cause effects on historical properties because it is administrative in nature. Therefore, no consultation is required under Section 106 of the National Historic Preservation Act.

The NRC staff has determined that the proposed action is not a type of activity that has potential to effect threatened or endangered species, or critical habitat because it is administrative in nature. Therefore, no consultation is required under Section 7 of the Endangered Species Act.

#### *References*

U.S. Nuclear Regulatory Commission (NRC), December 1977, NUREG-0170, "Final Environmental Impact Statement on the Transportation of Radioactive Material by Air and Other Modes," Accession No. ML022590265.

U.S. Nuclear Regulatory Commission (NRC), February 10, 1997, "Fissile Material

Shipments and Exemptions," Emergency Final Rule, 10 CFR Part 71, 62 FR 5907.

U.S. Nuclear Regulatory Commission (NRC), May 1997, "Environmental Assessment for Renewal of Special Nuclear Material License SNM-1097," Legacy Accession No. 9705080142.

U.S. Nuclear Regulatory Commission (NRC), July 1998, NUREG/CR-5342, "Assessment and Recommendations for Fissile Material Packaging Exemptions and General Licenses Within 10 CFR Part 71."

U.S. Nuclear Regulatory Commission (NRC), January 26, 2004, "Compatibility With IAEA Transportation Safety Standards (TS-R-1) and Other Transportation Safety Amendments," Final Rule, 10 CFR Part 71, 69 FR 3698.

Global Nuclear Fuel—Americas LLC (GNFA), April 19, 2004, "Exemption Request," ADAMS No. ML041190402.

### **III. Final Finding of No Significant Impact**

Pursuant to 10 CFR part 51, the NRC has considered the environmental consequences of amending NRC Materials License SNM-1097 to exempt GNF from fissile material classification and from the fissile material package requirements in 10 CFR 71.55 and 71.59 for a one-time shipment of approximately 800 containers of legacy materials and to impose license conditions on the shipment. On the basis of this assessment, the Commission has concluded that environmental impacts associated with the proposed action would not be significant and the Commission is making a finding of no significant impact. Accordingly, preparation of an EIS is not warranted.

### **IV. Further Information**

For further details, see the references listed above. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Room O-1F21, 11555 Rockville Pike, Rockville, Maryland. In addition, documents related to this proposed action will be available electronically for public inspection from the NRC Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html> (the Public Electronic Reading Room). Persons who do not have access to ADAMS, or who encounter problems accessing documents in ADAMS, should contact the PDR reference staff at (800) 397-4209 or (301) 415-4737, or by e-mail at [pdr@nrc.gov](mailto:pdr@nrc.gov).

Dated at Rockville, Maryland, this 14th day of May 2004.

For the Nuclear Regulatory Commission.

**Robert C. Pierson,**

*Director, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 04-11510 Filed 5-20-04; 8:45 am]

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-49711; File No. S7-24-89]

**Joint Industry Plan; Order Granting Approval of Amendment No. 13A 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.**

May 14, 2004.

### **I. Introduction**

On October 31, 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 as "Participants"), as members of the operating committee ("Operating Committee" or "Committee")<sup>1</sup> of the Plan submitted to the Securities and Exchange Commission ("SEC" or "Commission") a proposal to amend the Plan ("Amendment 13A")<sup>2</sup> pursuant to Rule 11Aa3-2<sup>3</sup> and Rule 11Aa3-1<sup>4</sup> under the Securities Exchange Act of 1934 ("Act" or "Exchange Act"). The proposal reflects several changes unanimously adopted by the Committee.<sup>5</sup> Amendment 13A was

<sup>1</sup> The Committee is made up of all the Participants.

<sup>2</sup> The Commission notes that CSE recently changed its name to National Stock Exchange. However, a Plan amendment that would change the name of CSE to National Stock Exchange for Plan purposes has not been submitted to the Commission. See Securities Exchange Act Release No. 48774 (November 12, 2003), 68 FR 65332 (November 19, 2003) (File No. SR-CSE-2003-12).

<sup>3</sup> 17 CFR 240.11Aa3-2.

<sup>4</sup> 17 CFR 240.11Aa3-1.

<sup>5</sup> CSE was chair of the Operating Committee at the time the 13A Amendment was filed with the Commission. Subsequently, PCX and its subsidiary

Continued

published for comment in the **Federal Register** on February 3, 2004.<sup>6</sup> The Commission received no comment letters on Amendment 13A.

## II. Description and Purpose of the Amendment

The Commission originally approved the Plan on a pilot basis on June 26, 1990.<sup>7</sup> The parties did not begin trading until July 12, 1993, accordingly, the pilot period commenced on July 12, 1993. The Plan has since been in operation on an extended pilot basis.<sup>8</sup>

By way of background, the Operating Committee submitted the Amendment 13 to the Nasdaq UTP Plan (Amendment 13") to address amendments related to (1) The Nasdaq Stock Market, Inc.'s ("Nasdaq") separation from NASD and anticipated registration as a national securities exchange, and (2) the implementation of an Internal Securities Information Processor ("Internal SIP") designed to separate Nasdaq's functions

the Archipelago Exchange were elected co-chairs 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>6</sup> See Securities Exchange Act Release No. 49137 (January 28, 2004), 69 FR 5217 (February 3, 2004).

<sup>7</sup> See Securities Exchange Act Release No. 28146, 55 FR 27917 (July 6, 1990) ("1990 Plan Approval Order").

<sup>8</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, 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 36586 (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); 44099 (March 23, 2001), 66 FR 17457 (March 30, 2001); 44348 (May 24, 2001), 66 FR 29610 (May 31, 2001); 44552 (July 13, 2001), 66 FR 37712 (July 19, 2001); 44694 (August 14, 2001), 66 FR 43598 (August 20, 2001); 44804 (September 17, 2001), 66 FR 48299 (September 19, 2001); 45081 (November 19, 2001), 66 FR 59273 (November 27, 2001); 44937 (October 15, 2001), 66 FR 53271 (October 19, 2001); 46139 (June 28, 2001), 67 FR 44888 (July 5, 2002); 46381 (August 19, 2002), 67 FR 54687 (August 23, 2002); 46729 (October 25, 2002), 67 FR 66685 (November 1, 2002); 48318 (August 12, 2003), 68 FR 49534 (August 18, 2003); and 48882 (December 4, 2003), 68 FR 69731 (December 15, 2003).

as a securities market from its functions as the securities information processor ("SIP" or "Processor") for the Nasdaq UTP Plan. The Internal SIP began operating in July 2002. The Legacy securities information processing system application (the "Legacy SIP") operated in parallel with this new system until March 31, 2003. In addition, certain other changes raised during the Operating Committee deliberations were proposed as part of Amendment 13. The changes in Amendment 13 were grouped in four categories:

Category 1: changes that would become effective upon Nasdaq's exchange registration;

Category 2: changes that would become effective upon the launch of the Internal SIP;

Category 3: changes that would become effective upon the end of the parallel period and the elimination of the Legacy SIP; and

Category 4: changes where timing was not an issue. The changes detailed in Categories 2, 3 and 4 were approved by the Commission.<sup>9</sup> The changes detailed in Category 1 have not been approved because Nasdaq's exchange registration has not been approved.

The NASD, acting through its subsidiary, Nasdaq, proposed Amendment 13A to address changes to the Plan related to the elimination of the Legacy SIP. As a condition to its decision to sunset the operation of the Legacy SIP on March 31, 2003, the Operating Committee determined to adopt the proposed changes contained in Amendment 13A. As described below, the proposed Amendment 13A also affects certain changes proposed in the Amendment 13, Category 1 revisions currently pending approval with the Commission.<sup>10</sup>

These proposed changes clarify the operation of the Internal SIP pending Nasdaq's exchange registration. The

<sup>9</sup> See Securities Exchange Act Release Nos. 46139 (June 28, 2001[sic]), 67 FR 44888 (July 5, 2002) (putting into effect summarily Category 2 of Amendment 13 on a temporary basis not to exceed 120 days); and 46381 (August 19, 2002), 67 FR 54687 (August 23, 2002) (approving the extension of the Plan through August 19, 2003); and 46729 (October 25, 2002), 67 FR 66685 (November 1, 2002) (approving the amendments in Categories 2, 3 and 4 on a pilot basis through August 19, 2003, to be coterminous with the expiration of the Plan and continuing the exemption under Rule 11Aa3-2(f) under the Act, 17 CFR 240.11Aa3-2(f), from compliance with Section VI.C.1 of the Plan as required by Rule 11Aa3-2(d) under the Act, 17 CFR 240.11Aa3-2(d), see Securities Exchange Act Release No. 46139). See also Securities Exchange Act Release No. 48882 (December 4, 2003), 68 FR 69731 (December 15, 2003) (extending the Plan through December 15, 2004).

<sup>10</sup> See Securities Exchange Act Release No. 46139 (June 28, 2001), 67 FR 44888 (July 5, 2002).

following is a summary of the changes to the Plan proposed in Amendment 13A.

1. Section III.T. of the Plan,<sup>11</sup> which defines "Quotation Information," would be amended to reflect that both the NASD Alternative Display Facility and the Nasdaq markets send individual market participant information to the Processor.<sup>12</sup>

2. Section III.Z. of the Plan would redefine "NQDS."<sup>13</sup> "NQDS" will now be defined as "the data stream of information that provides the best quotations and sizes from each Nasdaq Participant." In addition, Section III.Z. would add a definition for "Nasdaq Participant," which is "an entity that is registered as a market maker or an electronic communications network in Nasdaq or otherwise utilizes the facilities of Nasdaq pursuant to applicable NASD rules but does not include an NASD Participant as defined in Section III.G. of this Plan." A definition of NASD Participant would be added in Section III.G.<sup>14</sup> Sections III.G through III.X. would be accordingly

<sup>11</sup> In Amendment 13A, the Plan section number for "Quotation Information" is erroneously listed as III.R. This error was based on an anticipated renumbering of Section III, which would occur when Item 6 of the Category 1 changes in Amendment 13 is approved.

<sup>12</sup> The Commission approved Nasdaq's Order Display Facility, Order Collector Facility, and Trading Platform (collectively, "SuperMontage") contingent upon the NASD offering a quote and trade reporting alternative thereto, subsequently named the Alternative Display Facility ("ADF"). See Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001) ("SuperMontage Order").

<sup>13</sup> NQDS had previously been defined in Section III.O. of the Plan as "the Nasdaq Quotation Dissemination Service, a data stream of information that provides Vendors and Subscribers with quotations and sizes from all Participants and Nasdaq market participants." The definition in Section III.O. and related references to NQDS in the Plan were proposed to be eliminated through Item 7 of the Category 1 amendments. NQDS would be redefined in proposed Section III.Z., therefore, the conflicting reference contained in Section III.O. would be deleted. In addition, Item 7 of the pending Amendment 13, Category 1 revisions would be revised to reference Section III.Z. instead of Section III.O.

<sup>14</sup> The definition of "NASD Participant" in Section III.G. originally would have been added through Item 4 of the Category 1 amendments. However, because the term is necessary to distinguish between the NASD ADF and Nasdaq market participants (and is already used in various provisions of the Plan), this definition is included as part of Amendment 13. As a result, Item 4 of the Category 1 amendments would be removed from the list of pending Amendment 13 changes. In addition, because the NASD ADF and Nasdaq are now operating under two distinct marketplace identifiers (D and Q, respectively), Section VIII.C. of the Plan would be amended to reflect this. As a result, Item 10 of the Category 1 amendments would be removed from the list of the pending Amendment 13 changes.

renumbered to Sections III.H through III.Y.

3. Section VI.B. and VI.C.3. of the Plan would be amended to clarify who will act as the Processor for NQDS given the timing of Nasdaq's exchange registration and the appointment of an independent processor. Specifically, so long as Nasdaq is not registered as a national securities exchange but is still the Plan's Processor, these revisions would clarify that the Processor shall collect, consolidate, disseminate, and distribute the quotation information contained in NQDS. The revisions would also provide that, in the event a new Processor is selected for the Plan's other data feeds while Nasdaq's exchange registration is still pending, the Operating Committee would need to determine whether to allow Nasdaq or a third party to act as the Processor for NQDS.

4. Finally, Amendment 13A would amend Plan Exhibit 1, which governs the distribution of revenue attributable to the sale of market data collected pursuant to the Plan. Paragraph 3 of Plan Exhibit 1 would be amended to clarify that NQDS continues to be one of the data feeds subject to Paragraph 3. It also would be amended to reflect the change in the name of the "Level 1 Service" to the "UTP Quote Data Feed" (Section III.I) and the "Nasdaq Last Sale Information Service" to "UTP Trade Data Feed" (Section M), as well as reflect the addition of the OTC Montage Data Feed (Section III.O).<sup>15</sup>

### III. Discussion and Commission's Findings

After careful consideration of proposed Amendment 13A to the Plan, the Commission finds that approving Amendment 13A is consistent with the requirements of the Act and the rules and regulations thereunder, and, in particular, Section 11A(a)(1)<sup>16</sup> of the Act and Rules 11Aa3-1 and 11Aa3-2(c)(2) thereunder.<sup>17</sup> Section 11A of the Act directs the Commission to facilitate

<sup>15</sup>The change in definition of the UTP Quote, UTP Trade and OTC Montage Data Feeds was approved as part of the Category 2 amendments, but the cross-references in Paragraph 3 of Plan Exhibit 1 were not revised at that time (the cross-references were instead listed as part of Item 15 of the Category 1 changes). In drafting the Amendment 13A resolution, the Operating Committee assumed these changes were effective. The Processor continued to disseminate the Level 1, Level 2 and Nasdaq Last Sale Information Service for a parallel period to enable market data vendors to have a smooth transition to the new feeds. To the extent there is Plan revenue attributable to the parallel operation of these feeds, that revenue is governed by Paragraph 3 as though those terms had not been deleted.

<sup>16</sup> 15 U.S.C. 78k-1(a)(1).

<sup>17</sup> 17 CFR 240.11Aa3-1 and 17 CFR 240.11Aa3-2(c)(2).

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>18</sup> Rule 11Aa3-2(c)(2) requires the Commission to approve a plan or amendment "if it finds that such plan or amendment is necessary or appropriate in the public interest, for the protection of investors, and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act." <sup>19</sup> The Commission finds that approving Amendment 13A is appropriate in the public interest and otherwise in furtherance of the purposes of the Act. The amendment makes changes to the Plan related to the elimination of the Legacy SIP, which will enhance the maintenance of fair and orderly markets, and remove impediments to, and perfect the mechanisms of, a national market system.

### IV. Conclusion

*It is therefore ordered*, pursuant to Section 11A of the Act <sup>20</sup> and paragraph (c)(2) of Rule 11Aa3-2 <sup>21</sup> thereunder, that Amendment 13A to the Plan be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>22</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04-11518 Filed 5-20-04; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of May 24, 2004:

Closed Meetings will be held on Tuesday, May 25, 2004, at 11 a.m., Wednesday, May 26, 2004, at 12 p.m., and Thursday, May 27, 2004, at 2 p.m.

<sup>18</sup> 15 U.S.C. 78k-1(a).

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

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

<sup>21</sup> 17 CFR 240.11Aa3-2(c)(2).

<sup>22</sup> 17 CFR 200.30-3(a)(27).

An Open Meeting will be held on Wednesday, May 26, 2004, at 10 a.m.

Commissioners, Counsel to the Commission, and recording secretaries will attend the Closed Meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9), and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii), and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Campos, as duty officer, voted to consider the items listed for the closed meetings in closed sessions.

The subject matter of the Closed Meeting scheduled for Tuesday, May 25, 2004 will be:

Formal order of investigation;  
Institution and settlement of injunctive actions; and  
Institution and settlement of administrative proceedings of an enforcement nature.

The subject matter of the Open Meeting scheduled for Wednesday, May 26, 2004 will be:

1. The Commission will consider whether to adopt amendments to Form N-1A under the Securities Act of 1933 and the Investment Company Act of 1940 that would require an open-end management investment company to provide enhanced prospectus disclosure regarding breakpoint discounts on front-end sales loads.

For further information, please contact Christian L. Broadbent at (202) 942-0721.

2. The Commission will consider whether to adopt new rule 204A-1 under the Investment Advisers Act of 1940 ("Advisers Act"). The rule would require investment advisers to adopt codes of ethics that would set forth standards of conduct for advisory personnel and address conflicts that arise from personal trading by advisory personnel. The Commission will also consider whether to adopt related amendments to Advisers Act rule 204-2, Advisers Act Form ADV, and rule 17j-1 under the Investment Company Act of 1940.

For further information, please contact Robert Tuleya at (202) 942-0719.

3. The Commission will consider whether to propose a new rule under Section 17A of the Securities Exchange Act of 1934 ("Exchange Act") that would prohibit registered transfer agents from effecting any transfer of an equity