

Condition 2 to the Fund of Funds order is amended to read as follows: "No Underlying Portfolio will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent that the Underlying Portfolio other than a Money Market Fund acquires securities of another investment company pursuant to exemptive relief from the Commission permitting the Underlying Portfolio to purchase securities of an affiliated money market fund for short-term cash management purposes."

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40869; 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, 1998.

I. Introduction

On December 30, 1998, 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

¹ See Letter from Robert E. Aber, Vice President and General Counsel, Nasdaq, to Jonathan G. Katz, Secretary, Commission, dated December 30, 1998 ("December 1998 Extension Request"). The December 1998 Extension Request also requests that 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.

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 September 30, 1999.³ The Commission also is extending certain exemptive relief as described below. The December 1998 Extension Request also requests that the Commission approve the Plan, as amended, on a permanent basis on or before September 30, 1999. During the nine-month extension of the Plan, the Commission will consider 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

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 7.

³ On March 18, 1996, the Commission solicited comment on a revenue sharing agreement among the Participants. See March 1996 Extension Order, *infra* note 7. Thereafter the Participants submitted 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 7.

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, Roley & 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

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 of 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, 1998, the Commission granted an exemption to vendors from

11, 1995), 60 FR 3886 (January 19, 1995); Securities Exchange Act Release No. 36102 (August 14, 1995), 60 FR 43626 (August 22, 1995) ("August 1995 Approval Order"); 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, 1995); 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 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); Securities Exchange Act Release No. 39505 (December 31, 1997) 63 FR 1515 (January 9, 1998); and Securities Exchange Act Release No. 40151 (July 1, 1998) 63 FR 36979 (July 8, 1998) ("July 1998 Extension Order").

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 that 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.

Rule 11Ac1-2 under the Act regarding the calculation of 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 ask in the December 1998 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 1998 Extension Request, the 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 July 1998 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 a trade through rule; and the impact of the CHX's intended use of BRASS, as defined below.

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 More recently, the NASD proposed to expand the Actual Size Rule to cover all

Nasdaq securities and to implement this rule on a permanent basis.¹³ In addition, the NASD submitted a proposed rule change to establish an integrated order delivery and execution system for directed orders and non-directed orders.¹⁴ The proposed new system, if approved, would replace the NASD's SOES and SelectNet systems and would have an impact on the Plan (e.g., the manner in which Plan participants interact with orders and quotes displayed in Nasdaq). The Nasdaq Board approved a recommendation, under which the methodology for calculating the BBO on Nasdaq would be changed to a price/size/time algorithm, from the current price/time/size algorithm, provided that: Nasdaq market makers no longer are subject to a 1,000 share minimum quote size; and the formula used to determine the quoted size of the Nasdaq market be reconsidered to reflect all market maker quotes at the same price level, if, and when, Nasdaq develops the technological capacity to afford market makers' simultaneous access to such quotes.¹⁵ An extension of the Plan until September 30, 1999 has been requested in order to resolve the BBO issue.¹⁶

¹³ See Securities Exchange Act Release No. 39760 (March 16, 1998), 63 FR 13894 (March 23, 1998).

¹⁴ See Securities Exchange Act Release No. 39718 (March 4, 1998) 63 FR 12124 (March 12, 1998). ("IODES Proposal") Directed orders are those that an order-entry firm chooses to send to a specific Nasdaq 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 Nasdaq market maker or ECN. In other words, when the broker-dealer entering the order does not specify the particular Nasdaq market maker, ECN or UTP exchange it wants to access, the order will be sent to the next available executing participant quoting at the national BBO.

¹⁵ The NASD Board approved a recommendation that the price/size/time algorithm be utilized when a meaningful portion of Nasdaq securities are subject to a minimum quote size requirement of 100 shares. In addition, the Nasdaq and NASD Boards agreed that if Nasdaq develops the technological capability to afford market makers simultaneous electronic access to all market maker quotes at the same price level, the methodology used to determine the quoted size of the Nasdaq market will be re-examined to accommodate reflection of the fully accessible size displayed on Nasdaq.

¹⁶ The BSE submitted comments to the SEC concerning the proposed new order delivery and execution systems's impact on the Plan, preservation of the BSE's rights concerning issues still not agreed upon or specifically covered by the Plan (specifically the need for a trade-through rule). See Comment letter No. 1511, SR-NASD-98-17 from Karen A. Aluise, Vice President, BSE to Jonathan G. Katz, Secretary, SEC dated May 14, 1998. In addition, the CHX submitted comments to the SEC concerning the IODES proposal and encouraged the Commission to grant permanent approval of the Plan. See Comment letter No. 1160, SR-NASD-98-17 from Patricia L. Levy, Senior Vice President and General Counsel, CHX to Jonathan G. Katz, Secretary, SEC dated May 13, 1998.

With respect to the need for a trade through rule, the NASD has represented that it continues to maintain that it would be more appropriate to address this issue once the issue of electronic access to Nasdaq market makers' quotes has been resolved.

With regard to the CHX's use of BRASS, by September 30, 1999 the CHX intends to replace its existing trade support system for accessing securities subject to the Plan and begin using BRASS, developed by Automated Securities Clearance, Limited ("ASC"). 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. The CHX has represented that 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.¹⁷ 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.

The Commission notes that the CHX commented on the July 1998 Extension Order requesting an expansion of the number of Nasdaq/NM securities eligible to be traded on an unlisted basis on an exchange, from 500 to 1000, pursuant to the Plan.¹⁸ The CHX notes that exchange trading in Nasdaq/NM securities began in April 1987 when the CHX began trading 25 Nasdaq/NM securities.¹⁹ In 1990, the Commission expanded the number of eligible Nasdaq/NM securities to 100²⁰ and in 1995 the Commission expanded the number to 500.²¹ The CHX believes that investors are directly benefited from

¹⁷ 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.

¹⁸ See Letter from George T. Simon, Foley & Lardner, to Robert L.D. Colby, Deputy Director, Division, SEC, dated November 6, 1998.

¹⁹ Securities Exchange Act Release No. 24406 (April 29, 1987) 52 FR 17495 (May 8, 1987).

²⁰ See 1990 Plan Approval Order, *supra* note 7.

²¹ See August 1995 Extension Order, *supra* note 7.

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 to the Plan on a price/time/size basis.

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

¹² See Securities Exchange Act 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.

trading Nasdaq/NM securities on the CHX floor because it provides investors with auction-based trading, including unified opening transactions, in Nasdaq/NM securities. In addition, the CHX represents that it has assigned virtually all of its current allocation of 500 Nasdaq/NM securities.

The Commission continues to solicit comment regarding the BBO calculation, the trade through rule and the CHX's use of the BRASS system as well as issues presented by changes occurring in the market place. The Commission also solicits comment on the CHX's request to expand the number of Nasdaq/NM securities eligible to be traded on an unlisted basis on an exchange, pursuant to the Plan.

VI. Discussion

The Commission finds that an extension of temporary approval of the operation of the Plan, as amended, through September 30, 1999, 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 calculation²² and to begin to make reasonable proposals concerning a trade through rule to facilitate the trading of OTC securities pursuant to UTP. In addition, the Commission believes that the extension will afford the CHX adequate time to test the BRASS system, address any operating issues concerning its use and implement it. 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 September 30, 1999 so that the Commission may have ample time to determine whether to approve the Plan on a permanent basis by September 30, 1999.

The Commission also finds that it is appropriate to extend the exemptive relief from Rule 11Ac1-2 under the Act until the earlier of September 30, 1999 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 September 30, 1999. 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 11Aa-3 and 11Aa3-2 thereunder.

VII. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the extension, including whether the extension is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W. Washington, DC 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 February 2, 1999.

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 September 30, 1999, and certain exemptive relief through September 30, 1999, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²³

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40881; File No. SR-Amex-98-46]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to Revised Equity Fee Schedule

January 4, 1999.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 11, 1998, the American Stock Exchange LLC ("Amex" 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 Amex. 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

Amex is proposing to revise its equity fee schedule to reflect the transaction charges that will be imposed on trades in Select Sector SPDRs and the Nasdaq 100 Index Trust, the new exchange-traded fund products that are scheduled to begin trading in December and January, respectively.³ The text of the proposed rule change is set forth below. Proposed new language is italicized.

²³ 17 CFR 200.30-3(a)(29).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.196-4.

³ In December 1998, the Commission approved trading of Select Sector SPDRs, see Securities Exchange Act Release No. 40749 (December 4, 1998), 63 FR 68483 (December 11, 1998), and noticed the Exchange's intention to trade the Nasdaq 100 Index Trust, see Securities Exchange Act Release No. 40809 (December 18, 1998), 63 FR 71524 (December 28, 1998).

²² See e.g., Actual Size Rule Release, supra note 13 and IODES Proposal, supra note 14.