

shareholders might be unable to distinguish between frequent distributions of capital gains and dividends from investment income. Applicants state that each Fund's Distribution Policy, including the fact that quarterly dividends may include returns of capital to the extent that net investment income and net long-term capital gains are insufficient to meet the distribution obligation, will be described in periodic communications to its shareholders. Applicants further state that in accordance with rule 19a-1 under the Act, a separate statement showing the source of the distribution (investment company taxable income, net long-term realized capital gains or return of capital) will accompany any distribution (or the confirmation of its reinvestment under each Fund's dividend reinvestment plan) that is not from the Fund's net investment income. In addition, a statement showing the amount and character of the distributions during the year will be included with each Fund's IRS Form 1099-DIV and Form 1099-B reports, which will be sent to each shareholder of record who received distributions during the year (including shareholders who sold shares during the year).

4. Applicants submit that another concern underlying section 19(b) and rule 19b-1 is that frequent capital gains distributions could facilitate improper fund distribution practices, including, in particular, the practice of urging an investor to purchase shares of a fund on the basis of an upcoming dividend ("selling the dividend"), where the dividend results in an immediate corresponding reduction in NAV and is in effect a return of the investor's capital. Applicants state that this concern does not apply to closed-end investment companies such as the Funds which do not continuously distribute shares. Applicants also state that the condition to the requested relief would further assure that the concern about selling the dividend would not arise in connection with a rights offering by the applicants. Applicants state that any transferable rights offering by either Fund will comply with the guidelines of the Commission and its staff. In making the requisite findings in connection with such an offering, the Boards will consider, among other things, the brokerage commissions that would be paid in connection with the offering. Applicants also state that any such offering will also comply with any applicable National Association of Securities Dealers, Inc. rules regarding the fairness of compensation.

5. Applicants state that increased administrative costs also are a concern

underlying section 19(b) and rule 19b-1. Applicants assert that the anticipated benefits to the Fund's shareholders are such that each Fund will continue to make quarterly distributions regardless of what portion is composed of long-term capital gains.

6. Section 6(c) of the Act provides that the Commission may exempt any person or transaction from any provision of the Act or any rule under the Act to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. For the reasons stated above, the applicants believe that the requested relief satisfies this standard.

#### **Applicant's Condition**

Each Fund agrees that the order granting the requested relief shall terminate upon the effective date of a registration statement under the Securities Act of 1933 for any future public offering by the Fund of its shares other than:

(i) A rights offering with respect to the Fund's shares to holders of the Fund's shares, in which (a) shares are issued only within the six-week period immediately following the record date of a quarterly dividend, (b) the prospectus for such rights offering makes it clear that shareholders exercising the rights will not be entitled to receive such dividend, and (c) the Fund has not engaged in more than one rights offering during any given calendar year; or

(ii) An offering in connection with a merger, consolidation, acquisition, spin-off or reorganization of the Fund;

unless the Fund has received from the staff of the Commission written assurance that the order will remain in effect.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00-384 Filed 1-6-00; 8:45 am]

**BILLING CODE 8010-01-M**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-42268; 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 23, 1999.

#### **I. Introduction**

On November 29, 1999, 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")<sup>1</sup> for Nasdaq/National Market ("Nasdaq/NM") (previously referred to as Nasdaq/NMS) securities traded on an exchange on an unlisted or listed basis.<sup>2</sup> The proposal would extend the effectiveness of the Plan, as amended by Revised Amendment No. 9, as defined in footnote 3, through June 30, 2000.<sup>3</sup> The

<sup>1</sup> See Letter from Robert E. Aber, Vice President and General Counsel, Nasdaq, to Jonathan G. Katz, Secretary, Commission, dated November 29, 1999 ("November 1999 Extension Request"). The November 1999 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. Originally, the American Stock Exchange, Inc. ("Amex") was a Participant but withdrew its participation from the Plan in August 1994.

<sup>2</sup> 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.

<sup>3</sup> 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

Commission also is extending certain exemptive relief as described below. The November 1999 Extension Request also requests that the Commission approve the Plan, as amended, on a permanent basis on or before June 30, 2000. During the 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.<sup>4</sup> 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.<sup>5</sup> Accordingly, the pilot period commenced on July 12, 1993 and was scheduled to expire on July 12, 1994.<sup>6</sup> The Plan has since been in operation on an extended pilot basis.<sup>7</sup>

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.

<sup>4</sup> See Section 12(f)(2) of the Act.

<sup>5</sup> See Securities Exchange Act Release No. 28146 (June 26, 1990), 55 FR 27917 (July 6, 1990) ("1990 Plan Approval Order").

<sup>6</sup> See letter from David T. Rusoff, Foley & Lardner, to Betsy Prout, Division of Market Regulation ("Division"), SEC, dated May 9, 1994.

<sup>7</sup> See Securities Exchange Act Release No. 34371 (July 13, 1994), 59 FR 37103 (July 20, 1994); Securities Exchange Act Release No. 35221 (January 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, 1996), 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); Securities Exchange Act Release No. 40151 (July 1, 1998) 63 FR 36979 (July 8, 1998) ("July 1998 Extension Order"); Securities Exchange Act Release No. 40896 (December 31, 1998) 64 FR

## 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; 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.<sup>9</sup>

## IV. Exemptive Relief

In conjunction with the Plan, on a temporary basis, the Commission granted an exemption to vendors from Rule 11Ac1-2 under the Act regarding the calculation of the BBO<sup>10</sup> 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 November 1999 Extension Request that

1834 (January 12, 1999) ("December 1998 Extension Order"); and Securities Exchange Act Release No. 41392 (May 12, 1999), 64 FR 27839 (May 21, 1999) ("May 1999 Approval Order").

<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, 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.

<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> 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 offer 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/size/time basis.

the Commission grant an extension of the exemptive relief described above to vendors until the BBO calculation issue is fully resolved. Additionally, in the November 1999 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 December 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 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.<sup>11</sup> In furtherance of this goal, on October 29, 1997, the Commission approved an NASD proposal to extend and expand the "Actual Size Rule"<sup>12</sup> to a total of 150 securities from 100 securities.<sup>13</sup> More recently, the Commission approved an NASD proposal to permanently allow market makers to quote their actual size by reducing the minimum quotation size requirement for all Nasdaq securities to one normal unit of trading.<sup>14</sup>

In addition, the NASD submitted a proposed rule change to establish an

<sup>11</sup> 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.

<sup>12</sup> See Securities Exchange Act Release No. 39285 (October 29, 1997), 62 FR 59932 (November 5, 1997).

<sup>13</sup> 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.

<sup>14</sup> See Securities Exchange Act Release No. 40211 (July 15, 1998), 63 FR 39322 (July 22, 1998).

integrated order delivery and execution system for directed orders and non-directed orders.<sup>15</sup> The NASD also submitted a proposed rule change to modify the NASD's SOES and SelectNet systems and create a new system, Nasdaq National Market Execution System.<sup>16</sup> Either of the proposed new systems, if approved, would alter SOES and SelectNet and would have an impact on the Plan (e.g., the manner in which Plan participants interact with orders and quotes displayed in Nasdaq). With respect to the need for a trade through rule, the NASD maintains that it would be more appropriate to address this issue once the issue of electronic access to Nasdaq market makers' quotes has been resolved.

In December 1997, the CHX advised the Commissions staff that it intended to replace its then existing MAX-OTC system with the BRASS system developed by Automated Securities Clearance, Limited ("ASC").<sup>17</sup> In December 1998, the CHX stated its intention to implement the BRASS system by September 30, 1999.<sup>18</sup> While awaiting delivery of the necessary BRASS system modifications from ASC, the CHX continue to upgrade its MAX-OTC system. Earlier this year, after ASC failed to deliver the necessary modifications, the CHX decided to make the improved MAX-OTC system its means of accessing securities instead of the BRASS system.<sup>19</sup>

## VI. Discussion

The Commission finds that an extension of temporary approval of the operation of the Plan, as amended, through June 30, 2000, is appropriate and in furtherance of Section 11A of the Act.<sup>20</sup> The Commission believes that the

extension will provide the Participants with additional time to seek Commission approval of pending proposals concerning the BBO calculation<sup>21</sup> and to begin to make reasonable proposals concerning a trade through rule to facilitate the trading of OTC securities pursuant to UTP. With respect to a trade through rule, the Commission notes that it has recently proposed to expand the ITS linkage to all securities. This, in turn, would expand the coverage of the ITS trade through rule.<sup>22</sup> 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 June 30, 2000 so that the Commission may have ample time to determine whether to approve the Plan on a permanent basis by June 30, 2000.

The Commission also finds that it is appropriate to extend the exemptive relief from Rule 11Ac1-2 under the Act until the earlier of June 30, 1999, or until such time as the calculation methodology of 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 June 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 11Aa3-1 and 11Aa3-2 thereunder.

## IV. Solicitation of Comment

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 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

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

<sup>21</sup> See e.g., Actual Size Rule Release, *supra* note 13 and IODES Proposal, *supra* note 14.

<sup>22</sup> Securities Exchange Act Release No. 42212 (December 9, 1999), 64 FR 70297 (December 16, 1999).

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 January 28, 2000.

## V. 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 June 30, 2000, and certain exemptive relief through June 30, 2000, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>23</sup>

Margaret H. McFarland,  
Deputy Secretary.

[FR Doc. 00-393 Filed 1-6-00; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42302]

### Order Canceling Registrations of Certain Transfer Agents

December 30, 1999.

On October 28, 1999, notice was published in the **Federal Register** that the Securities and Exchange Commission ("Commission") intended to issue an order, pursuant to Section 17A(c)(4)(B) of the Securities Exchange Act of 1934 (Exchange Act),<sup>1</sup> canceling the registrations of the transfer agents whose names appear in the Appendix attached to this Order.<sup>2</sup> For the reasons discussed below, the Commission is canceling the registration of each of the transfer agents identified in the attached Appendix.

**FOR FURTHER INFORMATION CONTACT:** Jerry W. Carpenter, Assistant Director, or Gregory J. Dunmark, Special Counsel, at 202/942-4187, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-1001.

### Background and Discussion

Section 17A(c)(4)(B) of the Exchange Act provides that if the Commission

<sup>23</sup> 17 CFR 200.30-3(a)(29).

<sup>1</sup> 15 U.S.C. 78q-1(c)(4)(B).

<sup>2</sup> Securities Exchange Act Release No. 34-42039 (October 20, 1999), 64 FR 58112 (October 28, 1999).

<sup>15</sup> 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 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.

<sup>16</sup> Securities Exchange Act Release No. 41296 (April 15, 1999), 64 FR 19844 (April 22, 1999).

<sup>17</sup> 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.

<sup>18</sup> See December 1998 Extension Order, *supra* note 7.

<sup>19</sup> See Letter from Paul B. O'Kelly, Executive Vice President, Market Regulation and Legal, CHX, to Mignon McLemore, Attorney, Division, SEC, dated December 20, 1999.

<sup>20</sup> In approving this extension, the Commission has considered the extension's impact on efficiency,