

these proceedings but may help the Board and/or parties in their deliberations as to the proper boundaries of the issues to be considered. During this prehearing conference, such persons may make oral limited appearance statements, on Wednesday morning, February 1, 1995, from 9:00 a.m. to 11:00 a.m. If more persons than can be accommodated during this period wish to make statements, and to the extent that time may be available after the conclusion of the substantive portions of the conference, the Board may elect to hear additional statements. Written statements, or requests to make oral limited appearance statements, should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington D.C. 20555, Attn: Docketing and Service Branch. A copy of such statement or request should be served on the Chairman of this Atomic Safety and Licensing Board, T3 F23, U.S. Nuclear Regulatory Commission, Washington D.C. 20555.

Documents relating to this proceeding are available for public inspection at the Commission's Public Document Room, 2120 L St. N.W., Washington D.C. 20555.

For the Atomic Safety and Licensing Board.

Charles Bechnoefer,

Chairman Administrative Judge.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-35221; File No. S7-24-89]

Joint Industry Plan; Order Approving Amendment No. 2 to 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., and the Boston, Chicago and Philadelphia Stock Exchanges

January 11, 1995.

On January 9, 1995, the National Association of Securities Dealers, Inc., and the Boston, Chicago, and Philadelphia Stock Exchanges (collectively, "Participants")¹ submitted

¹ The signatories to the Plan, i.e., the National Association of Securities Dealers, Inc. ("NASD"), and the Chicago Stock Exchange, Inc. ("Chx") (previously, the Midwest Stock Exchange Inc.), Philadelphia Stock Exchange, Inc. ("Phlx"), and the Boston Stock Exchange, Inc. ("BSE"), are the "Participants." The BSE, however, joined the Plan as a "Limited Participant," and reports quotation information and transaction reports only in Nasdaq/National Market (previously referred to as "Nasdaq/

to the Commission Amendment No. 2 to a joint transaction reporting plan ("Plan") for Nasdaq/National Market securities traded on an exchange on an unlisted or listed basis.² The Commission is approving the proposed amendment to the Plan and trading pursuant to the Plan on a temporary basis to expire on August 12, 1995. The Commission also is soliciting comment, among other matters, on whether exchanges should be permitted to extend UTP to more than 100 OTC securities at any given time.

I. Extension of the Pilot Program

The Commission originally approved the Plan on June 26, 1990.³ The Plan governs the collection, consolidation and dissemination of quotation and transaction information for Nasdaq/National Market securities listed on an exchange or traded on an exchange pursuant to UTP. The Commission originally 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. Thereafter, the Commission extended the effectiveness of the Plan through January 12, 1995, as requested by the Participants in Amendment No. 1 to the Plan.⁴ Accordingly, the pilot period commenced on July 12, 1993, and most

NMS") securities listed on the BSE. Originally, the American Stock Exchange, Inc., was a Participant to the Plan, but did not trade securities pursuant to the Plan, and withdrew from participation in the Plan in August 1994.

² The Commission notes that Section 12(f) of the Act describes the circumstances under which an exchange may trade by security that is not listed on the exchange, i.e., by extending unlisted trading privileges ("UTP") to the security. Section 12(f) was amended on October 22, 1994, 15 U.S.C. 12(f) (1991) (as amended 1994). Prior to the amendment, Section 12(f) required exchanges to apply to the Commission before extending UTP to any security. In order to approve an exchange UTP application for a registered security not listed on any exchange ("OTC/UTP"), Section 12(f) required the Commission to determine that various criteria had been met concerning fair and orderly markets, the protection of investors, and certain national market initiatives. These requirements worked in conjunction with the Plan currently under review. The recent amendment to Section 12(f), among other matters, removes the application requirement and permits OTC/UTP only pursuant to a Commission order or rule. The order or rule is to be issued or promulgated under essentially the same standards that previously applied to Commission review of UTP applications. The present orders serves to meet this Section 12(f) requirement.

³ See Securities Exchange Act Release No. 28146 (June 26, 1990), 55 FR 27917 ("1990 Approval Order"). For a detailed discussion of history of UTP in OTC securities, and the events that led to the present plan and pilot program, see 1994 Extension Order, *infra* note 4.

⁴ See Securities Exchange Act Release No. 34371 (July 13, 1994), 59 FR 37103 ("1994 Extension Order").

recently was scheduled to expire on January 12, 1995.

As originally approved by the Commission, the Plan required the Participants to complete their negotiations regarding revenue sharing during the one-year pilot period. The Participants, however, have not yet come to an agreement concerning revenue sharing for transactions effected pursuant to the Plan. Proposed Amendment No. 2 to the Plan extends this negotiation period for an additional seven months.⁵ The Commission believes it is appropriate to extend the effectiveness of the pilot program, particularly in light of the reported recent progress made by the Participants concerning financial matters. At the same time, however, the Commission expects the Participants to conclude those negotiations before January 31, 1995, and expects the Participants to submit to the Commission a proposed amendment to the Plan concerning finances before February 15, 1995.

II. Extension of Certain Exemptive Relief

In conjunction with the Plan, on a temporary basis scheduled to expire on July 12, 1995, the Commission granted an exemption from Rule 11Ac1-2 under the Act regarding the calculated best bid and offer ("BBO"), 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. At the request of the Participants, this order extends these exemptions through August 12, 1995, provided that the Plan continues in effect through that date pursuant to a Commission order.⁶ The Commission continues to believe that exemptive relief from these provisions is appropriate through August 12, 1995, but at that time, the Commission will

⁵ In the present filing with the Commission, the NASD states that the parties have made substantial progress in their negotiations but have not concluded them and that, in order to conclude the negotiations and provide sufficient time for approval by their governing boards and the Commission, the parties believe that an additional seven months will be required. See letter from T. Grant Callery, Vice President and General Counsel, NASD, to Jonathan G. Katz, Secretary, Commission, dated January 9, 1995.

⁶ The Commission notes that the present filing does not make clear that the two exemptions were previously scheduled to expire on July 12, 1995. Nevertheless, the filing requests an "identical extension" of the relevant exemptions along with their request that the effectiveness of the Plan be extended through August 12, 1995. Accordingly, this order extends the effectiveness of the relevant exemptions from July 12, 1995, through August 12, 1995. See id.