review the exemptive relief in light of any comments received.

III. Outstanding Issues

In the 1994 Extension Order, the Commission noted several areas of unresolved issues concerning the Plan.[7] These issues include, among other matters, whether the Commission should continue to limit the number of OTC securities that may be traded on exchanges pursuant to UTP. Currently, exchanges may extend UTP up to a maximum of 100 securities.[8] To date, the Commission has solicited comment on this and other matters and has not received evidence that expanding the number of securities would have a negative effect on the markets or the protection of investors. Moreover, the Commission recently received a letter from the Chx requesting that the Commission expand the number of eligible securities from 100 to 500.[9]

Accordingly, the Commission solicits comment specifically on whether it is appropriate to permit exchanges to extend UTP to a maximum of 500 OTC securities for an interim period, and whether all NNM securities should be available for extensions of UTP if the Commission determines that permanent approval of the Plan is appropriate. The Commission preliminarily believes that, after consideration of comments received, it may be appropriate to expand the number of eligible securities prior to the Commission's review of other matters associated with the Plan in August 1995.

The Commission also notes other areas for commenters to address: (1) Whether the BBO calculation for the relevant securities should be based on price and time only (as currently is the case) or if the calculation should include size of the quoted bid or offer; and (2) whether there is a need for an intermarket linkage for order routing and execution and an accompanying trade-through rule.

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, NW., 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 9, 1995.

VI. Conclusion

The Commission finds that proposed Amendment No. 2 to the Plan to extend the financial negotiation period for an additional seven months is appropriate and in furtherance of Section 11A of the Act. The Commission also finds that extensions of the exemptive relief requested through August 12, 1995, and described above, also is consistent with the Act and the rules thereunder. Specifically, the Commission believes that these extensions should serve to provide the Participants with more time to conclude their financial negotiations and to evaluate the effects of the pilot program and report their findings to the Commission. This, in turn, should further the objects of the Act in general, and specifically those set forth in Section 12(f) and 11A of the Act and in Rules 11Aa3–1 and 11Aa3–2 thereunder.

It is therefore ordered, pursuant to Sections 12(f) and 11A of the Act and paragraph (c)(2) of Rule 11Aa3–2 thereunder, that Amendment No. 2 to the Joint Transaction Reporting Plan for Nasdaq/National Market securities traded on an exchange on an unlisted or listed basis is hereby approved, and trading pursuant to the Plan is hereby approved on a temporary basis through August 12, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(29).

Margaret H. McFarland,

Deputy Secretary.

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[7] In the 1994 Extension Order, the Commission requested views on numerous issues presented by the pilot program, and requested that the Participants submit reports to the Commission on those issues by September 30, 1994. See *Supra* note 4. The Commission received a report from the Philadelphia Stock Exchange as an attachment to its proposed rule change requesting an extension of the Phlx's pilot procedures for OTC/UTP. See letter from William W. Uchimoto, General Counsel, Phlx, to Elizabeth Prout, Division of Market Regulation, Commission, dated December 21, 1994 (attachment to File No. SR–PHLX–94–70). The other Participants have not complied with the Commission order, and must respond to the Commission request immediately.

[8] Prior to 1985, the Commission generally did not permit exchanges to extend UTP to OTC securities. In 1985, the Commission determined that it would be appropriate to permit exchanges, on a temporary basis and subject to certain limitations, to extend UTP up to a maximum of 25 OTC securities. These limitations included the requirement that the NASD and exchanges seeking to extend UTP to OTC securities enter into a plan for consolidated transaction and quotation dissemination. See Securities Exchange Act Release No. 22412 (September 16, 1985), 50 FR 38640. In 1986, the Midwest Stock Exchange (currently the Chicago Stock Exchange, or "Chx") entered into an interim plan which subsequently was superseded by the Plan currently operating on a pilot basis. In 1990, the Commission expanded the maximum number of eligible securities to 100. See 1990 Approval Order, *supra* note 3.

[9] See letter from George T. Simon, Foley & Lardner, to Katherine England, Assistant Director, Commission, dated January 9, 1995. This letter also concludes that, when the Plan is finally approved, all NNM stocks would be eligible for trading.

[Release No. 34–35211; File Nos. SR–Amex–94–12, SR–CBOE–94–27; and SR–PSE–94–23]

Self-Regulatory Organizations; Order Approving Proposed Rule Changes by the American Stock Exchange, Inc., the Chicago Board Option Exchange, Inc., and Pacific Stock Exchange, Inc.; Relating to Short Sales of Nasdaq/NM Securities of Companies Involved in a Merger or Acquisition

January 10, 1995.

I. Introduction

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] on October 14, 1994, the American Stock Exchange, Inc. ("Amex"), on August 4, 1994, the Chicago board Options Exchange, Inc. ("CBOE"), and on August 8, 1994, the Pacific Stock Exchange, Inc. ("PSE"), respectively (each individually referred to herein as an "Exchange" and two or more collectively referred to as "Exchange"), submitted to the Securities and Exchange Commission ("Commission") proposed rule changes relating to extending the market maker exemption from the NASD's short sale rule to Nasdaq National Market ("Nasdaq/NM" or "NM") securities involved in merger and acquisition ("NSA") transactions. On September 29, 1994, the CBOE filed Amendment No. 1 to its proposal,[3] and on October 14, 1994, the PSE filed Amendment No. 1 to its proposal.[4] The

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1993).

[3] In Amendment No. 1, the CBOE adds the requirement that for a short sale in a Nasdaq/NM security involved in an M&A to qualify as an exempt hedge transaction pursuant to the current proposal, the M&A must be publicly announced. See letter from Michael L. Meyer, Schiff Hardin & Waite, to Francois Mazur, Attorney, Division of Market Regulation ("Division"), Commission, dated September 29, 1994 ("CBOE Amendment No. 1").

[4] In Amendment No. 1, the PSE adds the requirement that for a short sale in a Nasdag/NM

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