

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53250; File No. S7-24-89)

February 7, 2006

Joint Industry Plan; Order Granting Approval of Category 1 Changes from Amendment No. 13 of the Reporting Plan for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis, Submitted by the Pacific Exchange, Inc., the National Association of Securities Dealers, Inc., the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Stock Exchange, Inc., the National Stock Exchange, Inc., and the Philadelphia Stock Exchange, Inc.

I. Introduction and Description

On May 31, 2002, the National Stock Exchange, Inc. ("NSX"),¹ 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 collectively as "Participants"),² as members of the Operating Committee of the Plan submitted to the Securities and Exchange Commission ("Commission") a proposal to amend the Plan, pursuant to Rule 608³ under the Securities Exchange Act of 1934 ("Act" or "Exchange Act"). The proposal represents the 13th amendment ("13th Amendment")

¹ At the time Amendment No. 13 was submitted, the NSX was known as the Cincinnati Stock Exchange, Inc ("CSE"). The Commission notes that the CSE changed its name to the National Stock Exchange, Inc. See Securities Exchange Act Release No. 48774 (November 12, 2003), 68 FR 65332 (November 19, 2003) (File No. SR-CSE-2003-12).

² At the time of submission, NSX was the chair of the operating committee ("Operating Committee" or "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. PCX is the current chair of the Operating Committee

³ 17 CFR 202.608.

made to the Plan. Notice of the proposed 13th Amendment was published in the Federal Register on July 5, 2002.⁴

The Nasdaq UTP Plan governs the collection, processing, and dissemination on a consolidated basis of quotation and last sale information for each of its Participants. This consolidated information informs investors of the current quotation and recent trade prices of The Nasdaq Stock Market, Inc. ("Nasdaq") securities. It enables investors to ascertain from one data source the current prices in all the markets trading Nasdaq securities. The Plan serves as the required transaction reporting plan for its Participants, which is a prerequisite for their trading Nasdaq securities.

As discussed in the 13th Amendment Notice, proposed amendments to the Plan have been segregated into four categories: (1) Category 1, "Effective Upon Nasdaq's Exchange Registration;" (2) Category 2, "Effective Upon Launch of the Internal SIP;" (3) Category 3, "Effective Upon End of Parallel Period-- Elimination of the Legacy SIP;" and (4) Category 4, "Timing Not An Issue." The amendments detailed in Category 2 were granted summary effectiveness through the 13th Amendment Notice so as to allow the target launch date for the new Internal Securities Information Processor ("SIP") data feeds to be met.⁵ In addition, the Commission granted partial temporary approval to the 13th Amendment with respect to extension of the expiration date of the Plan itself. The partial temporary approval extended the expiration date of the Plan through August 19, 2003.⁶ The Commission then granted approval to

⁴ See Securities Exchange Act Release No. 46139 (June 28, 2001 [sic]), 67 FR 44888 ("13th Amendment Notice").

⁵ The summary effectiveness expired on October 26, 2002.

⁶ See Securities Exchange Act Release No. 46381 (August 19, 2002), 67 FR 54687 (August 23, 2002) ("Date Extension Approval Order").

the amendments detailed in Categories 2, 3, and 4 on a pilot basis.⁷ However, the order approving parts 2, 3, and 4 of Amendment 13 noted specifically that it did not approve those amendments detailed in Category 1 because the Commission intended to address those amendments detailed in Category 1 through separate action when the Commission acted on the Nasdaq exchange registration application.⁸

Now that the Nasdaq exchange registration application has been approved,⁹ the Commission is approving the amendments detailed in Category 1 of Amendment 13, as published in the Federal Register.¹⁰

The Commission received one comment letter on the 13th Amendment from BrokerageAmerica ("BA").¹¹ However, this comment letter discussed changes proposed in Categories 2, 3, and 4 of Amendment 13, and the comment letter was discussed fully in the Partial Temporary Approval of Amendment No. 13.¹²

The Commission finds that the Category 1 changes included in the 13th Amendment are consistent with the requirements of the Act and the rules and regulations thereunder, and, in

⁷ See Securities Exchange Act Release No. 46729 (October 25, 2002), 67 FR 66685 (November 1, 2002).

⁸ Pursuant to Rule 608(b)(2), 17 CFR 242.608(b)(2), the Commission must take action within 120 days of the date of publication of notice of filing of amendment in the Federal Register unless the sponsors of such amendment consent to an extension. The sponsors of the 13th Amendment consented to final action on the Category 1 amendments being contingent upon a subsequent trigger event. See letter from Jeffrey T. Brown, Chairman, Operating Committee, to Jonathan G. Katz, Secretary, Commission, dated May 30, 2002 ("13th Amendment Filing").

⁹ See Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006).

¹⁰ See supra note 4, 13th Amendment Notice.

¹¹ See letter from Sam Guidetti, Senior Vice President & Chief Compliance Officer, BrokerageAmerica, to Jonathan Katz, Secretary, Commission, dated September 17, 2002

¹² See supra note 7.

particular, Section 12(f)¹³ and Section 11A(a)(1)¹⁴ of the Act and Rules 601 and 608 thereunder.¹⁵ Section 11A of the Act directs the Commission to facilitate 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 "fair competition. . . between exchange markets and markets other than exchange markets."¹⁶ When the Commission first approved the Plan on a pilot basis, it found that the Plan "should enhance market efficiency and fair competition, avoid investor confusion, and facilitate surveillance of concurrent exchange and OTC trading."¹⁷ The Commission believes that amending the Plan to incorporate the amendments detailed in Category 1 of Amendment 13 furthers these goals.

¹³ 15 U.S.C. 78l(f). The Commission finds that extending the Plan is consistent with fair and orderly markets, the protection of investors and the public interest, and otherwise in furtherance of the purposes of the Act. The Commission has taken into account the public trading activity in securities traded pursuant to the Plan, the character of the trading, the impact of the trading of such securities on existing markets, and the desirability of removing impediments to, and the progress that has been made toward the development of a national market system.

¹⁴ 15 U.S.C. 78k-1(a)(1).

¹⁵ 17 CFR 242.601 and 17 CFR 242.608.

¹⁶ 15 U.S.C. 78k-1(a).

¹⁷ See Securities Exchange Act Release No. 28146 (June 26, 1990), 55 FR 27917 (July 6, 1990).

IT IS THEREFORE ORDERED, pursuant to Sections 12(f) and 11A of the Act¹⁸ and paragraph (b)(4) of Rule 608 thereunder,¹⁹ that the operation of the Plan, as modified by the amendments detailed in Category 1 of Amendment 13 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁰

Nancy M. Morris
Secretary

¹⁸ 15 U.S.C. 78(f) and 15 U.S.C. 78k-1.

¹⁹ 17 CFR 242.608(b)(4).

²⁰ 17 CFR 200.30-3(a)(27).