

information will include any changes caused by the addition of a new Manager. To meet this condition, the Adviser will provide shareholders (or, if the Portfolio serves as a funding medium for any sub-account of a registered separate account, then by providing unitholders of the sub-account) with an information statement meeting the requirements of Regulation 14C, Schedule 14C, and Item 22 of Schedule 14A under the Securities Exchange Act of 1934.

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. 34-42269; File No. S7-24-89]

Joint Industry Plan; Solicitation of Comments and Order Approving Amendment No. 10 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, Philadelphia and Cincinnati Stock Exchanges

December 23, 1999.

I. Introduction

On December 6, 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"), the Philadelphia Stock Exchange, Inc. ("PHLX"), and the Cincinnati Stock Exchange ("Cincinnati") submitted to the Securities and Exchange Commission ("Commission" or "SEC") Amendment No. 10 to a joint transaction reporting plan ("Plan")¹ for Nasdaq/National

¹ Section 12(f) of the Securities Exchange Act of 1934 ("Act") describes the circumstances under which an exchange may trade a security that is not listed on the exchange, *i.e.*, by extending unlisted trading privileges ("UTP") to the security. See 15 U.S.C. 781(f). 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. Section 12(f) was amended on October 22, 1994; the amendment removed the application requirement. OTC/UTP is now allowed only pursuant to a Commission order or rule, which is to be issued or promulgated under essentially the

Market ("Nasdaq/NM") (previously referred to as Nasdaq/NMS) securities traded on an exchange on an unlisted or listed basis.² This notice and order approves the amendment, which would add Cincinnati as a Participant to the Plan and make technical changes to the Plan to reflect that the Midwest Stock Exchange now is called the Chicago Stock Exchange.

II. Background

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/NM securities listed on an exchange or traded on an exchange pursuant to a grant of UTP.⁴ 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. Accordingly, the pilot period commenced on July 12, 1993.⁵ The Plan has since been in operation on an extended pilot basis.⁶

same standards that previously applied to Commission review of UTP applications. The present order fulfills these Section 12(f) requirements.

² The signatories to the Plan, *i.e.*, the NASD, the CHX (previously, the Midwest Stock Exchange, Inc.), the PHLX, and the BSE, are the "Participants." The BSE, however, 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., 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.

³ See Securities Exchange Act Release No. 28146 (June 26, 1990), 55 FR 27917 (July 6, 1990) ("1990 Approval Order").

⁴ See Section 12(f)(2) of the Act. See also December 1998 Extension Order, *infra* note 6, for a more in depth description of the Plan.

⁵ See letter from David T. Rusoff, Foley & Lardner, to Betsy Prout, Division of Market Regulation, SEC, dated May 9, 1994.

⁶ 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); 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); 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); Securities Exchange Act Release No. 37689 (September 16, 1996), 61 FR 50058 (September 24, 1996); 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,

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."⁷ 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; Dispute Resolution; and Method of Determination and Imposition, and Amount of Fees and Charges.⁸

IV. Discussion

The Commission finds that it is consistent with Section 11A⁹ of the Act to add Cincinnati as a Participant to the Plan and to make technical changes to the Plan to reflect that the Midwest Stock Exchange is now called the Chicago Stock Exchange. Section 11A 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

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); Securities Exchange Act Release No. 40869 (December 31, 1998), 64 FR 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"); Securities Exchange Act Release No. 42268 (December 23, 1999).

⁷ 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 6.

⁸ 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.

⁹ 15 U.S.C. 78k-1. In approving this amendment, the Commission has considered the amendment's impact on efficiency, competition, and capital formations. 15 U.S.C. 78(c)(f).

maintenance of fair and orderly markets," and cites as an objective of that system the "fair competition * * * between exchange markets and markets other than exchange markets."¹⁰ 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 regulatory surveillance of concurrent exchange and OTC trading."¹¹ The Commission now finds that adding a Participant to the Plan furthers these same goals.

Section 1C of the Plan provides that a national securities exchange in whose market eligible securities become traded, may become a Participant, provided that the exchange executes a copy of the Plan and pays its share of development costs as specified in Section XIV of the Plan. Cincinnati has filed an executed copy of the Plan with the Commission, and the Participants have represented to the Commission that Cincinnati has paid its share of the development costs specified in Section XIV of the Plan. Accordingly, the Commission finds that Cincinnati has satisfied the requirements listed in the Plan to become a participant.

The Commission also finds that the technical amendments to the Plan are consistent with the Act. The Commission believes that the Plan should accurately reflect the Participants. Thus, it is appropriate that all references to the Midwest Stock Exchange are changed to the Chicago Stock Exchange, and that the Plan itself be modified to provide for a symbol for CHX.

V. Solicitation of Comment

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed amendment that are filed with the Commission, and all written communications relating to the proposed 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 10, 2000.

VI. 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 Amendment No. 10 to the Plan, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,

Deputy Secretary.

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DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD17-99-013]

Application for Recertification of Prince William Sound Regional Citizens' Advisory Council

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability; request for comments.

SUMMARY: The Coast Guard announces the availability of the application for recertification submitted by the Prince William Sound Regional Citizens' Advisory Council (PWSRCAC). A recertification would be valid for a year. Under the Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1990, the Coast Guard also may certify, on an annual basis, an alternative voluntary advisory group instead of the Regional Citizens' Advisory Council for Prince William Sound.

DATES: Comments must reach the Seventeenth Coast Guard District on or before February 7, 2000.

ADDRESSES: You may mail your comments to the Seventeenth Coast Guard District (mor), P.O. Box 25517, Juneau, AK 99802. You may also deliver them to the Juneau Federal Building, room 753, 709 W 9th Juneau, AK between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

The Seventeenth Coast Guard District maintains the public docket for this recertification process. Comments regarding recertification will become part of this docket and will be available for inspection or copying at the Juneau Federal Building, room 753, 709 W 9th Juneau, AK, between 8 a.m. and 4 p.m.,

Monday through Friday, except Federal holidays. You may also access this docket via the ARRT web site: www.akrrt.org.

A copy of the application is also available for inspection at the Prince William Sound Regional Citizens' Advisory Council's Offices, at 3709 Spenard Rd., Anchorage, Alaska, 99503 or 154 Fairbanks Dr., P.O. Box 3089, Valdez, Alaska, 99686, between the hours of 8 a.m. and 5 p.m. Monday through Friday. The telephone number is (907) 277-7222 in Anchorage, Alaska and (907) 835-5957 in Valdez, Alaska.

FOR FURTHER INFORMATION CONTACT: For general information regarding the PWSRCAC, see their web site: www.pwsrcac.org. For questions on viewing, or submitting material to the docket contact LCDR Larry Musarra, Seventeenth Coast Guard District (mor), (907) 463-2211.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to submit written data, views, or arguments. It solicits comments from interested groups including oil terminal facility owners and operators, owners and operators of crude oil tankers calling at terminal facilities, and fishing, aquacultural, recreational and environmental citizens groups, concerning the recertification application of PWSRCAC. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD17-99-013) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Commander (m), 17th Coast Guard District, P.O. Box 25517, Juneau, AK 99802. The request should include the reasons why a hearing would be beneficial. If there is sufficient evidence to determine that oral presentations will aid this recertification process, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Coast Guard published guidelines on December 31, 1992 (57 FR 626000), to assist groups seeking recertification

¹⁰ 15 U.S.C. 78k-1(a)(1)(C)(ii).

¹¹ See *supra* note 3.

¹² 17 CFR 200.30-3(a)(29).