

performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in January 2004.

**FOR FURTHER INFORMATION CONTACT:** Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202-326-4024. (TTY/TDD users may call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4024.)

**SUPPLEMENTARY INFORMATION:**

**Variable-Rate Premiums**

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate (the "required interest rate") in determining a single-employer plan's variable-rate premium. The required interest rate is the "applicable percentage" (currently 100 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the "premium payment year"). (Although the Treasury Department has ceased issuing 30-year securities, the Internal Revenue Service announces a surrogate yield figure each month—based on the 30-year Treasury bond maturing in February 2031—which the PBGC uses to determine the required interest rate.)

The required interest rate to be used in determining variable-rate premiums for premium payment years beginning in December 2003 is 5.12 percent.

The following table lists the required interest rates to be used in determining variable-rate premiums for premium payment years beginning between January 2003 and December 2003.

For premium payment years beginning in:	The required interest rate is:
January 2003 .....	4.92
February 2003 .....	4.94
March 2003 .....	4.81
April 2003 .....	4.80
May 2003 .....	4.90
June 2003 .....	4.53
July 2003 .....	4.37
August 2003 .....	4.93
September 2003 .....	5.31
October 2003 .....	5.14
November 2003 .....	5.16
December 2003 .....	5.12

**Multiemployer Plan Valuations Following Mass Withdrawal**

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281)

prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in January 2004 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 10th day of December, 2003.

**Joseph H. Grant,**

*Deputy Executive Director and Chief Operating Officer, Pension Benefit Guaranty Corporation.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-48882; File No. S7-24-89]

**Joint Industry Plan; Order Extending for One Year the Operation of the Reporting Plan for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis, Submitted by the National Association of Securities Dealers, Inc., the Boston Stock Exchange, Inc., the Chicago Stock Exchange, Inc., the Cincinnati Stock Exchange, Inc., the Pacific Exchange, Inc., the American Stock Exchange LLC, and the Philadelphia Stock Exchange, Inc.**

December 4, 2003.

**I. Introduction and Description**

On August 8, 2003, the Cincinnati Stock Exchange, Inc. ("CSE") 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"),<sup>1</sup> as members of the operating committee ("Operating Committee" or "Committee") of the Plan submitted to the Securities and Exchange Commission ("SEC" or "Commission") a request to extend the operation of the

Plan and also to extend certain exemptive relief as described below.<sup>2</sup> On August 12, 2003, the Commission issued a notice for comment and simultaneously granted summary effectiveness to the request to extend the operation of the Plan and certain exemptive relief.<sup>3</sup> No comments were received in response to the publication of this notice.

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 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. Currently, the Plan is scheduled to expire on December 16, 2003.

This order approves, pursuant to Rule 11Aa3-2(c)(2) under the Securities Exchange Act of 1934 ("Act"),<sup>4</sup> the request to extend operation of the Plan and the request to extend certain exemptive relief ("Date Extension") for a one-year period<sup>5</sup> expiring one year from the date of publication in the **Federal Register**.

**II. Exemptive Relief**

While both Nasdaq and the NASD operate under the umbrella of a single

<sup>2</sup> See letter from Jeffrey T. Brown, Chairman, Plan Operating Committee, to Jonathan G. Katz, Secretary, Commission, dated August 8, 2003.

<sup>3</sup> See Securities Exchange Act Release No. 48318, 68 FR 49534 (August 18, 2003).

<sup>4</sup> 17 CFR 240.11Aa3-2(c)(2).

<sup>5</sup> As discussed in the order granting partial temporary approval of Amendment No. 13 to the Plan, see Securities Exchange Act Release No. 46729 (October 25, 2002), 67 FR 66685 (November 1, 2002) ("Partial Approval"), proposed amendments to the Plan had 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." Through the Partial Approval, the Commission approved the Category 2, 3, and 4 amendments on a pilot basis, but did not approve the Category 1 amendments. Therefore, the Plan the Commission extends today is the Plan, as modified, by all changes previously approved. In the Partial Approval, the Commission explicitly noted its intention to address the Category 1 amendments through separate action when the Commission acts on the Nasdaq exchange registration application. This order does not approve the Category 1 amendments and the Commission reiterates its intent to act upon the Category 1 amendments through separate action in conjunction with the Nasdaq exchange registration application.

<sup>1</sup> The CSE was elected chair of the Operating 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.

Plan Participant, the submission of two distinct best bids and offers ("BBOs") could be deemed inconsistent with Section VI.C.1 of the Plan.<sup>6</sup> Pursuant to the 13th Amendment of the Plan and Rule 11Aa3-2(a),<sup>7</sup> Nasdaq cannot be granted Plan Participant status until it is registered as a national securities exchange. While Nasdaq submits a distinct BBO from the NASD and until Nasdaq is registered as a national securities exchange, the NASD will submit quotes to the Plan's Securities Information Processor ("SIP") in a manner different than specified in Section VI.C.1. of the Plan and, thus, in conflict with Commission Rule 11Aa3-2(d).<sup>8</sup>

As discussed at length in the notice of the 13th Amendment,<sup>9</sup> the Commission had determined to relieve the potential conflict among the SuperMontage approval order,<sup>10</sup> Rule 11Aa3-2,<sup>11</sup> and the Plan, by granting the NASD an exemption under Rule 11Aa3-2(f)<sup>12</sup> from compliance with Section VI.C.1. of the Plan as required by Rule 11Aa3-2(d)<sup>13</sup> until such time as Nasdaq is registered as a national securities exchange. The Plan Participants have requested an extension of such exemptive relief.

### III. Discussion

The Commission finds that extending the operation of the Plan is consistent with the requirements of the Act and the rules and regulations thereunder, and, in particular, Section 12(f)<sup>14</sup> and Section 11A(a)(1)<sup>15</sup> of the Act and Rules 11Aa3-1 and 11Aa3-2 thereunder.<sup>16</sup>

<sup>6</sup> Section VI.C.1. of the Plan, as approved by the Operating Committee in the 13th Amendment, states that "[t]he Processor shall disseminate on the UTP Quote Data Feed the best bid and offer information supplied by each Participant, including the NASD. \* \* \*

<sup>7</sup> 17 CFR 240.11Aa3-2(a).

<sup>8</sup> 17 CFR 240.11Aa3-2(d). Commission Rule 11Aa3-2(d) requires a self-regulatory organization participant of national market system plan to comply with the terms of that plan.

<sup>9</sup> See Securities Exchange Act Release No. 46139 (June 28, 2001 [sic]), 67 FR 44888 (July 5, 2002).

<sup>10</sup> See Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001).

<sup>11</sup> 17 CFR 240.11Aa3-2.

<sup>12</sup> 17 CFR 240.11Aa3-2(f).

<sup>13</sup> 17 CFR 240.11Aa3-2(d).

<sup>14</sup> 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.

<sup>15</sup> 15 U.S.C. 78k-1(a)(1).

<sup>16</sup> 17 CFR 240.11Aa3-1 and 17 CFR 240.11Aa3-2.

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 the "fair competition \* \* \* between exchange markets and markets other than exchange markets."<sup>17</sup> When the Commission first approved of 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."<sup>18</sup> The Plan has been in existence since 1990 and Participants have been trading Nasdaq securities under the Plan since 1993.

The Commission finds that extending the operation of the Plan for a year furthers the goals described above by preventing the lapsing of the sole effective transaction reporting plan for Nasdaq securities traded by exchanges pursuant to unlisted trading privileges. The Commission believes that the Plan is currently a critical component of the national market system and that the Plan's expiration would have a serious, detrimental impact on the further development of the national market system.

The Commission also finds that it is appropriate to extend the exemption under Rule 11Aa3-2(f)<sup>19</sup> from compliance with Section VI.C.1. of the Plan as required by Rule 11Aa3-2(d).<sup>20</sup> The Commission believes that the Plan is a critical component of the national market system and that the requested exemptive relief is necessary to assure the effective operation of the Plan. The Commission believes that the requested exemptive relief extension is consistent with the Act, the Rules thereunder, and, specifically, with the objectives set forth in Sections 12(f) and 11A of the Act<sup>21</sup> and Rules 11Aa3-1 and 11Aa3-2 thereunder.<sup>22</sup>

### IV. Conclusion

*It is therefore ordered*, pursuant to sections 12(f) and 11A of the Act<sup>23</sup> and paragraph (c)(4) of Rule 11Aa3-2<sup>24</sup> thereunder, that the operation of the Plan be, and hereby is, extended and

<sup>17</sup> 15 U.S.C. 78k-1(a).

<sup>18</sup> See Securities Exchange Act Release No. 28146 (June 26, 1990), 55 FR 27917 (July 6, 1990).

<sup>19</sup> 17 CFR 240.11Aa3-2(f).

<sup>20</sup> 17 CFR 240.11Aa3-2(d).

<sup>21</sup> 15 U.S.C. 78l(f) and 15 U.S.C. 78k-1.

<sup>22</sup> 17 CFR 240.11Aa3-1 and 11Aa3-2.

<sup>23</sup> 15 U.S.C. 78l(f) and 15 U.S.C. 78k-1.

<sup>24</sup> 17 CFR 240.11Aa3-2(c)(4).

that certain exemptive relief also be extended until December 15, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>25</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48890; File No. SR-NASD-2003-174]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Amend the Fee Schedule for the Nasdaq National Market Execution System With Respect to Executions Across Multiple MPIDs of the Same Member

December 8, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 26, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by Nasdaq. Nasdaq has designated this proposal as one establishing or changing a due, fee or other charge imposed by the self-regulatory organization under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the rule immediately effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to amend NASD Rule 7010(i) to modify the fee charged when Quotes/Orders submitted by the same member under different market participant identifiers ("MPIDs") match and execute against each other in the Nasdaq National Market Execution System ("NNMS" or,

<sup>25</sup> 17 CFR 200.30-3(a)(27).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>4</sup> 17 CFR 240.19b-4(f)(2).