

renumbered to Sections III.H through III.Y.

3. Section VI.B. and VI.C.3. of the Plan would be amended to clarify who will act as the Processor for NQDS given the timing of Nasdaq's exchange registration and the appointment of an independent processor. Specifically, so long as Nasdaq is not registered as a national securities exchange but is still the Plan's Processor, these revisions would clarify that the Processor shall collect, consolidate, disseminate, and distribute the quotation information contained in NQDS. The revisions would also provide that, in the event a new Processor is selected for the Plan's other data feeds while Nasdaq's exchange registration is still pending, the Operating Committee would need to determine whether to allow Nasdaq or a third party to act as the Processor for NQDS.

4. Finally, Amendment 13A would amend Plan Exhibit 1, which governs the distribution of revenue attributable to the sale of market data collected pursuant to the Plan. Paragraph 3 of Plan Exhibit 1 would be amended to clarify that NQDS continues to be one of the data feeds subject to Paragraph 3. It also would be amended to reflect the change in the name of the "Level 1 Service" to the "UTP Quote Data Feed" (Section III.I) and the "Nasdaq Last Sale Information Service" to "UTP Trade Data Feed" (Section M), as well as reflect the addition of the OTC Montage Data Feed (Section III.O).¹⁵

III. Discussion and Commission's Findings

After careful consideration of proposed Amendment 13A to the Plan, the Commission finds that approving Amendment 13A is consistent with the requirements of the Act and the rules and regulations thereunder, and, in particular, Section 11A(a)(1)¹⁶ of the Act and Rules 11Aa3-1 and 11Aa3-2(c)(2) thereunder.¹⁷ 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."¹⁸ Rule 11Aa3-2(c)(2) requires the Commission to approve a plan or amendment "if it finds that such plan or amendment is necessary or appropriate in the public interest, for the protection of investors, and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act."¹⁹ The Commission finds that approving Amendment 13A is appropriate in the public interest and otherwise in furtherance of the purposes of the Act. The amendment makes changes to the Plan related to the elimination of the Legacy SIP, which will enhance the maintenance of fair and orderly markets, and remove impediments to, and perfect the mechanisms of, a national market system.

IV. Conclusion

It is therefore ordered, pursuant to Section 11A of the Act²⁰ and paragraph (c)(2) of Rule 11Aa3-2²¹ thereunder, that Amendment 13A to the Plan be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²²

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of May 24, 2004:

Closed Meetings will be held on Tuesday, May 25, 2004, at 11 a.m., Wednesday, May 26, 2004, at 12 p.m., and Thursday, May 27, 2004, at 2 p.m.

An Open Meeting will be held on Wednesday, May 26, 2004, at 10 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9), and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii), and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Campos, as duty officer, voted to consider the items listed for the closed meetings in closed sessions.

The subject matter of the Closed Meeting scheduled for Tuesday, May 25, 2004 will be:

Formal order of investigation;
Institution and settlement of injunctive actions; and
Institution and settlement of administrative proceedings of an enforcement nature.

The subject matter of the Open Meeting scheduled for Wednesday, May 26, 2004 will be:

1. The Commission will consider whether to adopt amendments to Form N-1A under the Securities Act of 1933 and the Investment Company Act of 1940 that would require an open-end management investment company to provide enhanced prospectus disclosure regarding breakpoint discounts on front-end sales loads.

For further information, please contact Christian L. Broadbent at (202) 942-0721.

2. The Commission will consider whether to adopt new rule 204A-1 under the Investment Advisers Act of 1940 ("Advisers Act"). The rule would require investment advisers to adopt codes of ethics that would set forth standards of conduct for advisory personnel and address conflicts that arise from personal trading by advisory personnel. The Commission will also consider whether to adopt related amendments to Advisers Act rule 204-2, Advisers Act Form ADV, and rule 17j-1 under the Investment Company Act of 1940.

For further information, please contact Robert Tuleya at (202) 942-0719.

3. The Commission will consider whether to propose a new rule under Section 17A of the Securities Exchange Act of 1934 ("Exchange Act") that would prohibit registered transfer agents from effecting any transfer of an equity

¹⁵ The change in definition of the UTP Quote, UTP Trade and OTC Montage Data Feeds was approved as part of the Category 2 amendments, but the cross-references in Paragraph 3 of Plan Exhibit 1 were not revised at that time (the cross-references were instead listed as part of Item 15 of the Category 1 changes). In drafting the Amendment 13A resolution, the Operating Committee assumed these changes were effective. The Processor continued to disseminate the Level 1, Level 2 and Nasdaq Last Sale Information Service for a parallel period to enable market data vendors to have a smooth transition to the new feeds. To the extent there is Plan revenue attributable to the parallel operation of these feeds, that revenue is governed by Paragraph 3 as though those terms had not been deleted.

¹⁶ 15 U.S.C. 78k-1(a)(1).

¹⁷ 17 CFR 240.11Aa3-1 and 17 CFR 240.11Aa3-2(c)(2).

¹⁸ 15 U.S.C. 78k-1(a).

¹⁹ 17 CFR 240.11Aa3-2(c)(2).

²⁰ 15 U.S.C. 78k-1.

²¹ 17 CFR 240.11Aa3-2(c)(2).

²² 17 CFR 200.30-3(a)(27).

securities registered under Section 12 or 15(d) of the Exchange Act where transfer of such security to or from securities intermediaries is restricted or prohibited. The term "securities intermediary" would be defined in the rule as a clearing agency registered under Section 17A of the Exchange Act or a person, including a bank, broker, or dealer, that in the ordinary course of its business maintains securities accounts for others. For purposes of the proposed rule, the term "equity securities" excludes securities issued by partnerships, as defined in § 229.901(b) of Regulation S-K, as well as any other equity security the Commission may exempt.

For further information, please contact Jerry Carpenter or Susan Petersen, at (202) 942-4187.

4. The Commission will hear oral argument on appeals by Clarke T. Blizzard and the Division of Enforcement from the decision of an administrative law judge. Blizzard was formerly a senior vice president and managing director of Shawmut Investment Advisers, Inc. ("Shawmut"). Rudolph Abel, formerly Shawmut's president and chief investment officer, opposes the Division's petition for review.

The law judge found that Blizzard willfully aided and abetted and caused violations of Section 206(1) and 206(2) of the Investment Advisers Act of 1940 by Shawmut. The law judge found that charges that Abel aided and abetted violations of those provisions were unproven because no primary violations by Shawmut were established during the period that Abel was employed at Shawmut. The law judge ordered Blizzard to cease and desist from committing or causing any violations or future violations of Section 206 of the Advisers Act; to disgorge commissions in the amount of \$548,233, plus pre-judgment interest; to pay a civil money penalty of \$100,000; and to be suspended for 90 days from association with an investment adviser.

Among the issues likely to be argued are:

1. Whether Shawmut committed the alleged primary violation on which aiding and abetting liability by Blizzard and Abel may be premised.

2. Whether Blizzard and Abel committed the alleged aiding-and-abetting violations.

3. If respondents committed violations, whether sanctions should be imposed in the public interest.

The subject matter of the Closed Meeting scheduled for Wednesday, May 26, 2004, will be:

Post-argument discussion.

The subject matter of the Closed Meeting scheduled for Thursday, May 27, 2004, will be:

Formal order of investigation;
Institution and settlement of injunctive actions;
Institution and settlement of administrative proceedings of an enforcement nature; and an adjudicatory matter.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942-7070.

Dated: May 18, 2004.

Jonathan G. Katz,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49716; File No. SR-NASD-2003-164]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 by the National Association of Securities Dealers, Inc. Relating to the Adjournment of an Arbitration Hearing Within Three Business Days of the First Scheduled Hearing Session

May 17, 2004.

On November 4, 2003, the National Association of Securities Dealers, Inc. ("NASD" or "Association") through its wholly owned subsidiary, NASD Dispute Resolution, Inc. ("NASD Dispute Resolution"), filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4² thereunder, a proposal to amend the rules relating to the adjournment of a scheduled arbitration hearing. On March 5, 2004, NASD filed Amendment No. 1 to the proposed rule change.³ On April 1, 2004, NASD filed Amendment No. 2 to the proposed rule change.⁴ Notice of the proposed rule change, as amended, was published for comment

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter dated March 5, 2004 from Mignon McLemore, Counsel, NASD Dispute Resolution, to Katherine England, Assistant Director, Division of Market Regulation.

⁴ See letter dated April 1, 2004 from Mignon McLemore, Counsel, NASD Dispute Resolution, to Katherine England, Assistant Director, Division of Market Regulation.

in the **Federal Register** on April 14, 2004.⁵ No comments were received on the proposed rule change. This order approves the proposed rule change.

The proposed rule change will amend NASD IM-10104, Rule 10306, and Rule 10319 of the Code to impose a fee of \$100 per arbitrator on parties and to compensate arbitrators in the event a hearing is adjourned within three business days before a scheduled hearing session.

The Commission believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities association.⁶ Specifically, the Commission finds that the proposal is consistent with Section 15A(b)(6) of the Act,⁷ which requires, among other things, that NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The Commission believes the proposed rule change will provide NASD Dispute Resolution with an effective means of addressing the problems associated with last minute adjournments. The rule change should discourage frivolous adjournment requests while promoting more efficient use of the arbitration process by encouraging parties, when appropriate, to settle their disputes earlier to avoid additional fees. In addition, the Commission believes the proposed rule change should help NASD Dispute Resolution maintain a deep pool of qualified arbitrators by assuring arbitrators of some compensation in the event a scheduled hearing is adjourned at the last minute. In sum, the Commission believes that, by providing a more efficient and effective forum for investors to address grievances involving NASD members, the proposed rule change will serve to protect investors and the public interest.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (File No. SR-NASD-2003-164) be, and it hereby is, approved.

⁵ See Securities Exchange Act Release No. 49545 (April 8, 2004), 69 FR 19887 (April 14, 2004).

⁶ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78o-3(b)(6).

⁸ 15 U.S.C. 78s(b)(2).