

with the Manager (included in the term "Manager"), (b) uses the multi-manager structure described in the application for the Prior Order, and (c) complies with the terms and conditions of the Prior Order, as amended by the requested order (included in the term "Fund").<sup>3</sup> If the name of any Fund contains the name of a Sub-Adviser, the name of the Manager will precede the name of the Sub-Adviser.

3. Applicants agree that any order granting the requested relief will be subject to the conditions in the Prior Order, except that conditions 3 and 4 of the Prior Order will be modified as follows to reflect recent Commission precedent:

3. Within 90 days of the hiring of a new Sub-Adviser, the Manager will furnish shareholders of the applicable Fund all information about the new Sub-Adviser that would be included in a proxy statement. To meet this condition, the Manager will provide shareholders of the applicable Fund 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.

4. Each Fund's prospectus will disclose the existence, substance, and effect of the requested order. In addition, each Fund will hold itself out as employing the management structure described in the application. The prospectus will prominently disclose that the Manager has ultimate responsibility, subject to oversight by the Trustees, to oversee the Sub-Advisers and recommend their hiring, termination and replacement.

For the Commission, by the Division of Investment Management, under delegated authority.

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48318; File No. S7-24-89]

### Joint Industry Plan; Solicitation of Comments and Order Granting Summary Effectiveness to Request to Extend 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.

August 12, 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>

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 August 19, 2003.

This order grants summary effectiveness, pursuant to Rule 11Aa3-2(c)(4) under the Securities Exchange Act of 1934 ("Act"),<sup>3</sup> to the request to extend operation of the Plan and to the request to extend certain exemptive relief ("Date Extension").<sup>4</sup> Pursuant to Rule 11Aa3-2(c)(4) under the Act,<sup>5</sup> the Date Extension will be effective summarily upon publication in the **Federal Register** on a temporary basis not to exceed 120 days.

#### II. Exemptive Relief

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

<sup>3</sup> 17 CFR 240.11Aa3-2(c)(4).

<sup>4</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>5</sup> 17 CFR 240.11Aa3-2(c)(4).

<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>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.

<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> The Managers Funds, Managers Trust I and Managers Trust II are the only entities that currently intend to rely on the requested order.