

("Cinergy System"). The Plan would involve performance-based compensation, which might be conditioned on attainment of specified performance measures, in the nature of (i) stock options ("Options"), (ii) rights to receive the appreciation in fair market value of Common Stock ("Stock Appreciation Rights"), (iii) grants of Common Stock, subject to transfer restrictions and risk of forfeiture ("Restricted Stock"), (iv) Common Stock or rights to receive the fair market value of Common Stock ("Performance Stock"), (v) cash or Common Stock with the same fair market value ("Performance Awards"), (vi) Common Stock or cash equal in value to dividends on Common Stock ("Dividend Equivalents"), (vii) other stock-based awards denominated or payable in, valued by reference to, or otherwise based on or related to, Common Stock ("Other Stock-Based Awards"), and (viii) cash awards.

Common Stock used for awards under the Plan may be authorized but unissued Common Stock or Common Stock purchased on the open market, in private transactions or otherwise. The maximum number of Common Stock that may be issued or transferred upon the exercise of Options or Stock Appreciation Rights, awarded as Restricted Stock and released from substantial risk of forfeiture, issued or transferred as Dividend Equivalents, and issued or transferred in payment of Performance Stock, Performance Awards or Other Stock-Based Awards which have been earned, shall not exceed 7 million shares through the year 2000.

The Plan will be administered by the Compensation Committee of the Board ("Committee"), all of whose members will be non-employee members of the Board who are disinterested persons within the meaning of rule 16b-3 of the Securities Exchange Act of 1934.

The group of Cinergy System employees who would be eligible to receive awards under the Plan consists of officers, employees who are employed in a significant executive, supervisory, administrative, operational or professional capacity, and employees who have the potential to contribute to the future success of the Cinergy System. The Committee would have the exclusive authority to determine, in its sole discretion, those eligible employees to whom awards would be granted at any time, as well as the type, size and other terms and conditions of each granted award, subject only to the parameters in the Plan. The Committee may make grants to employees under any or a combination of all of the

various categories of awards that are authorized under the Plan.

The Plan is intended to be of indefinite duration. However, the Board may amend or terminate the Plan in whole or in part, except that it will not, without the approval of Cinergy shareholders, increase the maximum amount of Common Stock that may be issued under the Plan, change the class of employees eligible to participate in the Plan, or cause the Plan to be in non-compliance with rule 16b-3 under the Securities Exchange Act of 1934.

It appears that the application-declaration, to the extent that it relates to the proposed solicitation of proxies, should be permitted to become effective forthwith pursuant to rule 62.

It is ordered, therefore, that the application-declaration, to the extent that it relates to the proposed solicitation of proxies be, and it hereby is, granted and permitted to become effective forthwith pursuant to rule 62 and subject to the terms and conditions prescribed in rule 24 under the Act.

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

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-36934; File No. S7-24-89]

Joint Industry Plan; Solicitation of Comments and Order Approving Amendment No. 8 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 and Philadelphia Stock Exchange

March 6, 1996.

On March 5, 1996, the National Association of Securities Dealers, Inc., and the Boston, Chicago, and Philadelphia Stock Exchanges (collectively, "Participants")¹ submitted to the Commission proposed Amendment No. 8 to a joint transaction

¹ The signatories to the Plan, i.e., the National Association of Securities Dealers, Inc. ("NASD"), and the Chicago Stock Exchange, Inc. ("Chx") (previously, the Midwest Stock Exchange, Inc.), Philadelphia Stock Exchange, Inc. ("Phlx"), and the Boston Stock Exchange, Inc. ("BSE"), are the "Participants." The BSE, however, joined the Plan as a "Limited Participant," and reports quotation information and transaction reports only in Nasdaq/National Market (previously referred to as "Nasdaq/NMS") 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.

reporting plan ("Plan") for Nasdaq/National Market securities traded on an exchange on an unlisted or listed basis.² Amendment No. 8 would extend the effectiveness of the Plan through March 15, 1996.³ This order approves Amendment No. 8 to the Plan, thereby approving its operation through March 15, 1995.

I. Background

The Commission originally approved the Plan on June 26, 1990.⁴ The Plan governs the collection, consolidation and dissemination of quotation and transaction information for Nasdaq/National Market securities listed on an exchange or traded on an exchange pursuant UTP. The Commission has extended the effectiveness of the Plan seven times since then to allow the Participants to trade pursuant to the Plan while they finalize their negotiations for revenue sharing under the Plan.⁵

As originally approved by the Commission, the Plan required the Participants to complete their negotiations regarding revenue sharing during the one-year pilot period. The January 1995 Extension Order approved the effectiveness of the Plan through August 12, 1995. Since January 1995, the Commission has expected the

² Section 12 of the Act generally requires an exchange to trade only those securities that the exchange lists, except that Section 12(f) of the Act permits unlisted trading privileges ("UTP") under certain circumstances. For example, Section 12(f), among other things, permits exchanges to trade certain securities that are traded over-the-counter ("OTC/UTP"), but only pursuant to a Commission order or rule. The present order fulfills this Section 12(f) requirement. For a more complete discussion of this Section 12(f) requirement, see November 1995 Extension Order, *infra* note 3, at n. 2.

³ On December 28, 1995, the Commission extended the effectiveness of the Plan through March 5, 1996, by approving Amendment No. 7 to the Plan. See Securities Exchange Act Release No. 36650 (December 28, 1995), 60 FR 358 ("December 28 Extension Order").

⁴ See Securities Exchange Act Release No. 28146 (June 26, 1990), 55 FR 27917 ("1990 Approval Order"). For a detailed discussion of the history of UTP in OTC securities, and the events that led to the present plan and pilot program, see 1994 Extension Order, *infra* note 5.

⁵ See Securities Exchange Act Release No. 34371 (July 13, 1994), 59 FR 37103 ("1994 Extension Order"). See also Securities Exchange Act Release No. 35221, (January 11, 1995), 60 FR 3886 ("January 1995 Extension Order"), Securities Exchange Act Release No. 36102 (August 14, 1995), 60 FR 43626 ("August 1995 Extension Order"), Securities Exchange Act Release No. 36226 (September 13, 1995), 60 FR 49029 ("September 1995 Extension Order"), Securities Exchange Act Release No. 36368 (October 13, 1995), 60 FR 54091 ("October 1995 Extension Order"), Securities Exchange Act No. 36481 (November 13, 1995), 60 FR 58119 ("November 1995 Extension Order"), Securities Exchange Act Release No. 36589 (December 13, 1995), 60 FR 65696 ("December 13 Extension Order"), and the December 28 Extension Order, *supra* note 3.

Participants to conclude their financial negotiations promptly and to submit a filing to the Commission that reflected the results of the negotiations. Moreover, the Commission's August 1995 Extension Order required the Participants to submit a filing concerning revenue sharing on or before August 31, 1995. The Commission's December 13 Extension Order noted that request, and further requested that the Participants submit to the Commission, on or before December 20, 1995, a proposed revenue sharing amendment, along with a proposed amendment to extend the effectiveness of the Plan through the pending period for the financial proposal. The Commission further reminded the Participants of these requests in the December 28 Extension Order.

The Commission currently believes it is appropriate to extend the effectiveness of the Plan through March 15, 1996, so that operation of the Plan may continue while the Commission awaits these amendments and prepares them for publication in the Federal Register.

II. Extension of Certain Exemptive Relief

In conjunction with the Plan, on a temporary basis scheduled to expire on December 29, 1995, the Commission granted an exemption from Rule 11Ac1-2 under the Act regarding the calculated best bid and offer ("BBO"), and granted the BSE an exemption from the provision of Rule 11Aa3-1 under the Act that requires transaction reporting plans to include market identifiers for transaction reports and last sale data. This order extends these exemptions through March 15, 1996. Further, this extension will remain in effect only if the Plan continues in effect through that date pursuant to a Commission order.⁶ The Commission continues to believe that this exemptive relief is appropriate through March 15, 1996.

III. Comments on the Operation of the Plan

In the January 1995, August 1995, September 1995, October 1995, November 1995, December 13, and December 28 Extension Orders, the Commission solicited, among other things, comment on (1) whether the BBO calculation for the relevant

⁶In the December 28 Extension Order, the Commission extended these exemptions through March 5, 1996. Pursuant to a request made by the NASD, this order further extends the effectiveness of the relevant exemptions through March 15, 1996. See letter from Richard Ketchum, NASD, to Jonathan G. Katz, Commission, dated March 5, 1996.

securities should be based on price and time only (as currently is the case) or if the calculation should include size of the quoted bid or offer; and (2) whether there is a need for an intermarket linkage for order routing and execution and an accompanying trade-through rule. The Commission continues to solicit comments on these matters.

IV. Solicitation of Comment

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change 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 April 3, 1996.

V. Conclusion

The Commission finds that proposed Amendment No. 8 to the Plan to extend the operation of the Plan and the financial negotiation period through March 15, 1996, is appropriate and in furtherance of Section 11A of the Act. The Commission finds further that extension of the exemptive relief through March 15, 1996, as described above, also is consistent with the Act and the Rules thereunder. Specifically, the Commission believes that these extensions should serve to provide the Participants with more time to conclude their financial negotiations and to submit the necessary filings to the Commission. This, in turn, should further the objects of the Act in general, and specifically those set forth in Sections 12(f) and 11A of the Act and in Rules 11Aa3-1 and 11Aa3-2 thereunder.

It is therefore ordered, pursuant to Sections 12(f) and 11A of the Act and (c)(2) of Rule 11Aa3-2 thereunder, that Amendment No. 8 to the Joint Transaction Reporting Plan for Nasdaq/National Market securities traded on an exchange on an unlisted or listed basis is hereby approved and trading pursuant to the Plan is hereby approved

on a temporary basis through March 15, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(29).

Margaret H. McFarland,
Deputy Secretary.

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[Release No. 34-36938; File No. 600-25]

Self-Regulatory Organizations; Participants Trust Company; Notice of Filing of Application for Extension of Temporary Registration as a Clearing Agency

March 7, 1996.

Notice is hereby given that on February 22, 1996, the Participants Trust Company ("PTC") filed with the Securities and Exchange Commission ("Commission") pursuant to Section 19(a) of the Securities Exchange Act of 1934 ("Act"),¹ a request for extension of its temporary registration as a clearing agency under Section 17A of the Act through March 31, 1997.² The Commission is publishing this notice to solicit comments from interested persons on PTC's request for an extension of its temporary registration.

On March 28, 1989, the Commission granted PTC's application for registration as a clearing agency pursuant to Sections 17A(b)(2) and 19(a)³ of the Act on a temporary basis for a period of one year.⁴ Subsequently, the Commission issued orders that extended PTC's temporary registration as a clearing agency.⁵ PTC's current temporary registration extends through March 31, 1996.

As discussed in detail in the initial order granting PTC's temporary registration,⁶ one of the primary reasons for PTC's registration was to develop depository facilities for mortgage-backed securities, particularly securities guaranteed by the Government National Mortgage Association ("GNMA"). PTC services include certificate safekeeping, book entry deliveries, and automated

¹ 15 U.S.C. § 78s(a).

² Letter from John J. Sceppa, President and Chief Executive Officer, PTC, to Jerry Carpenter, Assistant Director, Division of Market Regulation, Commission (February 21, 1996).

³ 15 U.S.C. §§ 78q-1(b)(2) and 78s(a) (1988).

⁴ Securities Exchange Act Release No. 26671 (March 28, 1989), 54 FR 13266.

⁵ Securities Exchange Act Release Nos. 27858 (March 28, 1990), 55 FR 12614; 29024 (March 28, 1991), 56 FR 13848; 30537 (April 9, 1992), 57 FR 12351; 32040 (March 23, 1993), 58 FR 16902; 33734 (March 8, 1994), 59 FR 11815; and 35482 (March 13, 1995), 60 FR 14806.

⁶ *Supra* note 4.