

of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Rydex Fund of any changes to the list of the names as soon as reasonably practicable after a change occurs. The Rydex Fund and the Fund of Funds will maintain and preserve a copy of the order, the agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

9. Prior to approving any advisory contract under section 15 of the Act, the board of directors of each Fund of Funds, including a majority of the disinterested directors, will find that the advisory fees charged under such advisory contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Rydex Fund in which the Fund of Funds may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Fund of Funds.

10. A Fund of Funds Adviser will waive fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Rydex Fund under rule 12b-1 under the Act) received from a Rydex Fund by the Fund of Funds Adviser, or an affiliated person of the Fund of Funds Adviser, other than any advisory fees paid to the Fund of Funds Adviser or its affiliated person by the Rydex Fund, in connection with the investment by the Fund of Funds in the Rydex Fund. Any Subadviser will waive fees otherwise payable to the Subadviser, directly or indirectly, by the Fund of Funds in an amount at least equal to any compensation received from a Rydex Fund by the Subadviser, or an affiliated person of the Subadviser, other than any advisory fees paid to the Subadviser or its affiliated person by the Rydex Fund, in connection with the investment by the Fund of Funds in the Rydex Fund made at the direction of the Subadviser. In the event that the Subadviser waives fees, the benefit of the waiver will be passed through to the Fund of Funds.

11. Any sales charges and/or service fees charged with respect to shares of the Funds of Funds will not exceed the limits applicable to a fund of funds as set forth in rule 2830 of the NASD Conduct Rules.

12. No Rydex Fund will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the

Act, except to the extent permitted by section 12(d)(1)(E) of the Act or an exemptive order that allows the Rydex Fund to purchase shares of an affiliated money market fund for short-term cash management purposes.

13. The board of directors of any Fund of Funds and the Board of Trustees of any Rydex Fund will satisfy the fund governance standards as defined in rule 0-1(a)(7) under the Act by the later of (i) the compliance date for the rule or (ii) the date on which the Fund of Funds and the Rydex Fund execute a Participation Agreement.

B. ETF Order

Applicants agree to replace condition 2 of the ETF Order with the following condition:

14. Each Fund's Prospectus and Product Description will clearly disclose that, for purposes of the Act, Shares are issued by a Fund and the acquisition of Shares by investment companies is subject to the restrictions of section 12(d)(1) of the Act, except as permitted by an exemptive order that permits registered investment companies to invest in a Fund beyond the limits of section 12(d)(1), subject to certain terms and conditions, including that the registered investment company enter into an agreement with the Fund regarding the terms of the investment.

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

J. Lynn Taylor,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52886; File No. S7-24-89]

Joint Industry Plan; Solicitation of Comments and Order Granting Summary Effectiveness To Request To Extend the Operation of the Reporting Plan for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis, Submitted by The Pacific Exchange, Inc., The National Association of Securities Dealers, Inc., The American Stock Exchange LLC, The Boston Stock Exchange, Inc., The Chicago Stock Exchange, Inc., The National Stock Exchange, Inc., and The Philadelphia Stock Exchange, Inc. and To Extend Certain Exemptive Relief

December 5, 2005.

I. Introduction and Description

On December 2, 2005, the Pacific Exchange, Inc. ("PCX") 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 National Stock Exchange, Inc. ("NSX"), and the Philadelphia Stock Exchange, Inc. ("Phlx") (hereinafter referred to collectively as "Participants"),¹ as members of the operating committee ("Operating Committee" or "Committee") of the Plan submitted to the Securities and Exchange Commission ("Commission") a request to extend the operation of the Plan and also to extend certain exemptive relief as described below.² 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 The 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

¹ PCX is the chair of the operating committee ("Operating Committee" or "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.

² See letter from Bridget M. Farrell, Chairman, OTC/UTP Operating Committee, to Jonathan G. Katz, Secretary, Commission, dated December 2, 2005.

Nasdaq securities. Currently, the Plan is scheduled to expire on December 21, 2005.

This order grants summary effectiveness, pursuant to Rule 608(b)(4) under the Securities Exchange Act of 1934 ("Act"),³ to the request to extend operation of the Plan, as modified by all changes previously approved, and to the request to extend certain exemptive relief ("Date Extension"). Pursuant to Rule 608(b)(4) under the Act,⁴ the Date Extension will be effective upon publication in the **Federal Register** on 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.⁵ Pursuant to the 13th Amendment of the Plan and Rule 608(a)(3),⁶ 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 608(c).⁷ As discussed at length in the notice of the 13th Amendment,⁸ the Commission had determined to relieve the potential conflict among the SuperMontage approval order,⁹ Rule 608,¹⁰ and the Plan, by granting the NASD an exemption under Rule 608(e)¹¹ from compliance with Section VI.C.1. of the Plan as required by Rule 608(c)¹² until such time as Nasdaq is registered as a national securities exchange.¹³ The Plan

Participants have requested an extension of the 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)¹⁴ and Section 11A(a)(1)¹⁵ of the Act and Rules 601 and 608 thereunder.¹⁶ 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."¹⁷ 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 surveillance of concurrent exchange and OTC trading."¹⁸ 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 through summary effectiveness furthers the goals described above by preventing the lapse 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 grant summary effectiveness to the request to extend the

exemption under Rule 608(e)¹⁹ from compliance with Section VI.C.1. of the Plan as required by Rule 608(c).²⁰ 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 Act²¹ and Rules 601 and 608 thereunder.²²

IV. Solicitation of Comments

The Commission seeks general comments on the extension of the operation of the Plan and the extension of exemptive relief. Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number S7-24-89 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number S7-24-89. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 in the Commission's Public Reference

³ 17 CFR 242.608(b)(4).

⁴ 17 CFR 242.608(b)(4).

⁵ 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...."

⁶ 17 CFR 242.608(a)(3).

⁷ 17 CFR 242.608(c). Commission Rule 608(c) requires a self-regulatory organization participant of national market system plan to comply with the terms of that plan.

⁸ See Securities Exchange Act Release No. 46139 (June 28, 2001), 67 FR 44888 (July 5, 2002) ("13th Amendment Notice").

⁹ See Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001).

¹⁰ 17 CFR 242.608.

¹¹ 17 CFR 242.608(e).

¹² 17 CFR 242.608(c).

¹³ On March 15, 2001, the Nasdaq Stock Market, Inc. ("Nasdaq") submitted to the Commission a Form 1 application pursuant to Section 6 of the Act,

seeking registration as a national securities exchange. The most recent Form 1 and accompanying amendments were published for comment. See Securities Exchange Act Release No. 52559 (October 4, 2005), 70 FR 59097 (October 11, 2005).

¹⁴ 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.

¹⁵ 15 U.S.C. 78k-1(a)(1).

¹⁶ 17 CFR 242.601 and 17 CFR 242.608.

¹⁷ 15 U.S.C. 78k-1(a).

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

¹⁹ 17 CFR 242.608(e).

²⁰ 17 CFR 242.608(c).

²¹ 15 U.S.C. 781(f) and 15 U.S.C. 78k-1.

²² 17 CFR 242.601 and 17 CFR 242.608.

Room. Copies of the filing also will be available for inspection and copying at the Office of the Secretary of the Committee, currently located at the Pacific Exchange, Inc. and Archipelago Exchange L.L.C., 100 South Wacker Drive, Suite 2000, Chicago, IL 60606. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number S7-24-89 and should be submitted on or before January 4, 2006.

V. Conclusion

It is therefore ordered, pursuant to Sections 12(f) and 11A of the Act²³ and paragraph (b)(4) of Rule 608 thereunder,²⁴ that the operation of the Plan, as modified by all changes previously approved, be, and hereby is, extended, and that certain exemptive relief also be extended, both for a period not to exceed 120 days from the date of publication of this Date Extension in the **Federal Register**.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁵

Jonathan G. Katz,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52901; File No. SR-OPRA-2005-03]

Options Price Reporting Authority; Order Approving an Amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information To Provide That Classes of Foreign Currency Options Newly Introduced for Trading on the Philadelphia Stock Exchange Be Treated as Equity/Index Options During a Temporary Period Ending on December 31, 2007

December 6, 2005.

On October 21, 2005, the Options Price Reporting Authority ("OPRA") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 11A of the Securities Exchange Act of 1934 ("Act")¹ and Rule 608 thereunder,² an

amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("OPRA Plan").³ The proposed OPRA Plan amendment would provide that classes of Foreign Currency Options ("FCO Securities" or "FCO"), newly introduced for trading on the Phlx during a temporary period ending no later than December 31, 2007, will be treated by OPRA as Equity/Index Options ("EIO Securities" or "EIO") to the extent described in the proposed amendment. Notice of the proposal was published in the **Federal Register** on November 7, 2005.⁴ The Commission received no comment letters on the proposed OPRA Plan amendment. This order approves the proposal.

FCO Securities under the OPRA Plan are currently traded only on the Phlx, which processes these options on a separate computer platform from its EIO Securities. The FCO platform is a legacy system, which is in the process of being converted to a newer technology. The Phlx has advised OPRA that it expects to have this effort completed no later than December 31, 2007, and that, in the meanwhile, the Phlx does not intend to devote resources to expanding the soon to be replaced legacy platform. Because the legacy FCO platform does not have the capacity to handle additional classes of FCO Securities that may be introduced for trading by the Phlx while the new platform is being developed, the Phlx has proposed to temporarily process any such new classes of FCO Securities on its EIO platform, which does have the capacity to handle them, until the new FCO platform is available. According to OPRA, this would mean that, while these new FCO Securities are on the EIO platform, their quotes and trade reports would be disseminated to OPRA over EIO data lines and not over the FCO data line. In turn, this would require OPRA to treat these quotes and trade reports as if they were EIO Securities. Thus, quotes and trade reports covering these new FCO

Securities would be included in OPRA's basic service and not in its FCO service, and revenues and expenses pertaining to market data regarding these new FCO Securities would be allocated to OPRA's basic accounting center and further allocated among the parties to the OPRA Plan as if these products were EIO Securities and not FCO Securities.

OPRA represents that all currently traded FCO products would continue to be disseminated on the current FCO data line, and would continue to be treated by OPRA as FCO Securities. Only newly traded FCO Securities would be treated as EIO Securities and only for a temporary period while the Phlx's upgraded FCO platform is being developed. The purpose of the proposed OPRA Plan amendment is to codify in the language of the OPRA Plan the above-described temporary treatment of the Phlx's newly traded FCO Securities.

After careful review, the Commission finds that the proposed OPRA Plan amendment is consistent with the requirements of the Act and the rules and regulations thereunder.⁵ The Commission finds that the proposed OPRA Plan amendment is consistent with Section 11A of the Act⁶ and Rule 608 thereunder⁷ in that it is 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. Specifically, the Commission finds that it is appropriate to clarify in the language of the OPRA Plan the temporary treatment of the Phlx's newly traded FCO Securities as EIO Securities and believes that the proposed language is a reasonable accommodation by OPRA during the time the Phlx is upgrading its FCO platform.

It is therefore ordered, pursuant to Section 11A of the Act,⁸ and Rule 608 thereunder,⁹ that the proposed OPRA Plan amendment (SR-OPRA-2005-03) be, and it hereby is, approved on a temporary basis, until December 31, 2007.

³ The OPRA Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Act and Rule 608 thereunder (formerly Rule 11Aa3-2). See Securities Exchange Act Release No. 17638 (March 18, 1981), 22 S.E.C. Docket 484 (March 31, 1981). The full text of the OPRA Plan is available at <http://www.opradata.com>.

The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the participant exchanges. The six participants to the OPRA Plan are the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Incorporated, the International Securities Exchange, Inc., the Pacific Exchange, Inc., and the Philadelphia Stock Exchange, Inc ("Phlx").

⁴ See Securities Exchange Act Release No. 52710 (November 1, 2005), 70 FR 67503.

⁵ In approving this proposed OPRA Plan Amendment, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78k-1.

⁷ 17 CFR 242.608.

⁸ 15 U.S.C. 78k-1.

⁹ 17 CFR 242.608.

²³ 15 U.S.C. 78(f) and 15 U.S.C. 78k-1.

²⁴ 17 CFR 242.608(b)(4).

²⁵ 17 CFR 200.30-3(a)(27).

¹ 15 U.S.C. 78k-1.

² 17 CFR 242.608.