

THE New York Stock
Exchange

SECURITIES AND EXCHANGE COMMISSION

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DIVISION OF MARKET REGULATION

James P. Bucy
Secretary

Mr. Lee A. Pickard
Securities and Exchange Commission
500 North Capitol Street
Washington, D. C. 20549

October 31, 1975

Dear Mr. Pickard:

As you know the possibility of extending the hours during which the consolidated tape would operate was recognized and provided for in the Consolidated Tape Plan as declared effective by the Commission as of May 17, 1974 (the Plan). Effective Monday, November 3, 1975, the hours of operation of the consolidated tape will be extended from 4:00 to 5:30 p.m. Eastern Time.

The Plan clearly envisions that all Participants (as defined in the Plan), including the NASD, which provide markets in which transactions in Eligible Securities are effected during the hours of operation of the consolidated tape are to collect and report those transactions to the Processor named in the Plan (SIAC) for processing and dissemination in accordance with the Plan. In addition, the NASD rules which were adopted as required by Section VII(b) of the Plan and put into effect by the SEC summarily on June 11, 1975 specifically require that transactions by both Designated and Non-Designated Reporting Members during the trading hours of the consolidated tape be reported on a current basis. Furthermore, pursuant to Section VII(b) of the Plan, an amendment was filed by the Participants with the Commission by letter dated June 11, 1975. That amendment describes the NASD reporting rules and specifically requires both the Designated Reporting Members and the Non-Designated Reporting Members of NASD "to transmit to the NASD last sale reports of transactions in Eligible Securities executed during trading hours of the consolidated tape within 1 1/2 minutes after

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execution..." and also specifically requires the NASD to report to SIAC all last sale prices reported to it by its members immediately after it receives those reports.

It is also clear under the Plan that the provisions of the Plan as amended to include the description of the NASD reporting rules may not be further amended except as provided in the Plan and in accordance with Section III(b) thereof.

Further, we call your attention to the provisions of the written agreement between the Processor (SIAC) and the NASD as required by Section IV(c) of the Plan. In Article FIRST of that agreement, the NASD has specifically agreed that, during the term of the agreement, it would

"collect and report to SIAC all last sale prices relating to transactions in Eligible Securities (except as to transactions to be excluded as provided in Section V(c) of the Plan) which meet all four of the following conditions: (i) they do not take place on a national securities exchange, (ii) they take place within the continental limits of the United States of America, (iii) they take place during the period during which SIAC is required to disseminate such prices pursuant to Section X(b) of the Plan, and (iv) a member of the Participant is obligated to report such last sale prices pursuant to its rules (last sale prices which are to be collected and reported by Participant under the foregoing provisions of this Article FIRST are herein referred to as 'subject prices')." (Emphasis added)

Clearly clause (iii) of this Article FIRST obligates the NASD to collect and report to SIAC last sale prices relating to transactions in Eligible Securities which take place during the proposed extended hours of operation of the consolidated tape.

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We also call your attention to the letter dated March 8, 1974 from the Commission to each of the Participants named in the Plan. That letter called upon the Participants to modify the plan they had previously filed on March 2, 1973 in various specific respects and to refile the revised plan no later than March 24, 1974. Under the heading "Hours of Operation" included in the March 8, 1974 letter, the Commission stated:

"The Commission continues to believe in the importance of disclosing promptly as many trades in Eligible Securities as feasible and therefore has determined that the consolidated tape should operate as long as a national securities exchange is open."

Clearly, any failure by a Participant to report trades during any of the hours of operation of the consolidated tape would be inconsistent with this statement.

Pursuant to the March 8, 1974 letter the plan was revised and refiled with the Commission. By letter dated May 10, 1974 the Commission declared the Plan effective. The May 10 letter called attention to the changes requested by the Commission in its letter of March 8 and stated that, following a review of the revised plan as filed in response to the March 8 letter, the Commission had determined that, except as specifically discussed in the May 10 letter, the Plan accurately reflected all of the Commission's requested changes. Under the heading of "Pre-Opening Run-Off" in its May 10 letter, the Commission stated that it had requested "that some procedure be adopted whereby the consolidated tape would be activated prior to the opening of any exchange so that all trades which took place subsequent to the prior day's close of the tape, and before the opening of exchanges, would be reported in sequence". From this it is clear that the Commission contemplated that any Participant providing a market during the hours of operation of the tape would cause last sale prices reflecting completed transactions in Eligible Securities taking place during those hours to be reported on a current and continuous basis to the Processor for dissemination.

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Nevertheless by letter dated October 24, 1975, the NASD requested the Commission that over-the-counter transactions in Eligible Securities executed after 4:00 p.m. Eastern Time, not be required to be reported on the consolidated tape. No such request has been made of CTA, yet clearly this is a matter which falls within the purview of the Plan. Unless and until the Plan and the existing contract between NASD and SIAC are amended in some appropriate fashion, the NASD is obligated to report over-the-counter trades in Eligible Securities during all of the hours of operation of the consolidated tape.

In its letter of October 24, the NASD cited two reasons for its request: additional costs NASD members would incur and the fact that trades reported between 4:00 and 4:15 "will be held up during each individual NASD closing transmission and then displayed between each transmission". Both of these so-called reasons have long been anticipated and indeed the additional costs are believed to be very reasonable. All the Participants are aware that the burdens imposed by Rule 17a-15 are costly, but they have accepted those burdens in anticipation of the benefits to be derived by both the industry and the investing public. Ironically, the reason why it was decided to intersperse last sale price reports received by SIAC between 4:00 and 4:15 with end of day transmissions traditional at the close of the New York markets was to minimize, insofar as possible, the costs of operating the tape after 4:00 p.m., costs which under the Plan were to be borne equitably by markets reporting trades during that period.

The New York Stock Exchange therefore does not accept the NASD's reasons as justification for its requested exemption. The underlying premise of both Rule 17a-15 and the Plan is to fully inform the public of all domestic transactions in Eligible Securities that occur while the tape is operational regardless of the market in which they occur. The Exchange therefore strongly objects to the exemption requested by the NASD since it would frustrate the purposes of both Rule 17a-15 and

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the Plan and would unjustifiably limit last sale price information available to the investing public.

For all of these reasons, the Exchange strongly urges that the Commission not grant the NASD's request for exemption.

Sincerely,

A handwritten signature in cursive script, appearing to read "J. E. Buck". The signature is written in dark ink and is positioned below the word "Sincerely,".

NARA-CP

RG 226 UD-UP Entry 1

Box 24, Folder "New York Stock Exchange Volume 26"