

THE NATIONAL MARKET SYSTEM:
A SELECTIVE OUTLINE OF SIGNIFICANT EVENTS

1971 -1985

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THE NATIONAL MARKET SYSTEM: 1971 -1985 **

**For purposes of this outline the following abbreviations will be used to refer to the various self-regulatory organizations (“SROS”): New York Stock Exchange, Inc. (“NYSE”), American Stock Exchange, Inc. (“Amex”), Boston Stock Exchange, Inc. (“BSE”), Cincinnati Stock Exchange, Inc. (“CSE”), Midwest Stock Exchange, Inc. (“MSE”), Pacific Stock Exchange, Inc. (“PSE”), Philadelphia Stock Exchange, Inc. (“Phlx” or “PBW”), National Association of Securities Dealers, Inc. (“NASD”), and Detroit Stock Exchange, Inc. (“DSE”).

PART I: BACKGROUND AND OVERVIEW

I. In the letter of transmittal accompanying the Institutional Investor Study,¹ the Commission first endorsed the notion of a central market system.

A. The Commission noted two significant market structure problems:

1. barriers to competition, e.g.
 - a. fixed commissions;
 - b. barriers insulating markets and market makers from one another;
2. fragmentation resulting from:
 - a. use of regional exchanges and the third market;²
 - b. lack of communication facilities integrating these markets.

B. As a means of alleviating these problems, the Commission advocated the creation of a “strong central market system” having the following attributes:

1. competition among all orders, permitting interaction of all buying and selling interest;
2. preservation of auction values (although it suggested that “it may or may not be possible for the central market to be largely an auction market”);
3. participation of strong dealers;
4. universal access;
5. multiple physical locations;

6. consolidated last sale reporting of all transactions.³

II. Soon thereafter, the NYSE issued a Report prepared for it by William McChesney Martin, Jr.⁴ In contrast to the Commission's recommendation permitting equal access to all markets, Martin advocated a "National Exchange System" characterized by:

- A. Elimination of third market trading in listed securities;
- B. Minimal dealer intervention between orders;
- C. Equal regulation of all brokers, dealers, and exchanges;
- D. Imposition of fair commissions (to be unfixd gradually if at all);
- E. Centralized reporting of all transactions in listed securities by mid-1972.

III. In the Fall of 1971, the Commission, House, and Senate each held hearings to further define the emerging concept of a central market system, and an industry Task Force met to discuss the feasibility of the exchanges implementing a consolidated tape.

IV. The SEC's hearings culminated in the issuance of its Future Structure Statement of the Securities Markets (February 2, 1972).

A. The Commission advocated the implementation of a central market system including:

- 1. nationwide disclosure of transaction reports and quotations from all markets;
- 2. elimination of barriers to competition;
- 3. broker-dealer access to all exchanges, regardless of membership;
- 4. integration of third market trading by inclusion in the disclosure system and imposition of market responsibility rules.

B. To implement these proposals, the Commission:

- 1. proposed Rules 17a-14⁵ and 17a-15⁶ under the Exchange Act requiring the creation of a composite quotation system and a consolidated transaction reporting System;
- 2. wrote the NYSE requesting reduction of the negotiated commission breakpoint from \$500,000 to \$300,000;⁷
- 3. established three advisory committees to make recommendations to the Commission:

- a. an Advisory Committee on Market Disclosure to continue the work of the industry Task Force studying the feasibility of a consolidated tape;
- b. an Advisory Committee on the Central Market System to recommend general market structure goals;
- c. an Advisory Committee on Block Trading.

V. On July 17, 1972, the Advisory Committee on Market Disclosure⁸ issued a report on composite transaction reporting. The Committee recommended:

- A. All trades in a multiply traded securities should be reported in the same data stream, regardless of where they took place.
- B. Data should be split into two separate streams, one for NYSE listed stocks, and one for all other listed stocks.
- C. The data should indicate where each trade took place.
- D. Data should be routed from each market center to a neutral processor operated by a joint governing body.
- E. The governing body should be permitted to charge reasonable and non-discriminatory rates for the information and control access to its information.

VI. On August 7, 1972, the Advisory Committee on Block Trading issued its report to the Commission. The Committee recommended that:

- A. After implementation of a consolidated tape, block positioners and specialists (in securities in which they do not specialize), should be permitted to register, at least on a trial basis, as upstairs market makers (thus suggesting modification of NYSE Rule 394 (now NYSE Rule 390));
- B. Specialists should be permitted to have direct contact with institutions (prohibited by NYSE Rule 113⁹);
- C. Upstairs block transactions should be required to clear the specialist's book;
- D. The Commission should clarify that normal handling of block transactions does not involve a Rule 10b-6 distribution.¹⁰

VII. On August 23, 1972, the House Interstate Commerce Committee released its Securities Industry Study culminating extensive hearings (26 days and 87 witnesses held during the summer of 1971).¹¹

A. The Securities Industry Study recommended a broad range of central market system initiatives, including:

1. equal access to the system by all broker-dealers;
2. development of consolidated tape and composite quotation systems, including statutory amendments to assure Commission authority to do so;
3. elimination of barriers to competition, including Rule 394 (regulating off-board trading) and, ultimately Rule 113 (regulating specialists dealing with institutions);
4. nationwide price priority of all orders entered on specialists' books;
5. uniform regulation of all markets;
6. negotiated commission rates.

VIII. On November 21, 1972, the Advisory Committee on Market Disclosure issued its final report to the Commission. The Committee recommended that:

- A. A composite quotation system be established.
- B. The system should display quotations for all market makers satisfying capital and commitment requirements.
- C. The system should be operated by the same processor as the consolidated tape.
- D. The system should require firm quotes, subject to exceptions, and should be the exclusive means of publishing quotations in listed securities.

IX. In February 1973, the Senate Securities Subcommittee of the Senate Committee on Banking, Housing and Urban Affairs issued its own Securities Industry Study, based upon 18 months of study, including 18 days of hearings during which 78 witnesses provided testimony.¹²

A. Among the exhibits included in the hearings was a document furnished by the Amex which described proposed enhancements to its order routing and execution systems to provide for automated routing of orders and automated execution of certain types of orders.

B. In the Senate Securities Industry Study, the Subcommittee:

1. noted two different approaches to a central market system:
 - a. the SEC approach taken in the letter of transmittal accompanying the Institutional Investor Study and the Future Structure Statement;
 - b. the NYSE approach taken in the Martin Report;
2. recommended that, contrary to the NYSE approach, barriers to competition should be eliminated, not created;
3. noted two such barriers:
 - a. the absence of a central communication system;
 - b. the existence of restrictive rules, such as NYSE Rule 394 (now Rule 390).
4. in response to the first barrier:
 - a. endorsed:
 - (i) the recommendation of the Advisory Committee on Market Disclosure that consolidated transaction reporting and quotation systems be implemented;
 - (ii) the Commission's adoption of Rule 17a-15 relating to last sale reporting.
 - b. was critical of the suggestion that the Securities Industry Automation Corporation ("SIAC"), an entity controlled by the NYSE, would process the consolidated tape and quotation systems.
 - c. recommended that the SEC should be given authority to regulate such a processor and, if permitted by the SEC to have a monopoly power, it should be required to provide access to such information "on reasonable and nondiscriminatory terms to all in the trade."
5. in response to the second barrier to competition, recommended that, by December 31, 1973, NYSE Rule 394 be amended to permit NYSE members to deal with the third market, provided that "public orders be given priority in the actual consummation."
6. also recommended:
 - a. that an electronic limit order book have nationwide price priority and precedence over dealer executions;
 - b. a gradual move to negotiated commission rates;
 - c. inclusion of suitable OTC securities in the central market system.

X. On March 6, 1973, the Advisory Committee on a Central Market System¹³ issued its report to the Commission. The Committee was evenly divided between two alternative approaches to achieve a central market system.

A. Those supporting Approach I advocated:

1. an evolutionary process of implementation;
2. a central market system linking geographically distinct exchanges (by composite transaction and quotation reporting systems);
3. elimination of third market trading at the earliest possible date;
4. organization of a Task Force to oversee implementation of reporting systems;
5. implementation of short sale, manipulation, and trading suspension rules to assure successful operation of the consolidated tape;
6. study to consider further rules, e.g., a public preference rule and minimum dealer qualifications.

B. Those supporting Approach II advocated:

1. as general policy objectives:
 - a. maximum order interaction without a dealer;
 - b. elimination of impediments to and creation of incentives for dealer participation;
 - c. communication systems to achieve best execution;
 - d. system-wide price priority.
2. as specific recommendations:
 - a. securities should be qualified to trade in the system based upon shareholder diversification, trading characteristics, and issuer financial condition;
 - b. trading should be subject to rules providing:
 - (i) time and price priority for agency orders entered in a central electronic limit order repository
 - (ii) public order preference;

- c. all dealers should be subject to equal regulation;
- d. all quotations in qualified securities should be disseminated in an exclusive composite quotation System;
- e. dealers not wanting to enter Continuous two-sided quotations in the quotation system should be permitted to quote prices on request, but should still be subject to market responsibility rules;
- f. upstairs market making should be permitted, but would be closely monitored;
- g. NYSE Rule 113 possibly should be removed;
- h. there should be unlimited access to facilities, resulting in intra-system competitive commission rates;
- i. the system would be administered by a governing body composed of all SRO's.

XI. On March 29, 1973, the Commission, drawing upon the recommendations of its Advisory Committees, issued its Statement on the Structure of a Central Market System. In the Policy Statement, the Commission in large part adopted Approach II of the Advisory Committee on a Central Market System and recommended a central market system with the following characteristics:

- A. Brokers and dealers on exchanges and off-board would be linked by an electronic communication network and a common regulatory framework;
- B. Trading would initially be in "qualified" (i.e., with sufficient investor interest) listed securities although it could be expanded to encompass similar unlisted securities;
- C. Trading would be subject to an "auction trading rule" i.e., absolute price (and perhaps time) priority for all public limit orders;
- D. Trading would also be subject to a "public preference rule;"
- E. All transactions (except possibly fourth market transactions¹⁴) would be reported on a consolidated tape;
- F. All bids and offers would be reported in a composite quotation system;
- G. Regulation of market makers would be equalized;
- H. Upstairs market making by exchange members would be permitted, although perhaps subject to a stock allocation process;

I. Barriers to access and inter-market competition would be eliminated (i.e., NYSE Rule 394 would be eliminated and nonmember commission rates would be negotiated);

J. All trading in qualified securities would be required to take place within the system.

XII. During the summer of 1973, the Commission held hearings on proposed commission rate increases by the NYSE and PBW Stock Exchange (now the Philadelphia Stock Exchange)¹⁵ and, on September 11, issued its conclusions that:

A. It would not object to the proposed NYSE rate increase after April 1, 1974, on the condition that, by April 1, 1974:

1. members be permitted to charge in excess of fixed rates;
2. discounts of up to 10% on all orders be permitted;

B. It would not object to the PBW proposal offering reduced commissions for a second transaction executed within 14 days of an earlier transaction in the same security;

C. It would act promptly to eliminate fixed rates entirely by April 30, 1975, if the exchanges did not do so on their own.¹⁶

XIII. In June through September, 1973, the House Subcommittee on Commerce and Finance held hearings on H.R. 5050, a bill which reflected the legislative embodiment of the recommendations of the House Securities Industry Study.

XIV. In November, 1973, the Senate Subcommittee on Securities held hearings on S. 2519, the National Securities Market System Act of 1973, a bill growing out of the Senate Securities Industry Study.¹⁷

XV. The NYSE also continued its efforts to eliminate third market trading in listed securities (as recommended in the Martin Report and Approach I of the Advisory Committee on a Central Market System).

A. On September 25, 1972, the NYSE wrote Chairman William Casey of the SEC that the Exchange would support SEC efforts to require all exchanges to provide each other, on a reciprocal basis, with bid and asked quotations if trading in listed securities were limited to exchanges;

B. On December 1, 1972, at the SIA Convention in Bacon Raton, Florida, the Chairman of the NYSE requested Congress to statutorily limit trading in listed securities to exchanges;

C. On March 1, 1973, the NYSE Board released a policy statement calling for elimination of fixed commission rates on all orders if all trading in listed securities were limited to exchanges;

D. In July 1973, the NYSE released its “Staff Analysis of Issues Affecting the Structure of a Central Market System for Listed Securities,” recommending:

1. elimination of third market trading;
2. a central market system Consisting of consolidated reporting and composite quotation Systems;

E. In March, 1974, the Senate Subcommittee on Securities held hearings regarding S. 3126, a bill suggested by the NYSE, which would amend the 1934 Act to authorize the Commission to eliminate third market trading.¹⁸

XVI. In March, 1974, the Commission announced the establishment of an Advisory Committee to be chaired by Alexander Yearly to study the implementation of a central market system.¹⁹ On May 10, 1974, the Commission announced the names of the members of the Committee and the matters which the Committee was to study.²⁰

XVII. On May 22, 1974, the Senate Committee on Banking, Housing and Urban Affairs reported favorably on S. 2519, the National Securities Market System Act of 1974, which incorporated, with certain amendments, S. 3126 (allowing the SEC to prohibit third market trading).

A. The Senate bill did not specify the elements of a national market system; rather, it was designed to encourage the development and implementation of a national market system by:

1. preserving competing markets;
2. breaking down barriers to competition;
3. encouraging maximum reliance on communication and data processing equipment;

B. The bill included provisions:

1. expanding SEC authority over securities information processors to assure implementation of consolidated transaction and composite quotation systems;

2. obligating the SEC to review existing and proposed SRO rules and to abrogate any present or to disapprove any proposed rule imposing an unreasonable competitive restraint;

3. providing the SEC with authority to eliminate third market trading, but only after making certain prescribed findings.²¹

XVIII. In late 1974, the House Committee on Interstate and Foreign Commerce reported favorably on H.R. 5050.

A. The bill would have added:

1. a new Section 20A to the Act in which:

a. Congress stated its findings that:

(i) the nation's capital assets are an important national asset which must be preserved and strengthened;

(ii) changing conditions and trading patterns have placed considerable strain on existing market mechanisms.

(iii) in order to preserve and strengthen capital markets, a national market system should be established;

b. the SEC was directed to establish a national market system including as a minimum:

(i) a transaction reporting system;

(ii) a composite quotation system;

(iii) rules designed to provide fair competition in the national market system;

c. the SEC was directed to study the need for a National Market Board to administer the national market system.

2. added a new Section 20B which would prohibit any exchange from restricting off-board trading after July 1, 1975, unless specifically provided for by a rule approved by the Commission.

B. Failure to obtain a positive vote in the House Rules Committee prevented the full House from considering H.R. 5050.

XIX. During 1974 and 1975, the Commission also continued its proceedings on commission rates:

A. On March 7, 1974, the Commission announced it would not object to a NYSE proposal to institute:

1. competitive rates for non-member orders involving up to \$2,000;
2. non-member charges in excess of fixed rates for larger orders;
3. a limited experiment in intra-member competitive rates.²²

B. In April 1974, the Commission commenced further hearings to determine whether the NYSE's experiment was sufficient;²³

C. On August 27, 1974, the Commission formally announced it would commence proceedings to eliminate fixed commission rates;²⁴

D. In September 1974, the Commission wrote letters to each exchange formally requesting them to eliminate fixed commission rates;²⁵

E. In October 1974, the Commission proposed Rules 19b-3 and 10b-22 requiring unfixing of commission rates;²⁶

F. On November 8, 1974, the Commission issued a "white paper" discussing issues relating to fixed commission rates;²⁷

G. In November 1974, the Commission held hearings on its proposal;

H. On January 23, 1975, the Commission adopted Rule 19b-3 requiring unfixing, commission rates as of May 1, 1975.²⁸

XX. Commencing in December 1974, the Yearly Committee on Implementation of a Central Market System issued a series of three reports setting forth its views on a variety of topics related to a central market system.

A. On December 11, 1974, a "Preliminary Statement" was issued²⁹ which recommended that a central market system have the following characteristics and facilities:

1. a composite quotation system;
2. maximum order interaction;
3. time and price priority;
4. a public preference rule;

5. a requirement that all transactions take place within the system;
6. rules assuring equal access;
7. equal regulation;
8. separate specialist books linked electronically.

B. On June, 11, 1975, the Committee issued a “Summary Report” in which the Committee suggested a National Central Market System based upon the following:

1. basic principles:

- a. all brokers should have access to the system;
- b. all trading in listed stocks should be within the system (however, pending effectiveness of this rule, NYSE Rule 394 should be retained);
- c. auction principles, including time, price, and public order priority, should be established.

2. operational characteristics:

- a. a composite quotation system;
- b. a consolidated limit order book;
- c. uniform net capital rules.

3. governance:

- a. equal regulation;
- b. merger of all exchanges into a single National Securities Exchange.

C. On September 12, 1975, the Committee issued a “Supplementary Report,” amplifying its views set forth in the Summary Report.

XXI. During the deliberation of the Yearly Committee, the 94th Congress began and completed its proposed revision of the 1934 Act to implement a national market system. Both houses considered new bills, H.R. 4111 (substantially similar to H.R. 5050) and S. 249 (derived from five Senate bills, including S. 2519 and, in part, from H.R. 5050);

A. In February 1975, the Senate held hearings on S. 249;³⁰

B. On March 26, 1975, H.R. 4111 was reported from Committee to full House,³¹

C. On April 14, 1975, S. 249 was reported from Committee to full Senate. The bill:

1. set forth the goals and objectives of a national market system;
2. provided explicit SEC authority to:
 - a. foster implementation of a composite tape and quotation system;
 - b. regulate securities information processors, and, in particular, to assure the fairness and reasonableness of exclusive processor access charges;
 - c. eliminate unnecessary barriers to competition;
3. provided SEC authority to assure equal regulation of market makers;
4. provided SEC authority to implement rules such as the “auction trading” and “public preference rules” described in the Policy Statement;
5. permitted the SEC to grant unlisted trading privileges to exchanges in securities traded exclusively over-the-counter;
6. permitted the SEC, upon making certain findings, to eliminate third market trading.³²

D. On May 19, 1975, a Conference substitute was reported to both houses of Congress. The Conference substitute largely incorporated the national market system provisions of S. 249, adding certain material from H.R. 4111, including:

1. a specific requirement that the SEC review off-board trading rules for their anti-competitive effects;
2. provisions requiring the establishment of a National Market Advisory Board (“NMAB”).³³

E. On June 4, 1975, the Securities Acts Amendments of 1975 (“1975 Amendments”) were signed into law.³⁴

XXII. On July 16, 1975, the NYSE portion of the consolidated tape began operating on a low speed basis.

XXIII. In accordance with the 1975 Amendments, the Commission proceeded to review the anti-competitive effects of off-board trading rules:

A. On September 2, 1975, the Commission reported to Congress the results of its initial review of off-board trading rules and commenced a proceeding to consider abrogation of these rules;³⁵

B. In October, the Commission held hearings on its proposals;

C. On December 19, 1975, the Commission:

1. announced it had found that off-board trading rules were anti-competitive;
2. adopted Rule 19c-1 under the Act which, prohibited exchanges from limiting off-board agency trading with qualified third market makers and non-member block positioners (although transactions were still required to clear the NYSE limit order book for a limited period of time);
3. deferred taking action with respect to prohibitions against in-house agency cross transactions and dealing as principal in order to:
 - a. receive the views of the NMAB;
 - b. devote additional study to the issues of fragmentation, overreaching and equal regulation;
 - c. evaluate industry efforts to implement a national market system.
4. announced its intention to institute proceedings to achieve comprehensive limit order protection.³⁶

XXIV. On September 30, 1975, in accordance with the 1975 Amendments, the Commission established an NMAB to:

- A. Formulate views on the major regulatory proposals of the Commission;
- B. Study and make recommendations to the Commission with respect to the establishment of a national market system;
- C. Report to Congress on the possible need for modifications in the scheme of self-regulation in the securities industry.

XXV. On September 24, 1976, the NMAB issued its first report to the Commission, a study on in-house agency cross transactions. The NMAB recommended that the Commission not permit in-house agency cross transactions because:

- A. Restrictions on such transactions do not impose significant burdens on competition;

B. To the extent such restrictions do impose a burden on competition, that burden is outweighed by the fragmentation which would result from their removal.

XXVI. On May 12, 1977, the Commission announced its intent to institute further proceedings to abrogate the remaining off-board trading rules:

A. On June 23, 1977, the Commission issued a release:

1. proposing Rule 19c-2 to remove the remaining off-board trading restrictions;
2. proposing rules that could be used to address overreaching of customers by off-board market makers, including rules:
 - a. precluding a dealer from executing orders off-board directly with a retail customer (proposed Rule 15c5-1[A]);
 - b. prohibiting executions at prices inferior to the best bid or offer (proposed Rule 15c5-1[B]);
 - c. requiring confirmation disclosure of the best bid or offer (proposed Rule 15c5-1[C]);
 - d. requiring execution of customer orders as principal at prices no less favorable than could be expected to be obtained on an agency basis (proposed Rule 15c5-1[D]).
3. proposing an amendment of Rule 19c-1 to remove remaining off-board agency restrictions.³⁷

B. In August 1977, the Commission held nine days of public hearings.

XXVII. On May 13, 1977, the Commission (Commissioner Loomis dissenting) instituted a proceeding to consider disapproval of proposed changes to Amex listing standards with respect to certain domestic issuers.³⁸ Implementation of the proposed alternate listing standards would have expanded the universe of issuers eligible to list securities on the Amex.

A. In so acting, the Commission noted that implementation of the Amex's proposed listing criteria would broaden the reach of Amex rules restricting members' off-board principal transactions in stocks listed on the Amex.

B. This proceeding culminated in disapproval of the Amex proposed rule change on August 31, 1977 (Commissioner Loomis again dissenting).³⁹ The Commission indicated that it would have approved the proposed rule change if the Amex had been willing to

exempt any security listed pursuant to the proposed listing standards from its off-board trading restrictions.

XXVIII. On December 6, 1977, the NMAB issued its final report to the Commission on the establishment of a national market system. The NMAB did not make specific recommendations but rather reported a variety of views held by its members, ranging from establishment only of a composite quotation system to establishment of a fully automated trading system.

XXIX. On December 30, 1977, the Commission announced the adoption of an amendment to Rule 19c-1 to prohibit any exchange from restricting off-board agency transactions except in-house agency crosses.⁴⁰

XXX. On January 26, 1978 the Commission issued a Statement on the Development of a National Market System (“January Statement”)⁴¹ indicating the steps it believed must be taken during the following 12 months to establish a national market system, including:

- A. Establishment of a composite quotation system (Rule 11Ac1-1, the Commission’s quotation rule, was adopted simultaneously);⁴²
- B. Establishment of market linkage and order routing facilities;
- C. Establishment of a central limit file;
- D. Deferral of removal of off-board trading rules pending review of progress towards a national market system;
- E. Refinements to the operation of the consolidated tape;
- F. Proceedings to define qualified securities.

XXXI. In 1978 a market linkage system and an automated trading system were implemented.

A. On March 9, 1978, the Amex, PSE, NYSE, PSE, and Phlx filed with the Commission a Plan governing the operation of the Intermarket Trading System (“ITS”) linking these exchanges, and this plan was approved on a temporary basis on April 14, 1978.⁴³

B. On April 18, 1978, the Commission approved on a temporary basis the implementation of the National Securities Trading System (“NSTS”) of the CSE, an electronic communications network linking CSE members.⁴⁴

XXXII. On June 23, 1978, the Commission requested comment publicly and from each SRO on the concept of routing orders directly from brokers on an order by order basis to the best market as determined by published quotations.⁴⁵

XXXIII. On August 1, 1978, the Commission's quotation rule, Rule 11Ac1-1, became effective.

XXXIV. On December 1, 1978, the Commission approved proposed rule changes of the Amex that would liberalize listing requirements for domestic and foreign issuers.⁴⁶ The Commission's action followed the filing by the Amex of alternate listing criteria for securities of foreign issuers, coupled with a request by the Amex that the Commission reconsider its prior disapproval with respect to alternate listing standards for domestic issuers.⁴⁷

A. A majority of the Commission⁴⁸ concluded that it would not be appropriate to disapprove the proposed changes in listing standards solely because a potential coincidental consequence of approving those rule changes would be to expand the effects of the off-board trading restrictions of one exchange.

B. Two Commissioners dissented,⁴⁹ concluding that approval of these proposals would "magnif[y] the already severe anti-competitive consequences of off-board trading restrictions" and would be "inconsistent with both the letter and spirit of the [1975 Amendments], which requires [the Commission] to assure fair competition among brokers and dealers and between markets."⁵⁰

XXXV. In March 1979, the Commission issued a Status Report on the Development of a National Market System, ("Status Report") in which it assessed progress during 1978 toward establishment of a national market system, and set forth its views as to the next steps which should be taken.⁵¹ In the Status Report to the Commission:

A. Reiterated its catalytic function and warned against gauging progress by the number of facilities implemented or rules adopted;

B. Noted the establishment of the Consolidated Quotation System and the ITS.

C. Established achievement of nation-wide price protection of limit orders as a high priority;

D. Deferred consideration of a requirement of order-by-order routing of retail orders to the market displaying the best quotation;

E. Indicated that it would commence rulemaking to preclude the application of off-board trading restrictions to newly listed securities;

F. Indicated its continued interest in:

1. the designation of national market system securities;
2. a national system for clearance and settlement;
3. options market structure;
4. enhancement of surveillance of securities markets.

XXXVI. On April 26, 1979, the Commission commenced a proceeding to consider adoption of Rule 19c-3, amending exchange off-board trading restrictions.⁵²

A. Proposed Rule 19c-3 would preclude off-board trading restrictions from applying to securities listed on an exchange after the April 26, 1979, the proposal date of the rule, or to securities listed on an exchange on April 26, 1979 but which cease to be traded on an exchange thereafter.

B. The Commission announced that hearings would be held on the proposed rule in June, 1979.

XXXVII. During the hearings on Rule 19c-3 in June, the NYSE proposed an alternative Competitive Market Maker system, in which member firms would be allowed to display dealer quotations on the NYSE through display devices.⁵³

XXXVIII. On June 15, 1979, the Commission proposed Rule 11Aa2-1 establishing standards for qualification as a national market system security.⁵⁴

XXXIX. On June 11, 1980, the Commission adopted Rule 19c-3 amending exchange off-board trading restrictions.⁵⁵ In adopting Rule 19c-3, the Commission:

A. Emphasized the experimental value of observing concurrent exchange and OTC trading in listed securities;

B. Noted problems potentially arising from internalization of orders by OTC market makers, including;

1. overreaching of public customers,

2. fragmentation of order flow among markets;
 3. anticompetitive effects for exchange specialists and small broker-dealers.
- C. Established a surveillance program in conjunction with the NASD, to monitor the impact of Rule 19c-3 on the markets and to detect instances of overreaching;
- D. Noted that overreaching rules proposed in connection with the proposal of Rule 19c-2 remain outstanding;
- E. Withdrew proposed Rule 19c-2.⁵⁶

XL. In August, 1981, the Commission published “A Monitoring Report on the Operation and Effects of Rule 19c-3 under the Securities Exchange Act of 1934.” The Report:

- A. Noted that the extent of off-board trading in Rule 19c-3 securities had been limited, in part due to the absence of a linkage between OTC and exchange markets;
- B. Indicated that, while the majority of orders received by integrated broker-dealers were executed in-house, these broker-dealers continued to route 40 percent of their orders to exchange floors;
- C. Noted insignificant levels of overreaching of customers by market makers.

XLI. On February 5, 1981, the Commission proposed an order mandating an electronic linkage between the ITS and the NASD’s Computer Assisted Execution System (“CAES”), an automated system for trading listed securities in the OTC market.⁵⁷

XLII. On February 17, 1981, the Commission adopted Rule 11Aa2-1, establishing designation standards for OTC securities qualifying as national market system securities.⁵⁸

XLIII. In April 1981, the ITS participants adopted a trade-through rule providing price protection to published quotations in ITS securities. The ITS rule and the implementing rules of participants:

- A. Established a policy against executing a trade at a price, inferior to the published quotation of another market;⁵⁹
- B. Established corrective procedures to satisfy the quotations traded-through and provide customers the better price;

C. Established a block policy requiring that all superior quotations be satisfied at the block trade price when a block is executed outside the best prevailing quotation.⁶⁰

XLIV. On April 21, 1981, the Commission ordered a linkage between the ITS and the NASD's CAES, to be implemented by March 1, 1982.

A. The Commission stated that an internalization rule was not a prerequisite to the interface, because the interface would not exacerbate internalization concerns as a structural matter.

B. The Commission established a six month pilot phase for 30 Rule 19c-3 securities, after which the interface was to be extended to all Rule 19c-3 securities with a registered CAES marketmaker.⁶¹

XLV. During January through May 1982, while negotiations concerning changes to the ITS Plan necessary to include the NASD in ITS were underway, representatives of the securities industry met, under the auspices of a Securities Industry Association ("SIA") Committee, to develop principles for addressing internalization by market centers of order flow in Rule 19c-3 securities.

XLVI. On April 1, 1982, last sale reporting commenced for 41 OTC securities designated as national market system securities pursuant to Rule 11Aa2-1.

XLVII. On May 13, 1982, the Commission proposed for comment two Commission rules that would require exposure of orders in Rule 19c-3 securities.⁶²

A. The first, Rule 11A-1(A), was submitted by the NYSE and would require order exposure only by OTC market makers;

B. The second, Rule 11A-1(B), was based on principles developed by the SIA Committee and would apply to all market centers;

C. The Commission also specifically requested comment on whether any rule was needed at that time.

XLVIII. On May 17, 1982 the pilot phase of the ITS/CAES interface was implemented in 30 of the most active Rule 19c-3 securities.

XLVIX. On December 9, 1982, the Commission ended the NSTS' experimental status and extended the NSTS for an indefinite period.⁶³

L. On December 23, 1982, the Commission proposed a single order exposure rule, Rule 11A-1, applicable to all market makers in Rule 19c-3 securities.⁶⁴

A. The Rule:

1. would require all market makers in securities traded in the ITS/CAES interface to either:

a. expose customer orders to other markets at a superior price prior to execution as principal; or

b. expose these orders on a neutral basis to CAES or NSTS under conditions intended to prevent market makers from taking advantage of prior knowledge of the orders;

2. would provide exceptions for active market conditions;

3. would require the ITS participants to devise a Plan for exposure of block trades within 18 months of the Rule's effective date.

B. The Commission also extended the pilot phase of the ITS/CAES interface until June 1, 1983, to allow the Commission time to act on Rule 11A-1 before full implementation of the ITS/CAES interface.⁶⁵

LI. On January 27, 1983, the Commission ended the ITS' experimental status and extended the ITS for an indefinite period.⁶⁶

LII. On August 12, 1983, the Commission deferred action on its proposed order exposure rule, in view of the limited amount of OTC trading in Rule 19c-3 securities. At the same time, the Commission invited commentators to submit "hard objective data" on the trading experience with respect to Rule 19c-3 securities,⁶⁷ and published a statistical appendix on Rule 19c-3 trading.

LIII. On September 15, 1983, after two additional extension of the pilot phase of the ITS/CAES interface,⁶⁸ the pilot phase ended and all Rule 19c-3 securities, numbering over 700, became eligible for trading through the ITS/CAES interface.

LIV. On December 18, 1984, in response to an NASD petition, the Commission amended its criteria in Rule 11Aa2-1 for designation of OTC securities as national market system securities, making an additional 1400 OTC securities eligible for last sale reporting.⁶⁹

LV. On June 2, 1985, the Commission sought comment on what additional categories of securities should be designated as national market system securities, and in what initiatives they should be included.⁷⁰

LVI. On September 12, 1985, the Commission adopted amendments to Rule 10b-10 requiring broker-dealers executing customer orders in reported securities as principal to disclose on confirmations the reported trade price, the net price to the customer, and the difference.⁷¹

LVII. On September 16, 1985, the Commission announced its willingness to grant applicant exchanges unlisted trading privileges in up to 25 national market system securities,⁷² on condition that:

1. the applicant exchanges and the NASD file a joint plan providing for consolidated last sale and quotation reporting in these securities, and
2. OTC and exchange market makers receive equivalent access to one another for interdealer trading purposes.

LVIII. Also on September 16, 1985, the Commission amended Rules 11Aa3-1 and 11Aa2-1 to allow securities meeting the requirements of Rule 11Aa2-1 and not otherwise reported in accordance with the CTA Plan to be designated as national market system securities.⁷³

PART II: ELEMENTS OF A NATIONAL MARKET SYSTEM

Transaction Reporting

I. The need for a consolidated transaction reporting system was noted as early as 1971 in the Institutional Investor Study and was endorsed by the NYSE shortly thereafter in the Martin Report.

II. In late 1971, at the request of the NYSE:

A. A Task Force including representatives of the NYSE, Amex, BSE, PBW, MSE, PSE, CSE and DSE, was formed to discuss the possibility of implementing a consolidated tape for multiply traded securities;

B. A working committee of representatives of the NYSE, Amex, MSE, PSE, and PBW (and later the NASD) was formed to study this issue further.

III. On February 2, 1972, in its Future Structure Statement, the Commission:

A. Noted the need for comprehensive disclosure of last sale prices;

B. Announced the formation of an Advisory Committee on Market Disclosure, including members of the industry Task Force, to make recommendations regarding the consolidated tape.

IV. Five days later, the regional stock exchanges participating in the Task Force reported to the Commission that although all members of the Task Force had agreed that a consolidated reporting system could become operational in three to six months, discussions had reached a halt because there were basic disagreements between the regional stock exchanges and the NYSE and Amex:

A. The NYSE and Amex wanted market identifiers whereas the regional exchanges did not;

B. The NYSE and Amex did not want to proceed with the consolidated tape until all other central market system issues had been resolved;

C. The NYSE was willing to consider reporting of regional and third market transactions only on the Amex tape.

V. On March 8, 1972, as recommended in the Future Structure Statement, the Commission proposed for comment Rule 17a-15 under the Act, which called for every exchange and association (and non-member broker or dealer effecting transactions in listed securities) to file a plan with the Commission for the dissemination of transaction reports in listed securities.⁷⁴

VI. The NYSE and Amex submitted comments on the proposal of Rule 17a-15:

A. Questioning the Commission's authority to adopt the rule except pursuant to the more cumbersome procedures of Section 19(b) of the Act;⁷⁵

B. Asserting their proprietary rights in last sale data (and their resultant right to charge for receipt of this data).

C. Suggesting that, as an alternative to adoption of the rule, a consolidated reporting system be implemented by the Securities Industry Automation Corporation ("SIAC"), a jointly-owned subsidiary of the NYSE and Amex, with the following characteristics:

1. the system would be owned and operated by the constituent exchanges and data would remain the property of the exchanges;

2. all trades would be identified as to market of execution;

3. transactions would be displayed in any format selected by a subscriber (including individual market moving tickers);

4. the system would be fully operational in 40 weeks, after one of two alternative pilot programs:

a. a thirty week pilot including data on transactions in NYSE listed securities executed on the NYSE and PSE;

b. a ten week pilot including trading in selected NYSE securities on all exchanges.

VII. Prior to republication of the rule, the Commission also received a report from its Advisory Committee on Market Disclosure, which recommended:

A. Display of all transaction data for a particular security on the same tape or display device;

B. Division of data into two networks, one consisting of all trading in NYSE-listed stocks and the other consisting of all trading in all other listed stocks;

- C. Collection of data by each exchange and the NASD and processing of data by a “neutral” central processor, i.e., an entity not controlled by any particular market center;
- D. Geographically uniform fees for use of data;
- E. Regulation of retransmission of data to assure pricing integrity;
- F. Exclusion of only limited transactions (e.g., underwritings):
- G. Identification of all transactions by market of execution.

VIII. In August 1972, the Commission republished a revised version of Rule 17a-15 for comment⁷⁶ reflecting the following changes:

- A. All transactions would be identified as to market of execution;
- B. Explicit provisions were included to permit the exchanges and NASD to act jointly to implement a plan with a central processor such as SIAC;
- C. Vendors would be required to display all transactions without regard to the market of execution;
- D. Explicit provisions were included permitting imposition of geographically uniform access fees for receipt of last sale data.

IX. In November 1972, the Commission adopted Rule 17a-15 in only slightly revised format, requiring all exchanges, associations, and non-member broker-dealers to file plans by December 26, 1972.⁷⁷

X. After twice delaying the date by which plans were to be filed,⁷⁸ on March 2, 1973, the Commission received a joint plan from the NYSE, Amex, MSE, PBW, PSE, and NASD (the original Task Force Working Committee) and shortly thereafter requested public comment thereon.⁷⁹

XI. Comments received in response to publication of the plan focused on two areas:

- A. The regional exchanges filing the plan opposed the dominance of the NYSE and Amex in the Consolidated Tape Association (“CTA”) voting structure and both the regional exchanges and the Senate Subcommittee in its Securities Industry Study opposed the designation of SIAC as initial processor of the plan. These commentators agreed with the Advisory Committee on Market Disclosure that a central processor should be “neutral” and the Senate Subcommittee noted that, if neutrality could not be assured and

if fair access could not be achieved, it would consider legislation establishing a quasi-governmental entity to operate the system.

B. Certain vendors raised anti-competitive concerns regarding a provision in the joint industry plan which prohibited retransmission of data for purposes of creating a moving ticker display. (Although the Commission had refused to include such a provision in the rule, it had specifically left open the question whether it was appropriate in the plan itself).

XI. In June 1973, the Commission published its comments on the joint industry plan, requesting the sponsors to make certain changes in the plan and inviting comments thereon by July 10, 1973.⁸⁰

XII. In July 1973, the NYSE published its “Staff Analysis of Issues Affecting the Structure of Central Exchange Market for Listed Securities,” which recommended, in conjunction with implementation of the consolidated tape, additional regulatory measures, including:

A. Adoption of anti-manipulative rules by all participating market centers;

B. Uniform regulation of short sales.

XIII. During late 1973 and early 1974, the Commission staff and representatives of the NYSE and Amex held meetings to discuss remaining areas of disagreement regarding the proposed plan.

XIV. In March 1974, the Commission wrote the plan sponsors requesting further changes in the plan.⁸¹

XV. On March 6, 1974, Commission proposed rules designed to establish a uniform short sale rule for securities reported on the consolidated tape.⁸²

XVI. On April 22, 1974, the sponsors filed a revised plan (“Plan”) with the Commission.

XVII. On May 10, 1974, the Commission:

A. Declared the Plan effective, including a phased implementation:

1. twenty weeks after approval of the Plan (October 4, 1974), Phase I, a pilot program in 15 stocks consolidating trading on the NYSE, MSE, PSE, and PBW was to begin;
 2. after twenty weeks of Phase I operation, Phase II, full implementation was to begin,⁸³
- B. Proposed an amendment to Rule 17a-15 to establish appeals procedures in connection with the operation of the Plan.⁸⁴

XVIII. On June 13, 1974, the Commission exempted from the operation of Rule 17a-15 all listed securities which were not “eligible” securities for purposes of the Plan.⁸⁵

XIX. On September 27, 1974, the Commission adopted a uniform short sale rule effective October 4, 1974, the proposed commencement of Phase I of the Plan.⁸⁶

XX. At the request of the NYSE, in October 1974, the Commission:

- A. Deferred implementation of Phase I of the Plan for a two-week period because of perceived difficulties in compliance with the Commission’s recently adopted short sale rule amendments;⁸⁷
- B. Suspended the effectiveness of the short sale amendments.⁸⁸

XXI. On October 18, 1974,

- A. Phase I of the Plan began operation as rescheduled;
- B. The Commission approved an amendment to the Plan, requiring the reporting of third market last sale reports during the pilot phase on a net basis (i.e., including any differential, commission or commission equivalent).⁸⁹

XXII. On November 13, 1974, the Commission adopted its proposed amendments to Rule 17a-15 governing appeals procedures.⁹⁰

XXIII. On February 18, 1975, the Commission approved plans filed by the BSE, CSE, DSE, and Instinet pursuant to which each would become an “other reporting party” reporting trades to SIAC for inclusion in the consolidated system.⁹¹

XXIV. On February 19, 1975, two days before the scheduled full implementation of the system, the CTA informed the Commission that:

A. Full implementation of the low speed Network A line would be delayed until June 16, 1975;

B. Full implementation of Phase II (i.e., implementation of Network B and use of high speed data transmission lines for both Networks) would be delayed further.⁹²

XXV. On March 5, 1975, the Commission proposed additional amendments to its short sales rules to address the operational problems raised by the NYSE.⁹³

XXVI. In response to requests from vendors regarding the commencement of their obligations to display consolidated last sale reports and the format of display of such reports, the Commission issued an interpretive release,⁹⁴ supplementing an earlier interpretive release dealing exclusively with market identifiers.⁹⁵ Based upon representations by various vendors, in this release the Commission granted permission to use an easier inquiry routine to obtain primary market last sale information than to obtain consolidated data.

XXVII. On April 30, 1975, the Commission:

A. Granted a request for an exemption from the reporting requirements of Rule 17a-15 to the Intermountain Stock Exchange (“ISE”);

B. Denied a similar request from the DSE;

C. Held a request from the Spokane Stock Exchange (“SSE”) in abeyance.⁹⁶

XXVIII. In June 1975, the Commission:

A. Summarily declared effective NASD rule changes⁹⁷ and Joint Industry Plan amendments⁹⁸ governing the reporting of third market transactions in all NYSE listed securities on a net basis;

B. Adopted proposed amendments to its short sale rules which, in effect, permitted the NYSE and Amex to continue to use their own last sale to measure compliance with the short sale rule, while all other markets would measure compliance by reference to the consolidated tape.⁹⁹

XXIX. On June 16, 1975, Network A of the consolidated system began dissemination of last sale reports in all NYSE listed stocks over low speed data transmission lines.

XXX. By September 1975, each of the SROs participating in Phase I had adopted uniform anti-manipulative rules as recommended by the NYSE.

XXXI. On March 3, 1976, the Commission published a letter from Reuters Limited and requested public comment concerning the continuation of the retransmission prohibition in the Joint Industry Plan.¹⁰⁰

XXXII. On April 30, 1976, over four years after the initial publication of Rule 17a-15, Phase II of the consolidated system was fully implemented.

XXXIII. In May 1976, NASD rule changes¹⁰¹ and Plan amendments¹⁰² were adopted, permitting reporting of third market transactions on a gross basis.

XXXIV. On January 26, 1978, in its January Statement, the Commission announced it would re-examine five operational aspects of the consolidated system:

- A. Method of recall of last sale information;
- B. CTA voting arrangement;
- C. Retransmission;
- D. Reporting exceptions;
- E. Fees.¹⁰³

XXXV. On April 11, 1978, the Commission granted the SSE's request for an exemption from the reporting requirements of the Plan.¹⁰⁴

XXXVI. On April 14, 1978, at the request of various exchanges, the Commission granted a temporary exemption from Rule 17a-15 to permit the CTA and SIAC to delete market identifiers from moving ticker displays with respect to transactions effected on participants in the ITS, on the condition that market identifiers be removed from moving ticker displays with respect to all transactions as soon as technically feasible.¹⁰⁵

XXXVII. On October 20, 1978, the Commission issued two releases addressing issues raised in the January Statement.

A. The first release proposed amendments to Rule 17a-15, redesignating that rule as 11Aa3-1, eliminating CTA Plan prohibitions on retransmission of transaction reports for ticker display purposes, and adding procedures for amending transaction reporting plans.¹⁰⁶

B. The second release proposed a new Rule 11Ac1-2 governing the display of transaction and quotation information by vendors, and incorporating vendor display requirements previously contained in Rule 17a-15.¹⁰⁷ Proposed Rule 11Ac1-2 included:

1. key stroke requirements;
2. a requirement of equal categories of information for competing market centers;
3. a best bid and offer (“BBO”) display requirement, including size and identifiers;
4. individual market quotation size requirements;
5. requirement that market minders (i.e., services provided on a vendor interrogation device which permit simultaneous monitoring, on a dynamic basis, of last sale information for several securities) be made available on a consolidated basis.

XXXVIII. On February 19, 1980, the Commission adopted Rule 11Aa3-1, redesignating Rule 17a-15 and eliminating CTA prohibitions on retransmission of transaction data.¹⁰⁸

XXXIX. Also on February 19, 1980, the Commission adopted Rule 11Ac1-2,¹⁰⁹ the “Vendor Display Rule.” The rule required, as of October 5, 1980:

- A. Display of a BBO, including size and market identifier;
- B. Key Stroke requirements;
- C. Display of equal categories of information for competing market centers;
- D. Individual market quotation size;

XL. On June 24, 1980, the Commission extended the effective date of the Vendor Display Rule to January 3, 1981, to allow development of an efficient method of supplying the BBO display.¹¹⁰

XLI. In July, 1980, NASD rule changes¹¹¹ were adopted, requiring reporting of all third market transactions on a gross basis.¹¹²

XLII. In July, 1980, the CTA Plan was amended to revise CTA voting arrangements. In addition, the CTA Plan was amended to remove market identifiers from moving tickers, and to include the BSE and CSE in the Plan.¹¹³

XLIII. In September, 1980, CTA Plan amendments permitting retransmission of transaction reports and establishing appropriate fees for retransmission were approved by the Commission.

XLIV. In December, 1980 the Commission extended the effective date of the Vendor Display Rule again to September 1, 1981, to allow additional time for SIAC to implement a BBO display.¹¹⁴

XLV. On July 30, 1981, the Commission granted certain exemptions from the Vendor Display Rule to GTE,¹¹⁵ and subsequent Commission orders granting exemptions to other vendors were approved by the Division of Market Regulation, pursuant to delegated authority, prior to the effective date of the Rule.

XLVI. On August 26, 1981 the Commission extended the effective date of the Vendor Display Rule yet again, to October 1, 1981, to allow final testing by vendors of the BBO provided by SIAC.¹¹⁶

XLVII. On October 1, 1981, the Vendor Display Rule became operative.

XLVIII. On November 17, 1983, the Commission approved a new CTA subscriber fee establishing low rates for current last sale information for non-professionals.¹¹⁷

Composite Quotations

I. The need for a composite quotation system was recognized as early as 1972, when the Commission, in its Future Structure Statement, noted that such a system was an essential step toward formation of a central market system.

II. Simultaneously with the initial publication of Rule 17a-15, the Commission proposed Rule 17a-14¹¹⁸ which:

A. Would have required that all exchanges and associations make quotations of their members available;

B. Would not have imposed specific firmness obligations on brokers disseminating quotations.

III. Commentary on proposed Rule 17a-15 focused on two deficiencies in the proposal:

A. The lack of any requirement to file plans;

B. The lack of any provisions regarding quotation size.

IV. On September 25, 1972, the NYSE proposed, as an alternative to the adoption of Rule 17a-14, that exchanges furnish each other with quotations on a reciprocal basis, on the condition that all trading in listed securities be limited to exchanges.

V. On November 21, 1972, the Advisory Committee on Market Disclosure issued its report to the Commission on a composite quotation system. The Committee recommended the implementation of a consolidated quotation system as the “cornerstone” of the central market system. This quotation system would have the following characteristics:

A. All listed securities would be eligible for inclusion;

B. Only bona fide market makers would be eligible to enter quotations (other brokers could continue to act as dealers but could only enter quotations through market makers);

C. The system would be operated by the processor of the consolidated tape;

D. Quotations would be designated by market maker and could include size;

E. Quotations would be firm for the price and size indicated, subject to revision immediately after execution of an order;

F. No two-sided quotations would be permitted outside the system;

G. The processor would maintain a permanent record of all quotations.

VI. In February 1973, the Senate released its Securities Industry Study, in which it:

A. Endorsed the views of the Advisory Committee on Market Disclosure;

B. Recommended that the Commission promptly adopt Rule 17a-14, such that implementation of the system could be completed within six months after implementation of the consolidated tape.

VII. In August 1974, the Commission published a revised version of Rule 17a-14, differing from the initial version of the rule by permitting:

A. SROS to file plans, similar to those filed pursuant to Rule 17a-15, to implement a composite quotation system;

B. Vendors to file plans, after a certain date, pursuant to which SROs would be required to make available quotations.¹¹⁹

VIII. In response to this proposal, the NYSE and Amex submitted comments questioning whether the Commission had any statutory authority to adopt Rule 17a-14.

IX. In March 1975, the Commission:

A. Determined:

1. to defer consideration of Rule 17a-14;

2. as an alternative course of action, to take steps to remove restrictions imposed by exchanges on the dissemination of quotations.

B. Pursuant to Section 19(b) of the Act, requested each exchange to amend any rules or practices restricting access to or use of any quotation information disseminated by such exchange.¹²⁰

X. On May 7, 1975, the Commission announced that it had received responses from each exchange indicating either that the requested changes had been made or that they had no rule or practice restricting access to or use of such information.¹²¹

XI. On June 4, 1975, the 1975 Amendments were signed into law, giving the Commission explicit statutory authority to implement a composite quotation system.

XII. In July 1976, the Commission:

A. Noted that efforts on the part of individual vendors to create a composite quotation system had been largely ineffectual due to the unreliability of quotation information made available by exchanges;

B. Proposed Rule 11Ac1-1 which:

1. would have required exchange specialists and third market makers to make available firm quotations and (if they chose) quotation sizes;

2. unlike Rule 17a-14, which permitted the filing of plans governing the collection, processing, and dissemination of quotations, would allow the private sector to develop the means of consolidating quotations;

3. required:

a. mandatory participation of all specialists and third market makers;

b. firm quotations subject to exceptions for:

(i) revised quotations;

(ii) intervening transactions or trade reports (the “three minute exception”).¹²²

XIII. In late 1976, Phlx implemented its Centramart system, permitting its specialists to update quotations automatically in over 400 securities, based upon NYSE last sale information.

XIV. In June 1977, the Commission republished Rule 11Ac1-1 in revised format. This version of the Rule differed from the earlier version in the following manner:

A. Exchanges would have been required to collect and make available the highest bid and lowest offer of any broker or dealer at the post for trading in a security;

B. If the bid or offer made available by an exchange represented the bid or offer of more than one broker or dealer, the exchange would have been required to make available an aggregate quotation size;

C. An additional exception to firmness was provided exchanges during periods of unusual market activity.¹²³

XV. In late 1977, the BSE, MSE and PSE reached an agreement in principle and established specifications with Quotron Systems, Inc. for the establishment of Autoquote,

a system permitting each exchange's specialists to update quotations automatically based upon the primary market quotation.

XVI. In January 1978, simultaneously with the issuance of its January Statement, the Commission adopted Rule 11Ac1-1, effective May 1, 1978.¹²⁴ The Rule as adopted was substantially similar to the 1977 proposal. The three minute exception, however, was deleted.

XVII. In early 1978, all of the SROs participating in or reporting transactions to the CTA began a series of meetings designed to create a consolidated quotation association ("CQA") which would collect quotations from all participating market centers and process and make available quotations in a single data stream.

XVIII. On April 26, 1978, the Commission announced that it had delayed the effective date of the Rule until August 1, 1978, at the request of various exchanges and the NASD, in order to permit:

- A. Joint implementation of the rule by the proposed CQA;
- B. Installation of Autoquote equipment on the various participating regional exchanges.¹²⁵

XIX. On July 25, 1978, the NYSE and Amex filed with the Commission a "Plan for the Purpose of Implementing Rule 11Ac1-1 under the Securities Exchange Act of 1934" ("CQ Plan") governing the Consolidated Quotation System. The BSE, PSE, Phlx and MSE became participants in the CQ Plan soon afterwards.

XX. On July 18, 1978, the Commission declared the CQ Plan effective on a temporary basis.¹²⁶

A. On condition that a provision prohibiting dissemination of quotations during a regulatory halt on the primary exchange not be implemented;

B. Requesting comment on:

1. fees;
2. regulatory halt provisions;
3. voting and revenue allocation provisions;

4. hours of quotation collection.

XXI. Also on July 28, 1978, the Commission granted exemptions from the Rule to the SSE¹²⁷ the ISE¹²⁸ and the CSE (for stocks other than those traded in its automated trading system).¹²⁹

XXII. On August 1, 1978, the single quotation stream disseminated by SIAC, including quotes from the NYSE, Amex, BSE, PSE, MSE, and Phlx, first became available.

XXIII. In December 1978, the NASD became a participant in the CQ Plan, and in February 1979 began disseminating third market information through the CQ System.

XXIV. On January 24, 1979, the Commission again temporarily approved the CQ Plan for a twelve month period.¹³⁰

A. conditioned on non-implementation of the regulatory halt provision, and submission of amendments to eliminate it;

B. to allow monitoring of CQS implementation, and further consideration of fees questions.

XXV. On April 19, 1979, the Commission granted an exemption to Amswiss International Corp., a third market maker, from the Quote Rule's requirement of quotation dissemination for securities, where Amswiss' quarterly trading volume in a security comprised less than one percent of the aggregate trading volume in that security.¹³¹ At the same time, the Commission granted the Division of Market Regulation delegated authority to grant similar exemptions to other third market makers.¹³²

XXVI. In May, 1979, the CQ participants agreed to amend the CQ Plan to eliminate the regulatory-halt provision.¹³³

XXVII. In November, 1979, the CSE joined as a participant in the CQ Plan, as a preliminary to linking with ITS.

XXVIII. On January 22, 1980, the Commission permanently approved the CQ Plan as a national market system facility.¹³⁴

A. The Commission noted that the regulatory- halt provision had been deleted from the CQ Plan.

B. The Commission expressed continued concern over the fee structure, but concluded it was inappropriate to address generic fees questions in the context of approval of the CQ Plan.

XXIX. On February 27, 1981, the Commission proposed amendments to the Quote Rule.¹³⁵

A. The proposals recognized that individual order routing to the best market on the best of displayed quotations had not occurred, and that problems had developed:

1. use of automated quotation devices caused regional quotations to be viewed as unreliable;
2. stale quotations displayed by third market makers often locked or crossed markets;
3. automated generation of quotations put burdens on vendors.

B. The proposed amendments required quotation dissemination only by:

1. the principal market for listed securities (other than Rule 19c-3 securities);
2. market centers comprising one percent or more of the aggregated trading volume in Rule 19c-3 securities or OTC securities designated as a national market system security;

C. The proposals also suggested eliminating ITS Plan quotation requirements, and banning automated quotation devices.

XXX. In April, 1981, the ITS participants adopted a policy against trade-throughs in one market of a superior quotation in another market¹³⁶ and each participant adopted a rule specifying procedures for correcting trade-throughs.¹³⁷

XXXI. On August 7, 1981, the Commission approved a CQ Plan amendment providing for dissemination of a single BBO display.¹³⁸

XXXII. On October 1, 1981, the BBO display was implemented, and the Vendor Display Rule, requiring dissemination of the BBO by vendors, went into effect.

XXXIII. On February 11, 1982, the Commission adopted Quote Rule amendments.¹³⁹

A. The amendments permitted quotation dissemination on a voluntary basis by all market centers except:

1. the principal market for listed securities (other than Rule 19c-3 securities);
2. market centers comprising one percent or more of the aggregate trading volume in a Rule 19c-3 security;

B. The Commission disclaimed any intention of eliminating the ITS Plan quotation requirements or banning automated quotation devices.

XXXIV. On November 17, 1982, the NASD adopted provisions against trade throughs.¹⁴⁰

XXXV. On November 17, 1983, the Commission approved a CQ Plan amendment providing for a low subscriber fee for real-time quotations for non-professionals.¹⁴¹

Market Linkage and Order Routing Systems

I. Market Linkages

A. The concept of a market linkage system enabling a broker to route orders from one market center to another appears to have been first advocated by an ad hoc group of representatives from the Amex, BSE, MSE, NASD, NYSE, PSE, and Phlx constituting the National Market Association (“NMA”). At the December 13, 1976, NMAB meeting, the NMA proposed:

1. to implement an intermarket execution application (“IME”) that would enable “a buyer in one market place [to] meet a seller on another marketplace and the transaction would take place between the two market centers;”
2. to establish an Operations Committee to study:
 - a. system specifications;
 - b. pre-opening information;
 - c. openings;
 - d. blocks;

- e. market identifiers;
 - f. comparison procedures;
 - g. an implementation schedule (tentatively scheduled to take 12-15 months);
 - h. quotation vendor responsibility;
 - i. hours of operation;
3. to establish a finance committee to study cost allocation (tentatively scheduled to be \$1.25 million).

B. At the March 14, 1977, NMAB meeting, the NMA:

1. presented a more detailed picture of the IME and the problem areas remaining to be resolved, including:
- a. unitary or coordinated openings;
 - b. participation in openings by market makers and specialists as principal;
 - c. market identifiers;
 - d. limit order protection on block trades;
2. discussed implementation of IME and recommended that systems design and processing be the subject of competitive bidding.

C. At the April, 1977, NMAB meeting, the NMA presented a Discussion Paper:

1. outlining the system, which consisted of an electronic linkage system supporting three distinct applications:
- a. an electronic mechanism to send orders from one market center to another market center;
 - b. a pre-opening application by which regional specialists and the orders they hold could participate in openings a specified amount away from the previous close;
 - c. a block application pursuant to which a market center would be required to advertise execution of a block at a specified differential away from the current quotation.
2. noting that further discussions were still necessary to resolve:
- a. unitary openings;

- b. blocks;
 - c. market identifiers;
 - d. vendor quotation responsibility;
3. arguing that the IMS was responsive to Congressional concern expressed in the 1975 Amendments to create a national market system.

D. On April 18, 1977, the PSE submitted a paper to the NMAB describing the necessity of resolving disagreements regarding:

- 1. unitary openings;
- 2. market identifiers.

E. In its appearance before the Commission at the August 1977 off-board hearings, the NYSE advocated an electronic intermarket linkage system similar to the IME as the heart of a national market system.

F. On August 19, 1977, the NYSE and PSE reached an agreement in principal:

- 1. to establish an intermarket linkage based on the IME, including:
 - a. intermarket executions;
 - b. pre-opening applications;
- 2. to eliminate market identifiers for participants in the IME.

G. On January 26, 1978, in its January Statement, the Commission:

- 1. endorsed the concept of an intermarket order routing system in which each exchange and third market maker would be electronically linked;
- 2. requested each exchange and the NASD to inform the Commission by April 30, 1978, of its plans to participate in such a linkage;
- 3. indicated that, in its view, such a linkage could be implemented by September 30, 1978.¹⁴²

B. On March 8, 1978, the Amex, BSE, NYSE, PSE and Phlx:

- 1. filed a plan with the Commission for the implementation of an Intermarket Trading System, based upon the IME, including:

- a. intermarket order routing;
 - b. pre-opening applications;
2. requested approval of the plan under Section 11A(a)(3)(B) of the Act;
 3. requested relief from Rule 17a-15 under the Act to permit deletion of market identifiers on moving ticker displays for ITS participants.
- I. On April 14, 1978, the MSE announced it would participate in the ITS.
3. On April 14, 1978, the Commission:
 1. issued a temporary 120-day order approving implementation of the ITS pending a final Commission decision concerning the ITS Plan.¹⁴³
 2. issued a temporary exemption from Rule 17a-15 permitting deletion of market identifiers on moving ticker displays for ITS participants, on the condition that market identifiers be removed from moving ticker displays for all transactions as soon as technically feasible.¹⁴⁴
- K. On April 17, 1978:
 1. the ITS began operation, linking the NYSE and the Phlx in eleven stocks;
 2. market identifiers were deleted from moving ticker displays for transactions taking place on the AMEX, BSE, NYSE, PSE, Phlx and MSE.
- L. On April 24, 1978, market identifiers were deleted from moving ticker displays for transactions taking place on the CSE, third market or through Instinet.
- M. On May 22, 1978, the ITS pilot program was extended to include quotation sizes and an additional 14 issues.
- N. The PSE became a member of ITS on June 20, 1978, the BSE on July 10, 1978, the MSE on July 24, 1978, and the AMEX on August 7, 1978.
- O. In response to a letter from the Commission dated June 22, 1978, the NASD indicated its desire to link to ITS through an automated interface with the NASD's proposed National Order Routing System ("NORS"), but suggested a manual link through the NASDAQ operating center until an automated interface was constructed.¹⁴⁵
- P. In July 1978, the CSE requested inclusion in ITS. In response, in October 1978 the ITS Operating Committee requested information on the proposed means of linking the CSE system to ITS.¹⁴⁶

Q. On August 11, 1978, the ITS Plan was approved on a temporary basis for an additional twelve months, to allow further monitoring of its operation before permanent approval.¹⁴⁷ The exemption from Rule 17a-15 for ticker identifiers for market centers was also extended for one year.¹⁴⁸

R. During the spring of 1979, the NASD and the NYSE engaged in discussions concerning changes in the ITS Plan necessary to include the NASD in ITS.

1. The NASD conditionally approved participation in ITS on a manual basis subject to certain conditions, and on June 26, 1979, the NYSE indicated the impediments to linkage had been resolved.

2. However, in late July 1979 the NYSE deferred consummation of the linkage¹⁴⁹ apparently because of concerns over the Commission's proposed Rule 19c-3, and in view of the NYSE alternative of a competitive market maker system, proposed at the Rule 19c-3 hearings on June 29, 1979.¹⁵⁰

S. On September 21, 1979, the Commission extended temporary approval of the ITS Plan until January 31, 1983. The Commission also indicated that a linkage should promptly be developed between the ITS and the NASD.¹⁵¹

T. In September, 1979, the NASD informed the NYSE of its determination to build a computer to computer interface with the ITS, rather than the manual link originally considered.¹⁵² On December 4, 1979, the NYSE responded that a simpler linkage could be developed within the first quarter of 1980.¹⁵³ No technical discussions were begun.

U. On October 1, 1979, the CSE responded to the NYSE's July 1978 request for information, and reaffirmed its desire for linkage with ITS.¹⁵⁴ In February, 1980, the NYSE tentatively agreed to a linkage but indicated that it was of low priority.¹⁵⁵

V. Between December 1978 and May 1980, extensive correspondence took place between the NASD and NYSE concerning the NASD's proposed automated interface, and the NYSE's suggestion of a pilot involving ITS terminals in third market makers' offices.¹⁵⁶

W. In April, 1980, the PSE circulated a "trade-through rule" limiting execution of orders on one exchange at a price inferior to the quotation of another market.

X. In May, 1980, the NYSE expressed its willingness to move forward on the CSE link.¹⁵⁷

Y. On May 20, 1980, the Commission staff formally requested a status report from the NYSE on the CSE and NASD linkages.¹⁵⁸

Z. On June 18, 1980, the Commission, in its release adopting Rule 19c-3, reiterated the importance of a linkage between the ITS and the NASD and requested formal status reports from each ITS participant and the NASD on the progress of linkage discussions.¹⁵⁹

AA. On June 27, 1980, the NASD presented a draft Memorandum of Understanding to the NYSE. In addition, during the fall, of 1980, the NASD began the enhancement of NASDAQ to include an automatic order routing and execution facility, termed the “Computer Assisted Execution System” (“CAES”).

BB. On September 4, 1980, the NYSE approved the CSE-ITS link, but only agreed to a manual pilot phase in the NASD-ITS linkage.

CC. On January 9, 1981, the NYSE proposed a linkage with the NASD comprising a two-phase test with thirty securities in the initial phase, plus a preliminary internalization rule.¹⁶⁰

DD. On January 26, 1981, an amendment of the ITS Plan to include the CSE in ITS was proposed. The amendment was filed with and temporarily approved by the Commission on February 10, 1981,¹⁶¹ and finally approved on April 9, 1981.¹⁶²

EE. On February 5, 1981, the Commission proposed an order that would require implementation of an automated interface between the NASD and ITS by September 30, 1981.¹⁶³

IF. Also in February 1981, the Commission released its first monitoring report on ITS.¹⁶⁴ This report indicated that:

1. ITS trades in November 1980 constituted 6.6% of total trades in ITS stocks, and 4.7% of total share volume in these stocks.
2. the NYSE participated in about 90% of all ITS trades: as recipient 60% of the time, and as originator 32%.
3. the inclusion of securities in ITS was not seen to have any discernable effect on the quality of the primary market.

GG. On March 31, 1981, the ITS participants filed a “trade-through rule” with the Commission:

1. establishing a general policy against trade-throughs;
2. requiring the participants to adopt similar rules against trade-throughs including:
 - a. corrective procedures;¹⁶⁵

- b. a block trade policy;
- c. a restriction on use of Autoquote¹⁶⁶ to 100 share markets.¹⁶⁷

ER. On April 21, 1981, the Commission ordered the ITS participants and the NASD to implement an automated interface between ITS and CAES by March 1, 1982.¹⁶⁸

1. The Commission stated that an internalization rule was not a prerequisite to the interface, because the interface would not exacerbate internalization concerns as a structural matter.
2. The Commission permitted a six-month pilot phase included 30 Rule 19C-3 stocks;
3. The Commission established a deadline of November 1, 1982 for the submission of ITS Plan amendments providing for the interface.

II. On March 4, 1982, in response to the parties' failure to agree on or submit ITS Plan amendments, the Commission proposed its own plan amendments, based on a restatement of the ITS Plan prepared by the ITS participants.¹⁶⁹ The Commission also amended its April 21, 1981 order to defer the implementation date to May 1, 1982, to permit comments on the amendments and the completion of testing of the interface.¹⁷⁰

JJ. While the ITS Plan negotiations between the NASD and the ITS participants were underway, discussions under the auspices of the SIA developed general order exposure principles on which an internalization rule could be based.

KK. On May 6, 1982, the Commission adopted ITS Plan amendments including the NASD in ITS.¹⁷¹

1. the Commission amendments deferred most unresolved Plan issues for the interface's pilot phase, including questions of automation of the process of routing CAES orders into ITS;
2. the order was amended to defer the implementation date of the pilot phase of the interface until May 17, 1982.

LL. On May 7, 1982, the ITS participants approved a rewrite of the ITS, referred to as ITS II, in order to expand capacity and permit use of special terminals by the various participants.

MM. On May 14, 1982, the Commission proposed for comment two alternative order exposure rules.¹⁷²

1. the first would have required only OTC market makers in Rule 19c-3 securities to:
 - a. hold out customer orders before executing them as principal, or

- b. route all orders to CAES on a neutral basis and compete as market maker there;
2. the second would have applied these requirements to all market makers in Rule 19c-3 securities;
3. the Commission also requested comment on the alternative of not adopting any rule at the present time.

NN. On May 17, 1982, the pilot phase of the ITS/CAES interface became operational in 30 stocks.

00. In June, 1982, the Commission released its second monitoring report on the ITS.¹⁷³ This report indicated that:

1. ITS trades in the fourth quarter of 1981 constituted 8.2% of total trades in the then 921 ITS stocks, compared to 6.8% in the last quarter of 1980, with 926,000 trades through ITS overall in 1981.
2. ITS share volume in the fourth quarter of 1981 constituted 4.8% of total share volume in ITS stocks, compared to 4.2% overall in the last quarter of 1980, with 542,601,000 shares traded through ITS in 1981.
3. The NYSE, Amex, and CSE were net recipients of ITS order flow, with the NYSE participating as recipient or originator of approximately 90% of all trades.
4. ITS did not have a statistically significant effect on the quality of the primary market.

PP. On November 17, 1982, the Commission approved permanent NASD trade-through rules, similar to those of the exchange participants.¹⁷⁴

QQ. On December 23, 1982, the Commission re-proposed a single order exposure rule, Rule 11A-1.¹⁷⁵

1. This rule would
 - a. apply to all broker-dealers executing as principal customer orders in Rule 19c-3 securities, and to derivative execution systems in these securities;
 - b. require a customer order:
 - (1) to be exposed at a superior price for 30 seconds before execution as principal;
 - (2) to be exported on a neutral basis to the CAES or NSTS under conditions preventing coordination of order entry and market making functions.

2. The Commission also deferred expansion of the ITS/CAES interface to all. Rule 19c-3 securities until June 1, 1983, to allow the Commission time to act concerning Rule 11A-1.¹⁷⁶

RR. On January 27, 1983, the Commission ended the experimental status of ITS and approved the ITS as a national market facility on an indefinite basis.¹⁷⁷

SS. On September 15, 1983, after two additional extensions of the pilot phase of the ITS/CAES interface,¹⁷⁸ the pilot phase ended and all. Rule 19c-3 securities, totaling over 700, became eligible for trading through the interface.

TT. On September 20, 1985, the Commission approved CSE rule changes to provide for an automated interface between the CSE's NSTS and ITS. Under this interface, orders that do not receive execution in the NSTS system could be entered directly into ITS.¹⁷⁹

II. Order Routing And Execution Systems

A. The first exchange-based application of the technology necessary to implement order routing systems may be traced back to 1969 when PSE implemented its COMEX system, which permitted retail firms to route odd-lot orders in multiply-traded NYSE and Amex issues to the PSE for automatic execution based upon NYSE or Amex last sales;

B. In 1971, at the hearings culminating in the Senate Securities Industry Study, the Amex presented plans for its AMCODE system which was designed to provide extensive order routing and message report facilities between retail firms and the floor of the Amex, ultimately providing automated broker-to-broker trading on the floor of the Amex. AMCODE would have permitted brokers to route round-lot orders directly to the post of a specialist or to automatically execute odd-lot orders.

C. In May 1973, COMEX was expanded to permit retail firms to route round-lot market orders of up to 199 shares for automatic or manual execution (at the choice of the PSE specialist) and to permit transmission of related traffic back to the entering firm.

D. In November 1974, the NYSE and Amex began implementation of their common message switch ("CMS") which, at that time, permitted retail firms to route odd-lot orders directly to odd-lot dealers and to receive confirmations and associated traffic from the odd-lot dealer.

E. In March 1976, CMS was expanded by implementation of DOT on the NYSE and PER on the Amex, which permitted retail firms to route small round-lot market orders directly to a specialist's post for manual execution.

F. On April 19, 1976, Phlx began pilot operation of its Centramart/PACE system. As fully implemented, the system permitted routing and automatic execution of both market and limit orders up to 299 shares based upon the NYSE last sale.

G. On March 22, 1977, the MSE applied to the Commission under Section 11A(b)(5) of the Act for review of SIAC's denial to the MSE of access to CMS.

H. On October 4, 1977, the Commission requested the views of the NYSE, Amex, SIAC, and MSE concerning certain issues raised by MSE's application for use of the CMS, including:

1. the precise nature of the Commission's jurisdiction over the dispute;
2. substantive concerns, such as:
 - a. relevant factors in determining fairness of access;
 - b. the purposes of the Act to be furthered by granting such access;
3. a description of possible applications of CMS in the context of a national market system and specifically with respect to:
 - a. a central limit order file;
 - b. routing of agency orders on an individual basis;
4. an assessment of the cost of granting access to MSE and other market centers;
5. the feasibility of order-by-order routing based on quotations.

I. On January 26, 1978, in its January Statement, the Commission:

1. endorsed the implementation of a facility permitting any broker or dealer to route orders to any qualified market;
2. requested each exchange and association to inform the Commission by April 15, 1978, of its willingness to undertake joint implementation of such a system by September 30, 1978.¹⁸⁰

J. In response to the January Statement, various SROs proposed alternative applications of the CMS to achieve the order routing facility endorsed by the Commission:

1. the NYSE:
 - a. noted that the CMS was not the exclusive order routing facility in existence, citing:
 - (i) the NYSE, Amex, PSE and Phlx order routing facilities operated as a integral part of DOT, PER, COMEX and Centramart/PACE;

(ii) order routing facilities maintained by 15 member firms which are capable of routing orders to one or more exchanges;

(iii) order-routing facilities operated by three service bureaus which are also capable of routing orders to one or more exchanges.

b. advocated a competitive environment in which multiple order routing systems could exist;

c. agreed to make the CMS available to other market centers for purposes only of order routing (as opposed to order processing):

(i) within 3 to 6 months;

(ii) if compensated;

d. would not commit itself to interface the CMS with other routing systems such as COMEX and Centramart/PACE.

2. the PSE recommended adaptation of the CMS to permit direct interface between brokers and exchange order routing and execution facilities such as COMEX and Centramart/PACE.

3. the NASD, in its "Technical Plan for the Development of a National Market System," proposed NORs, a comprehensive order routing system capable of:

a. routing orders to any market center as designated by the sending broker;

b. routing orders to any market center on the basis of pre-determined algorithms and firm quotations.

K. In June 1978, the Commission requested comment on whether order-by-order routing of retail orders to the best market based on displayed quotations should be a characteristic of the national market system.¹⁸¹ In response, commentators opposed the concept of a single Commission-mandated order routing facility that would route orders automatically on the basis of displayed quotations.

L. In February 1979, the NYSE expressed its willingness to provide access to CMS to other exchanges, but refused to allow an interface between CMS and exchange computer systems.

M. In its Status Report of March 1979, the Commission deferred any requirement of order-by-order routing:

1. noting that, in the current environment, quotations are not always firm and differences in execution and clearing costs exist;

2. conditioning deferral of further consideration on modification by the NYSE and Amex of CMS to permit all market centers to send and receive messages;

3. requesting a timetable for inclusion of the MSE in the CMS switch.¹⁸²

N. In September 1979, Merrill Lynch announced development of a Best Price Selector (“BPS”) which could route customer orders internally to the market center displaying the best quotation.¹⁸³

O. After protracted discussions, on November 20, 1979, the MSE accepted the NYSE offer of access to the CMS, on condition that it could interface with the CMS with automated execution and routing services to the same extent as the NYSE had.¹⁸⁴ The NYSE was unwilling to accept this condition, and no agreement was reached.

P. In the fall of 1979, the PSE’s COMEX system (renamed Scorex) was enhanced to:

1. price automatic executions of market orders off the consolidated quote;¹⁸⁵

2. end the specialists’ ability to reject orders sent through Scorex;

Q. In March 1980, the NYSE instituted its Opening Automated Report Service (“OARS”) which:

1. allows direct routing of opening orders to NYSE specialists;

2. pairs buy and sell market orders;

3. informs the specialist of the resulting imbalance prior to the opening of the stock.¹⁸⁶

R. In June 1981, the NYSE began a pilot “Limit Order File” program allowing limit orders to be directly routed to the NYSE’s specialist.

1. the system:

a. provides a limit alert when a trade on the floor has crossed limit order price;

b. directs away-from-the-market limit orders to the floor broker’s booth rather than to the post;

2. enhancements are planned that will automatically enter limit orders into an electronic limit order book.

S. In August, 1981, the MSE implemented an automatic execution system, MAX, through automation of its guaranteed execution system.¹⁸⁷ Orders of up to 399 shares are eligible for entry in MAX, with larger orders negotiable with specialist in the security.

T. In February, 1982, the Phlx modified PACE to provide executions based on the consolidated quote in orders up to 599 shares.¹⁸⁸

U. In February, 1982, the NYSE instituted an Active Stock Feature in DOT, which accumulates DOT orders when orders are received in rapid succession. These accumulated orders are delivered in bunches to the specialist after a certain number accumulate or two minutes elapse, whichever comes first.¹⁸⁹

V. The size of orders eligible for routing through DOT was raised incrementally from 299 shares in 1976, to 3099 shares in October 1985.

W. In September, 1982, the NYSE implemented its Registered Representative Rapid Response (“R4”) system. This system was approved by the Commission for a six month pilot.¹⁹⁰

1. R4 allows registered representatives in participating broker-dealers to confirm executions for the specialists’ account at the consolidated quotation.
2. During the pilot phase, R4 included orders up to 299 shares in 30 stocks, and two broker-dealers participated.

X. On June 9, 1983, the Commission instituted proceedings to determine whether to approve or disapprove an extension and expansion of the NYSE’s R4 pilot.¹⁹¹ The Commission expressed concern about R4’s effect on order interaction, pricing efficiency, and obtaining the best available price for customer orders.

Y. In August 1983, the NYSE added to DOT a default mode under which DOT orders not executed within three minutes of execution would be automatically executed at the previous NYSE last sale at the time the order was received.¹⁹²

Z. On November 4, 1983, the Commission approved extension and expansion of the NYSE’s R4 for approximately one year, to obtain greater experience with its potential impact on the market.¹⁹³

AA. In August, 1984, the NYSE reduced the DOT (now called SuperDot) default mode time period from three to two minutes, and instituted the Immediate Response Service (“IRS”) which executed SuperDot orders immediately in certain stocks in which the NYSE quote spread was 1/8 point and the NYSE quote equaled the best ITS quote.¹⁹⁴

BB. On September 11, 1984, the Commission determined to not require OTC automated small order execution systems developed by various broker-dealers to register as a securities exchanges initially, but rather to oversee these systems through a conditional no-action letter process.

CC. On October 9, 1984, the Commission issued a release stating its views on computer brokerage systems, which allow customers to send orders to their brokers through home computers.¹⁹⁵

DD. On January 18, 1985, the Commission extended approval of R4 until November 1985.¹⁹⁶

EE. In January 1985, the NASD began operating its Small Order Execution System (“SOES”).¹⁹⁷

1. SOES executed agency market orders of up to 300 shares at the inside NASDAQ quote on behalf of participating market makers;
2. SOES applied initially to national market system stocks and subsequently all NASDAQ stocks.

FF. In August, 1985, the NYSE proposed raising the SuperDot eligibility size to 3099 shares and using the NYSE best quote as the reference price in the SuperDot default made.¹⁹⁸

Limit Orders

I. The concept of a consolidated limit order repository, in which all limit orders across the country would be stored for subsequent execution, may be traced back to articles by Professor Morris Mendelson advocating an automated trading system.¹⁹⁹ Professor Mendelson advocated a fully automated trading system, built upon the existing NASDAQ system, in which:

- A. Brokers could enter agency limit orders into a central file (which would automatically execute matching orders);
- B. Registered dealers could enter quotations and execute transactions.

II. On March 6, 1973, the Advisory Committee on a Central Market System, in its Approach II:

- A. Suggested that the best means by which to assure nationwide priority for public orders was to establish an electronic centralized book which would have to be cleared by any market maker prior to executing a trade;
- B. Noted that such a repository was technically feasible at that time (prior to the completion of the Report, the Amex, has submitted to the Senate Securities Industry

Study specifications for its AMCODE system, which projected a fully automated Amex book in 1974);

III. In February 1973, the Senate Securities Industry Study, in recommending system-wide priority for public orders:

A. Recognized that such a concept presupposes the existence of a single electronic “book” for public orders;

B. Felt that such a book would be an integral part of the consolidated quotation system based upon NASDAQ.

IV. On March 29, 1973, in its Policy Statement on a Central Market System, the Commission adopted the recommendations of Approach II of the Advisory Committee on a Central Market System and proposed an Auction Trading Rule which would provide price (and perhaps time) priority for all public orders entered and stored in an electronic repository by a specialist.

V. In December 1974, the Yearly Advisory Committee on the Implementation of a Central Market System issued its Preliminary Statement, in which it advocated a hybrid type of limit order facility (which had been alluded to in a footnote of the Policy Statement) in which:

A. Each specialist would maintain his own separate limit order book;

B. All specialist books would be linked electronically;

C. Each specialist would have access to each other’s book;

D. All transactions would be required to clear all books maintained by specialists.

VI. In its July 17, 1975 Summary Report, the Yearly Committee:

A. Recommended system-wide priority of all public limit orders entered in a book over professional orders;

B. Recommended execution of all public orders on a time priority basis;

C. Concluded that a consolidated limit order book was an essential element of a national market system;

D. Concluded that specific design characteristics of a book would have to be decided by future developments.

VII. In the Committee's Supplementary Report, it noted that the Committee could not agree on the characteristics of a book, but noted three major design questions to be resolved:

- A. How and by whom orders are entered;
- B. Who has access to limit order information;
- C. Who receives floor brokerage.

VIII. In connection with the Commission's October 1975 hearings on off-board trading rules, a number of commentators advocated a consolidated limit order repository, and several persons submitted specific proposals, including:

A. Merrill Lynch's "Proposal for a National Market System," which recommended:

- 1. implementation of an electronic repository into which brokers could voluntarily enter orders;
- 2. time and price priority for orders entered in the repository in accordance with the Commission's suggested Auction Trading and Public Preference Rules;

B. Weeden and Co.'s proposed automated trading system ("WHAM") which was functionally identical to the Merrill Lynch proposal, including price, time, and public order priority.

C. The MSE'S "Preliminary Staff Outline of a Possible Progression of Steps to a Composite Book," proposing a series of steps including:

- 1. development of separate automated books for all specialists permitting:
 - a. automated filing;
 - b. automated execution by specialists;
 - c. automatic reporting;
 - d. the ability to transmit information to and display information on all other books;
- 2. development of a central file of all information entered on any book with access by all specialists regulated by time and price priority;

3. development of an automated system through which third market makers could also interrogate for and execute limit orders, but not enter such orders.

X.[sic] In its December Release announcing the adoption of Rule 19c-1,²⁰⁰ the Commission:

A. Indicated that an electronic book could provide an effective mechanism for integrating disparate trading markets;

B. Stated that it would propose a rule requesting SROs and securities information processors to submit plans for the design, construction, and operation of a composite book meeting the following specifications:

1. the book would store all limit orders entered through specialists or third market makers;
2. public (non-broker-dealer) orders would have priority over broker-dealer orders;
3. orders entered in the book would have price and time priority;
4. the book would be open to any broker or dealer (without disclosing the identity of order);
5. specialists and market makers could execute against orders and would be immediately notified of the result of an execution.

XI. In March 1976, the Commission and the NMAB jointly solicited comments on the characteristics of a composite book²⁰¹ and the NMAB requested views on the characteristics of a national market system.

XII. In response to this request, the Commission and NMAB received a variety of proposals, including:

A. “The National Book System, An Electronically Assisted Auction Market” by Junius Peake, Morris Mendelson, and Ralph Williams, expanding on the original automated trading system suggested by Morris Mendelson.

B. A “Discussion Paper” submitted by the NASD Suggesting that NASDAQ be modified to provide a composite book with automatic execution through dealer terminals.

C. The Report of the National Market System Committee of the SIA, advocating a consolidated limit order book linking the individual books of each specialist;

D. WHAM, an operational automated trading system for exclusive use on the CSE floor, suggested by the CSE and Weeden;

E. The NYSE proposal for an Order Indication System as a means of notifying other exchanges of a pending block transaction and Broker Representation in Markets as a means of providing access to the NYSE through floor brokers;

F. The MSE proposal for a limit order repository permitting the specialists and market makers to execute orders in the system.

XIII. On January 18, 1977, the NMAB issued the results of its study to the Commission and recommended a composite book with the following characteristics:

A. Any broker could enter orders on a voluntary basis;

B. Only specialists and market makers could execute against orders on the book;

C. Orders in the book would have price priority over orders not entered in the book but would not necessarily have time priority;

D. The book would be open to any person through vendor recall devices.

XIV. In January 1978. in its January Statement, the Commission:²⁰²

A. Reaffirmed its belief that a basic principle of a national market system is the assurance that agency orders receive the benefits of auction type trading;

B. Suggested that this principle could best be achieved through a central agency limit order file in which public limit orders can be entered and queued for execution in accordance with the auction trading principles of price and time priority;

C. Requested each of the exchanges and NASD to submit plans to establish such a file by September 30, 1978;

D. Requested each exchange to indicate its willingness to establish a composite file book by May 30, 1978.

XV. In March, 1979, in its Status Report, the Commission:²⁰³

A. Identified nationwide price protection for public limit orders as its first priority;

B. Shifted focus from requiring absolute price and time priority for limit orders to requiring price priority alone, in response to negative comments on the January Statement proposals;

C. Allowed the exchanges to experiment with enhancing the ITS to provide intermarket price protection and requested each exchange and the NASD to:

1. inform the Commission by May 1, 1979 of its willingness to provide limit order protection through the ITS;
2. submit a joint plan on the necessary ITS enhancements by September 1, 1979;
3. implement a pilot by December 31, 1980.

D. Indicated it would propose an rule prohibiting execution of orders at prices inferior to those of displayed limit orders.

XVI. In May of 1979, the Commission proposed Rule 11AcI-3 204/ which would have prohibited, as of June 1, 1981:

A. A broker-dealer from executing a trade (in a security included in a market linkage system) at an 1/8 outside the BBO unless all public limit orders at superior prices were satisfied at the limit order price;

B. A broker-dealer from executing a trade at a price 1/4 or more outside the BBO unless all public limit orders at superior prices were satisfied at the transaction price.

XVII. In letters sent during September, 1979, the ITS participants stated that limit order protection could best be provided by a Limit Order Information System ("LOIS") building on the existing ITS system.²⁰⁵

XVIII. Development of LOIS was delayed by disagreement on the concept among NYSE members, especially the upstairs and institutional traders, and the floor community. Finally, in September, 1980, the NYSE Board approved LOIS's implementation, and drafted a proposed ITS amendments and implementing rule changes which would:

A. Require specialists to aggregate and enter for display in LOIS limit orders to be protected;

B. Require brokers executing a block trade outside the BBO to reserve sufficient shares to satisfy LOIS orders, and use LOIS to generate commitments automatically at the execution price;

C. Require brokers executing a block trade to send commitments manually to satisfy superior displayed ITS quotations at the block price;

D. Establish a one year pilot encompassing ten stocks.

XIX. By December, 1980, the AMEX, BSE, MSE, and NYSE had each approved the proposed ITS amendment adopting LOIS and had filed with the Commission implementing rules for the pilot.²⁰⁶ However, implementation of the LOIS pilot developed by SIAC was impeded by lack of approval by the PSE, and initially the Phlx.

XX. In March, 1981, the ITS participants adopted trade-through rules and a block trade policy providing price protection to quotations displayed in the ITS. The Commission approved these rules in April 1981.²⁰⁷

XXI. Prompted by the PSE, on May 1, 1981, the ITS Operating Committee decided to abandon LOIS and pursue other less cumbersome and costly means of providing limit order protection.

A. In place of LOIS, the ITS Committee considered a PSE proposal which would require a broker executing a block to send a message to other markets indicating the price and asking the number of limit orders at or above that price. If he then chose to execute the block he would be required to send Commitments to satisfy the responses;

B. Alternatively, a proposal considered by the NYSE would require NYSE specialists to protect their limit orders against block trades effected at inferior prices on other market centers.

XXII. In October, 1981, the ITS Operating Committee developed an ITS Limit Order Block Procedure Experiment, similar to the PSE's proposal:

A. Under this experiment:

1. a broker executing a block at a price inferior to the BBO would use ITS to enquire, before or after the trade, the extent of limit orders superior to the block price in markets displaying quotes superior to the block price;
2. limit orders superior to the block price would receive the block price; limit orders at the block price would not be protected;
3. If the broker enquired concerning limit orders after the trade, and the amount of limit orders were more than the broker was capable of satisfying, the trade could be cancelled;

B. The experiment was not conducted by the ITS participants.

XXIV. In letters to the ITS participants in September 1982, and February, 1983, the Commission staff requested data for a sample period concerning the extent of block trades away-from-the market and the number of limit orders held by the specialists at the time of these block trades.

XXV. In December, 1982, the Commission proposed an order exposure rule, Rule 11A-1, including a requirement that the ITS participants develop a plan for exposing blocks in Rule 19c-3 securities to the market within 18 months of the Rule's effective date.²⁰⁸

XXVI. In the spring of 1983, the NYSE initiated an electronic limit order file for certain NYSE stocks. In this system:

A. Limit orders received through the DOT system are entered directly into an electronic limit display at the specialist's booth;

B. Limit orders delivered by a broker are entered manually into the display, when an order at an inferior price is keyed in the system;

C. When an order at an inferior price is keyed in, the system automatically matches it to superior limit orders, send reports, and updates the file

National Market System Securities

I. In its March 10, 1971, letter transmitting the Institutional Investor Study to Congress, the Commission first articulated the concept of a central market in "securities of national importance."²⁰⁹

II. In February 1972, the Commission published its Future Structure Statement, sketching the outlines of the evolving central market system concept:

A. The Commission indicated that the central market system primarily should involve listed stocks;

B. The Commission, however, also stated that a tandem central market system for unlisted stocks was important;

C. The Commission chose not to address whether eventually all trading in listed stocks should be limited to the central market system.²¹⁰

III. The question of what securities should be included in a central market system was addressed also in the Senate Securities Industry Study, issued in February 1973.²¹¹

A. The Study assumed that listed securities would be the focus of the central market system, but recognized that many listed securities were unsuitable for auction trading in a central market.

B. The Study also rejected an issuer's right to determine finally where its securities should trade, and suggested permitting, under certain conditions, unlisted exchange trading of certain OTC securities.

IV. On March 6, 1973, the Advisory Committee on a Central Market System published its report, setting forth two alternative approaches to the National Market System.

A. Approach I stated that a central market system Task Force should determine which listed securities should be eligible, with the ultimate objective of including all listed securities.

B. Approach II stated that to be qualified for the central market system, a security should have enough investor interest to satisfy criteria set by the governing body, including diversification of stock holdings, minimum dollar trading volume, and issuer tangible net assets and net income standards.

V. In March, 1973, the Commission, in its Policy Statement on the Structure of a Central Market System, expanded on what securities should be included in the central market system.²¹²

A. The Commission stated that initially the system should encompass only securities listed on an exchange, though eventually the system might be applied to unlisted securities;

B. It also recognized that not all, listed securities were necessarily qualified for inclusion in the system; rather, eligibility should turn on the investor interest and breadth of distribution of the shares;

C. The Commission refrained from addressing whether unlisted securities meeting qualification criteria should trade in the system without the consent of the issuer.

VI. In the 1975 Amendments, Congress:

A. Directed the Commission as part of its mandate to facilitate the establishment of a national market system, to “designate the securities or classes of securities qualified for trading in the national market system.”²¹³

B. Amended Section 12(f) of the Act to give the Commission authority to grant unlisted trading privileges to an exchange in an unlisted security, but only, among other things, if granting UTP would not impair a dealer’s ability to make markets in competition with exchanges.

VII. The Conference Report on the 1975 Amendments stated that it was “the intention of both Houses that all securities, other than exempted securities, be eligible for trading in the national market system,”²¹⁴ and the Commission was authorized to establish subsystems for different securities within the national market system.²¹⁵

VIII. In March 1976, the Commission requested comment on what securities should be included in a future composite limit order repository.²¹⁶ The Commission noted several possibilities, including:

A. All reported securities;

B. Listed securities other than options, debt, and preferred;

C. All listed securities;

D. All securities cleared by registered clearing agencies;

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- E. all securities.

IX. In response, the Commission received a variety of comments:

- A. The BSE, NYSE, and Phlx suggested limiting the composite limit order book to only reported securities;
- B. A vendor, Bunker Ramo, and the SIA argued further that the national market system itself should only include reported securities.
- C. The MSE and PSE argued that only multiply-traded securities suitable for auction trading should be included in the book, and that some QTC securities should be included under this approach.

X. In its January Statement issued in January 1978, the Commission stated its intention to designate securities qualified for trading in the national market system.²²¹

- A. The Commission reviewed the Congressional intention that qualification for trading in the national market system depend primarily on a security’s characteristics rather than an issuer’s choice of where the security should trade.
- B. It indicated preliminarily that qualified securities should include:
 - 1. listed equity securities; and
 - 2. equity securities traded OTC with national investor interest and substantial assets and earnings histories, provided that off-board trading restrictions did not apply, and that essential trading systems were in place.

C. Once qualified, these securities would be included in the consolidated last sale and quotation systems, and any other systems yet to be developed.

XI. The Commission received comments on this release from the NASD, the National Security Traders Association, and the National Association of OTC Companies, advocating issuer choice of whether securities should be designated as national market system securities, as well as proposing various standards.

XII. In its Status Report in March 1979, the Commission raised as questions:

A. Whether designation standards should be the same for listed and OTC securities;

B. Whether financial criteria concerning the issuer or trading characteristics are appropriate designation standards;

C. Whether the standards should involve administrative discretion; and

D. Whether the issuer should have a role in the selection process.²²²

XIII. In June 1979, the Commission proposed Rule 11Aa2-1 establishing designation standards for national market system (“NMS”) securities.²²³

A. Multiply-traded equity securities meeting stringent financial criteria would be designated automatically as Tier 1 securities;

B. Multiply-traded equity securities meeting similar but less stringent criteria would be designated as Tier 2 securities, on request of the issuer or two or more market centers or market makers;

C. The Commission also indicated that Tier 1 securities would be included, by rule amendment, in existing national market system facilities.

XIV. On February 17, 1981, the Commission adopted Rule 11Aa2-1 in a revised form, with a January 15, 1982 effective date for Tier 1 standards and an August 1, 1982 effective date for Tier 2 standards.²²⁴

A. Only OTC securities were made subject to the Rule, and the portions of proposed Rule 11Aa2-1 applicable to exchange securities were left outstanding;

B. Under the Rule, OTC equity securities meeting revised standards as of January 15, 1982, would be automatically designated Tier 1 securities subject to last sale and quotation reporting;

C. Securities meeting Tier 2 standards could be designated on election of the issuer;

D. The NASD was required to file a designation plan with the Commission;

E. The Commission discussed related issues, including:

1. application of the short sale rule to NMS securities;
2. inclusion of NMS securities in the NASD's CAES; and
3. price protection;

F. The Commission indicated that it would not grant unlisted trading privileges in NMS securities until it could examine the effects of transactions reporting and the effects of trading listed securities in an environment free from off-board trading restrictions.

XV. On July 24, 1981, in response to the interest of issuers of less actively traded OTC securities in becoming national market system securities, the NASD formally petitioned the Commission for amendments to Rule 11Aa2-1, which would:

A. Substantially expand the number of OTC securities eligible for Tier 2 designation;

B. Make minor technical changes to the Tier 1 standards.²²⁵

XVI. On October 1, 1981, the Commission:

A. Proposed for comment:

1. the NASD's proposed amendments;
2. the NASD's designation plan;
3. technical changes clarifying the application of the Rule to American Depository Receipts, rights, and warrants.

B. Delegated authority to approve the designation plan to the staff of the Division of Market Regulation.²²⁶

XVIII. On January 7, 1982, in response to market maker comments opposing expansion of the standards, the Commission:

- A. Deferred expansion of Tier 2 standards pending study of the initial effects of reporting of Tier 1 securities;
- B. Approved the technical amendments;
- C. Postponed the effective date of the designation of Tier 1 securities until March 1, 1982.²²⁷

XIX. Also on January 7, 1982, a Commission order approving the NASD'S designation plan was issued by the Division of Market Regulation, pursuant to delegated authority.²²⁸

XX. On February 25, 1982, the Commission:

- A. Amended Rule 11Aa2-1 to defer the effective date of Tier 1 until April 1, 1982, and defer the effective date of Tier 2 until October 1, 1982, because of technical difficulties confronting the NASD in testing enhancements to NASDAQ;
- B. Granted a temporary exemption from providing vendors with last sale reports for Tier 1 securities until May 15, 1982.²²⁹

XXI. On March 23, 1982, the Commission granted the NASD exemptions from Rule 11Ac-1, including;

- A. A temporary exemption, until October 1, 1982, from making available to vendors the highest bid and lowest offer of each market maker, to allow Instinet and other vendors to negotiate access to this data stream;
- B. An exemption from identifying specific market makers on NASDAQ Level 1 service;
- C. A temporary exemption until October 1, 1982 from making available quotation size on Level 1 service.²³⁰

XXII. On March 24, 1982, the Commission approved a transaction reporting plan providing for a transaction reporting system for NMS securities operated by the NASD.²³¹

XXIII. On April 1, 1982, last sale reporting for 41 Tier 1 securities went into effect.

XXIV. On May 14, 1982, the Commission extended the NASD's temporary exemption from providing vendors with last sale reports on Tier 1 securities until June 1, 1982.²³²

XXV. OTC last sale information was first disseminated by major vendors in mid-July, 1982.

XXVI. On September 29, 1982, the Commission deferred the effective date of Tier 2 designation from October 1, 1982, to February 1, 1983.²³³ The deferral was intended to:

A. Provide the NASD with time to draw up a plan for phasing in the large number of potential Tier 2 stocks.

B. Provide issuers with extended experience with Tier 1 trading on which to base their decision to apply for designation as Tier 2 securities.

XXVII. On October 12, 1982, the Commission extended the NASD's Quote Rule exemption until March 1, 1983, to allow the NASD to continue negotiations with Instinet concerning the quotation information subject to the Rule.²³⁴

XXVIII. On December 1, 1982, the Commission approved amendments to the NASD's Designation Plan, providing for:

A. Designation of 100 additional NMS securities in February 1983, made up of:

1. all qualified Tier 1 securities,

2. Tier 2 securities other than those in the lowest quarter of eligible securities, based on dollar trading volume, up to a total of 100 securities;

B. A period of study of the impact of designation on the markets for these securities, running from February through April, 1983;

C. If the study found no significant unforeseen adverse effects, continued phase-in of the remaining Tier 2 securities at a rate of 100 per month, beginning on May 1, 1983.²³⁵

XXIX. On February 8, 1983, an additional 100 securities became subject to last sale reporting in accordance with Rule 11Aa2-1 and the NASD's Designation Plan, increasing the total number of OTC reported securities to 184.

XXX. On March 3, 1983, the Commission extended the NASD's Quote Rule exemption a second time, to allow the NASD time to finish its technical preparations to disseminate full quotation information and to complete its negotiations with Instinet.²³⁶

XXXI. On June 17, 1983, the NASD filed fees for dissemination of full quotation information (named the "NQDS"), after negotiations with Instinet broke down.²³⁷ In response, in July 1983 Instinet challenged the proposed fee as a denial of access to quotation services under 11A(b)(5)(A) of the Act.

XXXII. On August 16, 1983, the Commission issued a release commencing a denial of access proceeding, and establishing interim fees.²³⁸ The Commission also instituted proceedings to disapprove the NASD's proposed fee.²³⁹

XXXIII. On April 17, 1984, the Commission issued a release holding the NASD's fees to be a denial of access to services²⁴⁰ and issued an accompanying release setting aside the NASD's fees in part.²⁴¹

XXXIV. On April 30, 1984, the Commission proposed, in response to an NASD petition, amendments to Rule 11Aa2-1 to incorporate as the Rule's Tier 2 eligibility criteria the standards used by the NASD for its National List.²⁴²

XXXV. On November 16, 1984, the Commission proposed changing its longstanding policy regarding OTC unlisted trading privileges ("OTC/UTP") to allow exchanges OTC/UTP in national market system securities.²⁴³

XXXVI. On December 18, 1984, the Commission amended Rule 11Aa2-1 to incorporate the NASD's proposed Tier 2 eligibility standards, increasing the number of OTC stocks eligible for designation by 1400.²⁴⁴

XXXVII. On February 11, 1985, the Commission proposed amending Rule 11Aa3-1 and 11Aa2-1 to allow exchange traded securities not reported pursuant to the CTA Plan to become national market system securities.²⁴⁵

XXXVIII. On June 2, 1985, the Commission sought comment on what categories of securities should be designated as national market system securities and in what initiatives they should be included.²⁴⁶

XXXIX. In August 1985, the NASD filed a new fee for the NQDS in response to the Commission's disapproval order.²⁴⁷

XL. On September 16, 1985, the Commission announced a change in policy to allow exchanges to obtain OTC/UTP in up to 25 national market system securities, on condition that a joint reporting plan was adopted by the NASD and the applicant exchanges, and that equivalent access was provided market makers.²⁴⁸

XLI. On September 16, 1985, the Commission also proposed amendments to its short sale rule, Rule 11a-1 to exempt trades in national market system securities traded pursuant to OTC/UTP from the Rule.²⁴⁹

ENDNOTES

¹Institutional Investor Study Report of the Securities and Exchange Commission, Summary Volume, H.R. Doc. No. 92-64, 92d Cong., 1st Sess. (March 10, 1971).

²The third market consists of non-exchange member broker-dealers who trade listed securities in the over-the-counter (“OTC”) market. The third market had its origin in the fixed commission rate structure, as institutions sought to avoid the high exchange fixed commission rates by dealing with non-exchange members in block trades. In addition, non-member firms, who in a fixed rate environment could not profitably execute agency business in listed securities on exchange markets, used the third market as the execution medium for retail-sized orders.

³Consistent with these conclusions, the Commission at that time requested the NYSE to institute competitive commission rates for orders of \$500,000 or more by April 1, 1971. The NYSE complied with this request on May 3, 1971. See Securities Exchange Act Release Nos. 9079 (February 11, 1971) and 9105 (March 11, 1971).

⁴W. Martin, “The Securities Markets, A Report with Recommendations,” submitted to the Board of Governors of the New York Stock Exchange (August 5, 1971).

⁵Securities Exchange Act Release No. 9529 (March 8, 1972).

⁶Securities Exchange Act Release No. 9530 (March 8, 1972).

⁷Letter from William J. Casey, Chairman, SEC. to Robert W. Haack, President, NYSE, March 9, 1972.

⁸The members of the Committee were: Gordon L. Teach, Chairman, William N. Clark, John R. Haire, Salim B. Lewis, Jr., William A. Lupien, Peter G.S. Mero, John A. Orb, Helen K. Steiner, Donald Stone, and Donald E. Weeden. John M. Liftin of the Commission’s staff served as Secretary.

⁹NYSE Rule 113 provides, in pertinent part, that NYSE specialists may not accept an order in any stock in which he is registered as specialist directly (i) from the company issuing the stock; (ii) from any officer, director or 10 percent shareholder of that company; (iii) from any pension or profit-sharing fund; or (iv) from any institution, such as a bank, trust company, insurance company or investment company. In addition, NYSE Rule 113 prohibits a specialist or his member firm from “popularizing,” either orally or in writing, any specialty security.

¹⁰Rule 10b-6 under the Exchange Act limits trading in securities by participants in a distribution of those securities. For a discussion of recent amendments to Rule 10b-6 in

light of changing market conditions, see Securities Exchange Act Release No. 19565 (March 4, 1983).

¹¹Subcomm. on Commerce and Finance of the House Comm. on Interstate Commerce, Securities Industry Study, 92nd Cong., 2d Sess. H.R. Rep. No. 92-1519 (1972). During the hearings, a NYSE proposal for a pilot test of an Automated Trading System was entered into the record. Pursuant to the proposed pilot program, 100 share market orders would be entered through terminals on the floor and automatically executed against the current NYSE bid and asked quote. As fully implemented, the system would permit a member to route orders directly from its upstairs communications network for automatic execution on the floor.

¹²Subcomm. on Securities of the Senate Comm. on Banking, Housing and Urban Affairs, Securities Industry Study, 93rd Cong., 1st Sess., Sen. Doc. No. 93-13 (1973).

¹³The members of the Committee were: Richard B. Walbert, Chairman, William B. Epples, Walter N. Frank, Sr., Alan Greenspan, Jerome H. Grossman, Paul R. Judy, Jack Nash, Ralph S. Saul, and John H. Schwieger. Robert C. Lewis and John M. Liftin participated from the Commission staff.

¹⁴The “fourth market” consists of trades directly between institutions outside of the traditional exchange or over-the-counter trading markets.

¹⁵See Securities Exchange Act Release Nos. 10206 (June 6, 1973), 10245 (June 28, 1973) and 10337 (August 10, 1973).

¹⁶Securities Exchange Act Release No. 10383 (September 11, 1973). See also Securities Exchange Act Release No. 10560 (December 14, 1973) in which the Commission explained its reasons for these conclusions.

¹⁷Subcomm. on Securities of the Senate Comm. on Banking, Housing and Urban Affairs, Hearings on S. 2519, 93d Cong., 1st Sess. (Comm. Print (1973)).

¹⁸Subcomm. on Securities of the Senate Comm. on Banking, Housing and Urban Affairs, Hearings on S. 3126, 93d Cong. 2d Sess (Comm. Print (1974)).

¹⁹Securities Exchange Act Release No. 10688 (March 18, 1974).

²⁰Securities Exchange Act Release No. 10790 (May 10, 1974). The members of the Committee were: Alexander Yearly, Chairman, Kenneth S. Axelson, M. Colyer Crum, Robert Gardiner, David B. Heller, Boyd L. Jefferies, Jon B. Lovelace, Jr., C. Rader McCulley, Ray F. Myers, Felix Rohatyn, and Donald Stone. Lee A. Pickard, Director of the Division of Market Regulation, participated from the Commission staff.

²¹Senate Comm. on Banking, Housing and Urban affairs, Report to Accompany S. 2519, 93d Cong., 2d Sess. Sen. Rep. No. 93-865 (May 22, 1974).

- ²²Securities Exchange Act Release No. 10670 (March 7, 1974).
- ²³Securities Exchange Act Release No. 10751 (April 23, 1974).
- ²⁴Securities Exchange Act Release No. 10986 (August 27, 1974).
- ²⁵Securities Exchange Act Release No. 11019 (September 19, 1974).
- ²⁶Securities Exchange Act Release No. 11073 (October 24, 1974).
- ²⁷Securities Exchange Act Release No. 11093 (November 8, 1974).
- ²⁸Securities Exchange Act Release No. 11203 (January 23, 1975). The rule provided for the immediate elimination of fixed rates for retail customers and institutions; the elimination of fixed intra-members rates was deferred until May 1, 1976.
- ²⁹Securities Exchange Act Release No. 11131 (December 11, 1974)
- ³⁰Subcomm. on Securities of the Senate Comm. on Banking, Housing and Urban Affairs, Hearings on S. 249, 94th Cong., 1st Sess. (Comm. Print) (1975).
- ³¹House Comm. on Interstate and Foreign Commerce, Report on H.R. 4111, H.R. Rep. NO. 94-123, 94th Cong., 1st Sess. (1975).
- ³²Senate Comm. on Banking, Housing and Urban Affairs, Report to accompany S. 249, Sen. Rep. 94-75, 94th Cong., 1st Sess. (1975).
- ³³Comm. on Conference, Conference Report to accompany S. 249, H.R. Rep. No. 94-229, 94th Cong., 1st Sess. (1975).
- ³⁴Pub. L. No. 94-29 (June 4, 1975), 89 Stat. 97, [1975] U.S. Code Cong. & Ad. News 97.
- ³⁵Securities Exchange Act Release No. 11628 (September 2, 1975), 40 FR 41808.
- ³⁶Securities Exchange Act Release No. 11942 (December 19, 1975), 41 FR 4507. The release also clarified that off-board trading rules were not applicable to odd-lot transactions. Id. at n. 91.
- ³⁷Securities Exchange Act Release No. 13662 (June 23, 1977), 42 FR 33510.
- ³⁸Securities Exchange Act Release No. 13542 (May 13, 1977).
- ³⁹Securities Exchange Act Release No. 13912 (August 31, 1977).

⁴⁰Securities Exchange Act Release No. 14325 (December 30, 1977), 43 FR 1327. The rule amendment permitted agency transactions to be effected through Instinet, an institutional trading system registered with the Commission as a broker-dealer. The Commission also noted that it was continuing its consideration of issues related to the Rule 19c-2 proposal.

⁴¹Securities Exchange Act Release No. 14416 (January 26, 1978), 43 FR 4354.

⁴²Securities Exchange Act Release No. 14415 (January 26, 1978), 43 FR 4342. For a more complete description of the Commission's quotation rule, see discussion at pp. 45-54 infra.

⁴³Securities Exchange Act Release No. 14661 (April 14, 1978), 43 FR 17419. For a more complete description of the ITS, see discussion at pp. 54-66, infra.

⁴⁴Securities Exchange Act Release No. 14674 (April 18, 1978), 43 FR 17894.

⁴⁵Securities Exchange Act Release No. 14885 (June 23, 1978), 15 S.E.C. Doc. 138.

⁴⁶Securities Exchange Act Release No. 15376 (December 1, 1978), 43 FR 58664.

⁴⁷See notes 38-39 and accompanying text.

⁴⁸Chairman Harold Williams and Commissioners Philip Loomis and Roberta Karmel.

⁴⁹Commissioners John Evans and Irving Pollack.

⁵⁰43 FR at 58669.

⁵¹Securities Exchange Act Release No. 15671 (March 22, 1979), 44 FR 20360.

⁵²Securities Exchange Act Release No. 15769, (April 26, 1979), 44 FR 26688.

⁵³Transcript of Hearings re Off-Board Trading Rules File No. 4-220 (June 29, 1979) at 840.

⁵⁴Securities Exchange Act Release No. 15926 (June 15, 1979) 44 FR 36912. For a more complete description of this rule, see discussion at pp. 84-93, infra.

⁵⁵Securities Exchange Act Release No. 16888 (June 11, 1980), 45 FR 41125.

⁵⁶Securities Exchange Act Release No. 16889 (June 11, 1980), 45 FR 41156.

⁵⁷Securities Exchange Act Release No. 17516 (February 5, 1981), 46 FR 12379.

⁵⁸Securities Exchange Act Release No. 17549 (February 17, 1981), 46 FR 13992.

⁵⁹In general, the trade-through rules provide that any market whose published quotation was traded-through may complain to the ITS market center responsible for the trade-through. Upon receipt of the complaint, the responsible ITS market is obligated to take corrective action, which normally involves either cancellation of the trade or satisfaction of the published quotation of the market that was traded-through.

⁶⁰Securities Exchange Act Release Nos. 17703 (April 9, 1981) and 17704 (April 9, 1981), 46 FR 22520.

⁶¹Securities Exchange Act Release No. 17744 (April 21, 1981), 46 FR 23856.

⁶²Securities Exchange Act Release No. 18738 (May 13, 1982), 47 ER 22376.

⁶³Securities Exchange Act Release No. 19315 (December 9, 1982), 47 FR 56236.

⁶⁴Securities Exchange Act Release No. 19372 (December 23, 1982), 47 FR 58287.

⁶⁵Securities Exchange Act Release No. 19371 (December 23, 1982), 47 FR 58411.

⁶⁶Securities Exchange Act Release NO. 19456 (January 27, 1983), 48 FR 4938.

⁶⁷Securities Exchange Act Release No. 20079 (August 12, 1983), 48 FR 38250.

⁶⁸Securities Exchange Act Release Nos. 19825 (May 31, 1983), 48 FR 25043, and 19970 (July 14, 1983), 48 FR 33103.

⁶⁹Securities Exchange Act Release No. 21583 (December 18, 1984), 50 FR 730.

⁷⁰Securities Exchange Act Release No. 22127 (June 21, 1985), 50 FR 26584.

⁷¹Securities Exchange Act Release No. 22397 (September 12, 1985), 50 FR 37648

⁷²Securities Exchange Act Release No. 22412 (September 16, 1985), 50 FR 38235.

⁷³Securities Exchange Act Release No. 22413 (September 16, 1985), 50 FR 38515.

⁷⁴Securities Exchange Act Release No. 9530 (March 8, 1972).

⁷⁵Section 19(b) of the Act, as then in effect, permitted the Commission, after making an appropriate request in writing to an exchange that such exchange effect specified changes in its rules and practices, to alter or supplement the rules of exchanges with respect to specified areas, including “the reporting of transactions on the exchange and upon tickers maintained by or with the consent of the exchange . . .” The authority of the Commission to amend exchange rules was expanded by the 1975 Amendments and recodified in Section 19(c) of the Act, which now permits the Commission, in accordance with the

specific procedural requirements of that section, to amend the rules of a self-regulatory organization “as the Commission deems necessary or appropriate to insure the fair administration of the self-regulatory organization, to conform its rules to requirements of [the Act] and the rules and regulations thereunder applicable to such organizations, or otherwise in furtherance of the purposes of [the Act] . . .”

⁷⁶Securities Exchange Act Release No. 9731 (August 14, 1972).

⁷⁷Securities Exchange Act Release No. 9850 (November 8, 1972), 37 FR 24172.

⁷⁸See Securities Exchange Act Release Nos. 9924 (January 3, 1973) and 9981 (February 2, 1973).

⁷⁹Securities Exchange Act Release No. 10026 (March 5, 1973).

⁸⁰Securities Exchange Act Release No. 10218 (June 13, 1973).

⁸¹Securities Exchange Act Release No. 10671 (March 8, 1974).

⁸²Securities Exchange Act Release No. 10668 (March 6, 1974).

⁸³Securities Exchange Act Release No. 10787 (May 10, 1974).

⁸⁴Securities Exchange Act Release No. 10788 (May 10, 1974).

⁸⁵Securities Exchange Act Release No. 10851 (June 13, 1974), 39 FR 22194.

⁸⁶Securities Exchange Act Release No. 11030 (September 27, 1974).

⁸⁷Securities Exchange Act Release No. 11036 (October 3, 1974).

⁸⁸Securities Exchange Act Release No. 11056 (October 17, 1974).

⁸⁹Securities Exchange Act Release No. 11061 (October 18, 1974).

⁹⁰Securities Exchange Act Release No. 11097 (November 13, 1974).

⁹¹Securities Exchange Act Release No. 11255 (February 18, 1975).

⁹²Securities Exchange Act Release No. 11273 (March 3, 1975).

⁹³Securities Exchange Act Release No. 11276 (March 5, 1975).

⁹⁴Securities Exchange Act Release No. 11317 (March 28, 1975).

⁹⁵Securities Exchange Act Release No. 10388 (September 12, 1973).

- ⁹⁶Securities Exchange Act Release No. 11385 (April 30, 1975).
- ⁹⁷Securities Exchange Act Release No. 11461 (June 11, 1975).
- ⁹⁸Securities Exchange Act Release No. 11472 (June 13, 1975).
- ⁹⁹Securities Exchange Act Release No. 11468 (June 12, 1975).
- ¹⁰⁰Securities Exchange Act Release No. 12161 (March 3, 1976).
- ¹⁰¹Securities Exchange Act Release No. 12432 (May 12, 1976).
- ¹⁰²Securities Exchange Act Release No. 12433 (May 12, 1976).
- ¹⁰³Securities Exchange Act Release No. 14416 (January 26, 1978), 43 FR 4354.
- ¹⁰⁴Securities Exchange Act Release No. 14651 (April 11, 1978).
- ¹⁰⁵Securities Exchange Act Release No. 14662 (April 14, 1978).
- ¹⁰⁶Securities Exchange Act Release No. 15250 (October 20, 1978), 43 FR 50606.
- ¹⁰⁷Securities Exchange Act Release No. 15251 (October 20, 1978), 43 FR 50615.
- ¹⁰⁸Securities Exchange Act Release No. 16589 (February 19, 1980), 45 FR 12377.
- ¹⁰⁹Securities Exchange Act Release No. 16590 (February 19, 1980), 45 FR 12391.
- ¹¹⁰Securities Exchange Act Release No. 16924 (June 24, 1980), 45 FR 44922.
- ¹¹¹Securities Exchange Act Release No. 16960 (July 7, 1980), 45 FR 47291.
- ¹¹²Gross reporting requires a transaction to be printed exclusive of any commission, commission equivalent, mark-up or differential charged in connection with the transaction.
- ¹¹³Securities Exchange Act Release No. 16983 (July 16, 1980), 45 FR 49414.
- ¹¹⁴Securities Exchange Act Release No. 17368 (December 11, 1980), 45 FR 83477.
- ¹¹⁵Securities Exchange Act Release No. 17983 (July 30, 1981), 46 FR 39923.
- ¹¹⁶Securities Exchange Act Release No. 18066 (August 26, 1981), 46 FR 43962.
- ¹¹⁷Securities Exchange Act Release No. 20386 (November 17, 1983), 48 FR 53616

- ¹¹⁸Securities Exchange Act Release No. 9529 (March 8, 1972).
- ¹¹⁹Securities Exchange Act Release No. 10969 (August 14, 1974).
- ¹²⁰Securities Exchange Act Release No. 11288 (March 11, 1975).
- ¹²¹Securities Exchange Act Release No. 11406 (May 7, 1975).
- ¹²²Securities Exchange Act Release No. 12670 (July 29, 1976), 41 FR 32856. The three-minute provision would have relieved brokers and dealers responsible for published quotations of their obligation to effect transactions at those quotations for a three-minute period following either a transaction in the particular market center involved or the reporting of a transaction on the consolidated tape.
- ¹²³Securities Exchange Act Release No. 13626 (June 14, 1977), 42 FR 32418.
- ¹²⁴Securities Exchange Act Release No. 14415 (January 26, 1978), 43 FR 4342.
- ¹²⁵Securities Exchange Act Release No. 14711 (April 27, 1978), 43 FR 18556.
- ¹²⁶Securities Exchange Act Release No. 15009 (July 28, 1978), 43 FR 34851.
- ¹²⁷Securities Exchange Act Release No. 15011 (July 28, 1978), 43 FR 33983.
- ¹²⁸Securities Exchange Act Release No. 15012 (July 28, 1978), 43 FR 33978.
- ¹²⁹Securities Exchange Act Release No. 15010 (July 28, 1978), 43 FR 33976.
- ¹³⁰Securities Exchange Act Release No. 15511 (January 24, 1979), 44 FR 6230.
- ¹³¹Securities Exchange Act Release No. 15747 (April 19, 1979), 17 S.E.C. Doc. 304.
- ¹³²Securities Exchange Act Release No. 15771 (April 26, 1979), 44 FR 26067.
- ¹³³Securities Exchange Act Release No. 16446 (December 21, 1979), 44 FR 76896.
- ¹³⁴Securities Exchange Act Release No. 16518 (January 22, 1980), 45 FR 6521.
- ¹³⁵Securities Exchange Act Release No. 17583 (February 27, 1981), 46 FR 15713.
- ¹³⁶Securities Exchange Act Release No. 17703 (April 9, 1981).
- ¹³⁷Securities Exchange Act Release No. 17704 (April 9, 1981), 46 FR 22520.
- ¹³⁸Securities Exchange Act Release No. 18019 (August 7, 1981), 46 FR 40961.

- ¹³⁹Securities Exchange Act Release No. 18482 (February 11, 1982), 47 FR 7399.
- ¹⁴⁰Securities Exchange Act Release No. 19249 (November 17, 1982), 47 FR 53552.
- ¹⁴¹Securities Exchange Act Release No. 20385 (November 17, 1983), 48 FR 53615.
- ¹⁴²Securities Exchange Act Release No. 14416 (January 26, 1978), 43 FR 4354.
- ¹⁴³Securities Exchange Act Release No. 14661 (April 14, 1978), 43 FR 17419.
- ¹⁴⁴Securities Exchange Act Release No. 14662 (April 14, 1978), 43 FR 17422.
- ¹⁴⁵Letter to Chairman Williams from Gordon Mackim, President, NASD, dated August 1, 1978. For a description of NORS, see pg. 70, infra.
- ¹⁴⁶Letter to Richard D. Niehoff, President, CSE, from Robert Hall, Chairman, ITS Operating Committee, dated October 1978.
- ¹⁴⁷Securities Exchange Act Release No. 15058 (August 11, 1978), 43 FR 36732.
- ¹⁴⁸Securities Exchange Act Release No. 15059 (August 11, 1978), 43 FR 36736.
- ¹⁴⁹See e.g., Letter to Gordon Mackim, President, NASD, from John Phelan, Vice Chairman, NYSE, dated August 10, 1979.
- ¹⁵⁰Transcript of Hearings re Off-Board Trading Rules, File No. 4-220, (June 20, 1979), at 839.
- ¹⁵¹Securities Exchange Act Release No. 16214 (September 21, 1979), 44 FR 56069
- ¹⁵²Letter to John Phelan, NYSE, from Gordon Mackim, NASD, dated September 28, 1979.
- ¹⁵³Letter to Gordon Mackim, NASD, from John Phelan, NYSE, dated December 4, 1979.
- ¹⁵⁴Letter to Donald Kittei, Sr. Vice President, NYSE from K. Richard D. Niehoff, President, CSE, dated October 1, 1979.
- ¹⁵⁵Letter to K. Richard D. Niehoff, CSE, from Donald Kittel, NYSE, dated February 22, 1980.
- ¹⁵⁶Letter to John Phelan, NYSE, from Gordon Mackim, NASD, dated December 26, 1979; letter to Gordon Mackim, NASD, from John Phelan, NYSE, dated January 18, 1980; letter to John Phelan, NYSE, from Gordon Mackim, NASD, dated April, 1980; letter to Gordon Mackim, NASD, from John Phelan, NYSE, dated May 5, 1980.

¹⁵⁷Letter to K. Richard D. Niehoff, CSE, from Donald Kittel, NYSE, dated May 6, 1980.

¹⁵⁸Letter to John Phelan, Vice Chairman, NYSE, from Douglas Scarff, Director, Division of Market Regulation, dated May 20, 1980.

¹⁵⁹Securities Exchange Act Release No. 16888 (June 11, 1980), 44 FR 41125.

¹⁶⁰Letter to Douglas Scarff, Director, Division of Market Regulation, from Donald Calvin, NYSE, dated January 9, 1981.

¹⁶¹Securities Exchange Act Release No. 17532 (February 10, 1981), 46 FR 12919.

¹⁶²Securities Exchange Act Release No. 17702 (April 9, 1981).

¹⁶³Securities Exchange Act Release No. 17516 (February 5, 1981), 46 FR 12379.

¹⁶⁴“A Monitoring Report on the Operation of the Intermarket Trading System” (February 1981).

¹⁶⁵See note 59 supra.

¹⁶⁶As discussed at pg. 49 supra, the BSE, MSE, and PSE disseminate quotations in many reported securities through the use of a computerized quotation system named Autoquote, developed and operated by Quotron Systems, Inc.; the Phlx, on the other hand, uses its own computerized system for similar purposes. The term “Autoquote” is used to refer to these systems collectively. Autoquote systems permit specialists on the various regional exchanges to track the quotations of the primary exchanges and to disseminate quotations automatically in response to changes in those quotations.

¹⁶⁷The ITS trade-through rule was approved in Securities Exchange Act Release No. 17703 (April 9, 1981). The individual exchange rules were approved in Securities Exchange Act Release No. 17704 (April 9, 1981), 46 FR 22520.

¹⁶⁸Securities Exchange Act Release No. 17744 (April 21, 1981), 46 FR 23856.

¹⁶⁹Securities Exchange Act Release No. 18536 (March 4, 1982), 47 FR 10658.

¹⁷⁰Securities Exchange Act Release No. 18537 (March 4, 1982), 47 FR 10682.

¹⁷¹Securities Exchange Act Release No. 18713 (May 6, 1982), 47 FR 20413.

¹⁷²Securities Exchange Act Release No. 18738 (May 13, 1982), 47 FR 22376.

¹⁷³“A Monitoring Report on the Operation of the Intermarket Trading System: 1978-1981” (June, 1982).

- ¹⁷⁴Securities Exchange Act Release No. 19249 (November 17, 1982), 47 FR 53552.
- ¹⁷⁵Securities Exchange Act Release No. 19372 (December 23, 1982), 47 FR 58287.
- ¹⁷⁶Securities Exchange Act Release No. 19371 (December 23, 1982), 47 FR 58411.
- ¹⁷⁷Securities Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4938.
- ¹⁷⁸Securities Exchange Act Release Nos. 19825 (May 3, 1983), 48 FR 25043, and 19970 (July 14, 1983), 48 FR 33103
- ¹⁷⁹Securities Exchange Act Release No. 22430 (September 20, 1985), 50 FR 39209.
- ¹⁸⁰Securities Exchange Act Release No. 14416 (January 26, 1978), 43 FR 4354.
- ¹⁸¹Securities Exchange Act Release No. 14885 (June 23, 1978), 15 S.E.C. Doc. 138.
- ¹⁸²Securities Exchange Act Release No. 15671 (March 22, 1979), 44 FR 20360.
- ¹⁸³Testimony of William A. Schreyer, President, Merrill Lynch, at the House Joint Oversight Hearings on the Progress toward the Development of a National System, September 2, 1979.
- ¹⁸⁴Letter to Donald Kittell, Executive Vice President, NYSE, from John Weithers, Executive Vice President, MSE, dated November 28, 1979.
- ¹⁸⁵Securities Exchange Act Release No. 15812 (May 17, 1979), 44 FR 28904.
- ¹⁸⁶Securities Exchange Act Release No. 16649 (March 13, 1980), 45 FR 18541.
- ¹⁸⁷Securities Exchange Act Release No. 18742 (May 17, 1982), 47 FR 22438.
- ¹⁸⁸Securities Exchange Act Release No. 18513 (February 25, 1982), 47 FR 9124.
- ¹⁸⁹See Securities Exchange Act Release No. 19392 (January 3, 1983), 48 FR 1582.
- ¹⁹⁰Securities Exchange Act Release No. 19047 (September 14, 1982), 47 FR 41896.
- ¹⁹¹Securities Exchange Act Release No. 19858 (June 9, 1983), 48 FR 27872.
- ¹⁹²Securities Exchange Act Release No. 20028 (August 1, 1983), 48 FR 36046.
- ¹⁹³Securities Exchange Act Release No. 20350 (November 4, 1983), 48 FR 51722.
- ¹⁹⁴Securities Exchange Act Release No. 21197 (August 2, 1984), 49 FR 31792.

¹⁹⁵Securities Exchange Act. Release No. 21383 (October 9, 1984), 49 FR 40159.

¹⁹⁶Securities Exchange Act Release No. 21675 (January 18, 1985), 50 FR 21675.

¹⁹⁷SOES was permanently approved in Securities Exchange Act Release No. 21742 (February 12, 1985), 50 FR 7432

¹⁹⁸Securities Exchange Act Release No. 22327 (August 13, 1985), 50 FR 33662.

¹⁹⁹See, e.g., M. Mendelson, "From Automated Quotes to Automated Trading," a paper prepared for discussion at the June 1971 meeting of the Advisory Council for the Center for Study of Financial Institutions, University of Pennsylvania Law School.

²⁰⁰Securities Exchange Act Release No. 11942 (December 19, 1975), 41 FR 4507.

²⁰¹Securities Exchange Act Release No. 12158 (March 2, 1976), 9 S.E.C. Doc. 76.

²⁰²Securities Exchange Act Release No. 14416 (January 26, 1978), 43 FR 4354.

²⁰³Securities Exchange Act Release No. 15671 (March 22, 1979), 44 FR 20360.

²⁰⁴Securities Exchange Act Release No. 15770 (April 26, 1979), 44 FR 26692.

²⁰⁵See, e.g., Letter to Andrew M. Klein, Director, Division of Market Regulation, from William M. Batten, President, NYSE, dated September 7, 1979.

²⁰⁶See, e.g., Securities Exchange Act Release No. 17194 (October 6, 1980), 45 FR 67494.

²⁰⁷Securities Exchange Act Release No. 17704 (April 9, 1981), 46 FR 22520.

²⁰⁸Securities Exchange Act Release No. 19372 (December 23, 1982), 47 FR 58287.

²⁰⁹Institutional Investor Study Report, B.R. Doc. No. 92-64, 92nd Cong., 1st Sess., Pt. 1, at XXIV-XXV (March 10, 1971).

²¹⁰See, Future Structure of the Securities Markets, 37 FR 5286 at 87 (February 2, 1972).

²¹¹Subcomm. on Securities of the Senate Comm. on Banking, Housing and Urban Affairs, Securities Industry Study, 93rd Cong., 1st Sess. Sen. Doc. No. 93-13 (1973).

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SEC, Policy Statement on the Structure of a Central Market System, reprinted in Securities Exchange Act Amendments of 1973, Hearings on H.R. 5050 and 340 Bef. the Subcomm. on Com. & Fin, of the H. Comm. on Interstate and For. Commerce, Ser. No. 93-52, Pt. 3, 93rd Cong., 1st Sess. at 912 (1974).

- ²¹³Section 11A(a)(2) of the Act.
- ²¹⁴Committee of Conference, Conference Report to Accompany S. 249, B.R. Rep. No. 94-299, 94th Cong., 1st Sess. 92 (1975).
- ²¹⁵Section 11A(a)(2) of the Act.
- ²¹⁶Securities Exchange Act Release No. 12159 (March 2, 1976), 9 S.E.C. Doc. 76
- ²¹⁷Section 11A(a)(2) of the Act.
- ²¹⁸Committee of Conference, Report to Accompany S. 249, H.R. Rep. No. 94-299, 94th Cong., 1st Sess. 92 (1975).
- ²¹⁹Section 11A(a)(2) of the Act.
- ²²⁰Securities Exchange Act Release No. 12158 (March 2, 1976) 9 S.E.C. Doc. 78.
- ²²¹Securities Exchange Act Release No, 14416 (January 26, 1978), 43 FR 4354.
- ²²²Securities Exchange Act Release No. 15671 (March 22, 1979), 44 FR 20360 at 20367.
- ²²³Securities Exchange Act Release No. 15926 (June 15, 1979), 44 FR 36912.
- ²²⁴Securities Exchange Act Release No. 17549 (February 17, 1981), 46 FR 13992.
- ²²⁵See Letter from S. William Broka, Secretary, NASD, to George A. Fitzsimmons, Secretary, SEC, dated July 24, 1981.
- ²²⁶Securities Exchange Act Release No. 18131 (October 1, 1981), 46 FR 49594
- ²²⁷Securities Exchange Act Release No. 18397 (January 7, 1982), 47 FR 2079.
- ²²⁸Securities Exchange Act Release No. 18399 (January 7, 1982), 47 FR 2226.
- ²²⁹Securities Exchange Act Release No. 18514 (February 25, 1982), 47 FR 9388.
- ²³⁰Securities Exchange Act Release No. 18585 (March 23, 1982), 47 FR 13265.
- ²³¹Securities Exchange Act Release No. 18590 (March 24, 1982), 47 FR 13617.
- ²³²Securities Exchange Act Release No. 18740 (May 14, 1982), 47 FR 21944.
- ²³³Securities Exchange Act Release No. 19092 (September 29, 1982), 47 FR 45002.

- ²³⁴Securities Exchange Act Release No. 19118 (October 12, 1982), 47 FR 46793.
- ²³⁵Securities Exchange Act Release No. 19286 (December 1, 1982), 47 FR 55357.
- ²³⁶Securities Exchange Act Release No. 19564 (March 3, 1983), 48 FR 10175.
- ²³⁷Securities Exchange Act Release No. 19889 (June 17, 1983), 48 FR 29086.
- ²³⁸Securities Exchange Act Release No. 20088 (August 16, 1983), 48 FR 38124.
- ²³⁹Securities Exchange Act Release No. 20089 (August 16, 1983), 48 FR 38131.
- ²⁴⁰Securities Exchange Act Release No. 20874 (April 17, 1984), 49 FR 17640.
- ²⁴¹Securities Exchange Act Release No. 20873 (April 17, 1984), 49 FR 17653.
- ²⁴²Securities Exchange Act Release No. 20902 (April 30, 1984), 49 FR 19314.
- ²⁴³Securities Exchange Act Release No. 21498 (November 16, 1984), 49 FR 46156.
- ²⁴⁴Securities Exchange Act Release No. 21583 (December 18, 1984), 50 FR 730.
- ²⁴⁵Securities Exchange Act Release No. 21703 (February 11, 1985), 50 FR 7065.
- ²⁴⁶Securities Exchange Act Release No. 22127 (June 21, 1985), 50 FR 26584.
- ²⁴⁷Securities Exchange Act Release No. 22376 (August 30, 1985), 50 FR 36692.
- ²⁴⁸Securities Exchange Act Release No. 22412 (September 16, 1985), 50 FR 38235.
- ²⁴⁹Securities Exchange Act Release No. 22414 (September 16, 1985), 50 FR 38671.