

(d) *Retransmission of transaction reports or last sale data.* On and after July 5, 1980, notwithstanding any provision of any effective transaction reporting plan, no exchange or association may, either individually or jointly, by rule, stated policy or practice, transaction reporting plan or otherwise, prohibit, condition or otherwise limit, directly or indirectly, the ability of any vendor to retransmit, for display in moving tickers, transaction reports or last sale data made available pursuant to any effective transaction reporting plan: *Provided, however,* That an exchange or association may, by means of an effective transaction reporting plan, condition such retransmission upon appropriate undertakings to ensure that any charges for the distribution of transaction reports or last sale data in moving tickers permitted by paragraph (e) of this section are collected.

(e) *Charges.* Nothing in this section shall preclude any exchange or association, separately or jointly, pursuant to the terms of an effective transaction reporting plan, from imposing reasonable, uniform charges (irrespective of geographic location) for distribution of transaction reports or last sale data.

(f) *Appeals.* The Commission may, in its discretion, entertain appeals in connection with the implementation or operation of any effective transaction reporting plan in accordance with the provisions of paragraph (e) of § 240.11Aa3-2.

(g) *Exemptions.* The Commission may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any exchange, association, broker, dealer or specified security if the Commission determines that such exemption is consistent with the public interest, the protection of investors and the removal of impediments to, and perfection of

the mechanisms of, a national market system.

(Secs. 2, 3, 6, 9, 10, 15, 17 and 23, Pub. L. 78-291, 48 Stat. 881, 882, 885, 889, 891, 895, 897 and 901, as amended by secs. 2, 3, 4, 11, 14 and 18, Pub. L. 94-29, 89 Stat. 97, 104, 121, 137 and 155 (15 U.S.C. 78b, 78c, 78f, 78i, 78j, 78o, 78q and 78w); sec. 15A, as added by sec. 1, Pub. L. 75-719, 52 Stat. 1070, as amended by sec. 12, Pub. L. 94-29, 89 Stat. 127 (15 U.S.C. 78-3); sec. 11A, as added by sec. 7, Pub. L. 94-29, 89 Stat. 111 (15 U.S.C. 78k-1); 15 U.S.C. 78a *et seq.*, as amended by Pub. L. 84-29 (June 4, 1975) and by Pub. L. 98-38 (June 6, 1983), particularly secs. 11A, 15, 19 and 23 thereof (15 U.S.C. 78k-1, 78o, 78s and 78w))

[45 FR 12388, Feb. 26, 1980, as amended at 46 FR 14006, Feb. 25, 1981; 46 FR 15872, Mar. 10, 1981; 48 FR 53690, Nov. 29, 1983; 50 FR 38518, Sept. 23, 1985; 52 FR 24153, June 29, 1987; 61 FR 48328, Sept. 12, 1996]

§ 240.11Aa3-2 Filing and amendment of national market system plans.

(a) *Definitions.* For purposes of this section, (1) The term *national market system plan* shall mean any joint self-regulatory organization plan in connection with

(i) The planning, development, operation or regulation of a national market system (or a subsystem thereof) or one or more facilities thereof, or

(ii) The development and implementation of procedures and/or facilities designed to achieve compliance by self-regulatory organizations and their members with any section of this subpart promulgated pursuant to section 11A of the Act.

(2) The term *effective national market system plan* shall mean any national market system plan approved by the Commission (either temporarily or on a permanent basis) pursuant to this section.

(3) The term *self-regulatory organization* shall mean any national securities exchange ("exchange") or national securities association ("association").

(4) The term *joint self-regulatory organization plan* shall mean a plan as to which two or more self-regulatory organizations, acting jointly, are sponsors.

(5) The term *sponsors*, when used in connection with a national market system plan, shall mean any self-regulatory organization which is a signatory to such plan and has agreed to act in accordance with the terms of the plan.

(6) The term *participants*, when used in connection with a national market system plan, shall mean any self-regulatory organization which has agreed to act in accordance with the terms of the plan but which is not a signatory of such plan.

(7) The term *plan processor* shall mean any self-regulatory organization or securities information processor acting as an exclusive processor in connection with the development, implementation and/or operation of any facility contemplated by an effective national market system plan.

(8) The term *vendor* shall have the meaning provided in §240.11Aa3-1 (Rule 11Aa3-1 under the Act).

(b) *Filing of national market system plans and amendments thereto.* (1) Any two or more self-regulatory organizations, acting jointly, may file a national market system plan or may propose an amendment to an effective national market system plan (“proposed amendment”) by submitting the text of the plan or amendment to the Secretary of the Commission, together with a statement of the purpose of such plan or amendment and, to the extent applicable, the documents and information required by paragraphs (b)(4) and (5) of this section.

(2) The Commission may propose amendments to any effective national market system plan by publishing the text thereof, together with a statement of the purpose of such amendment, in accordance with the provisions of paragraph (c) of this section.

(3) Self-regulatory organizations are authorized to act jointly in (i) planning, developing, and operating any national market subsystem or facility contemplated by a national market system plan, (ii) preparing and filing a national market system plan or any amendment thereto, or (iii) implementing or administering an effective national market system plan.

(4) Every national market system plan filed pursuant to this section, or

any amendment thereto, shall be accompanied by (i) copies of all governing or constituent documents relating to any person (other than a self-regulatory organization) authorized to implement or administer such plan on behalf of its sponsors and (ii), to the extent applicable,

(A) A detailed description of the manner in which the plan or amendment, and any facility or procedure contemplated by the plan or amendment, will be implemented;

(B) A listing of all significant phases of development and implementation (including any pilot phase) contemplated by the plan or amendment, together with the projected date of completion of each phase;

(C) An analysis of the impact on competition of implementation of the plan or amendment or of any facility contemplated by the plan or amendment;

(D) A description of any written understandings or agreements between or among plan sponsors or participants relating to interpretations of the plan or conditions for becoming a sponsor or participant in the plan; and

(E) In the case of a proposed amendment, a statement that such amendment has been approved by the sponsors in accordance with the terms of the plan.

(5) Every national market system plan, or any amendment thereto, filed pursuant to this section shall include a description of the manner in which any facility contemplated by the plan or amendment will be operated. Such description shall include, to the extent applicable,

(i) The terms and conditions under which brokers, dealers, and/or self-regulatory organizations will be granted or denied access (including specific procedures and standards governing the granting or denial of access);

(ii) The method by which any fees or charges collected on behalf of all of the sponsors and/or participants in connection with access to, or use of, any facility contemplated by the plan or amendment will be determined and imposed (including any provision for distribution of any net proceeds from such fees or charges to the sponsors and/or participants) and the amount of such fees or charges;

(iii) The method by which, and the frequency with which, the performance of any person acting as plan processor with respect to the implementation and/or operation of the plan will be evaluated; and

(iv) The method by which disputes arising in connection with the operation of the plan will be resolved.

(6) In connection with the selection of any person to act as plan processor with respect to any facility contemplated by a national market system plan (including renewal of any contract for any person to so act), the sponsors shall file with the Commission a statement identifying the person selected, describing the material terms under which such person is to serve as plan processor, and indicating the solicitation efforts, if any, for alternative plan processors, the alternatives considered and the reasons for selection of such person.

(7) Any national market system plan (or any amendment thereto) which is intended by the sponsors to satisfy a plan filing requirement contained in any other section of this subpart shall, in addition to compliance with this section, also comply with the requirements of such other section.

(c) *Effectiveness of national market system plans.* (1) The Commission shall publish notice of the filing of any national market system plan, or any proposed amendment to any effective national market system plan (including any amendment initiated by the Commission), together with the terms of substance of the filing or a description of the subjects and issues involved, and shall provide interested persons an opportunity to submit written comments. No national market system plan, or any amendment thereto, shall become effective unless approved by the Commission or otherwise permitted in accordance with paragraph (c)(3) of this section.

(2) Within 120 days of the date of publication of notice of filing of a national market system plan or an amendment to an effective national market system plan, or within such longer period as the Commission may designate up to 180 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or

as to which the sponsors consent, the Commission shall approve such plan or amendment, with such changes or subject to such conditions as the Commission may deem necessary or appropriate, if it finds that such plan or amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act. Approval of a national market system plan, or an amendment to an effective national market system plan (other than an amendment initiated by the Commission), shall be by order. Promulgation of an amendment to an effective national market system plan initiated by the Commission shall be by rule.

(3) A proposed amendment may be put into effect upon filing with the Commission if designated by the sponsors as:

(i) Establishing or changing a fee or other charge collected on behalf of all of the sponsors and/or participants in connection with access to, or use of, any facility contemplated by the plan or amendment (including changes in any provision with respect to distribution of any net proceeds from such fees or other charges to the sponsors and/or participants);

(ii) Concerned solely with the administration of the plan, or involving the governing or constituent documents relating to any person (other than a self-regulatory organization) authorized to implement or administer such plan on behalf of its sponsors; or

(iii) Involving solely technical or ministerial matters. At any time within 60 days of the filing of any such amendment, the Commission may summarily abrogate the amendment and require that such amendment be refiled in accordance with paragraph (b)(1) of this section and reviewed in accordance with paragraph (c)(2) of this section, if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or the maintenance of fair and orderly markets, to remove impediments to, and perfect mechanisms

of, a national market system or otherwise in furtherance of the purposes of the Act.

(4) Notwithstanding the provisions of paragraph (c)(1) of this section, a proposed amendment may be put into effect summarily upon publication of notice of such amendment, on a temporary basis not to exceed 120 days, if the Commission finds that such action is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act.

(5) Any plan (or amendment thereto) in connection with:

(i) The planning, development, operation or regulation of a national market system (or a subsystem thereof) or one or more facilities thereof; or

(ii) The development and implementation of procedures and/or facilities designed to achieve compliance by self-regulatory organizations and/or their members of any section of this subpart promulgated pursuant to section 11A of the Act, approved by the Commission pursuant to section 11A of the Act (or pursuant to any rule or regulation thereunder) prior to the effective date of this section (either temporarily or on a permanent basis) shall be deemed to have been filed and approved pursuant to this section and no additional filing need be made by the sponsors with respect to such plan or amendment; *Provided, however*, That all terms and conditions associated with any such approval (including time limitations) shall continue to be applicable; and, *Provided, further*, That any amendment to such plan filed with or approved by the Commission on or after the effective date of this section shall be subject to the provisions of, and considered in accordance with the procedures specified in, this section.

(d) *Compliance with terms of national market system plans.* Each self-regulatory organization shall comply with the terms of any effective national market system plan of which it is a sponsor or a participant. Each self-regulatory organization also shall, absent reasonable justification or excuse, enforce compliance with any such plan by

its members and persons associated with its members.

(e) *Appeals.* The Commission may, in its discretion, entertain appeals in connection with the implementation or operation of any effective national market system plan as follows:

(1) Any action taken or failure to act by any person in connection with an effective national market system plan (other than a prohibition or limitation of access reviewable by the Commission pursuant to section 11A(b)(5) or section 19(d) of the Act) shall be subject to review by the Commission, on its own motion or upon application by any person aggrieved thereby (including, but not limited to, self-regulatory organizations, brokers, dealers, issuers, and vendors), filed not later than 30 days after notice of such action or failure to act or within such longer period as the Commission may determine.

(2) Application to the Commission for review, or the institution of review by the Commission on its own motion, shall not operate as a stay of any such action unless the Commission determines otherwise, after notice and opportunity for hearing on the question of a stay (which hearing may consist only of affidavits or oral arguments).

(3) In any proceedings for review, if the Commission, after appropriate notice and opportunity for hearing (which hearing may consist solely of consideration of the record of any proceedings conducted in connection with such action or failure to act and an opportunity for the presentation of reasons supporting or opposing such action or failure to act) and upon consideration of such other data, views and arguments as it deems relevant, finds that the action or failure to act is in accordance with the applicable provisions of such plan and that the applicable provisions are, and were, applied in a manner consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanisms of, a national market system, the Commission, by order, shall dismiss the proceeding. If the Commission does not make any such finding, or if it finds that such action or failure to act imposes any burden on competition not necessary or

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appropriate in furtherance of the purposes of the Act, the Commission, by order, shall set aside such action and/or require such action with respect to the matter reviewed as the Commission deems necessary or appropriate in the public interest, for the protection of investors, and the maintenance of fair and orderly markets, or to remove impediments to, and perfect the mechanisms of, a national market system.

(f) *Exemptions.* The Commission may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any self-regulatory organization, member thereof, or specified security, if the Commission determines that such exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanisms of, a national market system.

(Secs. 2, 3, 6, 9, 10, 15, 17, and 23, Pub. L. 78-291, 48 Stat. 881, 882, 885, 889, 891, 895, 897, and 901, as amended by secs. 2, 3, 4, 11, 14, and 18, Pub. L. 94-29, 89 Stat. 97, 104, 121, 137, and 155 (15 U.S.C. 78b, 78c, 78f, 78i, 78j, 78o, 78q, and 78w); sec. 15A, as added by sec. 1, Pub. L. 75-719, 52 Stat. 1070, as amended by sec. 12, Pub. L. 94-29, 89 Stat. 127 (15 U.S.C. 78-3); sec. 11A, as added by sec. 7, Pub. L. 94-29, 89 Stat. 111 (15 U.S.C. 78k-1); 15 U.S.C. 78a *et seq.*, as amended by Pub. L. 84-29 (June 4, 1975) and by Pub. L. 98-38 (June 6, 1983), particularly secs. 11A, 15, 19 and 23 thereof (15 U.S.C. 78k-1, 78o, 78s and 78w))

[46 FR 15870, Mar. 10, 1981, as amended at 48 FR 53690, Nov. 29, 1983]

§ 240.11Ab2-1 Registration of securities information processors: Form of application and amendments.

(a) An application for the registration of a securities information processor shall be filed on Form SIP in accordance with the instructions contained therein.

(b) If any information reported in items 1-13 or item 21 of Form SIP or in any amendment thereto is or becomes inaccurate for any reason, whether before or after the registration has been granted, the securities information processor shall promptly file an amendment on Form SIP correcting such information.

(c) The Commission, upon its own motion or upon application by any se-

curities information processor, may conditionally or unconditionally exempt any securities information processor from any provision of the rules or regulations adopted under section 11A(b).

(d) Every amendment filed pursuant to this section shall constitute a "report" within the meaning of sections 17(a), 18(a) and 32(a) of the Act.

[40 FR 45424, Oct. 2, 1975]

§ 240.11Ac1-1 Dissemination of quotations.

(a) *Definitions.* For the purposes of this section:

(1) The term *aggregate quotation size* shall mean the sum of the quotation sizes of all responsible brokers or dealers who have communicated on any exchange bids or offers for a covered security at the same price.

(2) The term *association* shall mean any association of brokers and dealers registered pursuant to Section 15A of the Act (15 U.S.C. 78o-3).

(3) The terms *best bid* and *best offer* shall mean the highest priced bid and the lowest priced offer.

(4) The terms *bid* and *offer* shall mean the bid price and the offer price communicated by an exchange member or OTC market maker to any broker or dealer, or to any customer, at which it is willing to buy or sell one or more round lots of a covered security, as either principal or agent, but shall not include indications of interest.

(5) The term *consolidated system* means the consolidated transaction reporting system, including a transaction reporting system operating pursuant to an effective national market system plan.

(6) The term *covered security* shall mean any reported security and any other security for which a transaction report, last sale data or quotation information is disseminated through an automated quotation system as described in Section 3(a)(51)(A)(ii) of the Act (15 U.S.C. 78c(a)(51)(A)(ii)).

(7) The term *effective transaction reporting plan* shall have the meaning provided in § 240.11Aa3-1(a)(3).

(8) The term *electronic communications network*, for the purposes of § 240.11Ac1-1(c)(5), shall mean any electronic system that widely disseminates to third