

March 12, 2001

Richard G. Ketchum
President
The Nasdaq Stock Market, Inc.
1735 K Street, N.W.
Washington, D.C. 20006-1500

Re: Request for Temporary Exemption Under Rule 11Ac1-5

Dear Mr. Ketchum:

In your letter dated March 12, 2001 (“Letter”) on behalf of the Nasdaq Stock Market, Inc. (“Nasdaq”), you requested that the Commission issue a temporary exemption from the reporting requirements of Rule 11Ac1-5 (“Rule”) under the Securities Exchange Act of 1934 (“Exchange Act”). Specifically, you request an exemption until July 31, 2001 from the monthly reporting requirements set forth in paragraph (b)(1) of the Rule for any broker-dealer that arranges for Nasdaq to prepare and make public the reports required by the Rule. This letter responds to your request.

I. Background

Adopted in November 2000,¹ the Rule generally requires a “market center” (as defined in the Rule) that trades national market system securities to make available to the public monthly electronic reports that include uniform statistical measures of execution quality. The Adopting Release established a three-stage phase-in of compliance with the Rule. The first phase-in date was April 2, 2001, on which the Rule was to apply to the 1000 NYSE securities, 1000 Nasdaq securities, and 200 Amex securities with the highest average daily share volume for the quarter ending December 31, 2000. This initial compliance date for the Rule recently was moved back by one month until May 1, 2001.² Accordingly, the first monthly reports (for May 2001) under the Rule must be made available to the public by no later than the end of June 2001.

¹ Securities Exchange Act Release No. 43590 (November 17, 2001), 65 FR 75414 (“Adopting Release”).

² Securities Exchange Act Release No.44060 (March 9, 2001).

The second phase-in date is July 2, 2001, on which the Rule will apply to the next 1000 NYSE securities, the next 1000 Nasdaq securities, and the next 200 Amex securities with the highest average daily trading volume for the quarter ending March 31, 2001. The third and final phase-in date is October 1, 2001, on which the Rule will apply to all national market system securities. The Adopting Release also stated that market centers, if they believed they would be unable to meet the compliance dates for good cause, could request a temporary exemption from the Commission pursuant to paragraph (c) of the Rule.

The Letter states that Nasdaq intends to offer a voluntary reporting service that will be available to any broker-dealer with a reporting obligation as a market center under the Rule.³ For any such market center that chooses to use Nasdaq as its reporting service, Nasdaq will compile all of the information necessary for that market center to comply with the Rule and will make this information available on a free, publicly accessible web site designated by that market center. This web site, in turn, would be accessible either directly or through a hyperlink provided by the National Association of Securities Dealers, Inc. ("NASD") or another self-regulatory organization that the market center designates.

Nasdaq believes that its reporting service will be essential to ensure that all Nasdaq market makers are able to meet their reporting obligations. Nasdaq does not, however, currently have systems in place that would collect all of the data elements necessary to permit it to comply with the Rule on behalf of other market centers.⁴ Although a majority of the data elements currently are captured by the Order Audit Trail System ("OATS") and the Automated Confirmation Transaction Reporting Service ("ACT"), information for certain orders is not currently captured through either system. In particular, the Letter states that information is not currently captured for orders routed through the SelectNet system, orders routed to ECNs, and orders routed to non-NASD members. As a result, Nasdaq needs to develop a distinct system that will capture these missing data elements.

The Letter represents that it is not feasible for Nasdaq to have such a system in place in time for the Rule's initial compliance date on May 1, 2001. Nevertheless, Nasdaq believes that, if a Nasdaq reporting alternative is not available when the first monthly reports are required to be made public, many market centers, particularly smaller ones, will not be able to comply with the Rule in a cost-effective manner. Nasdaq therefore requests a temporary exemption until July 31,

³ Nasdaq intends to charge a monthly fee for this service. When the amount of the fee is determined, Nasdaq will file the fee with the Commission as a proposed rule change under Section 19(b)(3)(A) of the Exchange Act.

⁴ The Letter notes that Nasdaq has a direct market center obligation for SOES orders, and that Nasdaq will be prepared to report on those orders by the Rule's initial compliance date.

2001 for any broker-dealer that arranges, prior to May 1, 2001, for Nasdaq to prepare and make public the monthly reports required by the Rule.

II. Exemption

On the basis of your representations and the facts presented, the Commission, by the Division pursuant to delegated authority,⁵ is using its exemptive authority under paragraph (c) of the Rule to exempt temporarily, until July 31, 2001, from the reporting requirement of paragraph (b) of the Rule any Nasdaq market center that meets the following two conditions:

- (1) the Nasdaq market center's reported trade volume in Nasdaq-listed securities for the month of January 2001 was less than 10,000 trades; and
- (2) the Nasdaq market center arranges, prior to May 1, 2001, to use the Nasdaq reporting service or any other reporting service to comply with the Rule.

Accordingly, those Nasdaq market centers entitled to the temporary exemption must begin collecting the necessary data to comply with the Rule in August 2001, and their first monthly report (for August) must be made available to the public by the end of September 2001.

The Commission is issuing this temporary exemption primarily to ease the initial burden of compliance for smaller Nasdaq market centers. Those Nasdaq market centers with less than 10,000 reported trades represent less than 10% of total trading volume in Nasdaq National Market securities. Nasdaq, which already collects a significant amount of data necessary to comply with the Rule through the existing OATS and ACT automated facilities, may be a significantly more cost-effective means for smaller Nasdaq market centers to comply with the Rule.

III. Conclusion

The exemption granted in this letter is subject to modification or revocation at any time if the Commission determines that such action is necessary or appropriate in the public interest or

⁵ 17 CFR 200.30-3(a)(69).

Richard G. Ketchum
March 12, 2001
Page 4

otherwise in furtherance of the purposes of the Exchange Act. If you have questions, please do not hesitate to contact me.

Sincerely,

Annette L. Nazareth
Director