

Commission will amend the Plan directly.<sup>14</sup> The Participants submitted the 12th Amendment to the Plan to the Commission on August 30, 2001, which, among other things, includes a process for selecting an alternative securities information processor. Therefore, to enable the Commission to consider and to solicit comment on the 12th Amendment, the Commission believes that it is appropriate to extend the current Plan.

The Commission notes that the revised final Plan must provide for either (1) A fully viable alternative exclusive securities information processor ("SIP") for all Nasdaq securities, or (2) a fully viable alternative non-exclusive SIP in the event that the Plan does not provide for an exclusive SIP. If the revised Plan provides for an exclusive consolidating SIP, a function currently performed by Nasdaq, the Commission believes that, to avoid conflicts of interest, there should be a presumption that a Plan Participant, and in particular Nasdaq, should not operate such exclusive consolidating SIP. The presumption may be overcome if: (1) The Plan processor is chosen on the basis of bona fide competitive bidding and the Participant submits the successful bid; and (2) any decision to award a contract to a Plan Participant, and any ensuring review or renewal of such contract, is made without that Plan Participant's direct or indirect voting participation. If a Plan Participant is chosen to operate such exclusive SIP, the Commission believes there should be a further presumption that the Participant-operated exclusive SIP shall operate completely separate from any order matching facility operated by that Participant and that any order matching facility operated by the Participant must interact with the plan-operated SIP on the same terms and conditions as any other market center trading Nasdaq-listed securities. Further, the Commission will expect the NASD to provide direct or indirect access to the alternative SIP, whether exclusive or non-exclusive, by any of its members that qualify, and to disseminate transaction information and individually identified quotation

information for these members through the SIP.

Furthermore, the revised final Plan should be open to all SROs, and the Plan should share governance of all matters subject to the Plan equitably among the SRO Participants. The Plan also should provide for sharing of market data revenues among SRO Participants. Finally, the Plan should provide a role for participation in decision making to non-SROs that have direct or indirect access to the alternative SIP provided by the NASD. The Commission expects the parties to continue to negotiate in good faith on the above matters<sup>15</sup> as well as any other issues that arise during Plan negotiations.

The Commission also finds that it is appropriate to extend the exemptive relief from Rule 11Ac1-16<sup>16</sup> under the Act until the earlier of November 19, 2001, or until such time as the calculation methodology of the BBO is based on a mutual agreement among the Participants approved by the Commission. The Commission believes that the temporary extension of the exemptive relief provided to vendors is consistent with the Act, the Rules thereunder, and specifically with the objectives set forth in Sections 12(f)<sup>17</sup> and 11A<sup>18</sup> of the Act and in Rules 11Aa3-1<sup>19</sup> and 11Aa3-2<sup>20</sup> thereunder.

## VII. Conclusion

*It Is Therefore Ordered*, pursuant to Sections 12(f)<sup>21</sup> and 11A<sup>22</sup> of the Act and paragraph (c)(2) of Rule 11Aa3-2<sup>23</sup> thereunder, that the Participants' request to extend the effectiveness of the Plan, as amended, for Nasdaq/NM securities traded on an exchange on an unlisted or listed basis through November 19, 2001, and certain exemptive relief through November 19, 2001, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>24</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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<sup>15</sup> See also discussion in the SuperMontage order, *supra* note 4.

<sup>16</sup> 17 CFR 240.11Ac1-2.

<sup>17</sup> 15 U.S.C. 781(f).

<sup>18</sup> 15 U.S.C. 78k-1.

<sup>19</sup> 17 CFR 240.11Aa3-1.

<sup>20</sup> 17 CFR 240.11Aa3-2.

<sup>21</sup> 15 U.S.C. 781(f).

<sup>22</sup> 15 U.S.C. 78k-1.

<sup>23</sup> 17 CFR 240.11Aa3-2(c)(2).

<sup>24</sup> 17 CFR 200.30-3(a)(29).

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** [66 FR 52468, October 15, 2001].

**STATUS:** Closed meeting.

**PLACE:** 450 Fifth Street, NW., Washington DC.

**DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING:** Thursday, October 18, 2001 at 10 a.m.

**CHANGE IN THE MEETING:** Additional Item.

The following item has been added to the closed meeting scheduled for Thursday, October 18, 2001:

Report of an investigation.

Commissioner Hunt, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alternations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942-7070.

Dated: October 16, 2001.

**Jonathan G. Katz,**  
*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of October 22, 2001:

A closed meeting will be held on Tuesday, October 23, 2001, at 9:30 a.m., and an open meeting will be held on Thursday, October 25, 2001, in Room 1C30, the William O. Douglas Room, at 2:30 p.m.

Commissioner Hunt, as duty officer, determined that no earlier notice thereof was possible.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5

<sup>14</sup> See *supra* note 4. The Commission notes that the SuperMontage order stated the Participants were directed to produce a revised plan by July 19, 2001. The Commission, however, provided for a 3-month extension of the July 19, 2001 deadline if requested by the Participants for good cause. The Commission recognizes that the Participants have been meeting to discuss the alternatives for a new plan and has submitted the 12th Amendment to the Plan.