

NEOB-10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395-3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301-415-7233.

Dated at Rockville, Maryland, this 8th day of August, 2002.

For the Nuclear Regulatory Commission.

**Brenda Jo. Shelton,**

*NRC Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 02-20564 Filed 8-13-02; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25694, 812-12692]

### Commonfund Institutional Funds, et al.; Notice of Application

August 7, 2002.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of an application under: (a) Section 6(c) of the Investment Company Act of 1940 ("Act") requesting an exemption from sections 12(d)(3) and 17(e) of the Act and rule 17e-1 under the Act; (b) sections 6(c) and 17(b) of the Act requesting an exemption from section 17(a) of the Act; and (c) section 10(f) of the Act requesting an exemption from section 10(f) of the Act.

**SUMMARY OF APPLICATION:** Applicants request an order to permit certain registered open-end management investment companies advised by several investment advisers to engage in principal and brokerage transactions with a broker-dealer affiliated with one of the investment advisers and to purchase securities in certain underwritings. The transactions would be between the broker-dealer and a portion of the investment company's portfolio not advised by the adviser affiliated with the broker-dealer. The order also would permit these investment companies not to aggregate certain purchases from an underwriting syndicate in which an affiliated person of one of the investment advisers is a principal underwriter. Further, applicants request relief to permit a portion of an investment company's portfolio to purchase securities issued by a broker-dealer that is an affiliated person of an investment adviser to another portion, subject to the limits in rule 12d3-1 under the Act.

**APPLICANTS:** Commonfund Institutional Funds (the "Company") and

Commonfund Asset Management Company, Inc. ("COMANCO").

**FILING DATES:** The application was filed on November 21, 2001 and amended on August 6, 2002.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 3, 2002 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Commission, 450 5th Street, NW., Washington, DC 20549-0609. Applicants, c/o John W. Auchincloss, Commonfund Institutional Funds, 15 Old Danbury Road, Wilton, CT 06897.

**FOR FURTHER INFORMATION CONTACT:** Jaea F. Hahn, Senior Counsel, at (202) 942-0614, or Todd F. Kuehl, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 5th Street, NW., Washington, DC 20549-0102 (tel. 202-942-8090).

### Applicants' Representations

1. The Company is an open-end management investment company registered under the Act and currently consists of eight investment portfolios (the "CIF Portfolios"). COMANCO, an indirect, wholly owned subsidiary of The Common Fund for Nonprofit Organizations, is an investment adviser registered under the Investment Advisers Act of 1940, as amended ("Advisers Act"). COMANCO serves as investment adviser to each of the CIF Portfolios, including CIF Portfolios ("Multi-Managed Portfolios") that are advised by COMANCO and investment sub-advisers ("Sub-Advisers"). Each Sub-Adviser is registered under the Advisers Act or is exempt from registration. Each Sub-Adviser is responsible for making independent investment and brokerage allocation decisions for a discrete portion of a Multi-Managed Portfolio ("Portion")

based on its own research and credit evaluations. Each Sub-Adviser is paid a fee by COMANCO out of the management fee received by COMANCO from the Multi-Managed Portfolios, which fee is based on a percentage of the value of assets allocated to the Sub-Adviser. COMANCO may also directly advise a Portion of a Multi-Managed Portfolio.

2. Applicants request relief to permit: (a) A broker-dealer that serves as a Sub-Adviser or is an affiliated person of a Sub-Adviser (the broker-dealer, an "Affiliated Broker-Dealer"; the Sub-Adviser, an "Affiliated Sub-Adviser") to engage in principal transactions with a Portion of a Multi-Managed Portfolio that is advised by another Sub-Adviser that is not an affiliated person of the Affiliated Broker-Dealer or Affiliated Subadviser (the Portion, an "Unaffiliated Portion"; the other Sub-Adviser, an "Unaffiliated Sub-Adviser"); (b) an Affiliated Broker-Dealer to provide brokerage services to an Unaffiliated Portion, and the Unaffiliated Portion to use such brokerage services, without complying with rule 17e-1(b) or (d) under the Act; (c) an Unaffiliated Portion to purchase securities during the existence of an underwriting syndicate, a principal underwriter of which is an Affiliated Sub-Adviser or a person of which an Affiliated Sub-Adviser is an affiliated person ("Affiliated Underwriter"); (d) a Portion advised by an Affiliated Sub-Adviser ("Affiliated Portion") to purchase securities during the existence of an underwriting syndicate, a principal underwriter of which is an Affiliated Underwriter, in accordance with the conditions of rule 10f-3 under the Act, except that paragraph (b)(7) of the rule would not require the aggregation of purchases by the Affiliated Portion with purchases by Unaffiliated Portions; and (e) an Unaffiliated Portion to purchase securities issued by an Affiliated Sub-Adviser, or an affiliated person of an Affiliated Sub-Adviser engaged in securities-related activities ("Securities Affiliate"), subject otherwise to the limits in rule 12d3-1 under the Act.<sup>1</sup>

<sup>1</sup> The terms "Unaffiliated Subadviser" and "Subadviser" include COMANCO and the term "Unaffiliated Portion" includes the Portion of a Multi-Managed Portfolio directly advised by COMANCO provided that it manages its Portion of the Multi-Managed Portfolio independently of the Portions managed by other Sub-Advisers to the Multi-Managed Portfolio, and COMANCO does not control or influence any other Sub-Adviser's investment decisions for its portion of the Multi-Managed Portfolio. COMANCO does not currently directly manage a Portion of any Multi-Managed Portfolio.

3. Applicants request that the exemptive relief apply to the Company or any existing or future open-end management investment company registered under the Act, or series thereof, for which COMANCO or any entity controlling, controlled by, or under common control with (within the meaning of section 2(a)(9) of the Act) COMANCO currently or in the future acts as investment adviser. The Company is the only registered investment company that currently intends to rely on the order. COMANCO will take steps designed to ensure that any other existing or future entity that relies on the order will comply with the terms and conditions of the application.

#### **Applicants' Legal Analysis**

##### *A. Principal Transactions between Unaffiliated Portions and Affiliated Broker-Dealers*

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and an affiliated person of, promoter of, or principal underwriter for such company, or any affiliated person of an affiliated person, promoter, or principal underwriter ("second-tier affiliate"). Section 2(a)(3)(E) of the Act defines an affiliated person to be any investment adviser of an investment company, and section 2(a)(3)(C) of the Act defines an affiliated person of another person to include any person directly or indirectly controlling, controlled by, or under common control with such person. Applicants state that an Affiliated Sub-Adviser would be an affiliated person of a Multi-Managed Portfolio, and an Affiliated Broker-Dealer would be either an Affiliated Sub-Adviser or an affiliated person of the Affiliated Sub-Adviser to the same Multi-Managed Portfolio, and thus a second-tier affiliate of a Multi-Managed Portfolio, including the Unaffiliated Portions. Accordingly, applicants state that any transactions to be effected by an Unaffiliated Sub-Adviser on behalf of an Unaffiliated Portion of a Multi-Managed Portfolio with an Affiliated Broker-Dealer are subject to the prohibitions of section 17(a).

2. Applicants seek relief under sections 6(c) and 17(b) of the Act, to exempt principal transactions prohibited by section 17(a) where an Affiliated Broker-Dealer is deemed to be an affiliated person or a second-tier affiliate of an Unaffiliated Portion solely because an Affiliated Sub-Adviser is the Sub-Adviser to another Portion of the same Multi-Managed Portfolio.

3. Section 17(b) of the Act authorizes the Commission to grant an order

permitting a transaction otherwise prohibited by section 17(a) if it finds that the terms of the proposed transaction are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each registered investment company concerned and the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transaction from any provisions of the Act if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

4. Applicants contend that section 17(a) is intended to prevent persons who have the power to control an investment company from using that power to the person's own pecuniary advantage. Applicants assert that when the person acting on behalf of an investment company has no direct or indirect pecuniary interest in a party to a principal transaction, the abuses that section 17(a) was designed to prevent are not present. Applicants state that if an Unaffiliated Sub-Adviser were to purchase securities on behalf of an Unaffiliated Portion in a principal transaction with an Affiliated Broker-Dealer, any benefit that might inure to the Affiliated Broker-Dealer would not be shared by the Unaffiliated Sub-Adviser. Applicants state that Sub-Advisers are paid on the basis of a percentage of the value of the assets under their management. The execution of a transaction to the disadvantage of an Unaffiliated Portion would also disadvantage the Unaffiliated Sub-Adviser to the extent that it diminishes the value of the Unaffiliated Portion. Applicants further state that COMANCO's power to dismiss Sub-Advisers or to change the Portion of a Multi-Managed Portfolio allocated to each Sub-Adviser reinforces a Sub-Adviser's incentive to maximize the investment performance of its own Portion of the Multi-Managed Portfolio.

5. Applicants state that each Sub-Adviser's contract assigns it responsibility to manage a discrete Portion of the Multi-Managed Portfolio. Each Sub-Adviser is responsible for making independent investment and brokerage allocation decisions based on its own research and credit evaluations. Applicants state that COMANCO does not dictate brokerage allocation or investment decisions for any Multi-Managed Portfolio, or have the contractual right to do so, except for any Portion of a Multi-Managed Portfolio advised directly by COMANCO.

Applicants submit that, in managing a discrete Portion of a Multi-Managed Portfolio, each Sub-Adviser acts for all practical purposes as though it is managing a separate investment company.

6. Applicants state that the proposed transactions will be consistent with the policies of the Multi-Managed Portfolios, since each Unaffiliated Sub-Adviser is required to manage the Unaffiliated Portion in accordance with the investment objectives and related investment policies of the Multi-Managed Portfolio as described in its prospectus and statement of additional information. Applicants assert that permitting the transactions will be consistent with the general purposes of the Act and in the public interest because the ability to engage in such transactions increases the likelihood of the Multi-Managed Portfolio achieving best price and execution on its principal transactions, while giving rise to none of the abuses that the Act was designed to prevent.

##### *B. Payment of Brokerage Compensation by an Unaffiliated Portion to an Affiliated Broker-Dealer*

1. Section 17(e)(2) of the Act prohibits an affiliated person or a second-tier affiliate of a registered investment company from receiving compensation for acting as a broker in connection with the sale of securities to or by the investment company if the compensation exceeds the limits prescribed by the section unless otherwise permitted by rule 17e-1 under the Act. Rule 17e-1 sets forth the conditions under which an affiliated person or a second-tier affiliate of an investment company may receive a commission that would not exceed the "usual and customary broker's commission" for purposes of section 17(e)(2) of the Act. Rule 17e-1(b) requires the investment company's board of directors, including a majority of the directors who are not interested persons under section 2(a)(19) of the Act, to adopt certain procedures and to determine at least quarterly that all transactions effected in reliance on the rule complied with the procedures. Rule 17e-1(d) specifies the records that must be maintained by each investment company with respect to any transaction effected pursuant to rule 17e-1.

2. As discussed above, applicants state that an Affiliated Broker-Dealer is either an affiliated person (as Sub-Adviser to another Portion of a Multi-Managed Portfolio) or a second-tier affiliate of an Unaffiliated Portion and thus subject to section 17(e). Applicants request relief under section 6(c) of the

Act from section 17(e) of the Act and rule 17e-1 under the Act to the extent necessary to permit the Unaffiliated Portion to pay brokerage compensation to an Affiliated Broker-Dealer acting as broker in the ordinary course of business without complying with the requirements of rule 17e-1(b) and (d). The requested exemption would apply only where an Affiliated Broker-Dealer is deemed to be an affiliated person or a second-tier affiliate of an Unaffiliated Portion solely because an Affiliated Sub-Adviser is the Sub-Adviser to another Portion of the same Multi-Managed Portfolio.

3. Applicants believe that the proposed brokerage transactions involve no conflicts of interest or possibility of self-dealing and will meet the standards of section 6(c) of the Act. Applicants assert that the interests of an Unaffiliated Sub-Adviser are directly aligned with the interests of the Unaffiliated Portion it advises, and an Unaffiliated Subadviser will enter into brokerage transactions with Affiliated Broker-Dealers only if the fees charged are reasonable and fair, as required by rule 17e-1(a). Applicants note that an Unaffiliated Sub-Adviser has a fiduciary duty to obtain best price and execution for the Unaffiliated Portion.

#### *C. Purchases of Securities From Offerings With Affiliated Underwriters*

1. Section 10(f) of the Act, in relevant part, prohibits a registered investment company from knowingly purchasing or otherwise acquiring, during the existence of any underwriting or selling syndicate, any security (except a security of which the company is the issuer) when a principal underwriter of the security, or an affiliated person of the principal underwriter, is an officer, director, member of an advisory board, investment adviser or employee of the investment company. Section 10(f) also provides that the Commission may exempt by order any transaction or classes of transactions from any of the provisions of section 10(f), if and to the extent that such exemption is consistent with the protection of investors. Rule 10f-3 under the Act exempts certain transactions from the prohibitions of section 10(f) if specified conditions are met. Paragraph (b)(7) of rule 10f-3 limits the securities purchased by the investment company, or by two or more investment companies having the same investment adviser, to 25% of the principal amount of the offering of the class of securities.

2. Applicants state that each Sub-Adviser, although under contract to manage only a Portion of a Multi-Managed Portfolio, is an investment

adviser to the entire Multi-Managed Portfolio. Therefore, all purchases of securities by an Unaffiliated Portion from an underwriting syndicate, a principal underwriter of which is an Affiliated Underwriter, would be subject to section 10(f).

3. Applicants request relief under section 10(f) to permit an Unaffiliated Portion to purchase securities during the existence of an underwriting or selling syndicate, a principal underwriter of which is an Affiliated Underwriter. Applicants request relief from section 10(f) only to the extent those provisions apply solely because an Affiliated Sub-Adviser is an investment adviser to the Multi-Managed Portfolio. Applicants also seek relief from section 10(f) to permit an Affiliated Portion to purchase securities during the existence of an underwriting syndicate, a principal underwriter of which is an Affiliated Underwriter, provided that the purchase is in accordance with the conditions of rule 10f-3, except that paragraph (b)(7) of the rule will not require the aggregation of purchases by the Affiliated Portion with purchases by an Unaffiliated Portion.

4. Applicants state that section 10(f) was adopted in response to concerns about the "dumping" of otherwise unmarketable securities on investment companies, either by forcing the investment company to purchase unmarketable securities from its underwriting affiliate, or by forcing or encouraging the investment company to purchase the securities from another member of the syndicate. Applicants submit that these abuses are not present in the context of the Multi-Managed Portfolios because a decision by an Unaffiliated Sub-Adviser to a Portion of a Multi-Managed Portfolio to purchase securities during the existence of an underwriting syndicate, a principal underwriter of which is an Affiliated Underwriter, involves no potential for "dumping." In addition, applicants state that aggregating purchases would serve no purpose because there is no collaboration among Sub-Advisers, and any common purchases by an Affiliated Sub-Adviser and an Unaffiliated Sub-Adviser would be coincidence.

#### *D. Purchases of Securities Issued by Securities Affiliates*

1. Section 12(d)(3) of the Act generally prohibits a registered investment company from acquiring any security issued by any person who is a broker, dealer, investment adviser, or engaged in the business of underwriting. Rule 12d3-1 under the Act exempts certain transactions from the prohibitions of section 12(d)(3) if certain

conditions are met. One of these conditions, set forth in paragraph (c) of rule 12d3-1, provides that the exemption provided by the rule is not available when the issuer of the securities is the investment company's investment adviser, promoter, or principal underwriter, or an affiliated person of the investment adviser, promoter, or principal underwriter.

2. Applicants state that because each Sub-Adviser to a Multi-Managed Portfolio is considered to be an investment adviser to the entire Multi-Managed Portfolio, an Unaffiliated Portion may not purchase securities of a Securities Affiliate in reliance on rule 12d3-1. Applicants request an exemption under section 6(c) from section 12(d)(3) to permit an Unaffiliated Portion to acquire securities issued by a Securities Affiliate subject to the limits in rule 12d3-1, except for paragraph (c) to the extent that the paragraph applies solely because the Securities Affiliate is an Affiliated Sub-Adviser, or an affiliated person of an Affiliated Sub-Adviser. The requested relief would not extend to securities issued by the Sub-Adviser making the purchase, COMANCO, or a Securities Affiliate of any of these entities.

3. Applicants state that their proposal does not raise the conflicts of interest that rule 12d3-1(c) was designed to address because of the nature of the affiliation between a Securities Affiliate and the Unaffiliated Portion. Applicants submit that each Sub-Adviser acts independently of the other Sub-Advisers in making investment decisions for the assets allocated to its portion of the Multi-Managed Portfolio. Further, applicants assert that prohibiting the Unaffiliated Portions from purchasing securities issued by Securities Affiliates could harm the interests of shareholders by preventing the Unaffiliated Sub-Adviser from achieving optimal investment results.

#### **Applicants' Conditions**

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Each Multi-Managed Portfolio relying on the requested order will be advised by an Affiliated Subadviser and at least one Unaffiliated Sub-Adviser, and will be operated in the manner described in the application.

2. No Affiliated Sub-Adviser, Affiliated Broker-Dealer, Affiliated Underwriter or Securities Affiliate (except by virtue of serving as Sub-Adviser to a Portion of a Multi-Managed Portfolio) will be an affiliated person or second-tier affiliate of (a) COMANCO; (b) the Unaffiliated Sub-Adviser making

the investment decision with respect to the Unaffiliated Portion of the Multi-Managed Portfolio; (c) any principal underwriter or promoter of a Multi-Managed Portfolio, or (d) any officer, director or employee of the Multi-Managed Portfolio engaging in the transaction.

3. No Affiliated Sub-Adviser will directly or indirectly consult with any Unaffiliated Sub-Adviser concerning allocation of principal or brokerage transactions or concerning the purchase of securities issued by Securities Affiliates. Sub-Advisers may consult with COMANCO in order to monitor compliance with the limits in rule 12d3-1.

4. No Affiliated Sub-Adviser will participate in any arrangement whereby the amount of its sub-advisory fees will be affected by the investment performance of an Unaffiliated Sub-Adviser.

5. With respect to purchases of securities by an Affiliated Portion during the existence of any underwriting or selling syndicate, a principal underwriter of which is an Affiliated Underwriter, the conditions of rule 10f-3 will be satisfied except that paragraph (b)(7) will not require the aggregation of purchases by the Affiliated Portion with purchases by an Unaffiliated Portion.

6. With respect to purchases by an Unaffiliated Portion of securities issued by a Securities Affiliate, the conditions of rule 12d3-1 will be satisfied except for paragraph (c) of such rule to the extent such paragraph is applicable solely because such issuer is an Affiliated Sub-Adviser or an affiliated person of an Affiliated Sub-Adviser.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-20524 Filed 8-13-02; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Federal Register Citation of Previous Announcement: [67 FR 51900, August 9, 2002]

*Status:* Closed Meeting.

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

*Date and Time of Previously Announced Meeting:* Tuesday, August 13, 2002 at 10:00 a.m.

*Change in the Meeting:* Date Change.

The closed meeting scheduled for Tuesday, August 13, 2002 at 10 a.m. has been changed to Monday, August 12, 2002, at 3 p.m.

At times, changes in Commission priorities require alterations 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: August 9, 2002.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-20681 Filed 8-9-02; 4:09 pm]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46320; File No. SR-NASD-2002-84]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc. Relating to Display Requirements When Using Reserve Size Functionality in Nasdaq's Future Order Display and Collector Facility

August 6, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 18, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On July 25, 2002, Nasdaq submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> On August 5, 2002, Nasdaq submitted Amendment No. 2 to the proposed rule change.<sup>4</sup> The Commission

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See letter from Mary M. Dunbar, Vice President, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated July 24, 2002 ("Amendment No. 1"). Amendment No. 1 replaced in its entirety the original rule proposal filed on June 18, 2002. In Amendment No. 1, Nasdaq, in part, made a minor technical correction to its rule text and clarified that only Nasdaq Quoting Market Participants would be permitted to use the reserve size functionality on SuperMontage.

<sup>4</sup> See letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated August 5, 2002 ("Amendment No. 2"). In

is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to alter the display requirement when using the reserve size feature in Nasdaq's future Order Display and Collector Facility ("SuperMontage").

The text of the proposed rule change, as amended, appears below. New text is in italics. Deleted text is in brackets.

#### 4710. Participant Obligations in NNMS

(a) No Change.

(b)(1)(A) through (b)(1)(D) No Change.

#### (2) Refresh Functionality

(A) Reserve Size Refresh—Once a Nasdaq Quoting Market Participant's Displayed Quote/Order size on either side of the market in the security has been decremented to zero due to NNMS processing Nasdaq will refresh the displayed size out of Reserve Size to a size-level designated by the Nasdaq Quoting Market Participant, or in the absence of such size-level designation, to the automatic refresh size. To utilize the Reserve Size functionality, a minimum of [1,000] 100 shares must initially be displayed in the Nasdaq Quoting Market Participant's Displayed Quote/Order, and the Displayed Quote/Order must be refreshed to at least [1000] 100 shares. This functionality will not be available for use by UTP Exchanges.

(B) No Change.

(3) through (8) No Change.

(c) through (e) No Change.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set

Amendment No. 2, Nasdaq requested that the Commission waive the 30-day waiting period for the proposed rule change to become operative, and removed a sentence containing an inadvertent error regarding the possibility of decrementing a displayed quote to below 100 shares. For purposes of determining the effective date and calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers August 5, 2002 to be the effective date of the proposed rule change, the date Nasdaq filed Amendment No. 2. 15 U.S.C. 78s(b)(3)(C).