



Securities Industry Association

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April 11, 2001

Ms. Annette L. Nazareth
Director
Division of Market Regulation
U.S. Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-0609

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

Dear Ms. Nazareth:

The Securities Industry Association ("SIA")¹ is submitting this letter on behalf of its member firms to request that the U.S. Securities and Exchange Commission ("Commission") issue a temporary exemption until July 31, 2001 from the reporting requirements under paragraph (b)(1) of Rule 11Ac1-5 ("Rule") under the Securities Exchange Act of 1934 to any broker-dealer with a reporting obligation as a market center under the Rule ("market center") that does not fall within the temporary exemption recently granted by the Commission to smaller Nasdaq Stock Market ("Nasdaq") market centers, as defined below.

We note that the Commission granted on March 9, 2001 to all market centers a 30-day extension in the initial compliance date of the Rule from April 2, 2001 to May 1, 2001.² We also note that, on March 12, 2001, the Commission granted exemptive relief to market centers for reporting on certain types of orders in response to a request from the SIA,³ and issued interpretative guidance on the Rule.⁴ Finally, we note that, also on

¹ The Securities Industry Association ("SIA") brings together the shared interests of more than 680 securities firms, employing more than 380,000 individuals, to accomplish common goals. SIA members – including investment banks, broker-dealers, and mutual fund companies – are active in all markets and in all phases of corporate and public finance. The U.S. securities industry manages the accounts of more than 50 million investors directly and tens of millions of investors indirectly through corporate, thrift, and pension plans, and accounts for \$270 billion of revenues in the U.S. economy.

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

³ See Letter from Annette L. Nazareth, Director, Division of Market Regulation, SEC, to

March 12, 2001, the Commission responded to a request from Nasdaq seeking a temporary exemption from the reporting requirements under the Rule for those broker-dealers that arrange with Nasdaq to prepare and make public the reports required by the Rule (the “Letter”).⁵ In the Letter, the Commission did not grant exemptive relief to all market centers; instead, the Commission exempted temporarily, until July 31, 2001, from the reporting requirements 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.”

The Letter notes that Nasdaq stated in its request letter⁶ that it “does not... 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 market centers...As a result, Nasdaq needs to develop a distinct system that will capture these missing data elements...” The Letter explains that the Commission is granting the temporary exemption to smaller market centers “primarily to ease the initial burden of compliance for smaller Nasdaq market centers...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.” As you are aware, Nasdaq is developing such a distinct reporting system that is expected to be operational late this summer.

The SIA commends the Commission on granting the above exemptive relief and appreciates the significant amount of time the Commission staff has spent to provide interpretative guidance on this Rule. The SIA believes, however, that an exemption similar to that granted smaller Nasdaq market centers should be granted to all other market centers that trade national market system securities, including larger Nasdaq market centers trading Nasdaq-listed equity securities and market centers trading exchange-listed equity securities, for several reasons.⁷

Stuart J. Kaswell, Senior Vice President and General Counsel, SIA, dated March 12, 2001.

⁴ SEC Division of Market Regulation Staff Legal Bulletin No. 12, dated March 12, 2001.

⁵ See Letter from Annette L. Nazareth, Director, Division of Market Regulation, SEC, to Richard G. Ketchum, President, The Nasdaq Stock Market, Inc., dated March 12, 2001.

⁶ See Letter from Richard G. Ketchum, President, The Nasdaq Stock Market, Inc., to Annette L. Nazareth, Director, Division of Market Regulation, SEC, dated March 12, 2001.

⁷ The SIA’s request for exemptive relief goes only to any broker-dealer with a reporting obligation as a market center under the Rule (that does not fall within the temporary exemption recently granted by the Commission to smaller Nasdaq market centers), and not to any national securities exchange or national securities association that has such a reporting obligation under the Rule.

First, the SIA does not believe that the expected benefits of the Rule are furthered by the uneven treatment of market centers. As stated in the adopting release for the Rule, these benefits include: (1) facilitating an investor's ability to evaluate the quality of executions provided by different market centers and to have meaningful input into how their orders were executed; (2) helping broker-dealers fulfill their duty of best execution; and (3) stimulating competition between market centers to improve the quality of execution in order to attract order flow.⁸ All of the intended benefits of the Rule are clearly driven by an analysis of customer orders across all market centers. The SIA believes that the absence of smaller Nasdaq market centers during the initial compliance phase of the Rule prevents comparisons of execution data and inhibits competition within the Nasdaq market and between the Nasdaq market and the exchange-listed market.

Second, and relating specifically to the request for relief for larger Nasdaq market centers, these market centers have been working diligently to comply with the Rule by May 1, 2001 by reprogramming their own reporting systems or arranging for outside reporting services either on a permanent basis or an interim basis if they plan later to use Nasdaq's reporting service.⁹ While many are optimistic about being ready to comply by that date, others are not so confident that they (or the vendors they have chosen to report for them) will be ready.¹⁰ As a result, there exists a potential risk of non-compliance with the Rule on the initial compliance date, despite these firms' best efforts to comply. A further extension of time until July 31, 2001 would give larger Nasdaq market centers and their vendors a "quality assurance" period in which to test their data and evaluate their systems to ensure the production of more complete and valid statistics after July 31, 2001. Also, if many of the larger Nasdaq market centers should not be able to produce the required data from May 1, 2001 until July 31, 2001, and the smaller Nasdaq market centers are exempt from reporting during that time, the remaining number of market centers with which to initially compare statistics is even lower.

Third, many larger Nasdaq market centers believe they are being treated unfairly in that they are expending considerable efforts and funds to comply by May 1, 2001 when smaller Nasdaq market centers are not obligated to do the same.

Fourth, several larger Nasdaq market centers and market centers trading exchange-listed equities consider it unfair to be placed potentially at a competitive

⁸ Securities Exchange Act Release No. 43590 (December 1, 2000).

⁹ The national securities exchanges have offered to prepare and make public the reports required by Rule 11Ac1-5 for market centers trading exchange-listed equity securities.

¹⁰ Many of the member firms that believe they are ready to report are relying on outside vendors; of course, these firms' ability to comply is dependent on the vendors' ability to meet the demand. Also complicating the ability to report is the fact that the securities industry recently has witnessed at least five major mergers between securities firms and the conversion to decimals. The firms involved in these mergers have been working diligently to combine their data files, and this systems programming – along with programming for decimals and Rule 11Ac1-5 reporting – involves very complex changes that will undoubtedly result in unforeseen technical problems that would benefit from a period of testing and evaluation.

disadvantage if they must make their order execution data publicly available before the smaller Nasdaq market centers do so.

Finally, a few larger member firms trading in both Nasdaq and exchange-listed equities maintain that there may be technological difficulties in reporting on just exchange-listed equities and not Nasdaq securities; therefore, any exemption from the Rule's reporting requirements should cover both Nasdaq-listed equities and exchange-listed equities until July 31, 2001.

The SIA believes that delaying the initial compliance date for all market centers until July 31, 2001 when the smaller Nasdaq market centers must begin reporting ensures that all market centers are treated in a non-discriminatory manner, that no market center will incur unnecessary costs or burdens in complying with the Rule, and that the intent of the Rule to provide investors with fair and meaningful statistics across the entire industry is in fact upheld. The SIA respectfully requests that the Commission grant a temporary exemption from the reporting requirements set forth in paragraph (b)(1) of the Rule until July 31, 2001 to all market centers that do not fall within the exemption granted smaller Nasdaq market centers by the Commission on March 12, 2001.

As the SIA stated in its February 28, 2001 letter to the Commission,¹¹ the SIA supports greater disclosure of order routing practices and execution quality by market centers, but believes that the disclosure, among other things, must be fair and meaningful. The SIA believes that the Commission's granting the above temporary exemptive relief to all market centers is in the best interests of investors and the public, as it contributes to the production of fair and meaningful statistics for determining execution quality across the entire industry.

If we can provide further information or clarification of the points made in this letter, please contact Ann Vlcek, Assistant General Counsel, at 202-296-9410.

Sincerely,

Stuart J. Kaswell
Senior Vice President and
General Counsel

cc: Robert L. D. Colby, Deputy Director, Division of Market Regulation, SEC
Daniel M. Gray, Senior Special Counsel, Division of Market Regulation, SEC

¹¹ See Letter from Stuart J. Kaswell, Senior Vice President and General Counsel, SIA, to Annette L. Nazareth, Director, Division of Market Regulation, SEC, dated February 28, 2001.