



OFFICE OF
THE SECRETARY

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

December 20, 1993

Michael J. Kulczak, Esq.
Associate General Counsel
National Association of
Securities Dealers, Inc.
1735 K Street, N.W.
Washington, D.C. 20006

Re: OTC Bulletin Board Display Service ("OTCBB")
File No. TP 94-73

Dear Mr. Kulczak:

In your letter dated December 14, 1993, as supplemented by conversations with the staff, you request on behalf of brokers or dealers that publish quotations in the OTC Bulletin Board Display Service ("OTCBB"), operated by the National Association of Securities Dealers, Inc. ("NASD"), an exemption from Rule 15c2-11 ("Rule 15c2-11" or "Rule") under the Securities Exchange Act of 1934 ("Exchange Act") with respect to the maintenance and furnishing of information by brokers or dealers initiating quotations for over-the-counter ("OTC") equity securities in the OTCBB, as more fully described below.

We understand the facts to be as follows:

Recently, the Commission approved an NASD rule proposal that will require NASD members dealing in OTC equity securities to report their transactions to the NASD within 90 seconds of execution.¹ The trade reporting requirements apply to members' transactions in all OTC equity securities, regardless of whether they are included in the OTCBB or a quotation medium operated by a commercial entity.

Starting on December 20, 1993, NASD members must report their transactions in OTC equity securities pursuant to the new rules. These rules require NASD members to supply the same trade information as required for securities quoted in the National Association of Securities Dealers Automated Quotation system

¹

Securities Exchange Act Release No. 32647 (July 16, 1993), 58 FR 39262.

Response:

Rule 15c2-11 prohibits a broker or dealer from publishing any quotation for a security, or, directly or indirectly, from submitting any such quotation for publication in any quotation medium, unless such broker or dealer has in its records and reviews the information specified in the Rule regarding the security and its issuer, or unless an exception or exemption from the Rule's requirement is available. Paragraph (d) of the Rule requires the broker or dealer submitting a quotation to an interdealer quotation system for any security of an issuer included in paragraph (a)(5) of Rule 15c2-11 to furnish the information described in paragraph (a)(5) to the interdealer quotation system, in the form prescribed by that system, at least three business days before the quotation is published or submitted. Paragraph (f)(3), the "piggyback exception," provides that the Rule's information maintenance requirements are not applicable when a broker or dealer enters a quotation in an interdealer quotation system for a security that has been the subject of quotations in such a system on at least 12 business days during the previous 30 calendar days, with no more than four consecutive business days without quotations.

Based upon your representations and the facts presented, IT IS ORDERED that an exemption from Rule 15c2-11, pursuant to paragraph (h), is granted to permit brokers or dealers to publish or submit quotations in the OTCBB for OTC equity securities that are not issued by a foreign private issuer within the meaning of Rule 3b-4 under the Exchange Act or that are not American Depositary Receipts, without having and reviewing the information specified under paragraph (a) of Rule 15c2-11 and without furnishing the information specified in paragraph (d) of Rule 15c2-11 to the NASD, subject to the following conditions at the time that the broker-dealer submits or initiates quotations in the OTCBB:

- (1) The security is eligible for piggybacking pursuant to paragraph (f)(3) of Rule 15c2-11 in another interdealer quotation system;
- (2) A broker-dealer relying upon this exemption must have published quotations in the security in that interdealer quotation system on at least 12 business days during the preceding 30 calendar days, with no more than four consecutive business days without quotations;
- (3) The issuer of the security is not the subject of bankruptcy proceedings;

("Nasdaq").² The second phase of this initiative will be implemented in April 1994, with dissemination of last sale information on OTC equity securities through the networks of commercial vendors.³ At that time, broker-dealers and their customers will be able to access the most recent transaction prices and the cumulative share volume traded in a given OTC equity security.⁴ As a result of these new trade reporting requirements, the NASD believes that a number of market makers in OTC equity securities not presently quoted in the OTCBB may move their quotations to the OTCBB.

You request a conditional exemption from Rule 15c2-11 based on the NASD's belief that the policy goals underlying the Exchange Act, including enhanced investor protection through electronic market surveillance, maintenance of fair and orderly securities markets, broad dissemination of reliable quotation and transaction information, and facilitation of best execution of retail orders, could be advanced by encouraging greater broker-dealer participation in the OTCBB in conjunction with the start-up of trade reporting on December 20, 1993.

You indicate that conceptually the exemption from Rule 15c2-11 requested by the NASD would be similar to that granted in connection with the revised maintenance standards for inclusion of securities in Nasdaq.⁵

² The transaction information to be reported is: (i) security symbol; (ii) number of shares; (iii) transaction price; and (iv) a symbol indicating whether a transaction is a buy, sell, or cross. Regarding OTC equity securities that are clearing eligible, additional data will be entered to enable trade comparison through the Automated Confirmation Transaction service.

³ Dissemination of transaction reports will not be required for the securities of foreign issuers or for American Depositary Receipts.

⁴ However, you indicate that market participants may not have access to real-time quotation information for all OTC equity securities because an undetermined number of these OTC equity securities may not be quoted in the OTCBB.

⁵ See Letter Regarding Rule 15c2-11: NASDAQ Initial Listing and Maintenance Standards (February 28, 1992).

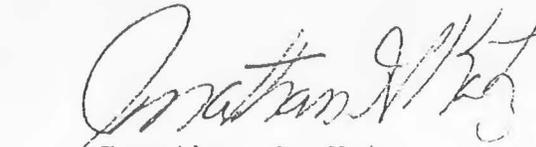
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- (4) The issuer of the security is not delinquent in any of its reporting obligations under the Exchange Act or rules thereunder, if subject to Section 13(a) or 15(d) of the Exchange Act; and
- (5) If at any time the Commission subsequently suspends trading in the domestic OTC equity security pursuant to Section 12(k) under the Exchange Act, no broker or dealer will initiate or resume quotations in that security in the OTCBB unless the broker-dealer complies with Rule 15c2-11.

The foregoing exemption from Rule 15c2-11 is based solely on your representations and the facts presented to the Commission, and is strictly limited to the application of Rule 15c2-11 to the quotations described above. The publication or submission of quotations by a broker or dealer in the OTCBB for a security based upon the foregoing exemption should be discontinued if any material change occurs concerning any of those facts or representations. In addition, brokers or dealers are directed to the anti-fraud and anti-manipulation provisions of the Exchange Act, particularly Sections 10(b) and 15(c) and Rules 10b-5 and 15c1-2 thereunder. Responsibility for compliance with these and any other applicable provisions of the federal securities laws must rest with the brokers or dealers. The Commission expresses no view with respect to any other questions that the proposed transactions may raise, including, but not limited to, the applicability of any other federal or state laws to the proposed transactions.

By the Commission.



Jonathan G. Katz
Secretary



Michael J. Kulczak
Associate General Counsel

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December 14, 1994

Nancy J. Sanow
Assistant Director
Trading Practices
Division of Market Regulation
Securities and Exchange Commission
450 Fifth St., N.W.
Washington, D.C. 20549

DEC 14 1993

Re: **Amended Request for Exemption from Securities Exchange Act Rule 15c2-11.**

Dear Ms. Sanow:

The purpose of this letter is to amend the National Association of Securities Dealers, Inc.'s ("NASD") pending request for an exemption from Rule 15c2-11 under the Securities Exchange Act of 1934 ("Exchange Act"), in conjunction with the launch of real-time trade reporting for over-the-counter equity securities ("OTC equities") on December 20, 1993. The basis for the exemption request is set forth below.

On July 16, 1993, the Securities and Exchange Commission approved a rule proposal that will require members dealing in OTC equities to report their transactions to the NASD within 90 seconds of execution.¹ The new reporting regime for OTC equities mirrors that which has existed for many years respecting Nasdaq National Market securities. Although the trade reporting requirements for the Nasdaq Stock MarketSM apply exclusively to Nasdaq-listed securities, the new OTC requirements apply to members' transactions in all OTC equities, regardless of whether they are included in the OTC Bulletin Board[®] service ("OTCBB" or "Service") or an inter-dealer quotation system operated by a commercial entity.

¹ The new reporting requirements applicable to OTC equities were approved with the Commission's issuance of Release No. 34-32647 (July 16, 1993), 58 F.R. 39262 (July 22, 1993). These requirements are contained in Part XII of Schedule D to the NASD By-Laws.

Starting on December 20, 1993, NASD members must report their transactions in OTC equities pursuant to the new rules, supplying the same data elements that comprise a transaction report in The Nasdaq Stock MarketSM.² The second phase of this initiative will be implemented in April, 1994 with real-time dissemination of last sale information on OTC equities through the networks of commercial vendors.³ At that point, broker-dealers and their customers will be able to access the most recent transaction prices and the cumulative share volume traded in a given OTC equity. However, these constituencies may not have access to real-time quotation information on all OTC equities, which information could be used to assess the quality of an execution, market depth, and intra day market trends in particular OTC equities. This situation will arise because an undetermined number of these issues are not presently quoted in the OTCBB. The absence of current quotation information in the OTCBB's database also poses difficulties for the NASD, in that it will not be able to validate the accuracy of transaction prices (before disseminating them to vendors) by comparison of a reported price to the best bid/offer prices prevailing in the OTC equity when the transaction report was received. (This method has been followed for many years in validating the prices of reported transactions in Nasdaq National Market securities.)

The NASD believes that several policy goals underlying the Securities Exchange Act of 1934 ("Act") -- i.e., enhanced investor protection through electronic market surveillance, maintenance of fair and orderly securities markets, broad dissemination of reliable quotation and transaction information, and facilitation of best execution for retail orders -- could be advanced by encouraging greater broker-dealer participation in the OTCBB in conjunction with the start-up of real-time trade reporting on December 20, 1993.⁴ This initiative constitutes a significant development in the operational capabilities associated with the OTCBB, which development is likely to prompt many broker-dealers to consider expanding their market making commitments in the Service. Accordingly, the NASD hereby requests that the Commission exercise its exemptive authority under paragraph (h) of Securities Exchange Act Rule 15c2-11 and grant an exemption from Rule 15c2-11's data gathering and review requirements to brokers-dealers initiating quotations for OTC equities in the OTCBB under the following conditions:

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- ² These elements consist of the following: (i) security symbol; (ii) number of shares; (iii) transaction price; and (iv) a symbol indicating whether a transaction is a buy, sell, or cross. Regarding OTC equities that are clearing eligible, additional data elements will be entered to enable trade comparison through the Automated Confirmation Transaction service.
 - ³ This real-time dissemination will not encompass transaction reports in foreign equities or American Depositary Receipts.
 - ⁴ To the extent the proposed exemption facilitates the entry and dissemination of real-time quotation information for OTC equities classified as "penny stocks" (within the meaning of Rule 3a51-1 under the Exchange Act), it will further realization of the statutory mandate contained in Section 17B(b) of the Exchange Act. The provision directs the Commission to facilitate widespread dissemination of reliable and accurate last sale and quotation information respecting penny stocks through one or more automated quotation systems having the characteristics specified in Section 17B(b)(2). With the full implementation of the NASD's trade reporting initiative for OTC equities in April, 1994, the OTCBB will satisfy those characteristics.

- (1) the exemption would apply only to domestic OTC equities whose issuers are not in bankruptcy and, if they are Exchange Act reporting companies, that are current in the periodic financial filings with the Commission;⁵
- (2) dealer interest for such security must have been reflected in at least one inter-dealer quotation system over the preceding 30 calendar days; during this 30 day period, quotations for the security (i.e., priced bids/offers as well as unpriced indications of dealer interest) must have been published in that inter-dealer quotation system with sufficient frequency to satisfy the so-called "piggyback" exemption contained in paragraph (f)(3) of Rule 15c2-11;
- (3) assuming that the OTC equity meets the previous two conditions, a broker-dealer that is an NASD member could invoke the proposed exemption and be authorized to enter quotations into the OTCBB without having to submit to the NASD the information required by Section 4 of Schedule H to the NASD By-Laws⁶; however, this exemptive treatment would be available only to those NASD member firms which have published dealer quotations (including unpriced indications of interest) for the particular OTC equity, in the inter-dealer quotation system referenced above, on at least 12 business days during the previous 30 calendar days, with no more than 4 business days in succession without the firm's having published a quotation (including an unpriced indication of interest) in that quotation system; and
- (4) if the proposed exemption is granted and the Commission subsequently suspends trading in the OTC equity pursuant to Section 12(k) of the Act, no broker or dealer could initiate (or resume) the quotation of that security in the OTCBB unless the firm satisfied the requirements of Section 4 of Schedule H and thereby demonstrated compliance with Rule 15c2-11.

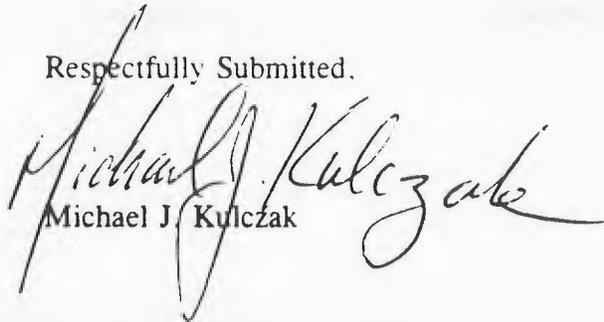
⁵ For purposes of this exemption request, the universe of domestic OTC equities includes certain foreign equities whose issuers are not classified as "foreign private issuers", as that term is defined in Exchange Act Rule 3b-4

⁶ This provision specifies the filing of certain information with the NASD in order for a broker-dealer to demonstrate compliance with Rule 15c2-11 before initiating or resuming the quotation of an OTC equity in any inter-dealer quotation system.

Conceptually, this approach is similar to that taken in an earlier Rule 15c2-11 exemption request that the Commission granted in connection with the implementation of revised maintenance standards for inclusion of securities in The Nasdaq Stock Market⁷.

In conclusion, the NASD views implementation of real-time trade reporting for OTC equities as a significant milestone, both in regulatory and operational terms. When fully implemented next April, this initiative will produce a quantum leap in the amount of real-time information available to broker-dealers and their customers respecting thousands of OTC equities. It will also provide the NASD with transactional data that will be captured in an audit trail file for surveillance purposes. Nevertheless, these benefits will be diminished if large numbers of OTC equities continue to be quoted exclusively in an environment lacking the capability to deliver real-time quotation information to a broad base of broker-dealers and their customers. If the requested exemption is granted, the NASD firmly believes that many broker-dealers will rely on it, resulting in many more OTC equities having visible markets characterized by firm real-time quotations, multiple market makers, and widespread dissemination of reliable quotation and transaction information.

Respectfully Submitted,



Michael J. Kulczak

⁷ Letter dated February 28, 1992 from Jonathan G. Katz, Secretary, Securities and Exchange Commission, to T. Grant Callery, Vice President and General Counsel, the National Association of Securities Dealers, Inc., File No. TP92-143.