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**USING NASDAQ MARKET REPORTS
IN ARBITRATION PROCEEDINGS**

Timothy J. O'Connor

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BIOGRAPHY

Timothy J. O'Connor is a partner with the Albany, New York, of Ainsworth & Sullivan and practices law in New York and Florida. He is also a member of the Public Investors Arbitration Bar Association and has written a number of articles of interest to individual investors, and his practice includes the representation of individual investors in arbitration proceedings. Mr. O'Connor's chapter focuses on the use of NASD historical trading information which can be useful in proving or defending customer claims. It is a timely article for practitioners on both sides of the fence as it discusses using historical data which can be particularly useful in trading activity in times of volatile markets and cases involving untimely or poor execution, market manipulation and pricing abuses.

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USING NASDAQ MARKET REPORTS IN ARBITRATION PROCEEDINGS

The past several years have seen unprecedented trade volatility in NASDAQ stock market stocks particularly in the shares of companies involved with the Internet, information technology and bio-technology. Further, unprecedented volume in the numbers of shares traded in this area has caught many firms off guard and otherwise unable to make timely and proper trade executions for their customers.

Investors of all levels of sophistication from novice, on-line discount house traders to seasoned professionals have been caught off guard and in many instances have sustained catastrophic financial losses as a result of improper or untimely trade executions. Until fairly recently, the proof of an improper or untimely NASDAQ trade execution was a daunting task, if not a virtual impossibility. With information readily available from NASDAQ Trading and Marketing Services (TMS), the forensics of a trade can be examined on step by step basis in order to determine whether or not an improper or untimely trade was executed with NASDAQ stock.

Further yet, the responsibility of broker dealers for trade executions involving NASDAQ stock in times of price and volume volatility was addressed in NASD Notice to Members number 99-11 (see Appendix A). The obligation of NASD member firms to insure adequate operations in times of high volatility has been further addressed in Securities and Exchange Commission staff Legal Bulletin Number 8 which requires that all customers must be treated fairly and further, affirms an express obligation to advise customers about risks in times of price and volume volatility and the constraints that such conditions may impose on a firm's ability to process orders in a timely manner (see Appendix B).

NASD Notice to Members Number 99-11 provides that:

Firms should provide adequate, clear disclosure to customers about the risks arising out of evolving volatility and volume concerns and any related constraints on firms' ability to process orders in a timely and orderly manner.

The NASD Notice to Members 99-11 goes on to note:

Firms should consider explaining in detail the difference between

market and limit orders and the benefits and risks of each. In particular, firms should consider disclosing that they are required to execute a market order fully and promptly without regard to price and that, while a customer may receive a prompt execution of a market order, the execution may be at a price significantly different from the current quoted price of that security. Firms should tell customers that limit orders will be executed at a specified price or better and that, while the customer receives protection, there is the possibility that the order will not be executed.

Attorneys making inquiry into pricing discrepancies, trade execution problems, mark-up/mark-down abuses, or share manipulation schemes involving NASDAQ stocks can access relevant and publicly available information by written request to NASDAQ at the NASDAQ Stock Market, Inc., Trading and Market Services, 1735 K Street N.W., Washington, D.C. 20006. Time and Sales Reports, Market Maker Price Movement Reports, Inside Quote Reports, Equity Trade Journal Reports, and Trade and Quote Summaries are maintained by NASDAQ for every NASDAQ stock.

Ideally, trades involving NASDAQ stocks are executed at specific market price bid and ask parameters, depending on whether or not the transaction is a buy or a sell. For example, sales are ideally executed at the inside or highest quoted bid price (best bid) for a stock. Buy transactions are ideally executed at the inside or the lowest quoted asking price (best ask) for a stock. Buy and sell transactions on NASDAQ are executed through one of several computerized trading networks such as the Computer Assisted Execution System (CAES), SelectNet (SNET), or the Computer-to-Computer Interface (CTCI), to name a few.

NASDAQ market makers play a vital role in the preparation of the various NASDAQ reports which are the subject of this article. NASD defines a market maker as follows:

A firm that maintains a firm bid and offer price in a given security by standing ready to buy or sell at publicly-quoted prices. The NASDAQ stock market is a decentralized network of competitive market makers. Market makers process orders for their own customers, and for other NASD broker/dealers; all NASD securities are traded through market maker firms. Market makers also will buy securities from issuers for resale

to customers or other brokers/dealers. About 10% NASD firms are market makers; a broker/dealer may become a market maker if the firm meets capitalization standards set down by NASD.

The NASDAQ National Market is comprised of more than 3,900 companies that are the larger and generally more actively-traded NASDAQ securities as opposed to companies traded on the NASDAQ, Market or the NASDAQ OTC Bulletin Board.

I. INSIDE QUOTE REPORT

Inside Quote Reports for individual NASDAQ stocks are available on a daily, monthly and whole calendar year basis and contain differing types of trade summary information depending upon which of the three time periods is requested. A sample Inside Quote Report and Key has been annexed as Appendix C.

Inside Quote Summaries include high, low and closing prices at which buy and sell transactions involving NASDAQ stocks were executed. Although Inside Quote Summaries provide overviews of price trends in specific stocks, they do not provide specific detail that might be required to examine a specific trade involving a stock on a particular date at a specific time of day.

Inside Quote Reports do not identify market makers involved in the separately enumerated trades but rather simply list the inside bid and ask prices for each trade executed for a specific stock on a particular day. These reports also indicate locked trades when the inside bid price for a trade is the same as the inside ask price, as well as listing crossed trades, when the inside bid price on a stock is greater than the inside ask price.

Inside Quote Reports for OTC bulletin board stocks can be accessed free on line at www.otcbb.com.

II. MARKET MAKER PRICE MOVEMENT REPORT

These reports are helpful in seeing the sizes of share transactions, as well as bid and ask quotes for specific NASDAQ stocks. A sample Market Maker Price Movement Report and Key has been annexed as Appendix D. These reports can be essential in cases involving share manipulation and cases involving domination and control of share market pricing. Market Maker Price Reports for OTC bulletin board

stocks are available free on line by accessing www.otcbb.com

III. TIME AND SALES REPORT

Time and sales reports for individual securities quoted on NASDAQ report all purchase and sale transactions between 9:30 A.M. and 4:00 P.M., in chronological order, indicating rounded-off share volume, as well as the exact share price paid for each transaction (*See Appendix E*). Each trade is assigned its own control number, which can be used to track the trade, including locating a particular trade on the Equity Trade Journal Reports. A sample Time and Sales Report and Key has been annexed as Appendix E.

The reported time in the time and sales reports indicates the actual second when a trade has been reported.

IV. TRADE JOURNAL REPORT

Unlike Inside Quote Reports, Market Maker Price Movement Reports and Time and Sales Reports, NASDAQ considers these reports and Trade and Quote Reports as proprietary and generally will not release them without a Subpoena (*See Appendix F*). These reports contain very specific categories of information relating to each and every purchase and sale transaction involving a NASDAQ stock. The reports are presented in a multiple columned data table format using numerous NASDAQ specific abbreviations and resort to the NASDAQ prepared legends is essential for a meaningful understanding of the information contained in a Trade Journal Report for a specific transaction in a specific stock. A sample Trade Journal Report and Key have been annexed as Appendix G

The reporting obligation of a party to a buy or sell transaction as reflected in an Equity Trade Journal Report depends upon the status of the party to a transaction. For example, in a transaction between two market makers, the obligation of reporting the trade execution time falls upon the market maker acting on the selling side of the transaction. In a transaction involving a market maker and a non-market maker, the trade execution time reporting requirements falls upon the market maker.

The reporting party to a buy or sell transaction is required pursuant to the Automated Confirmation Transaction System ACT rules to report buy or sell transactions within ninety seconds. This is known as the real-time trade reporting

requirement which is required of market makers involved with each trade in a NASDAQ security. The speed of reporting the time of the trade execution depends on whether or not an automated or non-automated electronic trade reporting system was used for a specific transaction.

SelectNet is the proprietary, automated NASDAQ trade execution network licensed to NASDAQ members which involves no contact between individual traders employed by a buy or a sell side with trade execution times and prices being reported automatically. SelectNet enables security firms to route orders, negotiate terms, and execute trades in NASDAQ securities. The Short Order Execution System is similar in operation and make-up to SelectNet but is designed to process the execution and reporting of trades involving less than one thousand shares.

CTCI is the computer-to-computer interface, a high speed communications interface between the computer mainframes of many larger NASDAQ members and the mainframe computer system of the NASDAQ trading system designed for the more efficient transfer of trading information.

Resorting to the glossary of terms available at the NASDAQ web site can be vital in understanding the various abbreviations and terms used on the Equity Order Audit Trail Reports (*See* www.nasdr.com).

V. TRADE AND QUOTE REPORT

Trade and Quote Reports, like Equity Trade Journal Reports are considered proprietary (subpoena required - See Appendix F) by NASDAQ and contain all of the information contained in Trade Journal Reports with the addition of inside bid and ask quotes. Put another way, the Trade and Quote Report is a combination of the Equity Trade Journal and the Inside Quote Report. A Trade and Quote Report Key has been annexed as Appendix H.

CONCLUSION

Disputes involving claims of bad trade execution, failure to execute, mark-up/mark-down violations, market manipulation, and share-pricing violations involving NASDAQ stocks can, in many instances, be conclusively determined by resorting to NASDAQ historical trading reports. As market volatility has given rise to a growing number of customer claims which relate to the forensics of trading in particular stocks, the practitioner is well advised to obtain relevant NASDAQ historical trading data.

Dated: May 1, 2000

Appendix A

NASD Notice to Members 99-11

NASD Regulation Issues Guidance Regarding Stock Volatility

Executive Summary

In recent months, there has been a sharp increase in price volatility and volume in many stocks, particularly of companies that sell products or services via the Internet (Internet issuers). NASD Regulation, Inc. (NASD RegulationSM) is issuing this Notice to Members to suggest disclosures that firms can make to retail customers to educate them about the risks of price and volume volatility. This Notice also describes steps taken by some on-line brokers to respond to volatility. A companion Notice to Members issued today, Notice to Members 99-12, provides members with guidance concerning the operation of their order execution systems and procedures during extreme market conditions.

Questions or comments concerning this Notice may be directed to Mary Revell, Associate General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8203.

Discussion

Recently, there has been a marked increase in the price volatility of many stocks, particularly those of Internet issuers. This volatility has been coupled with record trading volume in many of these stocks. Customers eager to trade Internet stocks have flooded their brokers with large numbers of orders, leading to large order imbalances, systems queues, and backlogs. During these extreme market conditions, many firms implemented procedures that are designed to preserve the continuous execution of customers' orders while also lessening the exposure of the firm to extraordinary market risk. For example, some Market Maker firms temporarily discontinued normal automatic order executions and handled orders manually. Firms also reduced their size guarantees on individual stocks or groups of stocks (i.e., stocks of Internet issuers) on a going-forward basis. Delays in order executions and executions at prices significantly away from the market price quoted at the time the order was entered then occurred, which in turn led to market losses caused by executions at prices higher or lower than customers expected, especially with respect to orders placed over the Internet.

First and foremost, NASD Regulation reminds member firms of their obligations under Securities and Exchange Commission (SEC) Staff Legal Bulletin No. 8 to ensure that they have adequate systems capacity to handle high volume or high volatility trading days.¹ In this connection, we note that the SEC staff's position relates to all firms handling orders and is premised on a legal obligation to treat customers fairly.² Second, firms should provide adequate, clear disclosure to customers about the risks arising out of evolving volatility and volume concerns and any related constraints on firms' ability to process orders in a timely and orderly manner. This Notice describes the types of disclosure we deem appropriate.

We also have spoken to several order entry firms that provide on-line trading services about the steps they are taking to respond to volatility. This Notice provides members with information about these steps.³

Disclosure

Recent events show that the way some stocks are traded is changing dramatically, and the change in trading methods may affect price volatility and cause increased trading volume. This price volatility and increased volume present new hazards to investors, regardless of whether trading occurs on-line or otherwise. Firms are reminded that their procedures for handling customer orders must be fair, consistent, and reasonable during volatile market conditions and otherwise. To ensure that customers are knowledgeable about these procedures, we suggest that all firms, both order entry firms (i.e., firms with a retail business that route orders to other firms for execution) and integrated firms (i.e., firms with a large retail business that also engage in market making and other activities), whether they offer on-line trading services or not, consider making the following types of disclosures to educate retail customers about their procedures for handling the

execution of a securities transaction, particularly during volatile market conditions, along with any additional disclosures they deem appropriate. NASD Regulation notes, however, that disclosure of procedures that are unfair, inconsistent, or unreasonable would not correct deficiencies with these procedures.

Delays

Firms should consider disclosing that high volumes of trading at the market opening or intra-day may cause delays in execution and executions at prices significantly away from the market price quoted or displayed at the time the order was entered. Firms should consider explaining to customers how order executions are handled by Market Makers, and explain that Market Makers may execute orders manually or reduce their size guarantees during periods of volatility, resulting in possible delays in order execution and losses. This disclosure is particularly important with respect to on-line investors, who have come to expect quick executions at prices at or near the quotes displayed on their computer screens.

Types Of Orders

Firms should consider explaining in detail the difference between market and limit orders and the benefits and risks of each. In particular, firms should consider disclosing that they are required to execute a market order fully and promptly without regard to price and that, while a customer may receive a prompt execution of a market order, the execution may be at a price significantly different from the current quoted price of that security. Firms should tell customers that limit orders will be executed only at a specified price or better and that, while the customer receives price protection, there is the possibility that the order will not be executed.

As a related matter, firms should consider additional disclosure for customers who place market orders for initial public offering (IPO) securities trading in the secondary market, particularly those that trade at a much higher price than their offering price, or in "hot stocks" (those that have recently traded for a period of time under what is known as "fast market conditions," in which the price of the security changes so quickly that quotes for a stock do not keep pace with the trading price of the stock). Firms may disclose that in such cases customers' risk of receiving an execution substantially away from the market price at the time they place the order may be significantly reduced if they also include a cap (or floor) with the order above (or below) which the order is not to be executed, by placing a limit order.

Access

Firms should consider alerting customers that they may suffer market losses during periods of volatility in the price and volume of a particular stock when systems problems result in inability to place buy or sell orders. Customers trading on-line may have difficulty accessing their accounts due to high Internet traffic because of systems capacity limitations. Customers trading through brokers at full-service or discount brokerage firms or through representatives of on-line firms when on-line trading has been disabled or is not available because of systems limitations may have difficulty reaching account representatives on the telephone during periods of high volume. Firms should explain their procedures for responding to these access problems.

Communications With The Public

Firms may use advertisements or sales literature to make claims about the speed and reliability of their trading services. These communications with the public must not exaggerate the members' capabilities or omit material information about the risks of trading and the possibilities of delayed executions. Moreover, members should have the systems capacity to support any claims they make about their trading services. Misrepresentations or omissions of material facts in public communications violate National Association of Securities Dealers, Inc. (NASD®) Rule 2210 as well as Rule 2110, which requires members to observe high standards of commercial honor and just and equitable principles of trade.

Current Practices

As stated above, on-line firms have described to us steps they have taken to respond to volatility. These procedures are detailed below. While NASD Regulation believes that these actions, when clearly disclosed to customers, may be appropriate responses to trading in securities experiencing extraordinary volatility, they may not be sufficient or appropriate responses in all circumstances. Each action provides protection to the firm and obviously also impacts a firm's customers wishing to trade those securities.

Hot IPOs And Hot Stocks

There recently has been significant volatility during the period of time when certain IPOs have opened for secondary market trading, particularly the IPOs of Internet issuers. When some of these IPOs started trading on an exchange or on The Nasdaq Stock Market, Inc., after going public, they initially have traded at a much higher price than their IPO offering price. The prices of some of these "hot" IPOs have doubled or more in initial trading (one increased more than tenfold in price), only to fall sharply in subsequent trading. This price volatility has been accompanied by significant trading volume. Certain non-IPO stocks of Internet issuers also recently have traded for a period of time under fast market condition. The extraordinary volume of orders and cancellations entered on-line and otherwise during those periods caused queues and backlogs for many order entry and Market Maker firms. As a result of the level of market volatility and volume of orders, a number of Market Makers discontinued their normal automatic execution of orders and began handling orders manually. Firms also reduced their size guarantees on individual stocks or groups of stocks. This in turn led to delay in order executions, executions at prices significantly away from the market quoted at the time the order was entered, and delays in execution confirmations and cancellation reports.

Order entry firms responded to this price volatility and to changes in Market Maker order handling procedures in several ways. One firm has halted on-line trading of hot IPOs and stocks, requiring customers to purchase these securities through a registered representative, either in person or via the telephone. When contacted, representatives can explain, for example, the difference between market and limit orders and the benefits and risks of each, and encourage customers whose primary goal is to achieve a target price and protect against sudden price moves, and who understand that there is a possibility that the order will not be executed, to enter limit orders. When used, this halt has been implemented only for a short period of time, typically one day.

Other firms do not accept market orders for hot IPOs, requiring customers who wish to buy these stocks to enter a limit order specifying the highest price they would pay for these issues. Still other firms do not accept any orders for certain IPOs that are forecast to be hot until the IPO begins trading in the secondary market. Finally, some firms call clients back who have placed orders on IPOs that look to be volatile. The firms alert customers to restrictions they impose by placing a notice on their Web sites.

Margin

All firms, whether on-line or otherwise, may raise margin requirements for volatile stocks. Some firms that permit on-line trading have raised the amount of equity that must be maintained in margin accounts (maintenance margin) for long positions in certain volatile stocks to between 40 percent and 100 percent.⁴ The rationale for raising maintenance margin is to help ensure that the equity in a customer's margin account is sufficient to cover large changes in the price of a stock. Increasing maintenance margin requirements protects both the firm and customers by ensuring that investors have more equity in their margin accounts as protection in case of a large change in the value of a stock, which reduces the likelihood that the firm will have to liquidate assets in the customer's account to meet a margin call. Firms evaluate stocks for more stringent maintenance margin requirements by examining price fluctuations, market capitalization, and volatility.

On-line firms also have responded to recent volatility by prohibiting the use of margin to purchase certain securities. Some securities have been designated as

"not marginable," requiring customers to purchase the securities with 100 percent initial margin, allowing payment to be made within three days of settlement. Firms also have designated certain securities as "cash on hand," requiring customers to have 100 percent of the purchase price of the security in the account before the transaction can be executed.

Investor Education

Many firms provide some kind of investor education on issues related to market volatility on their Web sites. This education may be found in a part of the Web site devoted generally to investor education and in firm newsletters. It may include definitions of market and limit orders, an explanation of the difference between the two types of orders, and the risks and benefits of each. Some firms encourage customers to use limit orders when they are more concerned about achieving a desired target price for a trade than an immediate execution. Investor education also can be found in some firms' account-opening documents and cash-and-margin-account opening documents. Finally, many firms have customer help desks and support agents, both of which provide answers to customer questions.

Pop-up Or Splash Screens

Certain firms have added a page that a customer must view when entering the customer account pages of their Web sites indicating, for example, that maintenance margin has been raised for certain listed securities; trade reports may be delayed; only limit orders will be accepted for certain securities; and the last "real-time" quotes viewed on the site may not be reflective of the current trading price of a stock.

Some firms use these pages to discuss what happens when customers attempt to cancel market orders and enter replacement orders. Because of delays in receiving trade reports on volatile trading days, some customers, fearing that their orders have not been executed, have attempted to cancel their initial market orders and enter new orders. Because market orders must be executed as promptly as possible, firms explain that it may not be feasible to cancel a market order, since they may already have been executed, even if a customer has not yet received a trade report confirming the execution. Customers are told that entering a cancel order and a separate replacement order may result in the customer being responsible for the execution of duplicate orders, if the cancellation order cannot be processed in a timely fashion. Firms advise customers instead to place limit orders to reduce the risk of placing a duplicate order and ensure that the price received is within acceptable limits. One firm has created another category of order called "cancel and replace": the firm will execute the second or "replace order" only if it can confirm that the initial order was in fact canceled.

Member firms are exploring the feasibility of creating more of these screens on a stock-specific or trade-specific basis. This could include, for example, a "pop-up screen explaining that a particular stock is trading in a fast market condition when a customer seeks to place an order in the stock.

Endnotes

1 Staff Legal Bulletin No. 8 (MR), published on September 8, 1998, states the views of the SEC's Division of Market Regulation about the need for broker/dealers to maintain enough internal systems capacity to operate properly when trading volume is high. This Bulletin is available on the SEC's Web site at: <http://www.sec.gov/rules/other/slbmr8.htm>

2 The Legal Bulletin cites an SEC Release in support of its position. See note 8, citing Securities Exchange Act Release No. 8363 (July 29, 1968), 33 FR 11150 (August 7, 1968).

3 This Notice addresses possible responses to recent stock price volatility, particularly in stocks traded through on-line brokerage firms. While it does not address firms' suitability obligations in connection with recommended transactions or their know-your-customer obligations, firms are reminded that the existence of these obligations does not depend upon whether a trade is executed on-line or otherwise.

4 This increase is from the 25 percent maintenance margin required by NASD and stock exchange rules or the 30 percent to 35 percent maintenance margin required by many firms.

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Appendix B



Staff Legal Bulletin No. 8 (MR)

Action: Publication of Division of Market Regulation Staff Legal Bulletin

Date: September 9, 1998

Summary: This staff legal bulletin sets forth the views of the Division of Market Regulation ("Division") about how broker-dealers should handle customer orders and notify customers when marketwide circuit breakers halt trading on exchanges. This bulletin also states the Division's views about the need for broker-dealers to maintain enough internal systems capacity to operate properly when trading volume is extremely high.

Supplementary Information: The statements in this legal bulletin represent the views of the Division's staff. This bulletin is not a rule, regulation, or statement of the Securities and Exchange Commission. Further, the Commission has not approved or disapproved its contents.

Contact Person: For further information about order handling and circuit breaker issues, contact Alton Harvey at (202) 942-4167. For further information about technological capacity issues, contact Sheila Slevin at (202) 942-0796.

I. Problems That Arose During Trading on October 27 and 28, 1997

On October 27 and 28, 1997, the nation's securities markets fell by a record absolute amount on then-record trading volume.¹ In reconstructing the events of October 27 and 28, the Commission staff became aware that a number of broker-dealers and their customers faced significant problems trading on those days. On October 27, the first day that cross-market circuit breakers had ever been triggered, some broker-dealers were apparently confused about how to properly execute retail market orders. On the next day, October 28, historically high trading volume overwhelmed the capacity of some broker-dealer systems, causing those broker-dealers to fail to receive or execute customer orders in a timely manner.

This legal bulletin is intended to provide broker-dealers with guidance on how to handle orders and notify customers should circuit breakers close the markets in the future. This bulletin also is intended to remind broker-dealers that they need to have sufficient internal systems capacity to provide for continuous operation during episodic surges in trading volume.

II. Broker-Dealers Should Handle Circuit Breaker Trading Halts the Same Way That They Handle Other Regulatory Trading Halts

Two circuit breakers halted trading on October 27, 1997. The first circuit breaker stopped trading for 30 minutes between 2:36 and 3:06 p.m. The second circuit breaker closed the markets for the day at 3:30 p.m. A number of broker-dealers reportedly had problems determining how to properly route retail orders they received following the market's early close. Those firms were uncertain as to whether they should hold the orders for execution at the next day's opening, execute the orders at the last reported price, or cancel the orders. It appears that most firms held those customer orders for execution at the next day's market opening.

A. The Basic Rule – Follow Practices Used During Other Regulatory Halts

The Division believes that on the rare occasions when circuit breakers halt trading,² broker-dealers should handle pending orders and new orders in the same manner they handle orders for a security in which a self-regulatory organization ("SRO") has imposed a regulatory trading halt. For example, if an issuer is about to release material corporate news during a trading session, the SRO that serves as the primary market for the issuer's securities (*i.e.*, a securities exchange or Nasdaq) would impose a regulatory trading halt (for "news pending") that is honored by all of the other SROs until the news is disseminated and the halt is lifted. SROs impose these types of regulatory trading halts virtually on a daily basis. It is not uncommon for some of these halts to remain in effect through the remainder of the trading session. Broker-dealers and the markets already know how to handle orders when trading in an individual stock is halted, and there is no reason to adopt different practices for circuit breaker halts.

Accordingly, during intraday circuit breaker trading halts, broker-dealers should send pending orders and new orders to a market for execution upon the resumption of trading, unless they receive instructions to the contrary from their customers during the halt.

If circuit breakers close the markets early for the day, broker-dealers should handle pending and new orders in a similar manner. In particular:

- Unless a customer indicates otherwise when submitting an order, broker-dealers and the markets should treat orders that are pending when the circuit breaker is triggered, or that are received afterward, as "Good Til Cancelled" or "GTC" orders, and should hold the orders for execution at the reopening on the next trading session. This should be the case even if the order originally was marked as "Off-Hours Eligible."³
- Broker-dealers and the markets should treat pending orders marked as "At-the-Close" orders (including "Market-at-Close" or "MOC" orders, "Limit-at-Close" or "LOC" orders, or any other orders related to closing prices) as cancelled.⁴ Broker-dealers and the markets should not accept any new orders relating to closing prices.⁵

B. After-Hours and Pre-Opening Trading

The rules that govern circuit breakers on the stock exchanges are SRO rules, not Commission rules. Accordingly, the SROs have the latitude to make interpretations about the circuit breaker rules, including interpretations about whether members can engage in after-hours or pre-opening trading after circuit breakers have closed the markets early. For example, the New York Stock Exchange currently interprets NYSE Rule 80B, which governs circuit breaker trading halts, as barring members from engaging in trading in NYSE-listed securities prior to the next day's opening when a circuit breaker trading halt has closed the market early for the day.

In the case of over-the-counter securities, the National Association of Securities Dealers ("NASD") has no circuit breaker rule *per se*. The NASD instead has stated that it would halt trading on Nasdaq upon the Commission's request when other markets have halted trading due to extraordinary market conditions. In response, the Commission has made a standing request that the NASD halt trading whenever circuit breakers have stopped trading on the exchanges.⁶ After the NASD halted trading on Nasdaq on October 27, the NASD asked the Division to clarify whether the Commission's standing request prevented trading by NASD members prior to the next day's opening. The Division in response agreed with the NASD that it appeared reasonable to permit pre-opening trading starting at 8:00 a.m. on October 28, to assist the price-discovery process. In future instances when late-day circuit breakers stop trading early, the Division would consult with the NASD and evaluate market

circumstances prior to determining whether pre-opening trading should be permitted on the next day. In general, however, the Division believes that allowing pre-opening trading is appropriate when late-day circuit breakers stop trading early.

C. Broker-Dealers Should Take Steps to Notify Customers About Order Treatment

When circuit breakers have closed the markets, it is likely that customers will try to reach their broker-dealers to determine how their orders will be treated. Ideally, broker-dealers should be prepared to receive telephone calls and other direct communications from customers and to inform them of how pending orders and new orders will be handled. The Division recognizes that direct communications might not always be feasible under those conditions, especially during a brief intraday trading halt. At a minimum, however, broker-dealers (both online and full-service) that maintain a web page should promptly post a notice stating that circuit breaker halts have closed the markets and explaining how pending or new orders will be handled. Moreover, the Division believes that broker-dealers that handle orders through the Internet should have mechanisms in place so that, when a customer attempts to transmit an order after the triggering of a circuit breaker, an electronic response will indicate that the markets are closed and explain how pending orders and new orders will be handled.⁷

III. Broker-Dealers Need to Have Enough Systems Capacity to Ensure a High Degree of Operational Capability

The Commission received several complaints from customers regarding broker-dealer operations during the heavy trading volume effected on October 27 and 28. In particular, customers complained about receiving poor or untimely executions from broker-dealers. Customers of online broker-dealers also complained about delays in accessing their online brokerage accounts. Because of those problems, some broker-dealers made substantial adjustments to customer accounts.

Because broker-dealers are becoming increasingly reliant on technology to perform trading functions and to route customer orders to markets, these problems could be more severe during future periods of high trading volume. Broker-dealers therefore need to take steps to prevent their operational systems from being overwhelmed by periodic spikes in systems message traffic due to high volume. In particular, broker-dealers should not merely have sufficient systems capacity to handle average-to-heavy loads. Rather, broker-dealers should have the systems capacity to handle exceptional loads of several times the average trading volume.⁸

A. Access Problems Faced by Customers of Online Broker-Dealers

Numerous customers of online broker-dealers were unable to gain timely access to their accounts on October 28. Because the Internet contains multiple potential choke points that can slow the flow of information, it is difficult to determine what caused the delays faced by online users attempting to request information or place orders electronically. Moreover, some of the delays faced by online broker-dealers and their customers reflected the existing limitations of the Internet. Overall Internet traffic was extremely heavy on October 28, causing widespread slowness. Also, problems with regional Internet service providers ("ISPs") meant that investors in some areas of the country faced greater delays than investors in other areas of the country.

On the other hand, some of the problems that online investors experienced stemmed from broker-dealers' online systems and their websites. One significant problem was that some broker-dealers' web servers had reached their maximum capacity to handle simultaneous users. Not only did an extraordinarily high number of online investors access broker-dealer web sites on October 28, but they tended to stay connected for longer periods of time than typical. Delays with third-party vendor services and excessive non-customer requests for financial information may also have contributed to the problems. Other potential difficulties with online broker-dealers' web sites included poor

distribution of demand across system resources (load balancing), slow access equipment, slow web server software, and poor integration with back-end databases.

Some online broker-dealers also faced other access problems, including broker-dealer telephone lines that were overwhelmed with callers who were frustrated by the inability to access information online.

B. Execution Problems Faced by Broker-Dealers

Some broker-dealers experienced disruptions in their trading system operations that prevented them from routing customer orders to the designated market center for execution on a timely basis. Although disruptions occurred throughout the day, capacity problems were particularly high just after the opening of the market and prior to the close of trading on October 28. An unusually high numbers of orders that queued up in broker-dealers' internal order handling systems prior to the opening of trading on October 28 helped precipitate these problems. In addition, a number of broker-dealers were forced to manually execute some customer orders because mainframe computer capacity problems prevented automated routing systems from sending orders to designated market centers for execution.

C. Adequate Capacity Should be a Top Priority for Broker-Dealers

The Commission has long been concerned about the need to take steps to prevent capacity or other operational problems from disrupting market operations. Previously, the Commission published two Automation Review Policy ("ARP") statements⁹ that address the technological capacity needs of participants in the securities markets. The policy statements highlighted the Commission's concern that market participants, including exchanges, clearing agencies and broker-dealers, take voluntary steps to establish comprehensive planning and assessment programs to determine systems capacity and vulnerability.¹⁰ The first policy statement in particular discussed the importance of: (i) formally establishing capacity estimates; (ii) conducting periodic capacity stress tests; and (iii) contracting with independent reviewers to assess performance at current and future capacity levels and to assess vulnerability to physical threats.¹¹

With this bulletin, the Division seeks to emphasize to broker-dealers the importance of having adequate capacity to handle high volume or high volatility trading days, and conducting capacity planning on a regular basis. The Division does not intend to mandate standards for broker-dealer capacity at this time. Rather, the Division encourages broker-dealers to look to the guidance provided by the ARP statements, and to consider other appropriate measures to minimize potential capacity problems. These might include developing backup technology systems and procedures for handling system capacity problems. Online broker-dealers could consider additional steps, including: employing multiple ISPs, implementing class "B" Internet addresses to improve access quality, improving server capacity, giving priority at times of peak usage to customers who wish to enter orders (*i.e.*, preventing non-customers from accessing websites to review financial information), educating customers about Internet access issues, and providing alternatives means to place orders when Internet access is slow or unavailable.

As discussed above regarding circuit breakers, broker-dealers should use every reasonable effort to notify customers about operational difficulties. Broker-dealers also need to properly record all customer complaints, including e-mail complaints, as required by SRO and Commission rules.

D. Outsourcing Does Not Excuse Broker-Dealers from Focusing on Capacity Issues


Some broker-dealers have delegated responsibility for their technology operations, including trading systems, to outside vendors. Those broker-dealers should recognize that they are not excused from taking the steps necessary to ensure that adequate systems are in place merely because they rely on outside vendors. They need to exercise oversight of vendors' operations, and ensure that vendors


adequately address capacity problems.¹²

1. On Monday, October 27, the Dow Jones Industrial Average ("DJIA") declined 554.26 points (7.18%) to close at 7161.15. This represented the tenth largest percentage decline in the index since 1915. On Tuesday, October 28, market prices initially resumed their decline before rallying sharply. The DJIA closed up 337.17 points (4.71%) at 7498.32 on then-record share volume of over a billion shares each on the New York Stock Exchange ("NYSE") and the Nasdaq Stock Market ("Nasdaq").
2. Circuit breaker halts should be rare, due to the exchanges' April 1998 modification of the circuit breaker rules. The new circuit breaker rules have trigger levels based on a one-day decline of 10%, 20% and 30% of the Dow Jones Industrial Average.
3. NYSE Rule 13 defines a "Good Til Cancelled" order as "[a]n order to buy or sell which remains in effect until it is either executed or cancelled. A good til cancelled order that is designated Off-Hours eligible and that is not also a stop limit order may be executed through the Off-Hours Trading Facility." During circuit breaker trading halts, the exchange would not operate the Off-Hours Trading Facility.
4. NYSE Rule 13 defines an "At the Close" order as "[a] market order which is to be executed in its entirety at the closing price, on the Exchange, of the stock named in the order, and if not so executed, is to be treated as cancelled[, including] a limit order that is entered for execution at the closing price."
5. Those practices for handling pending orders and new orders also would apply to "At-the-Close" orders attempting to unwind stock positions related to expiring option and futures contracts on an "expiration Friday."
6. The NASD initially set forth its practice in a policy statement filed with the Commission after the October 1987 Market Break. In approving the NASD's policy statement, the Commission requested that the NASD impose a trading halt as quickly as practicable whenever the NYSE and other equity markets have suspended trading. *See Securities Exchange Act Release No. 26198 (October 19, 1988), 53 FR 41637 (October 24, 1988)*. The NASD has extended its Market Closing Policy until April 30, 2000 (unless otherwise modified or extended by the NASD's board of governors). *See Securities Exchange Act Release No. 39846 (April 9, 1998), 63 FR 18477 (April 15, 1998); NASD Rule IM-4120-3*.
7. The Division believes that the SROs should also promptly provide notification of the circuit breaker to financial newswires and other financial media.
8. The Commission has previously cautioned broker-dealers (during the back-office problems of the late 1960s) that accepting or executing orders without adequate order-handling capacity would violate the anti-fraud provisions of the securities laws. "The Commission also warns broker-dealers that it is a violation of applicable anti-fraud provisions for a broker-dealer to accept or execute any order for the purchase or sale of a security or to induce or attempt to induce such purchase or sale, if he does not have the personnel and facilities to enable him to promptly execute and consummate all of his securities transactions." *Securities Exchange Act Release No. 8363 (July 29, 1968), 33 FR 11150 (August 7, 1968)*.
9. *See Securities Exchange Act Release No. 27445 (Nov. 16, 1989), 54 FR 48703 (Nov. 24, 1989); Securities Exchange Act Release No. 29185 (May 9, 1991), 56 FR 22490 (May 15, 1991)*.
10. The Commission took the position that broker-dealers should use the policy statements as a guideline. *See 54 FR at 48706 n.17*.

- 11 See 54 FR at 48706-07. The second policy statement highlighted the importance of: (i) obtaining independent reviews of the general controls and risks in place in automated trading and information dissemination systems to determine the need for further reviews and enhancements; (ii) providing notice of significant additions, deletions or other changes to automated systems on an annual and as-needed basis; and (iii) providing the Commission staff with real-time notifications of unusual events such as significant outages involving automated systems. See 56 FR 22491-95.
- 12 On prior occasions when the Commission has considered broker-dealers' use of third-party vendors, the Commission has specified that broker-dealers remain ultimately responsible for abiding by all applicable regulatory requirements. For example, the Commission's electronic storage media rules require that any broker-dealer who uses electronic storage media "provide its own representation or one from the storage medium vendor" that the selected storage media meets certain conditions. See 17 CFR 240.17a-4(f)(2)(i).

<http://www.sec.gov/rules/other/slbmr8.htm>
Last update: 09/14/98

 [Return to previous screen \(Other Commission Notices\)](#)

 [Return to SEC Home Page](#)

Appendix C

XIRC Inside Quote Report

Symbol Ask	Quote Time Open/Closed	Inside Bid Locked/Crossed	Tick	Inside Quote Source		
XIRC	12:00:07	39.5	D	39.6875	O	MPQTE
XIRC	12:00:24	39.5	D	39.625	O	MPQTE
XIRC	12:00:39	39.5625		39.625	O	MPQTE
XIRC	12:01:23	39.5	D	39.625	O	MPQTE
XIRC	12:01:30	39.5	D	39.5625	O	MPQTE
XIRC	12:01:53	39.5	D	39.5625	O	MPQTE
XIRC	12:02:02	39.5	D	39.625	O	MPQTE
XIRC	12:02:46	39.5625		39.625	O	MPQTE
XIRC	12:04:24	39.5625		39.6875	O	MPQTE
XIRC	12:04:26	39.625		39.6875	O	MPQTE
XIRC	12:04:31	39.625		39.6875	O	MPQTE
XIRC	12:04:31	39.5625	D	39.6875	O	MPQTE
XIRC	12:05:13	39.625		39.75	O	MPQTE
XIRC	12:05:19	39.6875		39.75	O	MPQTE
XIRC	12:05:39	39.6875		39.8125	O	MPQTE
XIRC	12:05:45	39.6875		39.875	O	MPQTE
XIRC	12:05:58	39.75		39.875	O	MPQTE
XIRC	12:07:41	39.75		39.875	O	MPQTE
XIRC	12:08:19	39.75		39.8125	O	MPQTE
XIRC	12:08:31	39.6875	D	39.8125	O	MPQTE
XIRC	12:08:40	39.6875	D	39.75	O	MPQTE
XIRC	12:08:55	39.5625	D	39.75	O	MPQTE
XIRC	12:08:59	39.5625	D	39.6875	O	MPQTE
XIRC	12:09:04	39.5	D	39.6875	O	MPQTE
XIRC	12:09:05	39.5	D	39.625	O	MPQTE
XIRC	12:09:07	39.5	D	39.5625	O	MPQTE
XIRC	12:09:19	39.4375	D	39.5625	O	MPQTE
XIRC	12:09:21	39.4375	D	39.5	O	MPQTE
XIRC	12:13:08	39.4375	D	39.5	O	MPQTE
XIRC	12:13:18	39.25	D	39.5	O	MPQTE
XIRC	12:13:22	39.25	D	39.375	O	MPQTE
XIRC	12:13:49	39.1875	D	39.375	O	MPQTE
XIRC	12:13:58	39.3125		39.375	O	MPQTE
XIRC	12:14:05	39.3125		39.4375	O	MPQTE
XIRC	12:14:07	39.375		39.4375	O	MPQTE
XIRC	12:14:23	39.375		39.5	O	MPQTE

Nasdaq Inside Quote Report Key

QuoteDate: Trade date of the inside quotes
Time: Time of the inside quote change
IssueSymbol: Trading symbol of the security
InsideBidPrice: The best (highest) bid
BidTick: Blank = Uptick (Bid increased from last inside bid price)
D = Downtick (Bid decreased from last inside bid price)
InsideAskPrice: The best (lowest) ask (a/k/a Offer)
MarketOpenClosed: O = Market open
C = Market closed
MarketLockedCrossed: Blank = Market not locked or crossed
L = Market locked (Inside Bid = Inside Ask)
C = Market crossed (Inside Bid > Inside Ask)
QuoteSource: Source of the inside quote change:
BEG-DAY: Start of day positions
MPQTE: Market Participant quote update
MMOPEN: Market Maker position open
MMCLOSE: Market Maker position close
WDRAW: Market Maker withdraw
QTEHALT: Quotations halted
RSUMQTE: Quotations resumed
TRDHALT: Trading halted
RSUMTRD: Trading resumed
IQPSTAT: Inside quotation processing status changes
MASMCHG: Mass Market Maker change
SOES0EX: SOES zero exposure
SSUSPD0: SOES suspend zero exposure
SUSPDC: SOES suspend no clearing
SMMP.W: SOES Market Participant self withdraw
SOESQTE: SOES quote refresh
PREOPEN: Pre-open spin
TIMEDEP: Time dependent market open/close
SODXSPR: Start-of-day excess spread
SIACBBO: SIAC BBO quote
TMSALES: Time & Sales inside for OTCBB securities

CPIH

Market Maker Price Movement Report

Trade Date	Quote Time	Symbol	Market Class	MPID	Bid Price	Bid Size	Ask Price	Ask Size	Proc State	Quote Condition	Open/Closed
11/17/99	00:00:00	CPIH	NNM	STRK	0	0	0	0	S	R	C
11/17/99	00:00:00	CPIH	NNM	MHMY	10.125	1	11.75	1	A	R	C
11/17/99	00:00:00	CPIH	NNM	WEST	0	0	0	0	E	R	C
11/17/99	00:00:00	CPIH	NNM	RAMS	0	0	0	0	E	R	C
11/17/99	00:00:00	CPIH	NNM	MASH	0	0	0	0	E	R	C
11/17/99	00:00:00	CPIH	NNM	GFIN	0	0	0	0	E	R	C
11/17/99	00:00:00	CPIH	NNM	FLSC	0	0	0	0	E	R	C
11/17/99	00:00:00	CPIH	NNM	DLCR	0	0	0	0	E	R	C
11/17/99	00:00:00	CPIH	NNM	BRUT	0	0	0	0	E	R	C
11/17/99	00:00:00	CPIH	NNM	AFCA	0	0	0	0	E	R	C
11/17/99	00:00:00	CPIH	NNM	ISLD	0	0	0	0	E	R	C
11/17/99	00:00:00	CPIH	NNM	REDI	0	0	0	0	E	R	C
11/17/99	00:00:00	CPIH	NNM	INCA	0	0	0	0	E	R	C
11/17/99	00:00:00	CPIH	NNM	INCA	0	0	0	0	E	R	C
11/17/99	00:00:00	CPIH	NNM	HHL	-8.5	1	-13	1	A	R	C
11/17/99	00:00:00	CPIH	NNM	NITE	9	1	10.75	1	A	R	C
11/17/99	00:00:00	CPIH	NNM	EASH	0	0	0	0	S	R	C
11/17/99	00:00:00	CPIH	NNM	BACH	0	0	0	0	S	R	C
11/17/99	00:00:00	CPIH	NNM	DKNY	0	0	0	0	A	R	C
11/17/99	00:00:00	CPIH	NNM	RAMS	0	0	0	0	E	R	C
11/17/99	03:40:37	CPIH	NNM	MASH	0	0	0	0	E	R	C
11/17/99	03:40:37	CPIH	NNM	WEST	0	0	0	0	E	R	C
11/17/99	03:40:37	CPIH	NNM	FLSC	0	0	0	0	E	R	C
11/17/99	03:40:37	CPIH	NNM	DLCR	0	0	0	0	E	R	C
11/17/99	03:40:37	CPIH	NNM	DKNY	0	0	0	0	E	R	C
11/17/99	03:40:37	CPIH	NNM	GFIN	0	0	0	0	E	R	C
11/17/99	07:47:41	CPIH	NNM	MASH	10	1	12	1	E	R	C
11/17/99	07:58:19	CPIH	NNM	ISLD	0	0	12	1	E	R	C
11/17/99	07:58:37	CPIH	NNM	ISLD	11.25	1	12	1	E	R	C
11/17/99	07:58:40	CPIH	NNM	ISLD	11.25	1	0	0	E	R	C
11/17/99	07:59:29	CPIH	NNM	NTRD	0	0	0	0	E	R	C
11/17/99	07:59:29	CPIH	NNM	NTRD	0	0	0	0	E	R	C
11/17/99	08:04:30	CPIH	NNM	MASH	10	10	12	10	E	R	C
11/17/99	08:04:38	CPIH	NNM	ISLD	11.25	1	13.5	3	E	R	C
11/17/99	08:04:41	CPIH	NNM	MASH	10	1	12	1	E	R	C
11/17/99	08:06:00	CPIH	NNM	STRK	0	0	0	0	E	R	C
11/17/99	08:07:07	CPIH	NNM	MASH	9	1	12	1	E	R	C
11/17/99	08:08:42	CPIH	NNM	ISLD	11.375	10	13.5	3	E	R	C

Nasdaq Market Maker Price Movement Report Key

QuoteDate: Date of Market Participants' quote updates

Time: Time of Market Participants' quote updates

IssueSymbol: Trading symbol of the security

MarketClass: NNM = Nasdaq National Market

SC = Nasdaq SmallCap

MP_ID: Market Participant identifier

MPBidPrice: Market participants' posted bid price

MPBidSize: Number of shares the MP is obligated to buy at their bid

MPAskPrice: Market participants' posted ask (offer) price

MPAskSize: Number of shares the MP is obligated to sell at their ask

ProcState: A = Active

W = Withdrawn

E = Excused Withdrawn

S = Suspended

D = Deleted

QuoteCondition: A = Depth on offer side

B = Depth on bid side

C = Closing quote

D = News dissemination

E = Order influx

F = Fast trading

G = Pre-opening

H = Depth on bid/offer side

I = Order imbalance

J = Release/halt open delay

K = Release/halt open delay

N = Non-firm quote

O = Opening quote

P = News pending

R = Regular quote

S = Trade halt related security

V = Trade halt in view of common

X = Equipment change over

Z = No open, no resume

PositionOpenClosed: O = MP Position is open

C = MP Position is closed

Blank = Not applicable

Appendix E

CPIH

Time and Sales Report

Car	Symbol	Market	Source	Report Time	Buy/Sell	Share Volume	Price	FO	Mod 1	Mod 2	Control Number	Original Control No.
CPIH	NNM	NNM	SNET	09:30:00	B	400	20.875				321200823000	
CPIH	NNM	NNM	SNET	09:30:01	S	800	20.875				321300894400	
CPIH	NNM	NNM	SNET	09:30:01	S	200	20.875				321300895000	
CPIH	NNM	NNM	SNET	09:30:04	S	200	20.875				3213008915000	
CPIH	NNM	NNM	SOES	09:30:09	B	100	21.0625				321200885000	
CPIH	NNM	NNM	SNET	09:30:09	B	100	21				321000882800	
CPIH	NNM	NNM	SNET	09:30:10	S	200	20.875				3213008931000	
CPIH	NNM	NNM	SNET	09:30:11	B	500	18				3212008963000	
CPIH	NNM	NNM	SNET	09:30:11	B	100	18.125				3214008931000	
CPIH	NNM	NNM	SNET	09:30:11	B	200	18				321000894600	
CPIH	NNM	NNM	SNET	09:30:11	B	200	18				321000895400	
CPIH	NNM	NNM	SNET	09:30:11	B	400	18				321200898600	
CPIH	NNM	NNM	SNET	09:30:12	S	200	20.875				3215010039000	
CPIH	NNM	NNM	SNET	09:30:13	S	300	20.9375				3213010089000	
CPIH	NNM	NNM	SNET	09:30:13	B	500	15.75				321000898600	
CPIH	NNM	NNM	SNET	09:30:16	S	300	20.9375				3213010521000	
CPIH	NNM	NNM	SNET	09:30:17	B	100	18				3210008943000	
CPIH	NNM	NNM	SNET	09:30:18	B	100	19.25				3214008951600	
CPIH	NNM	NNM	SNET	09:30:19	S	200	20.5625				3215010821000	
CPIH	NNM	NNM	SNET	09:30:22	S	200	20.9375				3211011232000	
CPIH	NNM	NNM	SNET	09:30:23	S	1,000	20.9375				3215011192000	
CPIH	NNM	NNM	SNET	09:30:25	S	500	20.9375				3215011564000	
CPIH	NNM	NNM	SNET	09:30:26	S	800	20.9375				3213011586000	
CPIH	NNM	NNM	SNET	09:30:26	S	100	20.9375				3211011610000	
CPIH	NNM	NNM	SNET	09:30:27	B	100	20.9375				3212010289000	
CPIH	NNM	NNM	SNET	09:30:28	S	500	20.9375				3211011826000	
CPIH	NNM	NNM	SNET	09:30:32	B	400	20.3125				3214010513000	
CPIH	NNM	NNM	SNET	09:30:33	B	100	20.25			O	3212010624000	
CPIH	NNM	NNM	SNET	09:30:34	B	200	20.3125				3212010717000	
CPIH	NNM	NNM	SOES	09:30:34	B	100	20.25				3212010731000	
CPIH	NNM	NNM	SNET	09:30:35	B	100	20.5			O	3210010748000	
CPIH	NNM	NNM	SNET	09:30:36	S	1,000	20.625				3211012736000	
CPIH	NNM	NNM	SNET	09:30:37	S	500	20.625				3215012687000	
CPIH	NNM	NNM	SNET	09:30:38	S	200	20.625				3215012682000	
CPIH	NNM	NNM	SNET	09:30:39	S	200	20.625				3213012956000	

Time & Sales Version 53 Report Key

TradeReportDate: Date on which the trade was reported

TradeReportTime: Time the trade report was submitted by the reporting-side firm

IssueSymbol: Security trading symbol

MarketClass: NNM = Nasdaq National Market

SC = Nasdaq SmallCap

CQS = Consolidated Quotation Service security

(NYSE or AMEX listed)

ReportedVolume: Share volume reported by the reporting-side firm

ReportedPrice: Share price reported by the reporting-side firm

Modifier1 & Modifier2: Reported trade modifiers:

B = Bunched trade

C = Cash sale

SB = Sold bunched

ND = Next day delivery

Snn = Seller option (nn is numeric)

S(X) = Settlement date

T = Form T trade (occurred outside regular market hours)

SLD = Reported late (more than 90 seconds after execution)

W = Reported using average price

PRP = Prior Reference Price

Price Override: O = Subscriber entry price override

X = Supervisory entry price override

V = Supervisory contract price override

ControlNumber: Unique number assigned by ACT to each trade

NoLinkControl: Control number of the original "No" trade

ReportType: C = Canceled trade

E = Errored trade

N = No portion of No/Was trade (incorrect trade report)

W = Was portion of No/Was trade (corrected trade report)

Blank = Regular trade report

Appendix F

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ARBITRATION DEPARTMENT
NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.
Case No. _____

JOHN Q. PUBLIC,

Claimants,

-against-

PHAST & LUCE SECURITIES, INC.,

Respondent.

**SUBPOENA FOR
PRODUCTION OF
OF DOCUMENTS**

THE PEOPLE OF THE STATE OF NEW YORK

TO: Office of General Counsel, NASDAQ Stock Market, 1735 K Street, N.W.
Washington D.C. 20006

Demand is hereby made pursuant to Section 33(a) of the NASDAQ Code of Arbitration Procedure that you should produce and deliver for inspection and copying NASDAQ's Equity Trade Journal, relating to Chinese Prosperity International Holding, LTD. (CPIH) for the period of November 17 and 18, 1999.

DATED: January 20, 2000



Timothy J. O'Connor
Ainsworth, Sullivan, Tracy, Knauf, Warner
& Ruslander, P.C.
403 New Karner Road, P.O. Box 12849
Albany, New York 12212-2849
(518) 464-0600

Appendix G

Equity Trade Journal

Sorted by Date/Report Time

Symbol	Rpt Date	Exc Date	Rpt EXID	Con EXID	Rpt MPID	Con MPID	C	MM Rpt Tm	Con Rpt Tm	MM Exc Tm	Con Exc Tm	As	BIS	Of Market	Rpt Vol	Est Vol	Rpt Price	Est Price	Mod 1	Mod 2	PO	Rpt Short	Source	Media	Rpt Cntrl#	ACT Status	ACT Time	ACT Time	NTW Cntrl #	Type
	Wednesday, November 17, 1999																													
:PIH	11/17/99	11/17/99	CHAS	REDI	REDI	A	P	08:13:31	18:30:46	18:30:46	18:30:46	Y	S	400	0	0	0	0	0	0	0	0	0	0	321300169900		08:13:31		T	
:PIH	11/17/99	11/17/99	REDI	REDI	REDI	A	A	08:13:32	18:30:45	18:30:45	18:30:45	Y	B	0	0	0	0	0	0	0	0	0	0	0	321400148600	R	08:13:32		R	
:PIH	11/17/99	11/17/99	CHAS	CHAS	CHAS	A	A	08:13:33	18:30:46	18:30:46	18:30:46	Y	S	0	0	0	0	0	0	0	0	0	0	0	321500165400	N	08:13:33		R	
:PIH	11/17/99	11/17/99	FOCC	FOCC	FOCC	A	A	08:14:21	18:44:51	18:44:51	18:44:51	Y	S	0	0	0	0	0	0	0	0	0	0	0	321300178900	N	08:14:21		R	
:PIH	11/17/99	11/17/99	CHAS	CHAS	CHAS	A	A	08:14:21	18:44:51	18:44:51	18:44:51	Y	S	0	0	0	0	0	0	0	0	0	0	0	321500175200	N	08:14:21		T	
:PIH	11/17/99	11/17/99	REDI	REDI	REDI	A	A	08:14:21	18:44:51	18:44:51	18:44:51	Y	B	0	0	0	0	0	0	0	0	0	0	0	321000154700	N	08:14:21		R	
:PIH	11/17/99	11/17/99	CHAS	CHAS	CHAS	A	A	08:14:26	18:47:46	18:47:46	18:47:46	Y	S	200	200	200	12.375	12.375	0	0	0	0	0	0	321300180300	N	08:14:26		T	
:PIH	11/17/99	11/17/99	REDI	REDI	REDI	A	A	08:14:27	18:47:46	18:47:46	18:47:46	Y	B	0	0	0	0	0	0	0	0	0	0	0	321400155600	N	08:14:27		R	
:PIH	11/17/99	11/17/99	REDI	REDI	REDI	A	A	08:14:27	18:47:46	18:47:46	18:47:46	Y	S	0	0	0	0	0	0	0	0	0	0	0	321300180500	N	08:14:27		R	
:PIH	11/17/99	11/17/99	ISLD	ISLD	ISLD	A	A	08:18:00	08:17:59	08:17:59	08:17:59	S	0	0	0	0	0	0	0	0	0	0	0	0	321500212800	CTCI	08:18:00		M	
:PIH	11/17/99	11/17/99	MASH	ISLD	ISLD	A	A	08:18:00	08:17:59	08:17:59	08:17:59	B	200	200	200	11.375	11.375	T	0	0	0	0	0	0	321200191900	CTCI	08:18:00		T	
:PIH	11/17/99	11/17/99	ISLD	ISLD	ISLD	A	A	08:24:56	08:24:56	08:24:56	08:24:56	NMM	1000	1000	1000	12	12	T	0	0	0	0	0	0	321300256300	N	08:24:56		R	
:PIH	11/17/99	11/17/99	PERS	REDI	REDI	A	P	08:24:56	08:24:55	08:24:55	08:24:55	S	1000	1000	1000	12	12	T	0	0	0	0	0	0	321400237100	N	08:24:56		R	
:PIH	11/17/99	11/17/99	REDI	REDI	REDI	A	A	08:24:56	08:24:56	08:24:56	08:24:56	B	0	0	0	0	0	0	0	0	0	0	0	0	321400271800	CTCI	08:24:56		T	
:PIH	11/17/99	11/17/99	ISLD	ISLD	ISLD	A	A	08:32:10	08:32:10	08:32:10	08:32:10	NMM	175	175	175	14.5	14.5	T	0	0	0	0	0	0	321100315300	CTCI	08:32:10		R	
:PIH	11/17/99	11/17/99	INCA	INCA	INCA	A	A	08:40:20	08:40:20	08:40:20	08:40:20	S	0	0	0	0	0	0	0	0	0	0	0	0	321200311900	CTCI	08:40:20		R	
:PIH	11/17/99	11/17/99	MASH	MASH	MASH	A	A	08:40:20	08:40:20	08:40:20	08:40:20	NMM	500	500	500	14	14	T	0	0	0	0	0	0	321400308500	N	08:40:20		R	
:PIH	11/17/99	11/17/99	INCA	INCA	INCA	A	A	08:40:20	08:40:20	08:40:20	08:40:20	B	0	0	0	0	0	0	0	0	0	0	0	0	321300314200	CTCI	08:40:20		R	
:PIH	11/17/99	11/17/99	BACH	BACH	BACH	A	A	08:40:20	08:40:20	08:40:20	08:40:20	NMM	1000	1000	1000	13.125	13.125	T	0	0	0	0	0	0	321300314200	N	08:40:20		R	
:PIH	11/17/99	11/17/99	INCA	INCA	INCA	A	A	08:40:20	08:40:20	08:40:20	08:40:20	S	0	0	0	0	0	0	0	0	0	0	0	0	321300314200	N	08:40:20		R	
:PIH	11/17/99	11/17/99	MASH	MASH	MASH	A	A	08:40:20	08:40:20	08:40:20	08:40:20	NMM	1000	1000	1000	13.125	13.125	T	0	0	0	0	0	0	321200311900	CTCI	08:40:20		R	
:PIH	11/17/99	11/17/99	INCA	INCA	INCA	A	A	08:40:21	08:40:22	08:40:22	08:40:22	B	0	0	0	0	0	0	0	0	0	0	0	0	321200311900	N	08:40:21		R	
:PIH	11/17/99	11/17/99	BACH	BACH	BACH	A	P	08:40:21	08:40:22	08:40:22	08:40:22	NMM	500	500	500	14	14	T	0	0	0	0	0	0	321300314300	CTCI	08:40:21		T	
:PIH	11/17/99	11/17/99	INCA	INCA	INCA	A	A	08:40:21	08:40:22	08:40:22	08:40:22	NMM	500	500	500	14	14	T	0	0	0	0	0	0	321300314300	N	08:40:21		T	

The Nasdaq Stock Market, Inc., Trading & Market Services: CONFIDENTIAL

Equity Trade Journal Report Key

TradeReportDate: Date on which the trade was reported
ReportTime: Time the trade report was submitted by the reporting-side firm
ContraTime: Time the trade report was submitted by the contra-side firm
IssueSymbol: Security trading symbol
MarketClass: NNM = Nasdaq National Market
SC = Nasdaq SmallCap
CQS = Consolidated Quotation Service security
(NYSE or AMEX listed)
OTCBB = OTC Bulletin Board
OTC = Other-OTC security
ReportType: C = Canceled trade
E = Errored trade
N = No portion of No/Was trade (incorrect trade report)
W = Was portion of No/Was trade (corrected trade report)
Blank = Regular trade report
AsOf: Y = Reported T+1
Blank = Not an As Of trade report
ExecutionDate: Date the trade was executed
ExTime: Time the trade was executed (only required if the trade was not reported within 90 seconds of execution)
ContraExTime: Time the trade was executed as reported by the contra-side firm
BuySellCross: B = Buy
S = Sell
X = Cross trade
EnteredVolume: Share volume entered by the reporting-side firm
EnteredPrice: Share price entered by the reporting-side firm
ReportedVolume: Media-reported share volume (excludes odd lots; will be 0 for non-media reported trades)
ReportedPrice: Media-reported share price (will be 0 for non-media reported trades)
Modifier1 & Modifier2: Reported trade modifiers:
B = Bunched trade
C = Cash sale
SB = Sold bunched
ND = Next day delivery
Snn = Seller option (nn is numeric)
S(X) = Settlement date
T = Form T trade (occurred outside regular market hours)
SLD = Reported late (more than 90 seconds after execution)
W = Reported using average price
PRP = Prior Reference Price
Price Override: O = Subscriber entry price override
X = Supervisory entry price override
V = Supervisory contract price override
ReportingMPID: Market participant identifier for the reporting-side reporting firm
ReportingEXID: Market participant identifier for the reporting-side executing firm
ReportingCapacity: A = Agent
P = Principal
R = Riskless principal
ReportingShort: Reporting-side short sale indicator
S = Short sale
X = Short sale exempt
Blank = Not a short sale
ContraMPID: Market participant identifier for the contra-side reporting firm
ContraEXID: Market participant identifier for the contra-side executing firm
Contra Capacity: A = Agent
P = Principal
R = Riskless principal
ContraShort: Contra-side short sale indicator
S = Short sale
X = Short sale exempt
Blank = Not a short sale
ControlNumber: Unique number assigned by ACT to each trade
NoLinkControlNumber: Control number of the original "No" trade

MediaReported: N = Trade was not media reported
Blank = Trade was media reported

ACTStatus: A = Accepted
B = Broken (Previously locked-in trade)
C = Canceled
D = Declined
E = Errored
F = Forced match; locked-in trade
G = One-sided submission
I = Inhibited (by clearing firm)
K = Rejected sizeable trade
L = Automatic locked-in trade at end of T+1
M = Matched; locked-in trade
N = No/Was trade
R = Locked-in trade; rec'd via execution system interface
S = Automatic locked-in split trade at the end of T+1
T = Trade reporting only and not for clearing submission

TradeSource: ACES = ACES Pass-through
CAES = Computer Assisted Execution System
CAES/TTS = CAES/Intermarket Trading System
SNET = SelectNet
SOES = Small Order Execution System
UTP = Unlisted Trading Privileges
CTCI = Computer-to-Computer Interface
Blank = ACT Manual Trade Report

ACTDate: Date of the last ACT update for the trade
ACTStatusTime: Time of the last act update for the trade

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Trades & Quotes Report Key

TradeReportDate: Date on which the trade was reported
TradeReportTime: Time the trade report was submitted
IssueSymbol: Trading symbol of the security
MarketClass: NNM = Nasdaq National Market
 SC = Nasdaq SmallCap
 CQS = Consolidated Quotation Service security
 (NYSE or AMEX listed)
 OTCBB = OTC Bulletin Board
 OTC = Other-OTC
ReportTypeCode: C = Canceled
 E = Errored
 N = No portion of No/Was Trade
 W = Was portion of No/Was Trade
 Blank = Regular trade report
AsOf: Y = Trade reported T+1
 Blank = Not an As Of trade report
ExecutionDate: Date the trade was executed
ExTime: Time the trade was executed (only required if the trade was not reported within 90 seconds of execution)
BuySellCross: B = Buy
 S = Sell
 X = Cross trade
EnteredVolume: Share volume entered by the reporting-side firm
EnteredPrice: Share price entered by the reporting-side firm
ReportVolume: Media-reported share volume (excludes odd lots; will be 0 for non-media reported trades)
ReportPrice: Media-reported share price (will be 0 for non-media reported trades)
Modifier1 & Modifier2: Reported trade modifiers:
 B = Bunched trade
 C = Cash sale
 SB = Sold bunched
 ND = Next day delivery
 Snn = Seller option (nn is numeric)
 S(X) = Settlement date
 T = Form T trade (occurred outside regular market hours)
 SLD = Reported late (more than 90 seconds after execution)
 W = Reported using average price
 PRP = Prior Reference Price
Price Override: O = Subscriber entry price override
 X = Supervisory entry price override
 V = Supervisory contract price override
ReportingMPID: Market participant identifier for the reporting-side reporting firm
ReportingCapacity: A = Agent
 P = Principal
 R = Riskless principal
ReportingShort: Reporting-side short sale indicator
 S = Short sale
 X = Short sale exempt
 Blank = Not a short sale
ContraMPID: Market participant identifier for the contra-side reporting firm
Contra Capacity: A = Agent
 P = Principal
 R = Riskless principal
ContraShort: Contra-side short sale indicator
 S = Short sale
 X = Short sale exempt
 Blank = Not a short sale
ControlNumber: Unique number assigned by ACT to each trade

[ALL "WAS" FIELDS WILL BE BLANK FOR REGULAR TRADE REPORTS]

WasControlNumber: Control number for the Was portion of a No/Was trade (blank for regular trade reports)
WasIssueSymbol: Trading symbol of the security for the Was portion of a No/Was trade

WasBuySellCross: (B) Buy (S) Sell (X) Cross indicator for the Was portion of a No/Was trade
 WasEnteredVolume: Share volume entered by the reporting-side firm for the Was portion of a No/Was trade
 WasReportedVolume: Media reported volume for the Was portion of a No/Was trade
 WasEnteredPrice: Share price entered by the reporting-side firm for the Was portion of a No/Was trade
 WasReportedPrice: Media reported share price for the Was portion of a No/Was trade
 WasModifier1 & WasModifier2: Trade modifiers for the Was portion of a No/Was trade
 B = Bunched trade
 C = Cash sale
 SB = Sold bunched
 ND = Next day delivery
 Snn = Seller option (nn is numeric)
 S(X) = Settlement date
 T = Form T trade (occurred outside regular market hours)
 SLD = Reported late (more than 90 seconds after execution)
 W = Reported using average price
 MediaReported: N = Trade was not media reported
 Blank = Trade was media reported
 ACTStatus: A = Accepted
 B = Broken (Previously locked-in trade)
 C = Canceled
 D = Declined
 E = Errored
 F = Forced match; locked-in trade
 G = One-sided submission
 I = Inhibited (by clearing firm)
 K = Rejected sizeable trade
 L = Automatic locked-in trade at end of T+1
 M = Matched; locked-in trade
 N = No/Was trade
 R = Locked-in trade; rec'd via execution system interface
 S = Automatic locked-in split trade at the end of T+1
 T = Trade reporting only and not for clearing submission
 TradeSource: ACES = ACES Pass-through
 CAES = Computer Assisted Execution System
 CAES/ITS = CAES/Intermarket Trading System
 SNET = SelectNet
 SOES = Small Order Execution System
 UTP = Unlisted Trading Privileges
 CTCI = Computer-to-Computer Interface
 Blank = ACT Manual Trade Report
 InsideBidPrice: Inside bid at the time of the trade report
 InsideAskPrice: Inside ask at the time of the trade report
 InsideBidTick: U = Uptick (Inside bid increased from prior inside bid)
 D = Downtick (Inside bid decreased from prior inside bid)
 N = No change
 Blank = Inside market information not available for this security (OTC and OTCBB)
 ReportingMPIDBidPrice: Bid price of the reporting firm at the time of the trade report
 ReportingMPIDAskPrice: Ask price of the reporting firm at the time of the trade report