

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51936; File No. SR-NSX-2005-04)

June 29, 2005

Self-Regulatory Organizations; National Stock Exchange; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend an Existing Pilot Rule That Stipulates the Price Increment by Which Designated Dealers Must Better Customer Subpenny Orders

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 27, 2005, the National Stock ExchangeSM (“Exchange”)³ filed with the Securities and Exchange Commission (“Commission”) the proposed rule change, as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has filed this proposal pursuant to Section 19(b)(3)(A) of the Act⁴ and Rule 19b-4(f)(6) thereunder,⁵ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comment on the proposed rule change from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Exchange changed its name and was formerly known as The Cincinnati Stock Exchange or “CSE.” See Securities Exchange Act Release No. 48774 (November 12, 2003), 68 FR 65332 (November 19, 2003) (SR-CSE-2003-12).

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 17 CFR 240.19b-4(f)(6).

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

The Exchange has a pilot program under Exchange Rule 12.6, “Customer Priority,” Interpretation .02, which requires an Exchange Designated Dealer (“Specialist”) to better the price of a customer limit order that is held by that Specialist if that Specialist determines to trade with an incoming market or marketable limit order. Under the pilot program, the Specialist is required to better a customer limit order at the national best bid or offer (“NBBO”) by at least one penny, or by at least the nearest penny increment if the customer limit order is priced outside the NBBO.

The pilot program currently in effect is scheduled to expire on June 30, 2005.⁶ With the instant proposed rule change, the Exchange extends the pilot through June 30, 2006.⁷ The Exchange is making no substantive changes to the pilot program, other than extending its operation through June 30, 2006. The text of the proposed rule change is available at the Exchange’s principal office and at the Commission’s Public Reference Room.

⁶ See Securities Exchange Act Release Nos. 46274 (July 29, 2002), 67 FR 50743 (August 5, 2002) (File No. SR-CSE-2001-06) (establishing pilot); 46554 (September 25, 2002), 67 FR 6276 (October 4, 2002) (first extension of pilot) and 46929 (November 27, 2002), 67 FR 72711 (December 6, 2002) (second extension of pilot); 47941 (May 29, 2003), 68 FR 33751 (June 5, 2003) (third extension of pilot); 48869 (December 3, 2003), 68 FR 68684 (December 9, 2003) (fourth extension of pilot); and 49913 (June 24, 2004), 69 FR 40437 (July 2, 2004) (fifth extension of pilot).

⁷ The Exchange understands that the Commission’s Regulation NMS (“Reg NMS”) may have an impact on this pilot program. See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005). The Exchange intends to assess what impact Rule 612 may have on the pilot program and to accordingly revise the pilot program as appropriate to be consistent with the Rule 612 when it becomes effective.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The Exchange proposes to extend its pilot program, under Exchange Rule 12.6,⁸ which relates to the trading of securities in subpenny increments.⁹ Interpretation .02 of

⁸ Exchange Rule 12.6 provides, in pertinent part, that no member shall (i) personally buy or initiate the purchase of any security traded on the Exchange for its own account or for any account in which it or any associated person of the member is directly or indirectly interested while such member holds or has knowledge that any person associated with it holds an unexecuted market or limit price order to buy such security in the unit of trading for a customer, or (ii) sell or initiate the sale of any such security for any such account while it personally holds or has knowledge that any person associated with it holds an unexecuted market or limit price order to sell such security in the unit of trading for a customer.

⁹ In connection with the pilot Interpretation .02, the Exchange has also received a Commission exemption from Rules 11Ac1-1, 11Ac1-2, and 11Ac1-4 under the Act, 17 CFR 240.11Ac1-1, 240.11Ac1-2, and 240.11Ac1-4, that allows Exchange members to display their quotes for Nasdaq- and exchange-listed securities in whole penny increments while trading in subpenny increments. See letter from Robert L.D. Colby, Deputy Director, Division of Market Regulation (“Division”), Commission, to Jeffrey T. Brown, Senior Vice President & General Counsel, Exchange, (July 26, 2002) (granting initial exemption) in response to letter from Jeffrey T. Brown, Senior Vice President & General Counsel, Exchange, to Annette Nazareth, Director, Division, Commission (November 27, 2001) (requesting initial exemption); letter from Robert L.D. Colby, Deputy Director, Division, Commission, to Jeffrey T. Brown, Senior Vice President & General Counsel, Exchange (September 25, 2002) (amending and extending initial exemption) in response to letter from Jeffrey T. Brown, Senior Vice President &

Rule 12.6 requires a Specialist to better the price of a customer limit order held by the Specialist by at least one penny (for those customer limit orders at the NBBO) or at least the nearest penny increment (for those customer limit orders that are not at the NBBO) if the Specialist determines to trade with an incoming market or marketable limit order.¹⁰

General Counsel, Exchange, to Annette Nazareth, Director, Division, Commission (September 18, 2002) (requesting first extension); letter from Alden S. Adkins, Associate Director, Division, Commission, to Jeffrey T. Brown, Senior Vice President & General Counsel, Exchange (November 27, 2002) (granting second extension) in response to letter from Jeffrey T. Brown, Senior Vice President & General Counsel, Exchange, to Annette Nazareth, Director, Division, Commission (November 20, 2002) (requesting second extension); letter from Robert L.D. Colby, Deputy Director, Division, Commission, to Jeffrey T. Brown, Senior Vice President & General Counsel, Exchange, (May 29, 2003) (granting third extension) in response to letter from Jeffrey T. Brown, Senior Vice President & General Counsel, Exchange, to Annette Nazareth, Director, Division, Commission (May 19, 2003) (requesting third extension); letter from Robert L.D. Colby, Deputy Director, Division, Commission, to Jennifer M. Lamie, Assistant General Counsel & Secretary, Exchange (December 1, 2003) (granting fourth extension) in response to letter from Jennifer M. Lamie, Assistant General Counsel & Secretary, Exchange, to Annette Nazareth, Director, Division, Commission (November 21, 2003) (requesting fourth extension); letter from David S. Shillman, Associate Director, Division, Commission, to James C. Yong, Senior Vice President, Regulation and General Counsel, Exchange (June 30, 2004) (granting fifth extension) in response to letter from James C. Yong, Senior Vice President, Regulation and General Counsel, Exchange, to Annette Nazareth, Director, Division, Commission (May 20, 2004) (requesting fifth extension). In conjunction with the proposed rule change, the Exchange has requested that the Commission extend its exemption from Rules 11Ac1-1, 11Ac1-2 and 11Ac1-4 of the Act to allow subpenny quotations to be rounded down (buy orders) and rounded up (sell orders) to the nearest penny for quote dissemination for Nasdaq and listed securities. See letter from James C. Yong, Senior Vice President and Chief Regulatory Officer, Exchange, to Annette Nazareth, Director, Division, Commission (June 28, 2005).

¹⁰ Interpretation .01 to Rule 12.6 provides that, “[i]f a Designated Dealer holds for execution on the Exchange a customer buy order and a customer sell order that can be crossed, the Designated Dealer shall cross them without interpositioning itself as a dealer.”

The purpose of the Interpretation is to prevent a Specialist from taking unfair advantage of a customer limit order held by that Specialist by trading ahead of the order with an incoming market or marketable limit order. Notwithstanding the fact that a Specialist may price-improve the incoming order by providing a price superior to that of the customer limit orders it holds, the customer should have a reasonable expectation of having its order filled at the limit order price. This expectation should be reflected in reasonable access to incoming contra-side order flow, unless other customers place better-priced limit orders with the Specialist or the Specialist materially improves upon the customer limit order price that he or she holds (not the customer's quoted price).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,¹¹ in general, and Section 6(b)(5) of the Act,¹² in particular, which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange asserts that the forgoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹³ and Rule 19b-4(f)(6) thereunder¹⁴ because the rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with protection of investors and the public interest.¹⁵ The Exchange has requested that the Commission waive the 30-day operative delay and designate the proposed rule change to become effective immediately, so that the pilot can continue uninterrupted.

The Commission hereby grants the request.¹⁶ The Commission believes that such waiver is consistent with the protection of investors and the public interest because it will

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ In addition, Rule 19b-4(f)(6)(iii) states that the Exchange must provide the Commission with written notice of its intent to file the proposed rule change at least five days prior to the date of filing of the proposed rule change. The Exchange has satisfied this pre-filing requirement.

¹⁶ For purposes only of accelerating the operative date of the proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

allow the benefits of Manning protection provided by the pilot to continue without interruption. For these reasons, the Commission designates the proposed rule change to be operative upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NSX-2005-04 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, D.C. 20549-9303.

All submissions should refer to File No. SR-NSX-2005-04. This file number should be included in the subject line if e-mail is used. To help the Commission process and review comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site

(<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE, Washington, DC 20549. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to file number SR-NSX-2005-04 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Margaret H. McFarland
Deputy Secretary

Action as set forth or recommended herein
APPROVED pursuant to authority delegated by
the Commission under Public Law 87-592.

For: the Division of Market Regulation
By: _____

(date)

¹⁷ 17 CFR 200.30-3(a)(12).