

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-49586; File No. SR-NSX-2004-03)

April 21, 2004

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Stock Exchange Amending its Fee Schedule to Cap Members Monthly Transaction Fees and Reduce the Designated Dealer's Principal Activity Fees

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")¹ and Rule 19b-4² thereunder, notice is hereby given that on March 31, 2004, the National Stock ExchangeSM (the "Exchange" or "NSX"SM)³ filed with the Securities and Exchange Commission ("Commission") the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comment on the proposed rule change from interested persons.

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

The Exchange proposes to amend its fee schedule to place a cap of \$200,000 per member on monthly transaction fees and to reduce the charge for Designated Dealers' principal activity from \$0.0025 to \$0.001 per share for non-Nasdaq securities.

The text of the proposed rule change appears below. New text is in italics.

Deleted text is in brackets.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Exchange recently 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).

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Rule 11.10. National Securities Trading System Fees

A. Trading Fees

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(g) Proprietary ([p]Principal) Transactions

(1) (A) All Designated Dealers in securities other than Nasdaq securities, except those acting as Preferencing Dealers or Contributing Dealers, will be charged \$0.001[0.0025] per share (\$0.1[0.25]/100 shares) for principal transactions.

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(i) [Reserved.]Transaction Fee Cap. The monthly transaction fees charged to each member shall be equal to the lesser of (1) the amounts assessed pursuant to Paragraphs (A)(a) through (A)(h) of this Rule 11.10 or (2) \$200,000.

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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 IV 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 is proposing two changes to its fee schedule. First, the Exchange proposes to introduce a cap on the total monthly transaction fees assessed to each member. There is currently no limit to the overall amount of transaction fees that may be charged. However, under the new fee provision, the monthly transaction fee will now be capped at \$200,000 per member. Second, the Exchange proposes to reduce the charge for a Designated Dealer trading in non-Nasdaq securities when not acting as a Preferencing Dealer or Contributing Dealer.⁴ The current fee is \$0.0025 per share for principal transactions. The Exchange proposes to reduce this fee to \$0.001 per share, which is the equivalent of the Exchange's current charge for Intermarket Trading System or "ITS" transactions.

The Exchange believes that the implementation of these changes will allow for a reduction in the overall level of fees paid by members while ensuring that each member pays an equitable share of the costs associated with operating the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section

⁴ A Preferencing Dealer trades against public agency market or marketable limit orders which the Dealer presents as agent in accordance with the Exchange's price-time and agency/principal priority rules. See Exchange Rule 11.9(u). A Contributing Dealer is a member that must maintain certain minimum net capital, be registered with the Exchange with respect to one or more securities, and provide regular bids and offers for round lots of securities in which it is registered. See Exchange Rule 11.9(a)(6).

6(b) of the Act,⁵ in general, and with Section 6(b)(4) of the Act,⁶ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Act⁷ in that it is 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. The Exchange believes that the proposed changes will create incentives for members to use the Exchange trading system, thereby increasing competition, which, in turn, will enhance the National Market System.

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

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

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

Written comments were neither solicited nor received in connection with the proposed rule change.

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

The foregoing proposed rule change has become effective pursuant to Section

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4).

⁷ 15 U.S.C. 78f(b)(5).

19(b)(3)(A)(ii) of the Act⁸ Rule 19b-4(f)(2)⁹ thereunder, because it changes a due, fee or other charge imposed by the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such 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 for (<http://www.sec.gov/rules/sro.shtml>);
- or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NSX-2004-03 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-NSX-2004-03. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

⁹ 17 CFR 240.19b-4(f)(2).

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, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NSX. 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-2004-03 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.¹⁰

Margaret McFarland
Deputy Secretary

¹⁰ 17 CFR 200.30-3(a)(12).