

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-49792; File No. SR-NSX-2004-05)

June 2, 2004

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of
Proposed Rule Change by National Stock Exchange to Extend the Liquidity Provider Fee
and Rebate Pilot Program

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 28, 2004, National Stock Exchange ("Exchange")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 Exchange filed this proposal pursuant to Section 19(b)(3)(A) of the Act⁴ and Rule 19b-4(f)(6)⁵ thereunder, which renders the proposal effective upon filing with the Commission.⁶ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Exchange was formerly known as The Cincinnati Stock Exchange. 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).

⁶ The Exchange provided the Commission with written notice of its intention to file the proposed rule change on May 21, 2004. The Commission reviewed the Exchange's submission, and asked the Exchange to file the instant proposed rule change, pursuant to Rule 19b-4(f)(6) under the Act. 17 CFR 240.19b-4(f)(6).

The Exchange has a liquidity provider fee and rebate program ("Program"), which the Exchange established in SR-CSE-2002-16.⁷ The Program is currently in effect, and is scheduled to expire on June 30, 2004.⁸ With the instant proposed rule change, the Exchange extends the Program through June 30, 2005. The Exchange is making no substantive changes to the Program, other than extending its operation through June 30, 2005. The text of the proposed rule change is available at the Exchange and at the Commission.⁹

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

⁷ Securities Exchange Act Release No. 46848 (November 19, 2002), 67 FR 70793 (November 26, 2002).

⁸ The Program was originally set to expire on March 31, 2003. It has been extended three times, with the most recent extension due to expire on June 30, 2004. See Securities Exchange Act Release Nos. 47596 (March 28, 2003), 68 FR 16594 (April 4, 2003)(SR-CSE-2003-03)(extending the pilot until September 30, 2003); 48584 (October 2, 2003), 68 FR 58368 (October 9, 2003)(SR-CSE-2003-13)(extending the pilot until December 31, 2003); and 48891(December 8, 2003), 68 FR 69738 (December 15, 2003)(SR-CSE-2003-14)(extending the pilot until June 30, 2004).

⁹ The Commission notes that the Exchange filed the proposed rule change with the intention of extending the Program's operation through June 30, 2005; however, the proposed rule language states the Program will operate "until June 30, 2005." With the Exchange's permission, the Commission has conformed the proposed rule language to reflect that the Program will operate through June 30, 2005. The Commission did not require the Exchange to file an amendment to accomplish this technical change. See June 1, 2004 email exchange between Jennifer Lamie, Assistant General Counsel and Secretary, NSX, and Joseph P. Morra, Special Counsel, Division of Market Regulation, Commission.

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 aspects of such statements.

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

1. Purpose

In SR-CSE-2002-16,¹⁰ the Exchange established the Program, which provides a transaction credit for liquidity providers that is paid by liquidity takers on each intra-Exchange execution¹¹ in Nasdaq securities. To establish the Program, the Exchange amended CSE Rule 11.10A(g)(1) by adding subparagraph (B) to charge the liquidity taker (*i.e.*, the party executing against a previously displayed quote/order) \$0.004 per share. The Exchange then passes on to the liquidity provider (*i.e.*, the party providing the displayed quote/order) \$0.003 per share, allowing the Exchange to retain \$0.001 per share. With the instant proposed rule change, the Exchange is extending the Program through June 30, 2005.¹² The Exchange is making no other changes to the Program as it currently operates.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of

¹⁰ Securities Exchange Act Release No. 46848 (November 19, 2002), 67 FR 70793 (November 26, 2002).

¹¹ An "intra-Exchange execution" (referred to in the original filing as an "intra-CSE execution") is any transaction that is executed on the Exchange for which the executing member on the buy-side of the transaction differs from the executing member on the sell-side of the transaction.

¹² The Exchange understands that the Commission's Proposed Regulation NMS ("Reg. NMS") may have an impact on the Program. Accordingly, the Exchange will undertake to work with the Commission to ensure that the Program would be consistent with the rules and regulations contained in Reg. NMS, should it be adopted.

the Act¹³ in general, and furthers the objectives of Section 6(b)(5)¹⁴ in particular, in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system and, generally, in that it protects investors and the public interest. The Exchange believes that the proposed rule change is also consistent with Section 6(b)(4) of the Act,¹⁵ in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members by crediting members on a pro rata basis.

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.

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

No written comments were solicited or received in connection with the proposed rule change.

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

Because the foregoing proposed rule change does not:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or

such shorter time as the Commission may designate, it has become effective pursuant to

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ 15 U.S.C. 78f(b)(4).

Section 19(b)(3)(A) of the Act¹⁶ and Rule 19b-4(f)(6)¹⁷ thereunder. At any time within 60 days of the filing of the 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 form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NSX-2004-05 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-2004-05. 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 will post all comments on the Commission's Internet Web site <http://www.sec.gov/>

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f)(6).

[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-2004-05 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.¹⁸

Margaret H. McFarland
Deputy Secretary

¹⁸ 17 CFR 200.30-3(a)(12).