

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51691; File No. SR-CSE-2003-06)

May 12, 2005

Self-Regulatory Organizations; National Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3 to the Proposed Rule Change Relating to Corporate Governance of Listed Issuers

I. Introduction

On September 12, 2003, the Cincinnati Stock Exchange, now known as National Stock Exchange ("Exchange" or "NSX"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Article IV of its By-Laws pertaining to its listing standards, including the addition of new corporate governance standards applicable to listed companies. Among other things, the Exchange also proposed to amend Article IV, Section 2 of the By-Laws, relating to unlisted trading privileges.

The proposed rule change was published for comment in the Federal Register on October 20, 2003.³ The Commission received no comments on the proposal. On November 19, 2003, the Exchange submitted Amendment No. 1 to the proposed rule change. On November 21, 2003, the Exchange submitted Amendment No. 2 to the proposed rule change.

On November 25, 2003, the Commission partially approved the proposed rule change as amended by Amendment Nos. 1 and 2. The portion of the proposal that remained unapproved

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Id.

was the proposed change to Article IV, Section 2 of the By-Laws relating to unlisted trading privileges.⁴

On April 19, 2005, the Exchange filed Amendment No. 3 to the proposal, revising the proposed change to Article IV, Section 2. This Order approves this remaining portion of the proposed rule change by granting accelerated approval to Amendment No. 3, and solicits comments from interested persons on Amendment No. 3.

II. Description of the Proposal

Currently, Article IV, Section 2, of the Exchange's By-Laws provides that no application shall be made by the Exchange to the Commission for the extension of unlisted trading privileges with respect to any security unless the issuer of the security meets the requirements for listing on the Exchange that are set forth in Section 1.3 of Article IV. It further provides that in the event that an issuer whose security has been the subject of a grant of unlisted trading privileges to the Exchange ceases to meet the listing requirements of Section 1.3, the Exchange shall terminate such unlisted trading. An exception is provided that permits the Exchange to seek and continue unlisted trading privileges on any security for which the primary trading market is the New York Stock Exchange or the American Stock Exchange.

The proposed rule change, as amended by Amendment No. 3, would broaden the ability of the Exchange to extend unlisted trading privileges by revising Article IV, Section 2, simply to state: "Notwithstanding the requirements for listing set forth in Section 1.3 of this Article IV, the

⁴ Securities Exchange Act Release No. 48832 (November 25, 2003), 68 FR 67715 (December 3, 2003) ("Partial Approval Order"). In the Partial Approval Order, the Commission granted accelerated approval to Amendment No. 1, and solicited comments from interested persons on Amendment No. 1. The Commission received no comments on Amendment No. 1. Amendment No. 2 was a technical amendment that was not subject to notice and comment.

Exchange may seek and continue unlisted trading privileges on any security as to which unlisted trading privileges may be extended in accordance with Section 12(f) of the Act and the rules thereunder.⁵

III. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁶ In particular, the Commission believes that the proposed rule change, as amended, is consistent with Section 6(b)(5) and Section 12(f) of the Act⁷ in that it permits the Exchange to extend unlisted trading privileges to the extent permitted by Section 12(f) and the rules thereunder.⁸

The Exchange has requested that the Commission grant accelerated approval to Amendment No. 3 to the proposed rule change. The Commission believes that Amendment No.

⁵ The italicized text reflects Amendment No. 3 to the proposed rule change. The original proposal, as published in the Notice, used the phrase “as to which unlisted trading privileges have been granted pursuant to Section 12(f) of the Act.”

⁶ 15 U.S.C. 78f(b). In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78f(b)(5) and 15 U.S.C. 78j(f). Section 6(b)(5) requires that the rules of an exchange be designed, among other things, to facilitate transactions in securities, to prevent fraudulent and manipulative acts and practices, 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, and not permit unfair discrimination among issuers. Section 12(f) sets forth the requirements in accordance with which a national securities exchange may extend unlisted trading privileges.

⁸ In approving the proposed rule change, the Commission notes that, among other things, the extension of unlisted trading privileges is subject to Rule 12f-5, which prohibits a national securities exchange from extending unlisted trading privileges to a security unless the exchange has in effect a rule or rules providing for transactions in the class or

3 improves the text of the proposed rule change by revising it to mirror the terminology of the statute and to include a reference to the rules thereunder. Acceleration of the amendment will permit the Exchange to implement the proposed rule change without further delay. The Commission therefore finds good cause, consistent with Section 19(b)(2) of the Act,⁹ to approve Amendment No. 3 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 3, including whether the Amendment 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-CSE-2003-06 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-CSE-2003-06. 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

type of security to which the exchange extends unlisted trading privileges. 17 CFR 240.12f-5.

⁹ 15 U.S.C. 78s(b)(2).

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-CSE-2003-06 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁰ that the remaining portion of the proposed rule change (SR-CSE-2003-06), as amended, be, and hereby is, approved, and that Amendment No. 3 to the proposed rule change be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

J. Lynn Taylor
Assistant Secretary

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).