

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51805; File No. SR-NSX-2005-05)

June 8, 2005

Self-Regulatory Organizations; National Stock Exchange; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Liquidity Provider Rebate and Fee 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 26, 2005, the National Stock Exchange ("NSX" or "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 the proposed rule change pursuant to Section 19(b)(3)(A) of the Act⁴ and Rule 19b-4(f)(6) thereunder,⁵ which renders the proposed rule change effective upon filing with the Commission.⁶ The Commission is publishing this notice to solicit comments on the proposed rule change.

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 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).

⁶ The Exchange provided the Commission with written notice of its intention to file the proposed rule change on May 20, 2005. The Commission received 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 240.19-4(f)(6).

The Exchange established a liquidity provider rebate and fee pilot program (“Program”) in SR-CSE-2002-16.⁷ The Program is currently in effect and is scheduled to expire June 30, 2005.⁸ With the instant proposed rule change, the Exchange extends the Program through June 30, 2006. The Exchange is making no substantive changes to the Program, other than extending its operation through June 30, 2006. The text of the proposed rule change is available on the NSX’s Web site (<http://www.nsx.com>), at the NSX’s principal office, and at the Commission’s Public Reference Room.

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.

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

⁸ The Program was originally set to expire on March 31, 2003. It has been extended four times, with the most recent extension due to expire on June 30, 2005. 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); 48891 (December 8, 2003), 68 FR 69738 (December 15, 2003) (SR-CSE-2003-14)(extending the pilot until June 30, 2004); and 49792 (June 2, 2004), 69 FR 32389 (June 9, 2004)(SR-NSX-2004-05)(extending the pilot until June 30, 2005).

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

1. Purpose

In SR-CSE-2002-16,⁹ the Exchange established the Program, which provides a transaction credit for liquidity providers that is paid by liquidity takers on each intra-Exchange execution¹⁰ in Nasdaq securities. To establish the Program, the Exchange amended Exchange 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, 2006.¹¹ 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

⁹ See Original Pilot, *supra* note 7.

¹⁰ 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.

¹¹ The Exchange understands that the Commission’s 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 when they become effective.

the Act¹² in general, and furthers the objectives of Section 6(b)(5)¹³ 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,¹⁴ 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 either solicited or received.

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

Because the foregoing proposed 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) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ 15 U.S.C. 78f(b)(4).

protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)¹⁵ of the Act and Rule 19b-4(f)(6) thereunder.¹⁶

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-2005-05 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NSX-2005-05. This file number should be included on the subject line if e-mail is used. To help the Commission process and

¹⁵ 15 U.S.C. 78s(b)(3)(A).

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/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 Room. Copies of such filing also will 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

¹⁶ 17 CFR 240.19b-4(f)(6).

publicly. All submissions should refer to File Number SR-NSX-2005-05 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.¹⁷

Margaret H. McFarland
Deputy Secretary

¹⁷ 17 CFR 200.30-3(a)(12).