

As discussed at length in the notice of the 13th Amendment,⁹ the Commission had determined to relieve the potential conflict among the SuperMontage approval order,¹⁰ Rule 11Aa3-2,¹¹ and the Plan, by granting the NASD an exemption under Rule 11Aa3-2(f)¹² from compliance with Section VI.C.1. of the Plan as required by Rule 11Aa3-2(d)¹³ until such time as Nasdaq is registered as a national securities exchange. The Plan Participants have requested an extension of such exemptive relief.

III. Discussion

The Commission finds that extending the operation of the Plan is consistent with the requirements of the Act and the rules and regulations thereunder, and, in particular, section 12(f)¹⁴ and section 11A(a)(1)¹⁵ of the Act and Rules 11Aa3-1 and 11Aa3-2 thereunder.¹⁶ Section 11A of the Act directs the Commission to facilitate the development of a national market system for securities, "having due regard for the public interest, the protection of investors, and the maintenance of fair and orderly markets," and cites as an objective of that system the "fair competition * * * between exchange markets and markets other than exchange markets."¹⁷ When the Commission first approved of the Plan on a pilot basis, it found that the Plan "should enhance market efficiency and fair competition, avoid investor confusion, and facilitate surveillance of concurrent exchange and OTC trading."¹⁸ The Plan has been in existence since 1990 and Participants have been trading Nasdaq securities under the Plan since 1993.

The Commission finds that extending the operation of the Plan through summary effectiveness furthers the goals

described above by preventing the lapsing of the sole effective transaction reporting plan for Nasdaq securities traded by exchanges pursuant to unlisted trading privileges. The Commission believes that the Plan is currently a critical component of the national market system and that the Plan's expiration would have a serious, detrimental impact on the further development of the national market system.

The Commission also finds that it is appropriate to grant summary effectiveness to the request to extend the exemption under Rule 11Aa3-2(f)¹⁹ from compliance with Section VI.C.1. of the Plan as required by Rule 11Aa3-2(d).²⁰ The Commission believes that the Plan is a critical component of the national market system and that the requested exemptive relief is necessary to assure the effective operation of the Plan. The Commission believes that the requested exemptive relief extension is consistent with the Act, the Rules thereunder, and, specifically, with the objectives set forth in sections 12(f) and 11A of the Act²¹ and Rules 11Aa3-1 and 11Aa3-2 thereunder.²²

IV. Solicitation of Comments

The Commission seeks general comments on the extension of the operation of the Plan and the extension of exemptive relief. Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed amendment that are filed with the Commission, and all written communications relating to the proposal 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 the amendment will also be available for inspection and copying at the Office of the Secretary of the Committee, currently located at the CSE, One Financial Place, 440 South LaSalle St., Suite 2600, Chicago, IL 60126. All submissions should refer to

File No S7-24-89 and be submitted by September 8, 2003.

V. Conclusion

It is therefore ordered, pursuant to sections 12(f) and 11A of the Act²³ and paragraph (c)(4) of Rule 11Aa3-2²⁴ thereunder, that the operation of the Plan be, and hereby is, extended and that certain exemptive relief also be extended both for a period not to exceed 120 days from the date of publication of this Date Extension in the **Federal Register**.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁵

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Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48295; File No. SR-CSE-2003-08]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Cincinnati Stock Exchange, Inc. Relating to Its Schedule of Fees

August 7, 2003.

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 July 21, 2003, the Cincinnati Stock Exchange, Inc. ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which the CSE has prepared. The CSE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act,³ which renders the proposal effective upon filing with the Commission. 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

The Exchange hereby proposes to amend its schedule of fees to address recent developments in the cost of doing

⁹ See Securities Exchange Act Release No. 46139 (June 28, 2001 [sic]), 67 FR 44888 (July 5, 2002) ("13th Amendment Notice").

¹⁰ See Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001).

¹¹ 17 CFR 240.11Aa3-2.

¹² 17 CFR 240.11Aa3-2(f).

¹³ 17 CFR 240.11Aa3-2(d).

¹⁴ 15 U.S.C. 78l(f). The Commission finds that extending the Plan is consistent with fair and orderly markets, the protection of investors and the public interest, and otherwise in furtherance of the purposes of the Act. The Commission has taken into account the public trading activity in securities traded pursuant to the Plan, the character of the trading, the impact of the trading of such securities on existing markets, and the desirability of removing impediments to, and the progress that has been made toward the development of a national market system.

¹⁵ 15 U.S.C. 78k-1(a)(1).

¹⁶ 17 CFR 240.11Aa3-1 and 17 CFR 240.11Aa3-2.

¹⁷ 15 U.S.C. 78k-1(a).

¹⁸ See Securities Exchange Act Release No. 28146 (June 26, 1990), 55 FR 27917 (July 6, 1990).

¹⁹ 17 CFR 240.11Aa3-2(f).

²⁰ 17 CFR 240.11Aa3-2(d).

²¹ 15 U.S.C. 78l(f) and 15 U.S.C. 78k-1.

²² 17 CFR 240.11Aa3-1 and 11Aa3-2.

²³ 15 U.S.C. 78l(f) and 15 U.S.C. 78k-1.

²⁴ 17 CFR 240.11Aa3-2(c)(4).

²⁵ 17 CFR 200.30-3(a)(27).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).