

the principal office of the NASD. All submissions should refer to File No. SR–NASD–2003–169 and should be submitted by December 30, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48869; File No. SR–CSE–2003–16]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Stock Exchange To Extend a Pilot Amending Exchange Rule 12.6, Customer Priority, To Require Designated Dealers To Better Customer Orders at the National Best Bid or Offer by Whole Penny Increments

December 3, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that on November 28, 2003, National Stock Exchange (“Exchange”)<sup>3</sup> filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed this proposal pursuant to section 19(b)(3)(A) of the Act<sup>4</sup> and Rule 19b–4(f)(6)<sup>5</sup> thereunder, which renders the proposal effective upon filing with the Commission.<sup>6</sup> 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 proposes to extend the termination date of a pilot that amended Exchange Rule 12.6, “Customer Priority,” to add Interpretation .02.

Interpretation .02 requires an Exchange Designated Dealer (“Specialist”) to better the price of a customer limit order that is held by that Specialist if that Specialist determines to trade with an incoming market or marketable limit order.<sup>7</sup> Under the pilot rule, the Specialist is required to better a customer limit order at the national best bid or offer (“NBBO”) by at least one penny and at a price outside the current NBBO by at least the nearest penny increment. Through this proposal, the Exchange is seeking only to extend the existing pilot, and the exemption letters associated therewith,<sup>8</sup> through June 30, 2004. The Exchange proposes no other substantive changes to the pilot. The text of the proposed rule change is available at the Exchange and at the Commission.

### 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 aspects 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 proposes to extend its pilot program, under Exchange Rule 12.6,<sup>9</sup> which relates to the trading of securities in subpenny increments.<sup>10</sup> Under the pilot, Interpretation .02 of Exchange Rule 12.6 requires a Specialist to better the price of a customer limit order held by the Specialist by at least one penny (for those customer limit orders at the NBBO) or at least the nearest penny increment (for those customer limit orders that are not at the NBBO) if the Specialist determines to trade with an incoming market or marketable limit order.<sup>11</sup>

The purpose of the Interpretation is to prevent a Specialist from taking unfair advantage of customer limit orders held by that Specialist by trading ahead of such orders with incoming market or

<sup>7</sup> See Securities Exchange Act Release Nos. 46274 (July 29, 2002), 67 FR 50743 (August 5, 2002) (SR–CSE–2001–06) (“Pilot”); 46554 (September 25, 2002), 67 FR 6276 (October 4, 2002) (SR–CSE–2002–12) (“Pilot Extension”); 46929 (November 27, 2002), 67 FR 72711 (December 6, 2002) (SR–CSE–2002–17) (“Second Extension”); and 47941 (May 29, 2003), 68 FR 33751 (June 5, 2003) (SR–CSE–2003–05) (“Third Exemption”).

<sup>8</sup> See letter from Robert L.D. Colby (“Colby”), Deputy Director (“DD”), Division of Market Regulation (“Division”), Commission, to Jeffrey T. Brown (“Brown”), Senior Vice President (“SVP”) and General Counsel (“GC”), the Exchange, (July 26, 2002) (“Initial Exemption Letter”) in response to letter from Brown, SVP and GC, Exchange, to Annette Nazareth (“Nazareth”), Director, Division, Commission (November 27, 2001) (“Initial Exemptive Request”); letter from Colby, DD, Division, Commission, to Brown, SVP and GC, Exchange (September 25, 2002) (amending and extending Initial Exemption Letter) (“Amended Exemption Letter”) in response to letter from Brown, SVP and GC, Exchange, to Nazareth, Director, Division, Commission (September 18, 2002) (“Amended Exemption Request”); letter from Alden S. Adkins, Associate Director, Division, Commission, to Brown, SVP and GC, Exchange (November 27, 2002) (“Second Exemption Extension Letter”) in response to letter from Brown, SVP and GC, Exchange, to Nazareth, Director, Division, Commission (November 20, 2002) (“Second Exemption Request”); and letter from Colby, DD, Division, Commission, to Brown, SVP and GC, Exchange, (May 29, 2003) (“Third Exemption Extension Letter”) in response to letter from Brown, SVP and GC, Exchange, to Nazareth, Director, Division, Commission (May 19, 2003) (“Third Exemption Request”).

<sup>9</sup> Exchange Rule 12.6 provides, in pertinent part, that no member shall (i) personally buy or initiate the purchase of any security traded on the Exchange for its own account or for any account in which it or any associated person of the member is directly or indirectly interested while such member holds or has knowledge that any person associated with it holds an unexecuted market or limit price order to buy such security in the unit of trading for a customer, or (ii) sell or initiate the sale of any such security for any such account while it personally holds or has knowledge that any person associated with it holds an unexecuted market or limit price order to sell such security in the unit of trading for a customer.

<sup>10</sup> In conjunction with the proposed rule change, the Exchange has requested that the Commission again extend the Amended Exemption Request pursuant to Rules 11Ac1–1(e) (17 CFR 240.11Ac1–1(e)), 11Ac1–2(g) (17 CFR 240.11Ac1–2(g)) and 11Ac1–4(d) (17 CFR 240.11Ac1–4(d)) of the Act to allow subpenny quotations to be rounded down (buy orders) and rounded up (sell orders) to the nearest penny for quote dissemination for Nasdaq and listed securities. See letter from Jennifer M. Lamie (“Lamie”), Assistant General Counsel (“AGC”) and Secretary, to Nazareth, Director, Division, Commission (November 21, 2003) (“Fourth Exemptive Request”). Concurrent with the instant rule proposal, the Commission has granted the Fourth Exemptive Request. See letter from Colby, DD, Division, Commission, to Lamie, AGC and Secretary, CSE (December 1, 2003) (“Fourth Exemption Letter”).

<sup>11</sup> Interpretation .01 to Exchange Rule 12.6 provides that “[i]f a Designated Dealer holds for execution on the Exchange a customer buy order and a customer sell order that can be crossed, the Designated Dealer shall cross them without interpositioning itself as a dealer.”

<sup>8</sup> 17 CFR 200.30–3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> 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).

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b–4(f)(6).

<sup>6</sup> The Exchange gave the Commission written notice of its intention to file the proposed rule change on November 24, 2003. 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. The Exchange asked the Commission to waive the 30-day operative delay. 17 CFR 240.19b–4(f)(6).