

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

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Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48891; File No. SR-CSE-2003-14]

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

December 8, 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 December 3, 2003, National Stock Exchange ("Exchange")³ 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 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

The Exchange has a Liquidity Provider Fee and Rebate Program ("Program"), which was originally proposed in SR-CSE-2002-16,⁷ that is currently in effect and is set to expire on December 31, 2003.⁸ Through this

proposed rule change the Exchange seeks to extend the Program through June 30, 2004. The Exchange proposes no other substantive changes to the Program at this time. 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

On October 22, 2002, the Exchange filed SR-CSE-2002-16,⁹ which proposed to establish a pilot transaction credit for liquidity providers that is paid by liquidity takers on each intra-Exchange execution¹⁰ in Nasdaq securities. Under the Program, the Exchange amended its 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 with the exchange retaining \$0.001 per share. With this proposed rule change, the Exchange is extending the Program through June 30, 2004.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,¹¹ in general, and Section 6(b)(5) of

the Act,¹² 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,¹³ 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 Section 19(b)(3)(A) of the Act¹⁴ and Rule 19b-4(f)(6)¹⁵ 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.

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that such waiver is consistent with the protection of investors and the public interest, for it will allow the Program to continue without interruption. For these reasons, the Commission designates the

⁸ 17 CFR 200.30-3(a)(12).

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 gave the Commission written notice of its intention to file the proposed rule change on November 21, 2003. The Exchange asked the Commission to waive the 30-day operative delay. 17 CFR 240.19b-4(f)(6).

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

⁸ The Program, which was originally set to expire on March 31, 2003, was subsequently extended until September 30, 2003, and extended again until

December 31, 2003. Securities Exchange Act Release Nos. 47596 (March 28, 2003), 68 FR 16594 (April 4, 2003)(SR-CSE-2003-03)(extending the Program until September 30, 2003) and 48584 (October 2, 2003), 68 FR 58368 (October 9, 2003)(SR-CSE-2003-13)(extending the Program until December 31, 2003).

⁹ See Original Pilot, *supra* note 7.

¹⁰ An "intra-Exchange execution" (referred to in the Original Pilot 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. *Id.* at 70793.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

¹³ 15 U.S.C. 78f(b)(4).

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(6).