

A Transaction in any Option on a Stock or Stock Index or in a Stock or Stock Program Related to the Imminent Execution of a Transaction in any Futures, Stock Index Futures, or Security Futures Product (Including Single Stock Futures)

Same concept as that described above in the section titled "In the Same Security" except this section deals with a combination of related securities.

Example: After receiving an institutional order to sell 1,000 futures contracts on a stock expected to have an immediate, material and "favorable" impact on the price of the futures and related securities, but before representing the order in the pit, a brokerage house buys put or sells call options on the stock on the Amex. This is prohibited front-running.

A Transaction in any Security Futures Product or in a Stock or Stock Program Related to the Imminent Execution of a Transaction in any Option on a Stock, Index, or Futures

Same concept as that described above in the section titled "In the Same Security" except this section deals with a combination of related securities.

Example: After being solicited to participate as seller in a 1,000-contract transaction in near-term, at-the-money calls of XYZ expected to have an immediate, material and "favorable" impact on the price of XYZ stock, but before the options trade is presented to the Amex crowd, the solicited broker/dealer buys an equivalent number of XYZ single-stock futures and/or XYZ shares in the "cash" market. (This is sometimes known as "run fronting" and violates our rules.)

Example: After being solicited to participate as buyer in a 5,000-contract transaction in puts of ZYX expected to have an immediate, material and "favorable" impact on the price of ZYX stock, but before the options trade is presented to the CBOE crowd, the solicited broker/dealer sells an equivalent number of ZYX shares on the Amex. (This is also known as "run fronting" and violates our rules.)

Example: A member executes a 2,500 contract futures transaction on XYZ stock on a futures market at a price \$1 above the current market. Before that trade is printed, the member takes an offer to buy non-fungible futures on XYZ traded on the Amex. This is prohibited front-running.

Transactions Covered But Not Expressly Enumerated in the Rule

Example: After receiving an institutional order to buy on the Amex 100,000 shares of a HOLDRS, which order is expected to have an immediate, material and favorable impact on the price of the HOLDRS and related securities, but before representing the order in the crowd, a brokerage house buys on the offers on another exchange shares in (10) component stocks which comprise 50% of the HOLDRS. This is prohibited front-running.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46848; File No. SR-CSE-2002-16]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the Cincinnati Stock Exchange, Inc., To Establish a Pilot Liquidity Provider Fee and Rebate for Intra-CSE Trading in Nasdaq Securities

November 19, 2002.

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 October 22, 2002, The Cincinnati Stock Exchange, Inc. ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change, as described in Items I, II, and III below, which Items have been prepared by the Exchange. On November 13, 2002 the CSE amended the proposed rule change.³ The Exchange filed this proposal pursuant to Section 19(b)(3)(A)(ii) of the Act⁴ and Rule 19b-4(f)(2)⁵ thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CSE proposes to amend its schedule of transaction fees to establish an incentive for providing liquidity on the CSE. The text of the proposed rule change is below. Proposed additions are in italics. Proposed deletions are in brackets.

Chapter XI

Trading Rules

Rule 11.10 National Securities Trading System Fees

A. Trading Fees

(a)-(f) No change to text

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See November 12, 2002 letter from Jennifer M. Lamie, Esquire, CSE, to Katherine England, Assistant Director, Division of Market Regulation, Commission ("Amendment No. 1"). In Amendment No. 1, the CSE changed the expiration date of the pilot program from October 31, 2003 to March 31, 2003. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on November 13, 2002, the date the CSE filed Amendment No. 1.

⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

⁵ 17 CFR 240.19b-4(f)(2).

(g) Proprietary (principal) Transactions

(1)(A) All Designated Dealers in securities other than Nasdaq securities, except those acting as Preferencing Dealers or Contributing Dealers, will be charged \$0.0025 per share (\$0.25/100 shares) for principal transactions [including ITS transactions].

(1)(B) For a pilot period commencing October 1, 2002 and lasting until March 31, 2003, CSE members that execute orders in Nasdaq securities against previously displayed quotes/orders of other CSE members shall pay \$0.004 per share for such execution. The Exchange shall pass on to the CSE member displaying the quote/order executed against \$0.003 per share and the Exchange shall retain \$0.001 per share.

(2)-(4) No change to text

(h)-(r) No change to text

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 CSE proposes to establish a pilot transaction credit for liquidity providers that is paid by liquidity takers on each intra-CSE execution in Nasdaq securities. By "intra-CSE execution" the CSE means any transaction that is executed on the CSE for which the executing member on the buy-side of the transaction differs from the executing member on the sell-side of the transaction. The CSE believes that the proposed rule accomplishes two strategic objectives: (1) It resolves the issue of member-to-member access fees; and (2) it provides an incentive for members to display orders in the CSE, thereby increasing the liquidity available to investors.

The CSE currently does not permit members to charge other members for intra-CSE trades executed through CSE systems. Unlike the Nasdaq

environment, the CSE does not permit some members to charge for access to their liquidity while restricting others from doing so. Recognizing, however, that new CSE members may wish to continue being compensated for providing liquidity, *i.e.*, displaying orders on the CSE, the CSE proposes a mechanism whereby all CSE members active in the trading of Nasdaq securities, whether alternative trading systems or traditional market makers, will benefit by displaying orders on the CSE. In this manner, the CSE will provide equal regulation of its members, while promoting the growth of liquidity on the CSE.

Specifically, the CSE proposes to amend CSE Rule 11.10(g)(1) to establish a Liquidity Provider Fee for intra-CSE executions of Nasdaq securities. Currently, CSE Rule 11.10(g)(1) provides that Designated Dealers, except those acting as Preferencing Dealers or Contributing Dealers, will be charged \$0.0025 per share for principal transactions, including Intermarket Trading System transactions. The \$0.0025 per share charge is applied to both sides of the Dealer-to-Dealer transaction, thereby generating \$0.005 per share for the CSE. The Exchange is amending this provision by adding subparagraph (B) to charge the liquidity taker, *i.e.*, the party executing through CSE systems against a previously displayed quote/order, \$0.004 per share. The Exchange will then pass 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.

By adding CSE Rule 11.10(g)(1)(B), the Exchange is limiting the Liquidity Provider Fee to Nasdaq securities traded on the CSE, *i.e.*, Tape C securities, as defined under CSE Rules. While the Liquidity Provider Fee represents a reduction in the revenues received by the Exchange per intra-CSE transaction in Nasdaq securities, the CSE believes that the fee will provide an incentive for CSE members to provide liquidity, and therefore, will generate increased volume for the CSE. The pilot program commenced on October 1, 2002, and will expire on March 31, 2003, if not renewed.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act⁶ in general, and furthers the objectives of Section 6(b)(5)⁷ 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 CSE believes the proposed rule change is also consistent with Section 6(b)(4) of the Act,⁸ in that it is designed to provide for the equitable allocation of reasonable, dues, fees, and other charges among CSE 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

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act⁹ and subparagraph (f)(2) of Rule 19b-4 thereunder,¹⁰ because it involves a member due, fee, or other charge. 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. 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 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 will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR-CSE-2002-16 and should be submitted by December 17, 2002.

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

Jill M. Peterson,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46851; File No. SR-NASD-2002-159]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc., to Extend a Pilot Amendment to NASD Rule 4120 Regarding Nasdaq's Authority To Initiate and Continue Trading Halts

November 19, 2002.

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 November 5, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), 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 Nasdaq. Nasdaq filed the proposal as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act,³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission.⁵ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ Nasdaq asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay. See Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78f(b)(6).

⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁰ 17 C.F.R. 240.19b-4(f)(2).