

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50146; File No. SR-NSX-2004-08)

August 4, 2004

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the National Stock Exchange Relating to Manual Processing Fee

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 June 28, 2004, National Stock ExchangeSM (the “Exchange” or “NSXSM”) filed with the Securities and Exchange Commission (the “Commission”) a proposed rule change. On July 15, 2004, the Exchange filed Amendment No. 1 to the proposed rule change.³ The proposed rule change, as amended, is described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange filed the 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from James C. Yong, Senior Vice President, Regulation and General Counsel of the NSX, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated July 14, 2004 (“Amendment No. 1”). In Amendment No. 1, NSX made technical corrections to its rule text and clarified that the manual processing fee proposed as NSX Rule 11.10(A)(e)(4) will be in lieu of the fees currently assessed for crosses and meets in Tape A, Tape B and Tape C securities.

⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

⁵ 17 CFR 240.19b-4(f)(2).

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

The Exchange is proposing to amend its schedule of fees to incorporate a manual processing fee for crosses and meets phoned into the NSX Control Room.⁶ The Exchange implemented these proposed changes, as amended, on July 1, 2004.

Below is the text of the proposed rule change, as amended. Proposed new language is italicized; proposed deletions are in brackets.

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RULES

OF

NATIONAL STOCK EXCHANGE

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CHAPTER XI

Trading Rules

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Rule 11.10 National Securities Trading System Fees

A. Trading Fees

(a) No change.

(b) Odd-Lot Transactions. Members will be charged \$0.50 per odd-lot transaction when acting as agent or principal, except that members will earn a credit of \$0.50 for

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The Exchange is also proposing two non-material revisions to its fee schedule to change one reference to the "CSE" (the Exchange was formerly known as The Cincinnati Stock Exchange or "CSE") to the "Exchange" and to correct a typographical error. The Exchange represents that these changes are administrative and non-substantive in nature and therefore not subject to notice and comment. See Amendment No. 1.

every four round-lot transactions executed (agency, professional agency or principal) on the [CSE]Exchange and printed on the Consolidated Tape by the Exchange. Notwithstanding the forgoing credit, there will be a minimum charge of \$0.10 per odd-lot transaction.

(c) – (d) No change.

(e) Crosses and Meets

(1) – (3) No change.

(4) Users executing crosses and meets in Tape A, B or C securities

through the Exchange's System Supervisory Center shall be charged \$15 per contra-party, up to a maximum of \$75 per side of transaction.

This transaction fee shall be in lieu of any transaction fee otherwise applicable under Paragraphs (A)(e)(1) through (A)(e)(3) above.

(f) No change.

(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 (\$0.10/100 shares) for principal transactions.

(B) No change.

(2) – (4) No change.

(h) – (j) No change.

(k) Tape "B" Transactions. Except as provided in Paragraph (A)(e)(4) above, the [The] Exchange will not impose a transaction fee on Consolidated Tape "B" securities. In addition, Members will receive a 50 percent pro rata transaction credit

of gross Tape "B" revenue; provided that, however, calculation of the transaction credit will be based on net Tape "B" revenues in those fiscal quarters where the overall revenue retained by the Exchange does not offset actual expenses and working capital needs. To the extent market data revenue from Tape "B" transactions is subject to year-end adjustment, credits provided under this program may be adjusted accordingly.

(l) – (r) No change.

B. No change.

C. No change.

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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

Currently, orders can be entered on the Exchange either via an electronic connection or by phoning the NSX Control Room. There is currently no transaction charge for Users, who are not registered as Qualified or Designated Dealers, executing crosses and meets in Tape B and C

securities whether electronically or manually processed.⁷ For Users executing crosses and meets in Tape A securities, there is a currently a charge of \$0.0005 per share per side for average daily volume up to 5 million shares per day and \$0.000025 per share per side for average daily volume above 5 million shares, with a maximum charge of \$37.50 per firm per side of transaction, whether electronically or manually processed. The Exchange is proposing to introduce a manual processing fee of \$15 per contra-party, with a cap of \$75 per side, on every cross or meet phoned into the NSX Control Room because of the additional resources and expense associated with processing phoned-in orders. The proposed manual processing fee will be in lieu of, and not in addition to, the fees currently assessed for crosses and meets and Tape A, Tape B and Tape C securities.⁸ The Exchange believes that the implementation of this manual processing fee is reasonable and ensures that each member pays an equitable share of the costs associated with operating the Exchange.

2. Statutory Basis

The Exchange believes the proposed rule change, as amended, is consistent with Section 6(b) of the Act,⁹ in general, and with Section 6(b)(4) of the Act,¹⁰ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges. The Exchange believes the proposed change, as amended, is also consistent with Section 6(b)(5) of

⁷ Dealers executing crosses in Tape B securities are not charged a transaction fee. Dealers executing crosses in Tape C securities are charged a per share fee of \$0.001 per share for average daily volume up to 5 million shares per day and \$0.000025 per share for average daily volume 5 million shares and above per day.

⁸ See Amendment No. 1.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4).

the Act¹¹ in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange also believes that the proposed change, as amended, will create incentives for members to electronically connect to the Exchange trading system, thereby increasing efficiency and competition, which, in turn, will enhance the National Market System.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, 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 foregoing rule change, as amended, has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act¹² and subparagraph (f)(2) of Rule 19b-4¹³ thereunder, because it involves a member due, fee or other charge. At any time within sixty (60) days of the filing of such 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.

¹¹ 15 U.S.C. 78f(b)(5).

¹² 15 U.S.C. 78s(b)(3)(A)(ii).

¹³ 17 CFR 240.19b-4(f)(2).

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 should 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-2004-08 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-NSX-2004-08. This file number should be included on the subject line if e-mail is used. To help the Commission process and 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, 450 Fifth Street, NW Washington, DC 20549. Copies of such filings will also 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 publicly available. All submissions should refer to file number SR-NSX-2004-08 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 the delegated authority.¹⁴

Margaret H. McFarland
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).