

### B. Purpose of the Matching Program

The purpose of this agreement is to establish the conditions under which OPM and CMS can implement the terms and provisions of CMS's Employer Voluntary Data Sharing Agreement, which will also include the Internal Revenue Service/Social Security Administration/CMS Data Match Questionnaire process. Under the terms of the matching agreement, OPM agrees to provide coverage eligibility data to CMS and furthermore CMS agrees to consider our compliance with this agreement to constitute satisfaction of its statutory obligations. CMS agrees to provide coverage eligibility data to OPM on active as well as inactive employees and their spouses for whom the employer provides group health coverage. These disclosures will provide CMS with information for use in determining the extent to which any Medicare beneficiary is covered under the Federal Employees Health Benefits Programs (FEHBP). These disclosures will enable CMS to identify instances where Medicare is the secondary payer for working, nonPostal, Federal civilian employees and their spouses who have primary insurance because of their Federal employment or because of their spouse's Federal employment. This computer-matching program will result in systematic, improved coordination of benefits between Medicare and FEHBP through data sharing.

### C. Authority for Conducting the Matching Program

The provisions of the Social Security Act known as the Medicare Secondary Payer (MSP) laws, codified at 42 U.S.C. 1395y(b), shift from Medicare to certain group health plans (GHPs) primary payment responsibility for certain Medicare beneficiaries to the extent that the medical expenses of those Medicare beneficiaries are also covered by a GHP. The MSP provisions are found at the above citation, as amended, excepting 42 U.S.C. 1395y(b)(2)(A)(ii) and the regulations related to the statute, as amended and currently found at 42 CFR 411.20-37, 411.100-130, 411.160-175, and 411.200-206.

### D. Categories of Records and Individuals Covered by the Match

OPM will disclose information from two major records systems, the Central Personnel Data File, last published as OPM/GOV-1, General Personnel Records System (65 FR 24732, April 27, 2000), and the annuity roll systems, last published as OPM/Central-1, Civil Service Retirement and Insurance Records, (64 FR 54930, October 8, 1999,

as amended May 3, 2000 (65 FR 25775). CMS will use OPM's submission of data to update the CMS Common Working File, System Number 09-70-0526, published at 53 FR 52792, December 29, 1988. CMS will further use its Enrollment Data Base, found in System No. 09-70-0502 to determine Medicare eligibility for the records exchanged between the two agencies.

### E. Privacy Safeguard and Security

The personal privacy of the individuals whose names are included in the tapes is protected by strict adherence to the provisions of the Privacy Act of 1974 and OMB's "Guidance Interpreting the Provisions of Public Law 100-503, the Computer Matching and Privacy Protection Act of 1988." Access to the records used in the data exchange is restricted to only those authorized employees and officials who need it to perform their official duties. Records matched or created will be stored in an area that is physically safe from access by unauthorized personnel during duty hours as well as nonduty hours or when not in use. Records used in this exchange and any records created by this exchange will be processed under the immediate supervision and control of authorized personnel in a manner which will protect the confidentiality of the records.

Both OPM and CMS have the right to make onsite inspections or make other provisions to ensure that adequate safeguards are being maintained by the other agency.

### F. Inclusive Dates of the Match

The matching program shall become effective upon the signing of the agreement by both parties to the agreement and approval of the agreement by the Data Integrity Boards of the respective agencies, but no sooner than 40 days after notice of this matching program is sent to Congress and the Office of Management and Budget or 30 days after publication of this notice in the **Federal Register**, whichever is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

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## SECURITIES AND EXCHANGE COMMISSION

[File No. 1-15419]

### Issuer Delisting; Notice of Application of Celanese AG To Withdraw Its Ordinary Shares, No Par Value, From Listing and Registration on the New York Stock Exchange, Inc.

May 6, 2004.

On May 3, 2004, Celanese AG, a Federal Republic of Germany corporation ("Issuer"), filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 12d2-2(d) thereunder,<sup>2</sup> to withdraw its Ordinary Shares, no par value ("Security"), from listing and registration on the New York Stock Exchange, Inc. ("NYSE" or "Exchange").

The Board of Management ("Board") of the Issuer unanimously approved a resolution on April 27, 2004 to withdraw the Issuer's Security from listing on the NYSE. The Board states that the following reasons factored into its decision to withdraw the Security: (1) The acquisition by BCP Crystal Acquisition GmbH & Co. KG ("Bidder") of 84.32% of the Security, pursuant to a Voluntary Public Takeover Offer ("Offer") that was launched on February 2, 2004, and whose subsequent acceptance period expired on April 19, 2004; (2) the disclosure by the Bidder in the Offer Document ("Document") relating to the Offer, which was published in Germany and filed with the Commission as an Exhibit to the Bidder's amended Form Schedule TO on February 2, 2004, that the Bidder intends to acquire 100% of the Security and seeks to effect the delisting of the Security from the NYSE as promptly as possible following the consummation of the Offer; (3) the significant decrease in average trading volume of the Security on the NYSE from 48,133 shares per day during the first three weeks of April 2003 to 7,000 shares per day during the same three weeks in 2004, and to 2,520 shares per day since the expiration of the Offer's subsequent acceptance period; (4) the disproportionately high costs and obligations associated with the continued listing of the Security on the NYSE given the limited trading volume and the Bidder's intent to acquire 100% of the Security; (5) the Security will continue to be listed on the Frankfurt Stock Exchange until the Issuer's shareholders resolve to revoke

<sup>1</sup> 15 U.S.C. 78j(d).

<sup>2</sup> 17 CFR 240.12d2-2(d).

the Security's admission in accordance with applicable law; and (6) in the event of a delisting of the Securities from the Frankfurt Stock Exchange, the Bidder must offer the Issuer's minority shareholders fair cash compensation in exchange for their Security calculated in accordance with applicable law.

The Issuer stated in its application that it has complied with the NYSE's rules governing an issuer's voluntary withdrawal of a security from listing and registration. The Issuer's application relates solely to the Security's withdrawal from listing on the NYSE and from registration under section 12(b) of the Act<sup>3</sup> and shall not affect its obligation to be registered under section 12(g) of the Act.<sup>4</sup>

Any interested person may, on or before May 28, 2004 comment on the facts bearing upon whether the application has been made in accordance with the rules of the NYSE and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

Electronic comments:

- Send an e-mail to *rule-comments@sec.gov*. Please include the File Number 1-15419 or;

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 1-15419. This file number should be included on the subject line if e-mail is used. To help us 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/delist.shtml>). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Jonathan G. Katz,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

*Federal Register Citation of Previous Announcement:* [69 FR 25448, May 6, 2004]

*Status:* Closed meeting.

*Place:* 450 Fifth Street, NW., Washington, DC.

*Date and Time of Previously Announced Meeting:* Tuesday, May 11, 2004 at 2:30 p.m.

*Change in the Meeting:* Cancellation of meeting.

The Closed Meeting scheduled for Tuesday, May 11, 2004 has been cancelled. For further information please contact the Office of the Secretary at (202) 942-7070.

Dated: May 10, 2004.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 04-10871 Filed 5-10-04; 10:59 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49663; File No. SR-NASD-2004-036]

### Self-Regulatory Organizations; Order Granting Approval of a Proposed Rule Change by the National Association of Securities Dealers, Inc. To Revise and Update the Fee Schedule for OTC Bulletin Board Historical Trading Activity Reports

May 6, 2004.

#### I. Introduction

On March 1, 2004, 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"), 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> a proposed rule change to revise and update the fee schedule for the OTC Bulletin Board ("OTCBB") historical trading activity

reports. The proposal was published for comment in the **Federal Register** on April 1, 2004.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

#### II. Description of Proposed Rule Change

The proposed rule change would revise the fee schedule for the OTCBB historical trading activity reports that are available through the OTCBB website ("OTCBB.com"). The proposal would establish that the fees that Nasdaq would charge for the Issues Summary Statistics reports and the Intra-Day Quote and Intra-Day Time and Sales Data reports of OTCBB securities are identical to the fees assessed for similar reports for Nasdaq securities that are available through the website for Nasdaq traders ("NasdaqTrader.com"). In addition, the proposed rule change would establish a new fee for an up-to-date directory listing the contact information of all OTCBB issuers.

#### III. Discussion

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities association.<sup>4</sup> Specifically, the Commission finds that the proposal is consistent with the requirements of Section 15A(b)(5) and (b)(6) of the Act.<sup>5</sup> Section 15A(b)(5) requires that the rules of a registered national securities association provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls. Section 15A(b)(6) requires, among other things, that the rules of national securities association not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission notes that the pricing structure for the historical trading activity reports available through OTCBB.com for OTCBB securities is identical to the pricing structure for similar reports available through NasdaqTrader.com for Nasdaq securities. The Commission has previously determined that the fee structure for these NasdaqTrader.com

<sup>3</sup> See Securities Exchange Act Release No. 49486 (March 26, 2004), 69 FR 17254.

<sup>4</sup> In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>5</sup> 15 U.S.C. 78o(b)(5) and (b)(6).

<sup>3</sup> 15 U.S.C. 78j(b).

<sup>4</sup> 15 U.S.C. 78j(g).

<sup>5</sup> 17 CFR 200.30-3(a)(1).

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

<sup>2</sup> 17 CFR 240.19b-4.