

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>

**Jill M. Peterson,**

*Assistant Secretary.*

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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.

<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).

### 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

<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”).

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>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.”

marketable limit orders. Notwithstanding the fact that a Specialist may price-improve incoming orders by providing prices superior to that of customer limit orders it holds, customers should have a reasonable expectation to have their orders filled at their limit order prices. This expectation should be reflected in reasonable access to incoming contra-side order flow, unless other customers place better-priced limit orders with the Specialist or the Specialist materially improves upon the customer limit order prices (not the customers' quoted prices) it holds.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of section 6(b) of the Act,<sup>12</sup> in general, and section 6(b)(5) of the Act,<sup>13</sup> in particular, which requires, among other things, that the rules of an exchange be 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.

### *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*

The Exchange has neither solicited nor received written comments on 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 Act<sup>14</sup> and Rule 19b-4(f)(6)<sup>15</sup> 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 pilot to continue without interruption. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.<sup>16</sup>

## 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. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR-CSE-2003-16. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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-2003-16 and should be submitted by December 30, 2003.

<sup>16</sup> For purposes only of accelerating the operative date of the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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## SMALL BUSINESS ADMINISTRATION

### Declaration of Disaster #3559, Amdt. 2]

#### Commonwealth of Puerto Rico

In accordance with notices received from the Department of Homeland Security—Federal Emergency Management Agency, effective November 23 and December 2, 2003, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning on November 10, 2003, and continuing through November 23, 2003. This declaration is also amended to include the municipalities of Cabo Rojo, Lajas and Luquillo as disaster areas due to damages caused by severe storms, flooding, mudslides and landslides occurring on November 10, 2003, and continuing through November 23, 2003.

In addition, applications for economic injury loans from small businesses located in the contiguous municipalities Hormigueros, Mayaguez, and San German may be filed until the specified date at the previously designated location. All other municipalities contiguous to the above named primary municipalities have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is January 20, 2004, and for economic injury the deadline is August 23, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: December 3, 2003.

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 03-30430 Filed 12-8-03; 8:45 am]

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## SMALL BUSINESS ADMINISTRATION

### [Declaration of Disaster #3558, Amdt. 3]

#### State of West Virginia

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective November 30, 2003, the above

<sup>17</sup> 17 CFR 200.30-3(a)(12).

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(6).