

and trading trust issued receipts, including any concerns associated with purchasing and redeeming round-lots of 100 receipts. Accordingly, the Commission believes that the rules governing the trading of trust issued receipts provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest.

C. Disclosure and Dissemination of Information

The Commission believes that the Exchange's proposal will ensure that investors have information that will allow them to be adequately apprised of the terms, characteristics, and risks of trading trust issued receipts. The prospectus will address the special characteristics of a particular trust issued receipt basket, including a statement regarding its redeemability and method of creation. The Commission notes that all investors in trust issued receipts who purchase in the initial offering will receive a prospectus. In addition, anyone purchasing a trust issued receipt directly from the trust (by delivering the underlying securities to the trust) will also receive a prospectus. Finally, all BSE member firms who purchase trust issued receipts from the trust for resale to customers must deliver a prospectus to such customers.

The Commission also notes that upon the initial listing of any trust issued receipts, the Exchange will issue a circular to its members explaining the unique characteristics and risks of this type of security. The circular also will note the Exchange members' prospectus delivery requirements, and highlight the characteristics of purchases in trust issued receipts. The circular also will inform members of Exchange policies regarding trading halts in trust issued receipts.

D. Accelerated Approval

BSE has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice in the **Federal Register**. The Commission believes that the Exchange's proposal to trade trust issued receipts, and specifically Internet HOLDRs pursuant to UTP privileges, will provide investors with a convenient and less expensive way of participating in the securities markets. The Commission believes that the proposed rule change could produce added benefits to investors through the increased competition between other market centers trading the product. Specifically, the Commission believes

that by increasing the availability of trust issued receipts, and in particular Internet HOLDRs, as an investment tool, the BSE's proposal should help provide investors with increased flexibility in satisfying their investment needs, by allowing them to purchase and sell a single security replicating the performance of a broad portfolio of stocks at negotiated prices throughout the business day. The Commission notes, however, that notwithstanding approval of the listing standards for trust issued receipts, other similarly structured products, including trust issued receipts based on other industries, will require review by the Commission prior to being traded on the Exchange. Additional series cannot be listed by the Exchange prior to contacting Division staff. In addition, the BSE may be required to submit a rule filing prior to trading a new issue or series on the Exchange.

As noted above, the Commission has approved the listing and trading of trust issued receipts, including Internet HOLDRs, at the Amex, under rules that are substantially similar to BSE Chapter XXIV-A. The trading requirements of trust issued receipts at the BSE will be substantially similar to the trading requirements of trust issued receipts at the Amex and the CHX. The Commission published those rules in the **Federal Register** for the full notice and comment period. No comments were received on the proposed rules, and the Commission found them consistent with the Act.¹⁵ The Commission does not believe that trading of this product raises novel regulatory issues that were not addressed in the previous filing. Accordingly, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice in the **Federal Register**.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁶ that the proposed rule change (SR-BSE-99-15), is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Margaret H. McFarland,

Deputy Secretary.

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¹⁵ See *supra*, note 11.

¹⁶ 15 U.S.C. 78s(b)(2).

¹⁷ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42352; File No. SR-CSE-99-05]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Cincinnati Stock Exchange Enabling Members to Trade NASDAQ/NM Securities

January 20, 2000.

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 10, 1999, the Cincinnati Stock Exchange, Inc. ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. 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 proposes to amend its rules to enable members to trade NASDAQ National Market ("NASDAQ/NM") securities on the Exchange pursuant to unlisted trading privileges ("UTP") under Section 12(f) of the Act. The text of the proposed rule change is available at the Office of the Secretary, 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

The purpose of the proposed rule change is to amend the CSE Rules to permit members to trade NASDAQ/NM

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

securities on an UTP basis. This filing is made in conjunction with the Exchange joining the Unlisted Trading Privileges Plan ("UTP Plan") governing the collection, consolidation and dissemination of quotation and transaction information for NASDAQ/NM securities.³ The majority of the proposed rule change relates to amendments to CSE Rules to accommodate the trading of NASDAQ securities, however, certain rule changes are housekeeping in nature.

The following is a list of the substantive rule changes to Chapter XI, "Trading Rules," along with a statement of the purpose for the proposed change:

1. Rule 11.1, "Hours of Trading" The changes to Rule 11.1 convert the hours of trading on the Exchange from Cincinnati local time to Chicago local time and provide in subparagraphs (b) and (c) for the inclusion of securities traded on a national securities association in the determination of trading hours for dually or multiply-traded securities.

2. Rule 11.2. "Unit of Trading" The changes to Rule 11.2 reflect the inclusion of securities trading on a national securities association in determining the appropriate unit of trading.

3. Rule 11.3. "Price Variations" The changes amend the stated minimum variation to reflect the current primary market practice, *i.e.*, $\frac{1}{16}$ of \$1.00 per share in stocks trading at or above \$.50 per share and $\frac{1}{32}$ of \$1.00 per share in stocks trading below \$.50 per share. These variations will be revisited in any proposed rule changes to accommodate decimal pricing. The changes also include securities traded on a national securities association in determining the appropriate variation.

4. Rule 11.4. "Trading Ex-Dividend, Etc." The changes include securities traded on a national securities association in the exception language of the rule.

5. Rule 11.5. "Orders to be Reduced and Increased on Ex-Date" The changes include securities traded on a national securities association in the exception language of the rule.

6. Rule 11.7. "Cabinet Trading" The change amends the rule to reflect that the facilities are now located in Chicago, Illinois.

7. Rule 11.9. "National Securities Trading System" ("System")

(a) The amendments to this subparagraph define the terms "NASDAQ/NM Security," "NASDAQ System," and "NASDAQ System BBO"

and include the term "national securities association" in the definition of "Approved Dealer."

(c) The changes to this subparagraph add the term "NASDAQ System BBO" to the definition of marketable limit order, except NASDAQ/NM securities from the opening guarantee of 1099 shares, and implement a NASDAQ/NM opening guarantee up to 1099 shares at an opening price that is on or between the first unlocked/uncrossed NASDAQ System BBO.

(e) The changes to this subparagraph add specialists or market makers on other national securities associations to the entities that may submit bids or offers to the System.

(h) The changes to this subparagraph ensure that the System displays the NASDAQ System BBO and permits NASDAQ System market makers telephonic, or other such access to the System as may be established between the Exchange and the NASDAQ System, and conversely, permits Designated Dealers to send orders from the Exchange via telephone, or by other such access as may be established between the Exchange and the NASDAQ System, to NASDAQ market makers.

(j) This subparagraph is amended to include the NASDAQ System and the NASDAQ System BBO in the prohibition of executing a limit order only after a regular way transaction occurs in another market at a price equal or inferior to the limit price of the order.

(n) The amendment to this subparagraph clarify that the public agency guarantee for 1099 shares at the opening price applies to securities other than NASDAQ/NM securities. However, the public agency guarantee applies to those market and marketable limit orders priced better than the first unlocked/uncrossed NASDAQ System BBO. In addition, the amendments add the NASDAQ System BBO to the obligations to execute on the basis of the ITS BBO. Finally, the amendments to this subparagraph clarify that the execution guarantees and requirements of CSE Rule 12.6, Customer Priority, apply only during the hours of trading on the Exchange (8:30 a.m. to 3:05 p.m. local Chicago time) during normal business days.

Interpretations and Policies

.01 The amendment to the Market Order Exposure Requirement clarifies that the obligations of the interpretation apply to securities other than NASDAQ/NM securities.

.02 The amendment to the Limit Order Protection Requirement clarifies that obligations of the interpretation

apply to securities other than NASDAQ/NM securities.

2. Statutory Basis

The Exchange believes the basis under the Act for the proposed rule change is the requirement under Section 6(b)(5)⁴ that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market 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 any written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve the proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

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, D.C. 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

³ See Securities Exchange Act Release No. 42269 (December 23, 1999), 65 FR 799 (January 6, 2000).

⁴ 15 U.S.C. 78f(b)(5).

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 at 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 No. SR-CSE-99-05 and should be submitted by February 17, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00-1971 Filed 1-26-00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42351; File No. SR-NASD-99-61]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc., Amending Its Rules for the Listing of Additional Shares

January 20, 2000.

I. Introduction and Background

On October 19, 1999, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly owned subsidiary the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder.² The proposed rule change modifies the procedures employed by the NASD in assessing fees against issuers listing additional shares on either the Nasdaq National Market ("NNM") or Nasdaq SmallCap Market ("NSCM").

Notice of the proposed rule change was published for comment in the *Federal Register* on December 16, 1999.³ The Commission received no comments on the proposal.

II. Description of the Proposal

The Commission recently approved a rule change filed by the NASD to modify the fee rate structures and notification requirements applicable to issuers listing additional shares on the

NNM and NSCM.⁴ The rule change harmonizes the fee structures applicable to issuers of additional shares of NNM and NSCM securities, and allows issuers to file notifications of several issuances on a single form.

To further simplify the administration of the Listing of Additional Shares ("LAS") Program, the NASD is modifying notification procedures applicable to issuers of additional shares, and Nasdaq's monitoring and assessment of fees on the listing of such additional shares.

Nasdaq staff employ the LAS Program to monitor compliance by issuers with Nasdaq listing rules governing shareholder approval, public interest concerns, reverse mergers, and voting rights. Since 1992, all Nasdaq issuers have been required to file a notification form upon the creation of a stock option, employee stock purchase, or other stock remuneration plan, or upon the issuance of additional shares of any class of securities included in Nasdaq.⁵

The NASD believes that the current LAS Program is difficult and unduly time-consuming to administer. Specifically, the NASD believes that, under the current LAS Program, it is difficult for an issuer to calculate the number of shares to be reported for LAS purposes: an issuer must track the number of shares approved by Nasdaq according to current LAS criteria (a number not otherwise monitored by issuers and which has often proved difficult for Nasdaq staff and issuers to reconcile) instead of the total number of shares outstanding reported in periodic reports required to be filed with the Commission. Furthermore, the timing of the notifications required by the current LAS Program varies depending on the nature of the action undertaken by an issuer and, as a result, has proved confusing to issuers and their counsel. This in turn has led to delays in filing or failures to comply with LAS Program notification and fee requirements.

To remedy these deficiencies, the NASD proposal makes the following changes to the current LAS Program:

1. In order to address the problem of monitoring the number of fee-assessable shares, the billing aspect of the LAS Program will be separated from required compliance reviews. Issuers will be billed each quarter for any increase in their total shares outstanding ("TSO")

as reported in publicly available periodic reports required to be filed with the Commission.⁶ This modification will ensure that the LAS Program is administered based on a publicly disclosed TSO number rather than on the number of approved shares currently calculated by Nasdaq according to existing LAS criteria. This modification will thereby eliminate the current procedure of establishing a baseline number of shares upon an issuer's initial listing as well as the resultant confusion surrounding when transactions resulting in new shares being issued must be reported to Nasdaq. This modification will also permit Nasdaq staff to rely on the publicly reported TSO when performing reconciliations.

2. To address the uncertainty which has surrounded issuers' LAS notification requirements, the process of reporting to Nasdaq will be streamlined by confining issuers' notification requirements to those transactions implicated by the Nasdaq's corporate governance compliance requirements.⁷ Consequently, notification will not be required, unless:

(a) a stock option plan, purchase plan or other arrangement is established without shareholder approval; or

(b) the issuer enters into a transaction that may result in a change of control; or

(c) the issuer issues common stock or a security convertible into common stock in connection with the acquisition of the stock or assets of another company, if any officer or director or substantial shareholder of the issuer has an interest of 5% or more (or if a group of such persons collectively holds an interest of 10% or more) in the company to be acquired or in the consideration to be paid; or

(d) the issuer enters into a transaction that may result in the potential issuance of common stock (or securities convertible into common stock) representing more than 10% of either the total shares outstanding or voting power outstanding on a pre-transaction basis.

Under the proposed rule change, all LAS notifications will be required to be filed 15 calendar days prior to issuance (except for stock splits and dividends

⁶ Billing for all issuers will be conducted on a calendar year basis and LAS fees will then be assessed on any increase in the TSO number set forth in an issuer's most recent periodic report filed with the Commission pursuant to Section 13 or 15(d) of the Act. Telephone conversation between Arnold Golub, Senior Attorney, Office of the General Counsel, Nasdaq, and Matthew Boesch, Paralegal, Division of Market Regulation, Commission, on December 6, 1999.

⁷ See NASD Rules 4310(c)(25) and 4320(e)(21).

⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 42214 (Dec. 9, 1999), 64 FR 70309.

⁴ Securities Exchange Act Release No. 42300 (Dec. 30, 1999), 65 FR 1210 (Jan. 7, 2000) (SR-NASD-99-40).

⁵ See NASD Rules 4310(c)(17) and 4320(e)(15). The Commission granted permanent approval to the LAS Program in 1993. See Securities Exchange Act Release No. 31859 (February 16, 1993), 58 FR 9584 (Feb. 22, 1993) (SR-NASD-92-27).