

## SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

### Nationwide Capital Corporation; Order of Suspension of Trading

October 1, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Nationwide Capital Corporation ("Nationwide") because of questions regarding the accuracy of assertions by or about Nationwide on its Internet website, marketing materials, company press releases and other publicly available sources to investors concerning, among other things: (a) The company's business operations, (b) the company's business relationships, (c) the company's current financial condition, (d) the company's acquisition of Your Corner Office ("YCO"), a privately held company, and (e) trading in the company's common stock by related shareholders.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. EDT, October 1, 2002 through 11:59 p.m. EDT, on October 14, 2002.

By the Commission.

**Jonathan G. Katz,**  
*Secretary.*

[FR Doc. 02-25347 Filed 10-1-02; 4:05 pm]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46568; File No. SR-Amex-2002-23]

### Self-Regulatory Organizations; the American Stock Exchange LLC; Order Granting Approval to a Proposed Rule Change To Make Permanent a Pilot Program Under Amex Rule 126(g), Commentary .01, Relating to Size Precedence

September 27, 2002.

On March 22, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") 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")<sup>1</sup> and Rule 19b-4 thereunder.<sup>2</sup> The proposed rule change would make permanent a pilot program under Amex Rule 126(g), Commentary .01, regarding a 5,000 share minimum block cross size to establish size precedence. The pilot program was established in SR-Amex-2001-01, and has been in operation since March 28, 2001.<sup>3</sup> Notice of the proposed rule change was published in the **Federal Register** on April 3, 2002.<sup>4</sup> The Commission received no comments on the proposal.

The Commission has reviewed carefully the Amex's proposed rule change, and finds, for the reasons set forth below, that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of section 6(b)(5)<sup>5</sup> of the Act. Section 6(b)(5) requires the rules of a registered national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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 has represented that the reduction in the size precedence for clean crosses does not impair the application of Amex Rule 152, which provides price improvement opportunities for all or a portion of one side of a proposed cross.<sup>6</sup> Moreover, the Commission finds that the size precedence reduction for clean crosses from 25,000 to 5,000 shares reflects an appropriate adjustment to a decimalized environment in which the minimum price variation for equity quotes has been reduced from the fractional equivalent of slightly over six cents to one cent. For these reasons, the Commission finds that the proposed rule change is consistent with the provisions of the Act, in general, and with section 6(b)(5).<sup>7</sup>

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

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

<sup>3</sup> See Securities Exchange Act Release No. 44122 (March 28, 2001), 66 FR 18125 (April 5, 2001).

<sup>4</sup> Securities Exchange Act Release No. 45660 (March 27, 2002), 67 FR 15841.

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

<sup>6</sup> See September 17, 2002 letter from Michael Cavalier, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission.

<sup>7</sup> 15 U.S.C. 78f(b)(5).

It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (SR-Amex-2002-23) be, and hereby is, approved.<sup>9</sup>

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. 02-25225 Filed 10-3-02; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46554; File No. SR-CSE-2002-12]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Cincinnati Stock Exchange, Inc. Relating to an Extension and Expansion of an Existing Pilot Amending CSE Rule 12.6, Customer Priority, to Require Designated Dealers to Better Customer Orders at the National Best Bid or Offer by Whole Penny Increments

September 25, 2002.

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 September 19, 2002, the Cincinnati Stock Exchange, Inc. ("CSE" or "Exchange") 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 Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change for a pilot period through December 1, 2002.

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

The Exchange proposes to extend the initial pilot that amended CSE Rule 12.6, Customer Priority, by adding new Interpretation .02 and requiring a CSE 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

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>10</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.

incoming market or marketable limit order.<sup>3</sup> Under the pilot rule, the Specialist is required to better a customer limit order at the NBBO by at least one penny and at a price outside the current NBBO by at least the nearest penny increment. The Exchange is also proposing to expand the pilot to cover trading in all securities traded on the CSE, rather than simply Nasdaq National Market ("NNM") securities and SmallCap securities. The Exchange is requesting approval of the proposed rule change on a pilot basis, through December 1, 2002. Because the class of securities covered by the Initial Pilot was restricted to NNM and SmallCap securities by discussion language in the Initial Pilot approval order and by the exemption letter associated therewith<sup>4</sup> (rather than the actual rule text), no changes are required to the Initial Pilot rule 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 III 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 amend Exchange Rule 12.6<sup>5</sup> by adding an

<sup>3</sup> See Securities Exchange Act Release No. 46274 (July 29, 2002), 67 FR 50743 (August 5, 2002) (File No. SR-CSE-2001-06) ("Initial Pilot").

<sup>4</sup> See letter from Robert L.D. Colby, Deputy Director, Division of Market Regulation ("Division"), Commission, to Jeffrey T. Brown, General Counsel, CSE (July 26, 2002) ("Initial Exemption Letter") and letter from Jeffrey T. Brown, General Counsel, CSE, to Annette Nazareth, Director, Division, Commission (November 27, 2001) ("Initial Exemptive Request").

<sup>5</sup> CSE 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 a 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

interpretation to the rule covering the trading of securities in subpenny increments.<sup>6</sup> New Interpretation .02 to the Rule will require 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 by 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>7</sup>

The purpose of the new 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 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>8</sup> in general, and section 6(b)(5) of the Act,<sup>9</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

order to sell such security in the unit of trading for a customer.

<sup>6</sup> In conjunction with this proposed rule change, the CSE has requested that the Commission extend and expand upon the Initial Exemption Letter 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)) 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 to Annette Nazareth, Director, Division, Commission, from Jeffrey T. Brown, Senior Vice President & General Counsel, CSE (September 18, 2002) ("Exemptive Request"). Concurrent with the instant accelerated approval, the Commission has granted the Exemptive Request. See letter from Robert L.D. Colby, Deputy Director, Division, Commission, to Jeffrey T. Brown, Senior Vice President & General Counsel, CSE (September 25, 2002) ("Exemption Letter").

<sup>7</sup> Interpretation .01 to 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."

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

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 requests that this rule be approved on a pilot basis through December 1, 2002, to be co-extensive with the conditional temporary exemptive relief granted concurrently by the Commission in the Exemption Letter.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### 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. 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 No. SR-CSE-2002-12 and should be submitted by October 25, 2002.

## IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national

securities exchange,<sup>10</sup> and, in particular section 6(b)(5) of the Act.<sup>11</sup> As discussed above, by the Exemption Letter the Division has extended and expanded upon the relief granted by the Initial Exemption Letter. The Commission believes that the proposed rule change should provide protection to customer limit orders in the subpenny trading environment by helping to ensure that such orders will continue to have access to market liquidity ahead of Exchange Specialists in appropriate circumstances.

The Commission finds good cause for approving the proposed rule change on a pilot basis prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that granting accelerated approval to the proposed rule change will allow the Exchange to provide uninterrupted protection to customer limit orders in subpenny increments in Nasdaq securities and expedite the protection of customer limit orders in subpenny increments in listed securities.

#### V. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (SR-CSE-2002-12) is hereby approved on an accelerated basis for a pilot period through December 1, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. 02-25223 Filed 10-3-02; 8:45 am]

BILLING CODE 8010-01-P

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46566; File No. SR-NYSE-2001-24]

#### Self Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendments Nos. 1 and 2 Thereto Amending Exchange Rule 97 Which Limits Member Trading Because of Block Positioning

September 27, 2002.

On August 17, 2001, the New York Stock Exchange, Inc. ("NYSE" or

"Exchange") 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 amend NYSE Rule 97 (Limitation on Member Trading Because of Block Positioning) so that it applies only to transactions executed at or near the end of the trading day, and to provide exceptions to the rule for member organizations that establish the requisite internal information barriers and for certain hedging transactions. The Exchange filed Amendment No. 1 to the proposed rule change on April 17, 2002.<sup>3</sup> The Exchange filed Amendment No. 2 to the proposed rule change on June 28, 2002.<sup>4</sup>

The proposed rule change, as amended, was published for comment in the **Federal Register** on July 19, 2002.<sup>5</sup> The Commission received no comments on the proposal.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>6</sup> and, in particular, the requirements of Section 6 of the Act<sup>7</sup> and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>8</sup> because 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.

Currently, NYSE Rule 97 prohibits a member firm that holds any part of a long position in its trading account, which resulted from a block transaction with a customer, from purchasing for an account in which such member firm has an interest, additional shares of such stock on a "plus" or "zero plus" tick for the remainder of the trading day under certain conditions. NYSE Rule 97 is

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

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

<sup>3</sup> See letter from Richard P. Bernard, Executive Vice President and General Counsel, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated April 16, 2002 ("Amendment No. 1").

<sup>4</sup> See letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division, Commission, dated June 27, 2002 ("Amendment No. 2").

<sup>5</sup> See Securities Exchange Act Release No. 46191 (July 12, 2002), 67 FR 47588.

<sup>6</sup> In approving this proposed rule change, the Commission notes that it has considered its impact on efficiency, competition, and capital formation.

<sup>7</sup> 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78f.

<sup>9</sup> 15 U.S.C. 78f(b)(5).

intended to address concerns that a member firm might engage in manipulative practices by attempting to "mark-up" the price of a stock to enable the member firm to liquidate a position it acquired during a block transaction it effected with a customer at a profit, or to maintain the market at the price at which the position was acquired.

Under the proposed rule change, NYSE Rule 97 would prevent a member organization that holds a long position in a security that resulted from a block transaction with a customer from effecting within twenty minutes of the close of trading on the Exchange, a purchase on a "plus" tick in that security at a price higher than the lowest price at which any block was acquired in a previous transaction on that day, if the person responsible for the entry of such order to purchase the security had knowledge of the block position.<sup>9</sup> The proposed rule change would also add an exception to permit a member firm to make an otherwise prohibited purchase during the last twenty minutes of the trading day to hedge a position that is economically equivalent to a short position that the firm acquired in the course of facilitating a customer order. Under this exception, the hedge must be clearly related to transaction that created the short position and the size of the hedge must be commensurate with the number of shares required to hedge such position.

The Commission believes that the proposal to limit the restrictions on purchasing stock when a firm holds a long position that resulted from a block facilitation to the last twenty minutes of the trading day is consistent with the Act. The Commission believes it is appropriate for the NYSE to restrict such trading activities during this time of the trading day. However, the Commission notes that purchases executed during any time of the trading day continue to be subject to the anti-manipulative provisions of the Act. Accordingly, the Commission expects the NYSE to continue to surveil the activities of firms that trade while holding positions that result from block transactions with customers to ensure that they are not engaging in manipulative acts and practices during the entire trading day.

<sup>9</sup> NYSE Rule 97 only applies to transactions on the NYSE. However, NYSE Rule 97 would apply to transactions on the NYSE regardless of where the member firm acquired the block position. Telephone conversation between Jeffrey Rosenstock, Senior Special Counsel, NYSE, and Christopher Solgan, Attorney, Division, Commission, on September 13, 2002.

<sup>10</sup> In granting approval of the proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation.

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</sup> 17 CFR 200.30-3(a)(12).