

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46688; File No. SR-CSE-2002-14]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Cincinnati Stock Exchange, Inc. Relating to Changes in Transaction and Related Fees

October 18, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4² thereunder, notice is hereby given that on September 30, 2002, the Cincinnati Stock Exchange, Inc. ("Exchange" or "CSE") submitted to 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 CSE. The proposed rule change has been filed by the CSE under Rule 19b-4(f)(2)³ of the Act because it changes a due, fee, or other charge. 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 CSE proposes to amend the Exchange's schedule of transaction fees and related fees.

The text of the proposed rule change is below. Proposed additions are in italics and proposed deletions are in [brackets].

* * * * *

Proposed Rule Change

The Cincinnati Stock Exchange, Incorporated

Trading Rules

Rule 11.10 National Securities Trading System Fees

A. Trading Fees

(a)-(d) (No Change to Text)

(e) [(1) Crosses and Meets. Each member will be charged \$0.0005 per share (\$0.50/1000 shares), with a maximum charge of \$37.50 per firm per side of the transaction. No agency, professional agency or proprietary charges are applied.

(2) Tape "C" Transactions. Tape "C" Transactions are defined as transactions conducted in Nasdaq securities pursuant to unlisted trading privileges

("UTP"). Members will be charged a per share fee for Nasdaq securities based upon the following schedule:

| Number of shares traded (in a single day) | Fee per share |
|---|---------------|
| 0-5 million | \$0.001 |
| 5 million one + | 0.000025] |

(1) *Users executing crosses and meets in Tape A securities shall be charged \$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.*

(2) *Users, who are not registered as Qualified or Designated Dealers in the securities in which they are executing crosses and meets in Tape C securities (Nasdaq NMM and SmallCap securities), shall pay no transaction fees.*

(3) *Dealers executing crosses in Tape C securities (Tape "C" Transactions are defined as transactions conducted in Nasdaq securities pursuant to unlisted trading privileges) in which they are registered shall be charged a per share fee as noted below:*

| Average daily number of shares | Fee per share |
|--------------------------------|---------------|
| Up to 5 million shares | \$0.001 |
| 5 million shares and above | 0.000025 |

[(f) ITS Transactions. These transactions are charged according to the capacity in which they are executed.]

(f) *ITS Transactions. All ITS transactions, whether inbound or outbound, will be charged \$0.001 per share.*

(g) (No change to text)

[(h) Preferred Transactions. Designated dealers that are preferencing transactions are charged for one side of their preferred transactions and are subject to the incremental rates as noted below:

| Avg. daily principal share* volume | Charge per share |
|------------------------------------|------------------|
| 1 to 250,000 | \$0.0015 |
| 250,001 to 500,000 | 0.0013 |
| 500,001 to 750,000 | 0.0009 |
| 750,001 to 1,250,000 | 0.0007 |
| 1,250,000 and higher | 0.0005 |

*Odd-Lot Shares Excluded]

(h)(1) *Preferred Transactions. Designated Dealers that are preferencing transactions in Tape A securities are charged for one side of their preferred*

transactions and are subject to the incremental rates as noted below:

| Average daily share* volume | Charge per share |
|-----------------------------|------------------|
| 1 to 250,000 | \$0.0015 |
| 250,001 to 500,000 | 0.0013 |
| 500,001 to 750,000 | 0.0009 |
| 750,001 to 1,250,000 | 0.0007 |
| 1,250,000 and higher | 0.0005 |

*Odd-Lot shares excluded

(2) *Dealers executing preferencing transactions in Tape C securities are charged for one side of their preferred transactions and are subject to the following incremental rates:*

| Average daily share** volume | Charge per share |
|------------------------------|------------------|
| Up to 5 million shares | \$0.001 |
| 5 million shares and above | 0.000025 |

**Odd-Lot shares excluded

[(i) Member Gross Fee Discount. Members will receive an incremental discount to their total gross fee** charged in any given month as follows:

| Gross fees | Percentage |
|--------------------------------|------------|
| \$0.00 to \$5,000 | 0 |
| \$5,000.01 to \$20,000 | 0 |
| \$20,000.01 to \$50,000 | 15 |
| \$50,000.01 to \$90,000 | 20 |
| \$90,000.01 to \$125,000 | 25 |
| \$125,000.01 and higher | 30 |

*Excludes: Agency Transactions (a), Crosses & Meets (e), Dealer of the Day (g)(2) and Preferred Transaction (h) Fees.]

(i) *Reserved.*

(j) Revenue Sharing Program. After the Exchange earns total operating revenue sufficient to offset actual expenses and working capital needs, a percentage of all specialist Operating Revenue ("SOR") shall be eligible for sharing with Designated Dealers. SOR is defined as operating revenue, which is generated by specialist firms. SOR consists of transactions fees, book fees, technology fees, and market data revenue, which is attributable to specialist firm activity. SOR shall not include any investment income or regulatory monies. The sharing of SOR shall be based on each Designated Dealer's pro rata contribution to SOR. In no event shall the amount or revenue shared with Designated Dealers exceed SOR. *To the extent market data revenue is subject to year-end adjustment, SOR revenue may be adjusted accordingly.*

(k) Tape "B" Transactions. The CSE will not impose a transaction fee on Consolidated Tape "B" securities. In addition, Members will receive a 50 percent pro rata transaction credit of net Tape "B" revenue. *To the extent market*

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(2).

data revenue from Tape "B" transactions is subject to year-end adjustment, credits provided under this program may be adjusted accordingly.

[(l) Tape "C" Transaction Credit.

Members will receive a 75 percent pro rata transaction credit of Tape "C" revenue.]

(l) Reserved.

(m) (No change to text)

(n) (No change to text)

(o) Technology Fee. Every member of the Exchange shall be assessed a fee of [\$500.00] \$750.00 per month to help offset technology expenses incurred by the Exchange.

(p) (No change to text)

(a) (No change to text)

(r) Workstation Fee. Every member using the Exchange Workstation shall be charged \$500.00 per device per month.

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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 CSE 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 CSE 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 is proposing amendments to the Exchange Rules governing transaction and related fees. The first proposed rule change amends subsection (1) to Rule 11.10(A)(e), ("Crosses and Meets"). Subsection (1) currently provides that members will be charged \$0.0005 per share per side, with a cap of \$37.50 per firm per side of any transaction. The amended rule will provide that Users executing agency crosses or meets in Tape A securities (securities listed on the New York Stock Exchange) shall be charged \$0.0005 per share per side for average daily volume up to 5 million shares and \$0.000025 per share per side for average daily volume above 5 million shares. The cap of \$75.00 per transaction remains.

Subsection (2) of Rule 11.10(A)(e) is amended to change the current fee structure for crosses and meets in Tape C (Nasdaq securities) transactions. Currently, subsection (2) provides a fee

structure of \$0.001 for average daily volume up to 5 million shares traded and \$0.000025 for average daily volume above 5 million shares. Subsection (2) is amended eliminate the current fee schedule and to charge Users who are not Dealers no transaction fees for crosses and meets in Tape C securities. The Exchange states that since it is unable to share the market data revenue generated through its volume, the Exchange believes it is equitable and reasonable to reduce other transaction fees such as the fee for non-Dealers to execute crosses and meets in Tape C securities.⁴

Subsection (3) of Rule 11.10(A)(e) is added to provide that Dealers executing crosses in Tape C securities are charged \$0.001 for average daily volume up to 5 million shares traded and \$0.000025 for average daily volume above 5 million shares. The Exchange believes that it is fair to continue to charge Dealers in Tape C securities transaction fees because they are eligible to share in the market data revenue generated by their trading activity.⁵ This is because, under Rule 11.10A(j), Dealers share in Specialist Operating Revenue, which includes market data revenue, after the CSE retains sufficient income to offset actual expenses and working capital needs.⁶

Rule 11.10(A)(f) is being amended to reflect changes in the billing of ITS transactions. Currently, ITS transactions are charged according to the capacity in which they are executed. The Exchange is amending Subsection (f) to provide that all ITS transactions will be billed \$0.001 per share.

The Exchange is also amending Rule 11.10(A)(h), "Preferred Transactions," by adding subsections to the rule. Subsection (1) specifies that the current fee schedule for preferred transactions set forth in rule 11.10(A)(h) applies to Tape A securities only. Subsection (2) is added to provide that preferred transactions in Tape C securities will be charged \$.001 for average daily volume up to 5 million shares and \$0.000025 for average daily volume above 5 million shares.

Rule 11.10(A)(i), "Member Gross Fee Discounts," is deleted in light of the other fee reductions implemented in this filing.

In addition, the Exchange is amending Rules 11.10(A)(j) and (k) by adding a provision to each clarifying that to the

⁴ Telephone conference call among Jeffery T. Brown, Senior Vice President and General Counsel, CSE, Florence Harmon, Senior Special Counsel, Division, Commission, and Timothy Fox, Law Clerk, Division, Commission, October 16, 2002.

⁵ *Id.*

⁶ *Id.*

extent CSE market data revenue is subject to a year-end adjustment, revenues distributed to members is subject to adjustment accordingly. This Exchange believes that this provision will ensure that member receipts of market data revenue are consistent with the year-end true-up procedures applied by the Consolidated Tape Association and the Nasdaq-UTP Plan.

The Exchange is eliminating Rule 11.10(A)(l) because of the Commission's abrogation of the Exchange's pilot Nasdaq securities market data revenue sharing program.⁷ However, the Exchange is reserving Rule 11.10(A)(l) should the Exchange refile its Nasdaq revenue sharing program. Finally, the Exchange is amending Rule 11.10(A)(o) to increase the Exchange's technology fee from \$500 per month to \$750 per month and is adding Rule 11.10(A)(r) to establish a fee of \$500 per month for access to the Exchange's workstation, which was recently introduced to members.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Act⁸ in general, and with section 6(b)(5) of the Act⁹ specifically, in that it is designed to perfect the mechanism of a free and open market and a national market system, protect investors and the public interest and promote just and equitable principles of trade. The Exchange also believes that the proposal is consistent with section 6(b)(4) of the Act¹⁰ in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members by charging on a pro rata basis.

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

The CSE 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

No written comments were either solicited or received.

⁷ See Securities Exchange Act Release No. 46159 (July 2, 2002), 67 FR 45775 (July 10, 2002) (Order of Summary Abrogation). The Commission notes that the proposed rule change will effectively remove transaction fees for non-Dealer members of CSE, including ECNs, who execute crosses or meets in Tape C securities.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78f(b)(4).

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

Because the foregoing proposed rule change changes a member due, fee or other charge, it has become effective pursuant to section 19(b)(3)(A) of the Act¹¹ and subparagraph (f)(2) of Rule 19b-4¹² 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.¹³

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. 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 CSE. All submissions should refer to File No. SR-CSE-2002-14 and should be submitted by November 18, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46698; File No. SR-ISE-2002-22]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the International Securities Exchange, Inc. Relating to Pilot Fee Waivers

October 21, 2002.

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 October 3, 2002, the International Securities Exchange, Inc. ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The ISE filed an amendment to the proposed rule change on October 9, 2002.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The ISE is proposing to waive the following fees through May 31, 2003: firm proprietary execution fees for trading in the ISE Block Mechanism; firm proprietary execution fees for all trades on options on the iShares S&P 100 Index Fund; and the \$.10 licensing surcharge fee for all firm proprietary trades in options on the iShares S&P 100 Index Fund.

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 Exchange proposes to waive two firm proprietary fees for a pilot period expiring on May 31, 2003. Customer fees for these types of trades already are waived through June 30, 2003. *The fees the ISE proposes to waive under this pilot program are:*

- Firm proprietary fees for all transactions executed in the ISE's Block Order Mechanism. This is functionality that the ISE has introduced into the market place to effect large trades of 50 or more contracts. The ISE's goal is to attract firm proprietary traders to use this new type of functionality.
- Firm proprietary fees and licensing surcharges for all transactions in options on the iShares S&P 100 Index Fund, an exchange-traded fund based on the S&P 100 Index. The ISE's intent is to make trading in this product more attractive, and more competitive with options on the S&P 100 Index.

The ISE will continue to charge these fees to its members for trades by both ISE market makers and market makers on other exchanges. However, the ISE does not permit non-members to enter orders on the ISE, and thus does not impose these fees directly on non-members.

2. Statutory Basis

The ISE believes that the basis for the proposed rule change is the requirement under section 6(b)(4) of the Act⁴ that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

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

The Exchange believes that the proposal does not impose any burden on competition 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

Written comments were neither solicited nor received.

⁴ 15 U.S.C. 78f(b)(4).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Michael J. Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market Regulation, SEC, dated October 8, 2002, and attachment ("Amendment No. 1"). In Amendment No. 1, the ISE proposes to correct the rule text of the proposed rule change to clarify that the pilot period for the fee waivers would end on May 31, 2003.

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(2).

¹³ 15 U.S.C. 78s(b)(3)(C).

¹⁴ 17 CFR 200.30-3(a)(12).