

Dated: October 15, 2003.

Jonathan G. Katz,

Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48624; File No. SR-CSE-2003-06]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Cincinnati Stock Exchange To Amend Article IV of Its By-Laws Pertaining to Its Listing Standards

October 10, 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 September 12, 2003 the Cincinnati Stock Exchange ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("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 Article IV of its By-Laws pertaining to its listing standards, including the addition of requirements applicable to audit committees of listed companies. The text of the proposed rule change is set forth below. Text in brackets indicates material to be deleted, and text in italics indicates material to be added.<sup>3</sup>

\* \* \* \* \*

By-Laws

#### Article IV

[Prohibitions or Limitations on Access to the Exchange or Member Services]

#### Securities Listed on the Exchange

#### Section 1. Listing of Securities

##### 1.1. Applications

All applications for listing on the Exchange will be submitted to the

Exchange's Secretary on a form prescribed by the Exchange.

##### 1.2. Procedure

The Secretary of the Exchange shall refer such applications to the Exchange's [Listing]Securities Committee. In passing on applications, the [Listing]Securities Committee shall determine whether the applicant meets the requirements for listing and, in making such determination, the Committee shall adhere to the following procedures:[set forth in Section 6, paragraphs (c)-(e) of Article II of these By-Laws.]

*(a) Applications received by the Exchange's Secretary shall be referred to the Securities Committee and, if a majority of the Committee is satisfied that the applicant is qualified for listing pursuant to the provisions of this Article, the Committee shall promptly notify the Secretary of the Exchange of such determination, and the Secretary shall promptly notify, in writing, the applicant of the Committee's determination, and the applicant will be approved for listing on the Exchange.*

*(b) If a majority of the Securities Committee is not satisfied that the applicant is qualified for listing pursuant to the provisions of this Article, the Committee shall promptly notify the Secretary of the Exchange of such determination, and the Secretary shall promptly notify, in writing, the Board and the applicant of the grounds for denying listing. Within 30 days of such notification, the Board may reverse the determination of the Securities Committee that the applicant is not qualified for listing; provided, however, that if at the end of the 30-day period a majority of the Board has not specifically reversed the Committee's determination, the Secretary of the Exchange shall promptly notify the applicant, in writing, of the grounds for denying listing. If during the 30-day period a majority of the Board specifically determines to reverse the Securities Committee's determination to deny listing, the Board shall promptly notify the Secretary of the Exchange who shall promptly notify the applicant that the Board has granted the applicant's application for listing.*

*(c) In considering applications for listing, the Securities Committee, the Board and the Exchange's Secretary shall adhere to the following procedures:*

*(1) The Securities Committee shall act upon the application within 90 days of receipt of such application.*

*(2) Where a listing application is granted by the Board, the Secretary shall promptly notify the applicant.*

*(3) The applicant shall be afforded an opportunity to be heard on the denial of listing pursuant to the provisions of Exchange Rules governing adverse action.*

*(4) The applicant must satisfy the requirements of subsection 1.4 of this Article IV, including any portion of paragraphs (b) or (c) of Rule 10A-3 of the Act pertaining to audit committees, which cannot be exempted or otherwise waived other than as provided within the rules.*

##### 1.3. Requirements

No security shall be listed on the Exchange unless the issuer thereof shall meet the following requirements:

[(1)](a) In the case of common stock have:

(1) net tangible assets of at least \$2,000,000;

[(b) have](2) at least 1000 recordholders of the issue for which trading privileges have been granted or are requested;

[(c) have](3) outstanding at least 250,000 shares for which trading privileges have been granted or are requested exclusive of the holdings of officers and directors;

[(d) have](4) demonstrated net earnings of \$200,000 annually before taxes for two prior years excluding non-recurring income; and

[(e) have](5) been actively engaged in business and have been so operating for at least three (3) consecutive years

[(2)(a)](b) In the case of preferred stock[.]:

(1) [t]The listing of issues is considered on a case by case basis, in light of the suitability of the issue for [continuous auction market]trading on the Exchange. The Exchange, as a general rule, will not consider listing the convertible preferred stock of a company unless its common stock is also listed on the Exchange[, NYSE or AMEX], another exchange that is registered pursuant to Sections 6 of the Act or a facility of a national securities association registered pursuant to Section 15A of the Act.

[(b)2] [Companies]An issuer applying for listing of a preferred stock [are]is expected to meet the following criteria:

(i) The [Company]issuer appears to be in a financial position sufficient to satisfactorily service the dividend requirements for the preferred stock and meets the requirements set forth in [P]paragraph 1.3.[.](1)a) above.

(ii) In the case of an issuer whose common stock is [traded]listed on the CSE, [NYSE or AMEX,] another exchange that is registered pursuant to Section 6 of the Act or a facility of a national securities association

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

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

<sup>3</sup> The rule text as set forth herein includes several minor technical revisions that the Exchange has committed to correct by filing an amendment. Telephone conversation between Jennifer M. Lamie, CSE, and Ira L. Brandriss, Division of Market Regulation, Commission, on October 3, 2003.

registered pursuant to Section 15A of the Act, the following guidelines apply:

Shares Publicly Held .....	100,000
Aggregate Market Value/ Price .....	\$2,000,000/\$10

For issuers of preferred stock not listed as noted above, the Exchange has established different guidelines to ensure adequate public interest as follows:

Preferred Shares Publicly Held .....	400,000
Public Round-Lot Holders .....	800
Aggregate Market Value/ Price .....	\$4,000,000/\$10

(iii) The [CSE]Exchange will not list convertible preferred issues containing a provision which gives the company the right, at its discretion, to reduce the conversion price for periods of time or from time to time unless the company establishes a minimum period of ten business days within which such price reduction will be in effect.

[(3)(a)](c) In the case of warrants[.]:  
(1) at least 250,000 outstanding, exclusive of the holdings of officers and directors; and

[(b)2] have a class of common stock that would otherwise be eligible for listing on the Exchange or is already listed on the Exchange.

[(4)(a)](d) In [a]the case of bonds[.]:  
(1) a principal amount outstanding of at least \$2,000,000;

[(b)2] have at least an aggregate market value of at least \$2,000,000;

[(c)3] have at least 250 recordholders and, in the case of convertible debt, a larger distribution may be required; and

[(d)4] have a class of common stock that would otherwise be eligible for listing on the Exchange or is already listed on the Exchange.

[(5)(a)](e) In the case of the listing of any security not otherwise covered by the criteria of the foregoing subsections or in the Exchange Rules, provided the issue is otherwise suited for trading, such issues will be evaluated for listing against the following criteria;

[(b)1] the issuer[s] ha[ve]s assets in excess of \$100 million and stockholders' equity of at least \$10 million. In the case of an issuer [which]that is unable to satisfy the earnings criteria set forth in [subsection]paragraph [(1)](a), the Exchange generally will require the issuer to have the following:

(i) assets in excess of \$200 million and stockholders' equity of at least \$10 million; or

(ii) assets in excess of \$100 million and stockholders' equity of at least \$20 million;

[(c)2] the issue have a minimum public distribution of one million

trading units including a minimum of 400 holders, or if traded in thousand dollar denominations, a minimum of 100 holders;

[(d)3] the issue have a principal amount/aggregate market value of not less than \$20 million;

[(e)4] where the instrument contains cash settlement provisions, settlement must be made in U.S. dollars; and  
[(f)5] where the instrument contains redemption provisions, the redemption price may not be below \$3 per unit.

Prior to commencement of trading of securities admitted to listing under this subsection [5]e, the Exchange will evaluate the nature and complexity of the issue and, if appropriate, distribute a circular to the membership providing guidance regarding member [firm] compliance responsibilities when handling transactions in such securities.

[(6)f] Limited Partnerships—No security issued in a limited partnership rollup transaction (as defined by Section 14(h) of the [Exchange]Act), shall be eligible for listing unless:

[(i)1] the rollup transaction was conducted in accordance with procedures designed to protect the rights of limited partners as provided in Section 6(b)(9) of the [Exchange]Act, as it may from time to time be amended; and

[(ii)2] a broker-dealer which is a member of a national securities association subject to Section 15A(b)(12) of the [Exchange]Act participates in the rollup transaction.

The applicant shall further provide the Exchange with an opinion of counsel that the rollup transaction was conducted in accordance with the procedures established by such association.

#### 1.4 Listing Standards Relating to Audit Committees

(a) In addition to the requirements contained in subsection 1.3, each issuer must have an audit committee. The Exchange shall not initially list or continue listing any securities of an issuer that is not in compliance with the requirements of this subsection 1.4 or any portion of paragraphs (b) or (c) of Rule 10A-3 of the Act pertaining to audit committees. In addition to the requirements of Rule 10A-3 of the Act:

(1) Each audit committee shall consist of at least three directors, each of whom shall be financially literate, as such qualification is interpreted by the issuer's board of directors in its business judgment, or must become financially literate within a reasonable period of time after his or her appointment to the audit committee. At least one member of the audit committee must have

accounting or related financial management expertise, as the issuer's board of directors interprets such qualification in its business judgment.

(2) The board of directors of each issuer must adopt and approve a formal written charter for its audit committee. The audit committee must review and reassess the adequacy of the audit committee charter on an annual basis. The charter must specify:

(i) the scope of the audit committee's responsibilities and how it carries out those responsibilities, including structure, processes, and membership requirements; and

(ii) that the audit committee is responsible for ensuring that the outside auditor submits on a periodic basis to the audit committee a formal written statement delineating all relationships between the outside auditor and the issuer and that the audit committee is responsible for actively engaging in a dialogue with the outside auditor with respect to any disclosed relationships or services that may impact the objectivity and independence of the outside auditor and for recommending that the issuer's board of directors take appropriate action in response to the outside auditor's report to satisfy itself of the outside auditor's independence.

(b) As part of the initial listing process, and with respect to any subsequent changes to the composition of the audit committee, and otherwise approximately once each year, each issuer should provide the Exchange written confirmation regarding:

(1) any determination that the issuer has made regarding the independence of its audit committee members;

(2) the financial literacy of the audit committee members;

(3) the determination that at least one of the audit committee members has accounting or related financial management expertise; and  
(4) the annual review and reassessment of the adequacy of the audit committee charter.

(c) If a member of an issuer's audit committee ceases to be independent in accordance with the requirements of Rule 10A-3 for reasons outside the committee member's reasonable control, that person, with notice by the issuer to the Exchange, may remain an audit committee member of the issuer until the earlier of the next annual shareholders meeting of the issuer or one year from the occurrence of the event that caused the committee member to be no longer independent.

(d) For securities listed on the Exchange prior to [insert approval date], an issuer shall have until the earlier of its first annual shareholders meeting

after January 15, 2004, or October 31, 2004, to cure any defects that would be the basis for a prohibition from continued listing.

(e) An issuer must notify the Exchange promptly after an executive officer or the issuer becomes aware of any material noncompliance by the issuer with the requirements of this subsection 1.4 or Rule 10A-3 of the Act.

(f) In connection with a review of standards designed to ensure independence and strengthen corporate governance practices, the Exchange intends in the near future to adopt additional listing policies and requirements pertaining to issuer corporate governance, including standards for independence of board directors, independence and responsibilities of nominating, compensation and other board committees, codes of conduct, and shareholder approval of equity compensation plans. These additional policies and requirements will be reflected within the Exchange Rules.

## Section 2. Unlisted Trading Privileges

[No application shall be made to the Securities and Exchange Commission for the extension of unlisted trading privileges with respect to any security unless the issuer thereof shall meet the requirements for listing set forth in Section 1.3. of this Article IV. In the event that an issuer whose security has been the subject of a grant of unlisted trading privileges to the Exchange ceases to meet the requirements for listing set forth in Section 1.3. of this Article IV, the Exchange shall terminate such unlisted trading.] Notwithstanding the [foregoing] requirements for listing set forth in Section 1.3 of this Article IV, the Exchange may seek and continue unlisted trading privileges on any security as to which unlisted trading privileges have been granted pursuant to Section 12(f) of the Act [for which the primary trading market is the New York Stock Exchange or the American Stock Exchange].

## Section 3 Delisting of Securities

### 3.1. Suspension and/or Delisting by Exchange

(a) The Board [of Trustees ] may suspend dealings in any issue admitted to trading on the Exchange.

(b) Whenever the Board [of Trustees ] determines that it no longer is appropriate for a security to continue to be traded on the Exchange, it may institute proceedings to delist such security. Any issuer or any other person aggrieved by such action may seek relief pursuant to the Exchange[']s r]Rules governing adverse action.

(c) The securities of an issuer will be subject to suspension and/or withdrawal from listing and registration as a listed issue if any of the following conditions are found to exist:

(1) [F]ailure to comply with the listing standards and agreements[.]; or

(2) [S]ustained loss so that financial condition becomes so impaired that it is questionable to the Exchange whether the company can continue operations and/or meet its obligations as they mature.

Notwithstanding the foregoing, the Board [of Trustees ] may determine that the suspension or delisting of an issue is necessary for the protection of investors and the public interest.

### 3.2. Delisting by Issuer

A security, which in the opinion of the Board [of Trustees of the Exchange ] is eligible for continued listing, may be removed from [the ] listing upon the request or application of the issuer provided that the issuer submits a certified copy of a resolution adopted by the [B]oard of [D]irectors of the issuer authorizing withdrawal from listing and registration and a statement setting forth in detail the reasons for the proposed withdrawal and the facts in support thereof.

The issuer may be required to submit the proposed withdrawal to the security holders for their vote at a meeting for which proxies are solicited provided the stock is not also listed on another national securities [E]xchange registered under Section 6 of the Act having similar requirements or on a facility of a national securities association registered under Section 15A of the Act having similar requirements.

\* \* \* \* \*

## 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 Commission approved Rule 10A-3 under the Act,<sup>4</sup> with an effective date of April 25, 2003.<sup>5</sup> Rule 10A-3 under the Act<sup>6</sup> pertains to listing standards relating to audit committees and, among other things, requires each of the national securities exchanges and associations to adopt rules prohibiting the initial or continued listing of any security of an issuer that is not in compliance with the requirements of Rule 10A-3. Through this instant rule proposal, CSE seeks to incorporate the necessary rule language pertaining to Rule 10A-3 into its listing standards. In addition, CSE seeks to incorporate additional rule language pertaining to audit committee requirements for listed issuers in order to conform to recommendations made by the Blue Ribbon Committee on Improving Effectiveness of Corporate Audit Committees and rule changes adopted by other self-regulatory organizations. Finally, the Exchange is proposing to make certain other changes to Article IV of its By-Laws that are described below. CSE represents that these changes, in part, make the language of the various provisions uniform and consistent with the Exchange rules and practices.

In part, the proposed rule change specifies requirements for audit committees. First, proposed Subsection 1.4 of Article IV would require that, in order to qualify its securities for listing on the Exchange, an issuer must have an audit committee that complies with the requirements of Rule 10A-3 of the Act.<sup>7</sup> Proposed Subsection 1.4 goes on to specify that each audit committee must also consist of at least three members of the listed company's board of directors, each of whom must meet certain financial literacy requirements, and at least one of whom must possess certain accounting or related financial management expertise. CSE states that a board would be permitted to presume that a person who satisfies the definition of audit committee financial expert set out in Item 401(h) of Regulation S-K has accounting or related financial management expertise.

In addition to these committee member qualification requirements, the

<sup>4</sup> 17 CFR 240.10A-3.

<sup>5</sup> See Securities Act Release No. 8220, Securities Exchange Act Release No. 47654, and Investment Company Act Release No. 26001 (April 9, 2003), 68 FR 18788 (April 16, 2003).

<sup>6</sup> 17 CFR 240.10A-3.

<sup>7</sup> 17 CFR 240.10A-3.

issuer's board of directors would be required to adopt and approve a formal written charter for its audit committee. The charter would be required, at a minimum, to specify the scope of the audit committee's responsibilities and how the committee carries out those responsibilities. The charter would also be required to specify that the audit committee is responsible for ensuring that the outside auditor submits on a periodic basis to the audit committee a formal written statement delineating all relationships between the outside auditor and the issuer, that the audit committee is responsible for actively engaging in a dialogue with the outside auditor with respect to any disclosed relationships or services that may impact the objectivity and independence of the outside auditor, and for recommending that the issuer's board of directors take appropriate action in response to the outside auditor's report to satisfy itself of the outside auditor's independence.

As part of the initial listing process, when subsequent changes to the audit committee composition occur, and otherwise approximately once each year, each issuer would be required to provide the Exchange with written confirmation regarding any determinations made regarding the independence of its audit committee members, its compliance with the financial literacy and accounting or related financial management expertise requirements, and its annual review and reassessment of the adequacy of the audit committee charter. An issuer would also be required to notify the Exchange promptly after an executive officer or the issuer becomes aware of any material noncompliance by the issuer with the requirements of Subsection 1.4 of Article IV of CSE's By-Laws or Rule 10A-3 of the Act.<sup>8</sup>

Proposed Subsection 1.4 of Article IV of the By-Laws also contains provisions for opportunities to cure defects and compliance dates. If a member of an issuer's audit committee ceases to be independent in accordance with the requirements of Rule 10A-3 of the Act<sup>9</sup> for reasons outside the committee member's reasonable control, that person, with notice by the issuer to the Exchange, would be permitted to remain an audit committee member of the issuer until the earlier of the next annual shareholders meeting of the issuer or one year from the occurrence of the event that caused the committee member to be no longer independent. For securities listed on the Exchange

prior to the approval of Subsection 1.4, an issuer would have until the earlier of its first annual shareholders meeting after January 15, 2004, or October 31, 2004, to cure any defects that would be the basis for a prohibition from continued listing.

In addition, the Exchange is conducting a review of its listing standards designed to strengthen the corporate governance practices of listed companies. In the course of that review, the Exchange intends in the near future to adopt additional listing policies and requirements pertaining to issuer corporate governance, including standards for independence of board directors, independence and responsibilities of nominating, compensation and other board committees, codes of conduct, and shareholder approval of equity-compensation plans. As indicated in paragraph (f) of proposed Subsection 1.4, these additional policies and requirements will be reflected within the Exchange Rules.

Finally, CSE is also proposing to make certain other changes to Article IV of its By-Laws. Specifically, the Exchange is seeking to:

1. Change the name of Article IV from "Prohibitions or Limitations on Access to the Exchange or Member Services" to "Securities Listed on the Exchange";

2. Change the name of the Exchange Committee that reviews listing applications from Listing Committee to Securities Committee in Section 1.2;

3. Include the application review procedures within the listing procedures set forth in Section 1.2 rather than cross-referencing the procedures contained in Article II;

4. Change the reference to suitability for "continuous auction market trading" in Subsection 1.3 to suitability for "trading on the Exchange". Replace references to "company" and "companies" with "issuer" and a reference to "CSE" with "Exchange". In addition, correct a reference to "traded" in paragraph (b)(2)(ii) to "listed";

5. Make reference to securities that are subject to listing criteria that is contained in the Exchange Rules as not being subject to the general listing requirements contained in paragraph (e) of Subsection 1.3;

6. Make changes to Section 2 to provide that the Exchange may extend unlisted trading privileges to any security for which unlisted trading privileges have been granted pursuant to Section 12(f) of the Act, not just securities listed on the NYSE and Amex;

7. Make changes to Subsection 3.2 to clarify that an issuer seeking to delist its securities may be required to submit the

proposed withdrawal to the security holders for their vote at a meeting for which proxies are solicited provided the stock is not also listed on another national securities exchange having similar requirements or on a facility of a national securities association having similar requirements. Previously the text simply referenced other exchanges; and

8. Make certain other miscellaneous grammatical, punctuation and numbering changes throughout Article IV. Cross-references will be updated accordingly.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act<sup>10</sup> in general, and furthers the objectives of section 6(b)(5) of the Act<sup>11</sup> in particular, because it is designed to prevent fraudulent and manipulative acts and practices, 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*

No written comments were solicited or received in connection with 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 Exchange consents, the Commission will:

(A) By order approve such 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.

<sup>8</sup> 17 CFR 240.10A-3.

<sup>9</sup> 17 CFR 240.10A-3.

<sup>10</sup> 15 U.S.C. 78f(b).

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

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, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change, as amended, 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 CSE. All submissions should refer to file number SR-CSE-2003-06 and should be submitted by November 10, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48625; File No. SR-NASD-2003-152]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Reflecting the Delayed Implementation of Rule Changes Regarding Reporting of Transactions Conducted Through Electronic Communications Networks to the Automated Confirmation Transaction Service

October 10, 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 October 7, 2003, 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") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Pursuant to Section 19(b)(3)(A)(i) of the

Act<sup>3</sup> and Rule 19b-4(f)(1) thereunder,<sup>4</sup> Nasdaq has designated this proposal as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule, which renders the proposed rule change effective immediately upon filing. 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 the Substance of the Proposed Rule Change

Nasdaq has delayed until October 27, 2003 the implementation of rule changes effected by SR-NASD-2003-98.<sup>5</sup> There is no proposed rule language.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq 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 this rule filing is to notify the Commission and other interested parties of the delay until October 27, 2003 of the implementation of the proposed rule change in SR-NASD-2003-98.<sup>6</sup> In that filing, Nasdaq amended the various NASD rules governing trade reporting to define with greater clarity the reporting obligations applicable to transactions executed through electronic communications networks ("ECNs") that are reported to the Automated Confirmation Transaction Service. Under the filing, the rule change was to be implemented thirty days after approval by the Commission (*i.e.*, on October 6, 2003). However, several ECNs have informed Nasdaq that they did not receive

adequate notice of the rule change in order to meet the October 6, 2003 implementation date. Accordingly, Nasdaq is delaying the implementation date of SR-NASD-2003-98 for three weeks, until October 27, 2003. Nasdaq will inform market participants of the delay through a Head Trader Alert posted on [www.nasdaqtrader.com](http://www.nasdaqtrader.com).

###### 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,<sup>7</sup> in general, and with Section 15A(b)(6) of the Act,<sup>8</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to protect investors and the public interest.

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

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

##### 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 with respect to the proposed rule change.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act<sup>9</sup> and Rule 19b-4(f)(1) thereunder because it constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule.<sup>10</sup> At any time within 60 days of the filing of such 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.

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

<sup>4</sup> 17 CFR 240.19b-4(f)(1).

<sup>5</sup> See Securities Exchange Act Release No. 48442 (September 4, 2003), 68 FR 53766 (September 12, 2003) (SR-NASD-2003-98) (approval order); Securities Exchange Act Release No. 48239 (July 28, 2003), 68 FR 45870 (August 4, 2003) (SR-NASD-2003-98) (notice of filing).

<sup>6</sup> *Id.*

<sup>7</sup> 15 U.S.C. 78o-3.

<sup>8</sup> 15 U.S.C. 78o-3(b)(6).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>10</sup> 17 CFR 240.19b-4(f)(1).

<sup>12</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.