

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 filings will also be available for inspection and copying at the principal office of the Association. All submissions should refer to File No. SR-NASD-2003-165 and should be submitted by December 30, 2003.

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

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48864; File No. SR-NASD-2003-169]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Remove Pricing for Tools and Tools Plus Products

December 2, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on November 24, 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)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(3) thereunder,<sup>4</sup> Nasdaq has designated this proposal as one concerned solely with the

administration of the self-regulatory organization, 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 Substance of the Proposed Rule Change

Nasdaq is proposing to remove pricing for the Tools and Tools Plus products formerly supported by Nasdaq. Nasdaq will implement the proposed rule change immediately.

The text of the proposed rule change is below. Proposed new language is in *italics*; proposed deletions are in [brackets].

\* \* \* \* \*

7000. Charges for Services and Equipment

7050. Other Services

- (a)-(d) No change.
[(e) Software Products]
[(1) The following fees shall be paid by customers of Tools TM:]

Table with 2 columns: Description and Price. Rows include: [(A) Fee Charge], [Minimum fee per market participant...], [Coverage of each additional block of 25 or fewer stocks], [Each additional office equipped with Tools], [Aggregate maximum fee per market participant].

[B] Customers who also subscribe to Tools PlusSM services shall receive the following reduction on fees incurred pursuant to subsection (1)(A):]

Table with 2 columns: Description and Discount. Rows include: [Number of Tools Plus Terminals], [Five or fewer Tools Plus terminals], [Between six and 15 Tools Plus terminals], [Greater than 15 Tools Plus terminals].

[(2) The following deposits and fees shall be paid by all customers of Tools Plus:]
(A) Each customer shall pay a deposit at the time it initially subscribes to Tools Plus equal to two times the subscriber's aggregate monthly Terminal Charge (as defined below), calculated based on the number of terminals ordered by the subscriber upon subscribing to Tools Plus (the "Deposit"). The Deposit shall be refunded to the customer upon termination of its subscription to Tools Plus after deducting any outstanding balances owed Nasdaq.
[(B) Terminal Charge]

Table with 2 columns: Description and Price. Rows include: [Fee Charge], [Terminal Charge per full functionality terminal equipped with Tools Plus], [(More than 30 terminals if customer signs two-year contract)], [(All other situations)], [Terminal Charge per correspondent/ floor broker terminal equipped with Tools Plus], [Minimum Terminal Charge], [(C) Fee Charge].

17 17 CFR 200.30-3(a)(12).
15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.
3 15 U.S.C. 78s(b)(3)(A)(iii).

4 17 CFR 240.19b-4(f)(3).

[Connection Charge to Nasdaq Computer-to-Computer Interface (CTCI)] ....	[\$265/month]
[Connection Charge to Nasdaq Service Delivery Platform (SDP) (charged to subscribers who handle customer orders)].	[\$250/month]
[Installation Fee] [1]	
[(one-time charge for Tools Plus and includes up to 15 terminals)] .....	[\$16,000]
[(each additional set of up to 15 terminals)] .....	[\$13,000]
[Port Charges (one-time charge per line)] .....	[\$1,250]
[(one-time aggregate charge for two lines)] .....	[\$2,500]
[Training Fee on-site at customer] .....	[\$400/day (plus travel expenses)]
[Training Fee for course at Nasdaq Tools] .....	[\$150/course]
[Electronic communication network (ECN) maintenance charge (charged to subscribers who route orders to ECN)].	[\$250/per ECN/month]

[1] [Installation Fee includes two hours of on-site training of customer personnel and all programming costs associated with one customized interface for the customer to access its clearing firm.]

[Market data redistribution charges, which are set by the relevant market	data provider, are passed through to Tools Plus subscribers at cost.]	on interfaces for customers of Nasdaq Tools Plus shall be billed according to the following rates:]
	[(D) Labor rates for programming customized interfaces and maintenance	

[Calendar Year 2002] .....	[Calendar Year 2003 and thereafter]
[Senior Programmer \$175/hour] .....	[\$200/hour]
[Programmer \$125/hour] .....	[\$150/hour]
[Junior Programmer \$100/hour] .....	[\$125/hour]
[Project Management \$150/hour] .....	[\$175/hour]
[Network Engineer \$125/hour] .....	[\$150/hour]
[Operations Support \$100/hour] .....	[\$125/hour]

\* \* \* \* \*

**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

Nasdaq has discontinued support for the Tools and Tools Plus software product lines, effective November 14, 2003 and November 11, 2003, respectively. Users of these products were informed in the second quarter of 2003 of Nasdaq's intention to discontinue support of the products in the fourth quarter of 2003. Accordingly, Nasdaq is removing the prices for these product lines from the fee schedule in the NASD Manual.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the

provisions of section 15A of the Act.<sup>5</sup> The proposed rule change merely eliminates fees for product lines that are no longer supported by Nasdaq.

*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.

*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.

**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)(iii) of the Act<sup>6</sup> and Rule 19b-4(f)(3) thereunder, because Nasdaq has designated the proposal as concerned solely with the administration of the exchange.<sup>7</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

<sup>5</sup> 15 U.S.C. 78o-3.  
<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(iii).  
<sup>7</sup> 17 CFR 240.19b-4(f)(3).

the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR-NASD-2003-169. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all 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 NASD. All submissions should refer to File No. SR–NASD–2003–169 and should be submitted by December 30, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48869; File No. SR–CSE–2003–16]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Stock Exchange To Extend a Pilot Amending Exchange Rule 12.6, Customer Priority, To Require Designated Dealers To Better Customer Orders at the National Best Bid or Offer by Whole Penny Increments

December 3, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that on November 28, 2003, National Stock Exchange (“Exchange”)<sup>3</sup> filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed this proposal pursuant to section 19(b)(3)(A) of the Act<sup>4</sup> and Rule 19b–4(f)(6)<sup>5</sup> thereunder, which renders the proposal effective upon filing with the Commission.<sup>6</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>8</sup> 17 CFR 200.30–3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> The Exchange was formerly known as The Cincinnati Stock Exchange. See Securities Exchange Act Release No. 48774 (November 12, 2003), 68 FR 65332 (November 19, 2003) (SR–CSE–2003–12).

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b–4(f)(6).

<sup>6</sup> The Exchange gave the Commission written notice of its intention to file the proposed rule change on November 24, 2003. The Commission reviewed the Exchange’s submission, and asked the Exchange to file the instant proposed rule change pursuant to Rule 19b–4(f)(6) under the Act. The Exchange asked the Commission to waive the 30-day operative delay. 17 CFR 240.19b–4(f)(6).

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

The Exchange proposes to extend the termination date of a pilot that amended Exchange Rule 12.6, “Customer Priority,” to add Interpretation .02.

Interpretation .02 requires an Exchange Designated Dealer (“Specialist”) to better the price of a customer limit order that is held by that Specialist if that Specialist determines to trade with an incoming market or marketable limit order.<sup>7</sup> Under the pilot rule, the Specialist is required to better a customer limit order at the national best bid or offer (“NBBO”) by at least one penny and at a price outside the current NBBO by at least the nearest penny increment. Through this proposal, the Exchange is seeking only to extend the existing pilot, and the exemption letters associated therewith,<sup>8</sup> through June 30, 2004. The Exchange proposes no other substantive changes to the pilot. The text of the proposed rule change is available at the Exchange and at the Commission.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for

<sup>7</sup> See Securities Exchange Act Release Nos. 46274 (July 29, 2002), 67 FR 50743 (August 5, 2002) (SR–CSE–2001–06) (“Pilot”); 46554 (September 25, 2002), 67 FR 6276 (October 4, 2002) (SR–CSE–2002–12) (“Pilot Extension”); 46929 (November 27, 2002), 67 FR 72711 (December 6, 2002) (SR–CSE–2002–17) (“Second Extension”); and 47941 (May 29, 2003), 68 FR 33751 (June 5, 2003) (SR–CSE–2003–05) (“Third Exemption”).

<sup>8</sup> See letter from Robert L.D. Colby (“Colby”), Deputy Director (“DD”), Division of Market Regulation (“Division”), Commission, to Jeffrey T. Brown (“Brown”), Senior Vice President (“SVP”) and General Counsel (“GC”), the Exchange, (July 26, 2002) (“Initial Exemption Letter”) in response to letter from Brown, SVP and GC, Exchange, to Annette Nazareth (“Nazareth”), Director, Division, Commission (November 27, 2001) (“Initial Exemptive Request”); letter from Colby, DD, Division, Commission, to Brown, SVP and GC, Exchange (September 25, 2002) (amending and extending Initial Exemption Letter) (“Amended Exemption Letter”) in response to letter from Brown, SVP and GC, Exchange, to Nazareth, Director, Division, Commission (September 18, 2002) (“Amended Exemption Request”); letter from Alden S. Adkins, Associate Director, Division, Commission, to Brown, SVP and GC, Exchange (November 27, 2002) (“Second Exemption Extension Letter”) in response to letter from Brown, SVP and GC, Exchange, to Nazareth, Director, Division, Commission (November 20, 2002) (“Second Exemption Request”); and letter from Colby, DD, Division, Commission, to Brown, SVP and GC, Exchange, (May 29, 2003) (“Third Exemption Extension Letter”) in response to letter from Brown, SVP and GC, Exchange, to Nazareth, Director, Division, Commission (May 19, 2003) (“Third Exemption Request”).

the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

##### 1. Purpose

The Exchange proposes to extend its pilot program, under Exchange Rule 12.6,<sup>9</sup> which relates to the trading of securities in subpenny increments.<sup>10</sup> Under the pilot, Interpretation .02 of Exchange Rule 12.6 requires a Specialist to better the price of a customer limit order held by the Specialist by at least one penny (for those customer limit orders at the NBBO) or at least the nearest penny increment (for those customer limit orders that are not at the NBBO) if the Specialist determines to trade with an incoming market or marketable limit order.<sup>11</sup>

The purpose of the Interpretation is to prevent a Specialist from taking unfair advantage of customer limit orders held by that Specialist by trading ahead of such orders with incoming market or

<sup>9</sup> Exchange Rule 12.6 provides, in pertinent part, that no member shall (i) personally buy or initiate the purchase of any security traded on the Exchange for its own account or for any account in which it or any associated person of the member is directly or indirectly interested while such member holds or has knowledge that any person associated with it holds an unexecuted market or limit price order to buy such security in the unit of trading for a customer, or (ii) sell or initiate the sale of any such security for any such account while it personally holds or has knowledge that any person associated with it holds an unexecuted market or limit price order to sell such security in the unit of trading for a customer.

<sup>10</sup> In conjunction with the proposed rule change, the Exchange has requested that the Commission again extend the Amended Exemption Request pursuant to Rules 11Ac1–1(e) (17 CFR 240.11Ac1–1(e)), 11Ac1–2(g) (17 CFR 240.11Ac1–2(g)) and 11Ac1–4(d) (17 CFR 240.11Ac1–4(d)) of the Act to allow subpenny quotations to be rounded down (buy orders) and rounded up (sell orders) to the nearest penny for quote dissemination for Nasdaq and listed securities. See letter from Jennifer M. Lamie (“Lamie”), Assistant General Counsel (“AGC”) and Secretary, to Nazareth, Director, Division, Commission (November 21, 2003) (“Fourth Exemptive Request”). Concurrent with the instant rule proposal, the Commission has granted the Fourth Exemptive Request. See letter from Colby, DD, Division, Commission, to Lamie, AGC and Secretary, CSE (December 1, 2003) (“Fourth Exemption Letter”).

<sup>11</sup> Interpretation .01 to Exchange Rule 12.6 provides that “[i]f a Designated Dealer holds for execution on the Exchange a customer buy order and a customer sell order that can be crossed, the Designated Dealer shall cross them without interpositioning itself as a dealer.”