

6(b)(4) ⁵ of the Act because it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members.

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

Written comments on the proposed rule change were neither solicited nor received.

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

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A)(ii) ⁶ and subparagraph (f)(2) of Rule 19b-4 thereunder.⁷ 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 purpose of the Act.⁸

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, N.W., Washington, D.C. 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at

the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-99-12 and should be submitted by May 13, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Jonathan G. Katz,

Secretary.

[FR Doc. 99-10018 Filed 4-21-99; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41286; File No. SR-CSE-99-02]

Self-Regulatory Organizations; Cincinnati Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to a Specialist Revenue Sharing Program

April 14, 1999.

I. Introduction

On February 18, 1999, the Cincinnati Stock Exchange, Inc. ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") ¹ and Rule 19b-4 thereunder,² a proposed rule change to establish a specialist revenue sharing program.

The proposed rule change was published for comment in the **Federal Register** on March 1, 1999.³ No comments were received on the proposal.⁴ This order approves the proposal.

II. Description of the Proposal

The Exchange proposes to amend Exchange Rule 11.10 to provide an incentive for growth in specialist activity by implementing a quarterly revenue sharing program and to eliminate the current two-million-share average daily cap on preference charges.

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 41082 (February 22, 1999) 64 FR 10035 (File No. SR-CSE-99-02).

⁴ On March 30, 1999, Sam Scott Miller, Orrick, Herrington & Sutcliffe, on behalf of Charles Schwab & Co. ("Schwab") sent a letter advising the Commission that Schwab would submit comments on the proposed rule change in mid-April. On April 2, 1999, Mr. Miller informed Kathy England, Assistant Director, Division of Market Regulation, Commission, by telephone that Schwab would not comment on CSE's proposal.

Under the proposal, the Exchange would share with specialist firms all or a portion of the CSE's Specialist Operating Revenue ("SOR"), after operating expenses and working capital needs have been met. Under the definition contained in proposed Exchange Rule 11.10(j), SOR consists of transaction fees, book fees, technology fees, and market data revenue which is attributable to specialist firm activity. Further, all regulatory monies and investment income are excluded from SOR.

Under the proposal, the Exchange's Board of Trustees will determine on an ongoing basis the appropriate amount of SOR to be shared with specialist firms. The Exchange represents that its Board of Trustees has initially determined to share 100% of the first \$750,000 in quarterly SOR and 50% of all quarterly SOR over \$750,000, after actual expenses have been paid and the budgeted working capital goal of the Exchange has been set aside.

The proposed rule change provides that each specialist firm will receive a percentage of the SOR to be shared which is equal to that specialist firm's percentage contribution to SOR. Accordingly, the specialist firms will share the SOR on a pro rata basis. Although Tape B revenue is included in SOR, it will be excluded from each specialist firm's percentage contribution calculation.⁵ The Exchange represents that in no event will the amount of revenue shared with specialist firms exceed SOR.

III Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange ⁶ and, in particular, with the Section 6(b)(5) requirements that the rules of an exchange be designed 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.⁷

The Commission notes that, in recent years, several markets have instituted various forms of incentive programs for their members, in attempts to attract

⁵ CSE's current transaction charge on Tape B activity is already zero and CSE already has in place a program which shares up to 40% of Tape B revenue with its specialist firms. See Securities Exchange Act Release No. 39395 (December 3, 1997) 62 FR 65113 (December 10, 1997).

⁶ In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78f(b)(5).

⁵ 15 U.S.C. 78f(b)(4).

⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

⁷ 17 CFR 240.19b-4(f)(2).

⁸ In reviewing this proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

additional order flow to the exchange.⁸ As an incentive to its specialists, the CSE has chosen to distribute a portion of operating revenue which is solely attributable to specialist trade activity (e.g., transaction fees, book fees, and market data fees).⁹ The Commission believes that the CSE's revenue sharing program should allow the Exchange to remain competitive with other markets which have implemented similar programs, which, in turn, should enhance the National Market System.

The Commission further finds that the parameters of the Exchange's revenue sharing program are consistent with the requirements of Section 6(b)(1).¹⁰ The Commission believes it is appropriate for the CSE to distribute operating revenue generated by specialists only after the Exchange accumulates sufficient revenue to offset its actual expenses and working capital needs. In accordance with this principle, the Commission also finds that it is reasonable for the CSE's Board of Trustees to adjust the percentage of SOR to be distributed to reflect the changing financial needs of the Exchange over time. As a national securities exchange, it is the obligation of CSE to have the necessary resources to adequately conduct surveillance, examination and other regulatory responsibilities. While the Commission understands CSE's need to remain competitive with other securities markets, the Commission expects CSE to not compromise its regulatory responsibilities by sharing revenue that would more appropriately be used to fund regulatory responsibilities. More specifically, CSE, when determining its "working capital needs," should be mindful of its regulatory responsibilities.

The Commission believes it is appropriate for the Exchange to exclude

all regulatory monies, such as fines paid by specialists, from the definition of SOR. The deterrent and punished effect of a fine would be compromised if the Exchange essentially credited the fine amount back to the member. The Commission also finds that it is reasonable to exclude investment income from the definition of SOR, as that income is not generated by specialist activity.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹¹ that the proposed rule change (SR-CSE-99-02) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Jonathan G. Katz,
Secretary.

[FR Doc. 99-10020 Filed 4-21-99; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41296; File Nos. SR-NASD-99-11 and SR-NASD-98-17]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Modify Its Small Order Execution System and SelectNet Service; Reopening of Comment Period on Nasdaq's Limit Order Book Proposal (SR-NASD-98-17)

April 15, 1999.

On February 5, 1999, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly-owned subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission") proposed rule changes to modify its Small Order Execution System and SelectNet Service.¹ The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

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

NASD, through Nasdaq, is proposing rule changes that: (1) Re-establish SelectNet as an order delivery and negotiation system for Nasdaq National Market ("NNM") securities; and (2) make numerous changes to the current

rules relating to the trading of NNM securities, including: (a) Establishing a larger maximum automatic execution order entry size of 9,900 shares for NNM securities; (b) allowing market makers to use Nasdaq's proposed automatic execution system on a proprietary basis for transactions involving NNM securities; (c) reducing time delays between system executions against the same market maker from 17 to 5 seconds; and (d) enabling system interaction with a market maker's reserve size in NNM securities. The resulting new system will be referred to as the Nasdaq National Market Execution System ("NNMS"). In addition, as discussed below, Nasdaq is proposing to eliminate the NO Decrementation ("NO DEC") and preferencing functions for NNM quotes and orders. The current voluntary automatic execution system for Nasdaq SmallCap issues will continue to operate as it does today. Nasdaq views NNMS as an interim approach to improving the Nasdaq market pending final approval by the Commission of Nasdaq's previously proposed Integrated Order Delivery and Execution System (SR-NASD-98-17).²

The NASD also proposes to modify several rules found in the NASD Rule Series 4600 and throughout the NASD Manual. In particular, Rule 4613 (Character of Quotations) will be amended to eliminate the references to Small Order Execution System ("SOES") "Tier Sizes for the NNM" of market makers. Other rules referencing SOES will be rescinded or conformed accordingly, including Rule 4611(f) (Registration as a Nasdaq Market Maker), Rule 4619 (Withdrawal of Quotations and Passive Market Making), Rule 4620 (Voluntary Termination of Registration), Rule 4632 (Trade Reporting), Rule 4618(c) (Clearance and Settlement), and Rule 4700 Series (SOES).

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

⁸ See Securities Exchange Act Release Nos. 38237 (February 4, 1997) 62 FR 6592 (February 12, 1997) (notice of filing and immediate effectiveness of amendments to the Chicago Stock Exchange's pricing schedule relating to specialist fees); 40591 (October 22, 1998) 63 FR 58078 (October 29, 1998) (notice of filing and immediate effectiveness of the Boston Stock Exchange's revenue sharing program for member firms); and 41174 (March 16, 1999) 64 FR 14034 (March 23, 1999) (notice of filing and immediate effectiveness of the NASD's pilot program to provide transaction credits to NASD members who exceed certain levels of trading activity).

⁹ The Commission has recently undertaken a review of market data fees, including the current structure of such fees and the role such fees serve in the operation of the markets. Exchange programs that rebate or share revenue generated from market data fees to market participants, including the present proposal, are relevant to that study. Accordingly, it is likely that the Commission will examine the use of market data rebate programs in the context of the study.

¹⁰ 15 U.S.C. 78f(b)(1).

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200.30-3(a)(12).

¹ The notice was filed pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), and Rule 19b-4 thereunder, 17 CFR 250.19b-4. Items I, II, and III were prepared by Nasdaq.

² Because this filing is related to File No. SR-NASD-98-17 regarding the NASD's proposal to establish a central limit order book, the Commission also is seeking comment on that proposal at this time. NASD 98-17 was published in the **Federal Register** on March 12, 1998. See Securities Exchange Release No. 39718 (March 4, 1998), 63 FR 12124 (March 12, 1998). The comment period was subsequently extended to May 8, 1998. See Securities Exchange Act Release No. 39794 (March 25, 1998), 63 FR 15471 (March 31, 1998).