

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. 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-2001-04 and should be submitted by March 5, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁹

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45406; File No. SR-CSE-2002-01]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Cincinnati Stock Exchange, Inc. Establishing a Fee Schedule for Nasdaq National Market Securities Transactions and Establishing a Revenue Sharing Program for Trading in Nasdaq National Market Securities

February 6, 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 January 25, 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, II, and III below, which Items have been prepared by CSE.³ 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 the Exchange's rules to establish a fee schedule for transactions in Nasdaq National Market securities ("Nasdaq NM Securities") and to establish a revenue sharing program to reflect recent developments in competitive business strategy. The text of the proposed rule change is available at the principal offices of the CSE 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 CSE included statements concerning the purpose of, and the 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. CSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The CSE withdrew SR-CSE-2001-05 and replaced it with SR-CSE-2002-01 by letter. See letter from Jeffrey T. Brown, Vice President Regulation and General Counsel, CSE to Katherine England, Assistant Director, Division of Market Regulation, Commission (January 25, 2002).

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

1. Purpose

The Exchange is proposing two amendments to the Exchange rules governing transaction fees and market data revenue credits in keeping with recent trends in the securities industry.

The first amendment adds subsection (2) to CSE Rule 11.10(A)(e), ("Crosses and Meets"). Proposed subsection (2) establishes a fee schedule for transactions in Nasdaq NM Securities.

The second amendment creates an incentive for CSE members to trade Nasdaq NM Securities on the Exchange and will be codified as CSE Rule 11.10(A)(l) ("Tape 'C' Transaction Credit"). The Exchange believes the credit is a logical next step in its efforts to provide competitive exchange services to CSE members trading Nasdaq NM Securities. Under the Nasdaq program,⁴ CSE member firms will receive a 75 percent (75%) pro rata transaction credit on all Nasdaq Tape C market data revenue generated by CSE member trading of Nasdaq NM Securities.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act,⁵ generally, and section 6(b)(5) of the Act,⁶ in particular, in that 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, and, in general, to protect investors and the public interest. The proposal also is consistent with section 6(b)(4) of the Act⁷ in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members by crediting CSE members 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 result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

⁴ Nasdaq NM Securities will be traded on CSE pursuant to section 12(f) of the Act as well as the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis ("Nasdaq-UTP Plan").

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78f(b)(4).

President, Secretary and General Counsel, CSE, to Jonathan G. Katz, Secretary, Commission (January 24, 2002).

²⁹ 17 CFR 200.30-3(a)(12).

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.⁸

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

The foregoing rule change has become effective on filing pursuant to section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(2) thereunder,¹⁰ as establishing or changing a due, fee, or other charge paid solely by members of the CSE. 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.¹¹

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-2002-01 and should be submitted by March 5, 2002.

⁸ The Commission received a comment letter from the Nasdaq and a response to the letter from the CSE. Both letters are available in the Commission's Public Reference Room. See letter from Richard G. Ketchum, President, Nasdaq, to Jonathan G. Katz, Secretary, Commission (January 9, 2002) and letter from Jeffrey T. Brown, Senior Vice President, Secretary and General Counsel, CSE, to Jonathan G. Katz, Secretary, Commission (January 24, 2002).

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(2).

¹¹ See section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45361; File No. SR-MSRB-2002-01]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Relating to Rule G-17, on Disclosure of Material Facts

January 30, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 25, 2002 the Municipal Securities Rulemaking Board ("MSRB") 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 MSRB. 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

Interpretive Notice Regarding Rule G-17, on Disclosure of Material Facts

Rule G-17, the MSRB's fair dealing rule, encompasses two general principles. First, the rule imposes a duty on dealers³ not to engage in deceptive, dishonest, or unfair practices. This first prong of rule G-17 is essentially an antifraud prohibition.

Second, the rule imposes a duty to deal fairly. Statements in the MSRB's filing for approval of rule G-17 and the Commission's order approving the rule note that rule G-17 was implemented to establish a minimum standard of fair conduct by dealers in municipal securities. In addition to the basic antifraud prohibitions in the rule, the duty to "deal fairly" is intended to "refer to the customs and practices of

the municipal securities markets, which may, in many instances differ from the corporate securities markets."⁴ As part of a dealer's obligation to deal fairly, the MSRB has interpreted the rule to create affirmative disclosure obligations for dealers. The MSRB has stated that dealer's affirmative disclosure obligations require that a dealer disclose, at or before the sale of municipal securities to a customer, all material facts concerning the transaction, including a complete description of the security.⁵ These obligations apply even when a dealer is acting as an order taker and effecting non-recommended secondary market transactions.

Rule G-17 was adopted many years prior to the adoption of the Exchange Act's Rule 15c2-12. The development of the NRMSIR system,⁶ the MSRB's Municipal Securities Information Library[®] (MSIL[®]) system⁷ and

⁴ See Exchange Act Release No. 13987 (Sept. 22, 1977).

⁵ See e.g., Rule G-17 Interpretation—Educational Notice on Bonds Subject to "Detachable" Call Features, May 13, 1993, *MSRB Rule Book* (July 2001) at 129-130. The Commission described material facts as those "facts which a prudent investor should know in order to evaluate the offering before reaching an investment decision." *Municipal Securities Disclosure*, Exchange Act Release No. 26100 (Sept. 22, 1988) (the "1988 SEC Release") 53 FR 37778 at note 76, quoting *In re Walston & Co. Inc., and Harrington*, Exchange Act Release No. 8165 (Sept. 22, 1967) 43 SEC 508, 1967 SEC LEXIS 553. Furthermore, the United States Supreme Court has stated that a fact is material if there is a substantial likelihood that its disclosure would have been considered significant by a reasonable investor. *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438 (1976).

⁶ For purposes of this notice, the "NRMSIR system" refers to the disclosure dissemination system adopted by the Commission in Rule 15c2-12. Under Rule 15c2-12, as adopted in 1989, participating underwriters provide a copy of the final official statement to a NRMSIR to reduce their obligation to provide a final official statement to customers. In the 1994 amendments to Rule 15c2-12, the Commission determined to require that annual financial information and audited financial statements submitted in accordance with issuer undertakings must be delivered to each NRMSIR and to the State Information Depository ("SID") in the issuer's state, if such depository has been established. The requirement to have annual financial information and audited financial statements delivered to all NRMSIRs and the appropriate SID was included in Rule 15c2-12 to ensure that all NRMSIRs receive disclosure information directly. Under the 1994 amendments, notices of material events, as well as notices of a failure by an issuer or other obligated person to provide annual financial information, must be delivered to each NRMSIR or the MSRB, and the appropriate SID.

⁷ The MSIL[®] system collects and makes available to the marketplace official statements and advance refunding documents submitted under MSRB rule G-36, as well as certain secondary market material event disclosures provided by issuers under Rule 15c2-12. Municipal Securities Information Library[®] and MSIL[®] are registered trademarks of the MSRB.

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The term "dealer" is used in this interpretive notice as shorthand for "broker," "dealer" or "municipal securities dealer," as those terms are defined in the Exchange Act. The use of the term in this interpretive notice does not imply that the entity is necessarily taking a principal position in a municipal security.