

for annual meetings (except to the extent that the Commission may interpret section 16 of the Act not to require such meetings) or comply with section 16(c) of the Act (although the Trust is not, or will not be, the type of Trust described therein), as well as, with section 16(a) of the Act and, if and when applicable, section 16(b) of the Act. Further, the Trust will act in accordance with the Commission's interpretation of the requirements of section 16(a) with respect to periodic elections of trustees and with whatever rules the Commission may promulgate with respect thereto.

9. The Trust will notify all Participating Insurance Companies and all Qualified Plans that disclosure in separate account prospectuses or any Qualified Plan prospectuses or other Qualified Plan disclosure documents regarding potential risks of mixed funding may be appropriate. Each Variable Series will disclose in its prospectus that: (a) Shares of such Variable Series may be offered to insurance company separate accounts of both variable annuity and variable life insurance contracts and to Qualified Plans; (b) due to differences in tax treatment and other considerations, the interests of various contract owners participating in such Variable Series and the interests of Qualified Plans investing in such Variable Series may conflict, and (c) the Trust's Board of Trustees will monitor events in order to identify the existence of any material irreconcilable conflicts and to determine what action, if any, should be taken in response to any conflict.

10. If and to the extent that Rule 6e-2 or Rule 6e-3(T) under the Act is amended or proposed Rule 6e-3 under the Act is adopted to provide exemptive relief from any provision of the Act, or rules promulgated thereunder, with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the order requested in this amended and restated Application, then the Trust and/or the Participants, as appropriate, shall take such steps as may be necessary to comply with Rules 6e-2 or 6e-3(T), as amended, or Rule 6e-3, as adopted, as such rules are applicable.

11. The Participants, at least annually, will submit to the Board such reports, materials, or data as the Board may reasonably request so that the Trustees of the Trust may fully carry out the obligations imposed upon them by the conditions contained in this amended and restated Application, and said reports, materials and data will be submitted more frequently if deemed appropriate by the Board. The

obligations of the Participants to provide these reports, materials and data to the Board when it so reasonably requests will be a contractual obligation of all Participants under their agreements governing participation in each Variable Series.

12. All reports of potential or existing conflicts received by the Board of Trustees of the Trust, and all Board action with regard to (a) determining the existence of a conflict, (b) notifying Participants of the existence of a conflict, and (c) determining whether any proposed action adequately remedies a conflict, will be properly recorded in the board meeting minutes of the Trust or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

13. A Variable Series will not accept a purchase order from a Qualified Plan if such purchase would make the Qualified Plan shareholder an owner of 10 percent or more of the assets of such Variable Series unless the Qualified Plan executes an agreement with the Trust governing participation in such Variable Series that includes the conditions set forth herein to the extent applicable. A Qualified Plan will execute an application containing an acknowledgement of this condition at the time of its initial purchase of shares of any Variable Series.

#### Conclusion

For the reasons summarized above, Applicants assert that the requested exemptions are appropriate in the public interest and consist with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-6696 Filed 3-19-03; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47493; File No. SR-Amex-2002-108]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC To Amend Amex Rule 152 To Provide That a Member That Fails To Execute an Order May Be Compelled To Take or Supply the Securities Named in the Order

March 13, 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 December 18, 2002, the American Stock Exchange LLC ("Amex" 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 Amex proposes to amend Amex Rule 152 to provide that a member that fails to execute an order may be compelled to take or supply the securities named in the order. The text of the proposed rule change is below. Text in brackets indicates material to be deleted, and text in italics indicates material to be added.

\* \* \* \* \*

#### Taking or Supplying Stock to Fill Customer's Order

Rule 152. (a) No member or member organization shall take or supply for any account in which the member, member organization or any other member, officer or approved person therein has any direct or indirect interest, of which the member knows or should have known, the securities named in a sell or buy order accepted for execution by the member or member organization except as follows:

#### Error

(1) *A member who neglects to execute an order may be compelled to take or supply for his own account or that of his member organization the securities named in the order.* [A member or member organization which through

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

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

error or neglect has failed to execute an order may, with the consent of the customer, take or supply for the account of the member or member organization the securities named in the order.]

#### Filling Customer's Order

(2) A member or member organization may take or supply the securities for the purpose of filling a customer's order only if:

(i) In connection with taking the securities named in a sell order, the member or member organization shall have offered the securities in the open market at a price which is higher than the bid of such member or member organization by the minimum fraction of trading permitted in such securities;

(ii) In connection with supplying the securities named in a buy order, the member or member organization shall have bid for the securities in the open market at a price which is lower than the offer of such member or member organization by the minimum fraction of trading permitted in such securities;

(iii) The price in each case is justified by the condition of the market;

(iv) In the case of an order received from a non-member customer of the member or member organization, the member or member organization either (A) prior to effecting the transaction shall have obtained from the customer the customer's consent or, except as otherwise provided by law, (B) as promptly as possible following execution of the order shall have disclosed to the customer that the securities have been taken or supplied for an account in which the member, member organization, or any member, officer or approved person therein has an interest, and the customer accepts the trade;

(v) In the case of an order received from another member or member organization, the member or member organization receiving the order, promptly after effecting the transaction notifies such other member or member organization that the member or member organization receiving the order took or supplied the securities named in the order for the account of the member, member organization or a member, officer or approved person therein and such other member or member organization accepts the trade; and

(vi) Such transaction is made in accordance with any other applicable rules of the Exchange.

(b) In the event that a member or member organization having executed a sell or buy order accepted for execution as a broker finds that inadvertently the securities sold or purchased in such execution were taken or supplied for an

account in which the member, member organization or any member, officer or approved person therein has a direct or indirect interest, such member or member organization shall report that fact to his or its principal who may accept or reject the trade.

(c) A specialist acting as principal in the course of his specializing function is prohibited from charging a commission for the execution of an order entrusted to him, as agent, by a member.

#### Commentary

01. When in the ordinary course of business, priority of bids and offers has established the market in a security and the specialist in the security has publicized the full size of his bids and offers, the provisions of clauses (i) and (ii) of Rule 152(a)(2) do not apply to his transactions as principal in the proper performance of his function to assist in the maintenance of a fair and orderly market and he may as principal take or supply the securities named in an order on his book provided he complies with the other requirements of Rule 152.

\* \* \* \* \*

#### 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 Amex 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 Amex 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

Amex Rule 152 currently provides that a member that has failed to execute an order may, with the consent of the customer, take or supply for the account of the member or member organization, the securities named in the order. The Exchange believes that the current rule does not clearly state that the member may be compelled to take or supply the security in issue. The Exchange also believes that the rule is unclear whether "customer" refers to the ultimate buyer or seller or whether it refers to the person that placed the order with the member. To eliminate possible ambiguity, the Exchange is proposing to amend Amex Rule 152 to provide that

a member that fails to execute an order may be compelled to take or supply the securities named in the order.<sup>3</sup> The Exchange believes that this rewording protects the order by clearly stating that a member may be compelled to take or supply the securities in issue if the member fails to execute an order.

###### 2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act<sup>4</sup> in general, and furthers the objectives of section 6(b)(5) of the Act<sup>5</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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.

##### 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 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

No written comments were solicited or received with respect to 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

<sup>3</sup> The Exchange notes that the consent provisions in Amex Rule 152(a)(2) would continue to apply to the error transactions conducted under Amex Rule 152(a)(1). Telephone conversation between William Floyd-Jones, Jr., Assistant General Counsel, Amex, and Terri Evans, Assistant Director, and Cyndi Rodriguez, Special Counsel, Division of Market Regulation, Commission, on March 4, 2003.

<sup>4</sup> 15 U.S.C. 78f(b).

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

(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 Amex. All submissions should refer to File No. SR-Amex-2002-108 and should be submitted by April 10, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

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

[FR Doc. 03-6698 Filed 3-19-03; 8:45 am]

BILLING CODE 8010-01-P

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47471; File No. SR-CSE-2003-01]

#### Self-Regulatory Organizations; The Cincinnati Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change and Amendment No. 1 Thereto To Amend the CSE's Market Data Revenue Sharing Program for Tape B Securities

March 7, 2003.

On January 6, 2003, the Cincinnati Stock Exchange, Inc. ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to

modify the Exchange's schedule of transaction fees to amend its market data revenue sharing program for Type B securities traded on the Exchange. On January 24, 2003, the CSE amended the proposal.<sup>3</sup>

The proposed rule change, as amended, was published for comment in the **Federal Register** on February 3, 2003.<sup>4</sup> The Commission received no comments on the proposal.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>5</sup> and, in particular, the requirements of section 6 of the Act<sup>6</sup> and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change, as amended, is consistent with section 6(b)(4) of the Act<sup>7</sup> because it provides for the equitable allocation of reasonable dues, fees and other charges among Exchange members by crediting members on a pro-rata basis. However, as set forth in its July 2, 2002, Order of Summary Abrogation ("Abrogation Order"),<sup>8</sup> the Commission will continue to examine the issues surrounding market data fees, the distribution of market data rebates, and the impact of market data revenue sharing programs on both the accuracy of market data and on the regulatory functions of self-regulatory organizations. The decision to allow the CSE to establish the market data revenue sharing program described in this proposed rule change is narrowly drawn, and should not be construed as resolving the issues raised in the Abrogation Order, and does not suggest what, if any, future actions the Commission may take with regard to market data revenue sharing programs.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change, as amended, (SR-

<sup>3</sup> See January 23, 2003, letter from Jennifer M. Lamie, Esquire, CSE, to Katherine England, Assistant Director, Division of Market Regulation, Commission ("Amendment No. 1"). In Amendment No. 1, the CSE changed the text of the proposed rule to address omissions that were made in the original rule filing.

<sup>4</sup> See Securities Exchange Act Release No. 47258 (January 27, 2003), 68 FR 5316.

<sup>5</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78f.

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> See Securities Exchange Act Release No. 46159 (July 2, 2002), 67 FR 45775 (July 10, 2002) (File Nos. SR-NASD-2002-61, SR-NASD-2002-68, SR-CSE-2002-06, and SR-PCX-2002-37) (Order of Summary Abrogation).

<sup>9</sup> 15 U.S.C. 78s(b)(2).

CSE-2003-01) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

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

[FR Doc. 03-6658 Filed 3-19-03; 8:45 am]

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47503; File No. SR-NASD-2003-35]

#### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Extend for One Month the Pilot Period for Nasdaq PostData and the Associated Fees Assessed Under NASD Rule 7010(s)

March 14, 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 March 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. Nasdaq filed the proposal pursuant to section 19(b)(3)(A) of the Act,<sup>3</sup> and rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission.<sup>5</sup> 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

NASD proposes to reestablish and extend through March 31, 2003, the pilot period for Nasdaq PostData and the associated fees assessed under NASD rule 7010(s). Nasdaq also proposes to make this proposed rule change effective retroactive to March 1, 2003, to avoid a lapse of the previous pilot due to Nasdaq's failure to file for an

<sup>10</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> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> Nasdaq asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay. 17 CFR 240.19b-4(f)(6).

<sup>6</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.