

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 number SR-Amex-2003-71 and should be submitted by September 18, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03-22032 Filed 8-27-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48388; File No. SR-CSE-2003-09]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by The Cincinnati Stock Exchange, Inc. Relating to Market Order Exposure Requirements

August 21, 2003.

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 August 7, 2003, 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 the CSE. The Exchange filed the proposal pursuant to Section 19(b)(3)(A)(i) of the Act,³ and Rule 19b-4(f)(1)⁴ thereunder, as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule, which renders the proposal effective upon filing with the Commission. 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 CSE is proposing to amend CSE Rule 11.9(u), Interpretation .01, concerning market order exposure requirements ("Market Order Exposure Requirement"). The proposed rule change would modify the rule language in light of the current \$0.01 minimum price variation and codify certain of the Exchange's stated policies and interpretations contained in CSE Regulatory Circulars.⁵

The text of the proposed rule change is set forth below. Proposed new language is in *italics*; proposed deletions are in [brackets].⁶

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Rule 11.9(u), Interpretations and Policies

* * * * *

.01 Market Order Exposure Requirement

(a) Consistent with his or her agency responsibility to exercise due diligence, a member must comply with the following procedures which provide the opportunity for public agency buy/sell market orders in securities other than Nasdaq/NM securities to receive a price lower/higher than the disseminated national best offer/bid.

Except under unusual market conditions or if it is not in the best interests of the customer, [when the spread between the national best bid and offer is greater than the minimum price variation a member must either immediately execute the market order at an improved price or expose the market order on the Exchange for a minimum of fifteen seconds in an attempt to improve the price.] *Preferencing Dealers must immediately price improve or expose for a minimum of five seconds in an attempt to improve the price:*

1. market orders with sizes less than or equal to 1000 shares when the NBBO at time of order receipt is more than 5 cents (\$0.05) wide;

2. market orders with sizes between 1001 shares and 5000 shares when the

⁵ See Regulatory Circulars 01-07, 99-03, 98-06, 97-07 and 96-04.

⁶ At the request of the Exchange, the Commission has revised the proposed rule change to insert the word "wide" at the end of clauses (a)1, (a)2 and (a)3. Telephone conversation between John Polise, Senior Special Counsel, Joseph P. Morra, Special Counsel and Ann E. Leddy, Attorney, Division of Market Regulation, Commission, and Jeffrey T. Brown, Senior Vice President, Regulation and General Counsel, Exchange (August 20, 2003).

NBBO at time of order receipt is more than 10 cents (\$0.10) wide; and

3. market orders with sizes above 5000 shares when the NBBO at time of order receipt is more than 15 cents (\$0.15) wide.

(b) *to assist Preferencing Dealers in satisfying their obligations under the rule, the following exceptions apply:*

1. Unusual Market Conditions

Unusual market conditions include the following conditions:

- i. The NBBO is more than 1 dollar (\$1.00) wide at receipt;*
- ii. the market is locked or crossed at receipt or becomes that way during exposure;*
- iii. when circuit breakers have been activated;*
- iv. during and immediately after the opening (a period not to exceed 5 minutes);*
- v. immediately prior to the close (a period not to exceed 5 minutes);*
- vi. when the Exchange has declared a fast market; and*
- vii. when non-firm markets exist.*

2. Best Interests of the Customer

In order to protect the best interests of the customer, the following orders may require unique handling subject to the application of a member's brokerage judgment and experience as required by CSE Rule 12.10, Best Execution:

- i. block size market orders as defined in the Intermarket Trading System Plan;*
- ii. odd-lot orders;*
- iii. contingent orders;*
- iv. a market order for a quantity that exceeds the existing NBBO size;*
- v. NBBO moves in direction of market order stop price; and*
- vi. Primary market trades at market order stop price.*

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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 basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CSE 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

The purpose of the proposed rule change is to amend CSE Rule 11.9(u),

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(i).

⁴ 17 CFR 240.19b-4(f)(1).