

time, Gulf will issue Notes, evidencing such borrowings, to the Trust.

Gulf also proposes to guarantee (individually a "Guaranty" and collectively the "Guaranties") (i) payment of dividends or distributions on the Preferred Securities of any Trust if, and to the extent, the Trust has funds legally available, (ii) payments to the Preferred Securities holders of amounts due upon liquidation of the Trust or redemption of the Preferred Securities of such Trust and (iii) certain additional amounts that may be payable by the Preferred Securities. Gulf's credit would support any Guaranty.

Gulf states that each Note will have a term of up to fifty (50) years. Prior to maturity, Gulf will pay interest only on the Notes at a rate equal to the dividend or distribution rate on the related series of Preferred Securities, which dividend or distribution rate may be either fixed or adjustable, to be determined on a periodic basis by auction or remarketing procedures, in accordance with a formula or formulae based upon certain reference rates, or by other predetermined methods.<sup>4</sup>

The interest payments will constitute each respective Trust's only income and will be used by it to pay dividends or distributions on its Preferred Securities and dividends or distributions on its common stock. Dividend payments or distributions on the Preferred Securities will be made on a monthly or other periodic basis and must be made to the extent that the Trust issuing the Preferred Securities has legally available funds and cash sufficient for such purposes. However, Gulf may have the right to defer payment of interest on any issue of Notes for five or more years.

<sup>4</sup> The Preferred Securities of any series may be redeemable at the option of the Trust issuing the series (with the consent or at the direction of Gulf) at a price equal to their par or stated value or liquidation amount or preference, plus any accrued and unpaid dividends or distributions, (i) at any time after a specified date not later than approximately ten (10) years from their date of issuance, or (ii) upon the occurrence of certain events, among them that (a) the Trust is required to withhold or deduct certain amounts in connection with dividend, distribution or other payments or is subject to federal income tax with respect to interest received on the Notes issued to the Trust, or (b) it is determined that the interest payments by Gulf on the related Notes are not deductible for income tax purposes, or (c) the Trust becomes subject to regulation as an "investment company" under the Investment Company Act of 1940, as amended. The Preferred Securities of any series may also be subject to mandatory redemption upon the occurrence of certain events. Gulf also may have the right in certain cases, or in its discretion, to exchange the Preferred Securities of any Trust for the Notes or other junior subordinated debt issued to the Trust. In addition, rather than issuing Preferred Securities of a Trust, Gulf may instead issue Notes or other junior subordinated debt directly to purchasers.

Each Trust will have the parallel right to defer dividend payments or distributions on the related series of Preferred Securities for five or more years, provided that, if dividends or distributions on the Preferred Securities of any series are not paid for eighteen (18) or more consecutive months, then the holders of the Preferred Securities of such series may have the right to appoint a trustee, special general partner or other special representative to enforce the Trust's rights under the related Note and Guaranty. The dividend or distribution rates, payment dates, redemption and other similar provisions of each series of Preferred Securities will be substantially identical to the interest rates, payment dates, redemption and other provisions of the Notes issued.

Gulf states that the Notes and related Guaranties will be subordinate to all other existing and future unsubordinated indebtedness for borrowed money of Gulf and will have no cross-default provisions with respect to other indebtedness of Gulf (*i.e.*, a default under any other outstanding indebtedness of Gulf would not result in a default under any Note or Guaranty). However, Gulf may be prohibited from declaring and paying dividends on its outstanding capital stock and making payments in respect of *pari passu* debt unless all payments then due under the Notes and Guaranties (without giving effect to the deferral rights discussed above) have been made.

The distribution rate to be borne by the Preferred Securities and the interest rate on the Notes will not exceed the greater of (i) 300 basis points over U.S. Treasury securities having comparable maturities or (ii) a gross spread over U.S. Treasury securities that is consistent with similar securities issued by other companies having comparable maturities and credit quality.

Gulf will use the proceeds from the sale of the securities in connection with its ongoing construction program, to pay scheduled maturities and/or refundings of its securities, to repay short-term indebtedness to the extent outstanding and for other general corporate purposes.

Gulf represents that it will maintain its common equity as a percentage of capitalization (inclusive of short-term debt) at no less than thirty (30) percent. Gulf further represents that no guaranties or other securities may be issued in reliance upon the requested authorization, unless (i) the security to be issued, if rated, is rated investment grade; (ii) all outstanding securities of Gulf that are rated are rated investment grade; and (iii) all outstanding securities

of Southern that are rated are rate investment grade. For purposes of this provision, a security will be deemed to be rated "investment grade" if it is rated investment grade by at least one nationally recognized statistical rating organization, as that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of rule 15c3-1 under the Securities Exchange Act of 1934, as amended. Gulf requests that it, nevertheless, be permitted to issue a security that does not satisfy these conditions if the requirements of rule 52(a)(i) and rule 52(a)(iii) are met and the issue and sale of the security have been expressly authorized by the Florida Public Service Commission.<sup>5</sup> Gulf also requests the Commission to reserve jurisdiction over any guaranties or securities that do not satisfy these conditions.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48584; File No. SR-CSE-2003-13]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Cincinnati Stock Exchange, Inc., To Extend Its Liquidity Provider Fee and Rebate Pilot Program

October 2, 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 September 29, 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 and II below, which Items have been prepared by the Exchange. The Exchange has filed this proposal pursuant to section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6)<sup>4</sup> thereunder, which renders the proposal effective upon filing with the Commission.<sup>5</sup> The Commission is

<sup>5</sup> Gulf is a Maine corporation doing business in the State of Florida and does not do business in the State of Maine.

<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> The CSE asked the Commission to waive the 5-day pre-filing notice requirement and the 30-day