

Amendment No. 1 thereto prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that the Exchange's proposal, as amended, is similar to the NYSE and Nasdaq's proposals requiring shareholder approval of equity compensation plans. Both the NYSE and Nasdaq's proposals were published for comment in the **Federal Register** and recently approved by the Commission.³² The Commission believes that it already considered and addressed the issues that may be raised by the Exchange's proposal in its approval of the NYSE and Nasdaq's proposals.³³

The Commission believes that accelerated approval of the Exchange's proposal, as amended, is essential to allow for immediate harmonization of, and consistency in, the shareholder approval requirements for equity compensation plans among the markets. This will prevent issuers from making listing decisions based on differences in self-regulatory organization shareholder approval requirements and should provide equal investor protection to shareholders on the dilutive effects of plans irrespective of where the security trades. The Commission further believes that making the Exchange's new shareholder approval rules effective upon Commission approval will immediately impose the same requirements on the Exchange's issuers as those imposed upon NYSE, Nasdaq, and Amex issuers. Based on the above, the Commission finds good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act,³⁴ to approve the Exchange's proposal and Amendment No. 1 thereto on an accelerated basis.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,³⁵ that the proposed rule change (SR-CHX-2003-31) and Amendment No. 1 thereto are

hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³⁶

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48738; File No. SR-CSE-2003-11]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change and Amendment No. 1 Thereto by the Cincinnati Stock Exchange Relating to Shareholder Approval of Equity Compensation Plans

October 31, 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 October 1, 2003, the Cincinnati Stock Exchange ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On October 29, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal and Amendment No. 1 thereto on an accelerated basis.

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

The Exchange is proposing to implement changes to its listing standards to adopt requirements related to shareholder approval of equity compensation plans and to amend its rules related to the voting of proxies. The Exchange represents that this proposed rule change is part of an

ongoing review of the Exchange's listing standards aimed at helping to restore investor confidence by strengthening corporate governance practices.

Below is the text of the proposed rule change. Proposed new language is *italicized*; proposed deleted language is [bracketed].

* * * * *

Rule 13.3 Proxies

(a)-(c) No change to text.

(d) *Notwithstanding the provisions of this Rule 13.3, a member may not give a proxy to vote without instructions from beneficial owners when the matter to be voted upon authorizes the implementation of any equity compensation plan, or any material revision to the terms of any existing equity compensation plan (whether or not stockholder approval of such plan is required pursuant to Rule 13.6). This provision will be effective for any meeting of shareholders that occurs on or after the 90th day following the effective date of this provision.*

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Rule 13.6 Shareholder Approval of Equity Compensation Plans

Equity compensation plans can help align shareholder and management interests, and equity-based awards are often very important components of employee compensation. To provide checks and balances on the potential dilution resulting from the process of earmarking shares to be used for equity-based awards, the Exchange requires that all equity compensation plans, and any material revisions to the terms of such plans, be subject to shareholder approval, with limited exemptions identified in this rule.

(a) *Definition of Equity Compensation Plan. An "equity compensation plan" is a plan or other arrangement that provides for the delivery of equity securities (either newly issued or treasury shares) of the listed company to any employee, director or other service provider as compensation for services. A compensatory grant of options or other equity securities that is not made under a plan is considered an "equity compensation plan" for purposes of these rules.*

(b) *Exceptions to Equity Compensation Plan Definition. The following are not equity compensation plans, even if the brokerage and other costs of the plan are paid for by the listed company:*

(1) *Plans that are made available to shareholders generally, such as a typical dividend reinvestment plan;*

(2) *Plans that merely allow employees, directors or other service*

³² See Securities Exchange Act Release No. 46620 (October 8, 2002), 67 FR 63486 (notice of the NYSE's proposal). The Commission also published a correction to the notice of the NYSE's proposal. See Securities Exchange Act Release No. 44620A (October 21, 2002), 67 FR 65617 (October 25, 2002). See Securities Exchange Act Release No. 46649 (October 11, 2002), 67 FR 64173 (notice of Nasdaq's proposal). See *supra* note 4; see also *supra* note 19.

³³ Some of the substantive provisions ultimately adopted by the NYSE and Nasdaq, and now being proposed for adoption by the Exchange, were in response to these comments. The comments on the NYSE and Nasdaq proposals were also discussed in detail in the Commission's approval order of the NYSE and Nasdaq proposals. See *supra* note 4; see also *supra* note 19.

³⁴ 15 U.S.C. 78f(b)(5) and 78s(b)(2).

³⁵ 15 U.S.C. 78s(b)(2).

³⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Jennifer M. Lamie, Assistant General Counsel and Secretary, CSE, to Sapna C. Patel, Special Counsel, Division of Market Regulation, Commission, dated October 29, 2003 ("Amendment No. 1"). In Amendment No. 1, the Exchange made a technical correction to its proposed rule language to fix two typographical errors in proposed CSE Rule 13.6(e)(2). Because this is a technical amendment, it is not subject to notice and comment.