

applicable withdrawal or surrender charge.

k. Contract owners affected by the Substitution will be sent written confirmation of the Substitution that identify the substitutions made on behalf of that Contract owner within five (5) days following the Substitution Date.

#### Applicants' Legal Analysis

1. Section 26(c) of the 1940 Act provides that it shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution; and the Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act. Section 26(c) protects the expectation of investors that the unit investment trust will accumulate shares of a particular issuer and is intended to insure that unnecessary or burdensome sales loads, additional reinvestment costs or other charges will not be incurred due to unapproved substitutions of securities.

2. Applicants request an order pursuant to Section 26(c) of the 1940 Act approving the Substitution. Applicants represent that the purposes, terms, and conditions of the Substitution are consistent with the protections for which Section 26(c) was designed. Applicants believe the Substitution will benefit Contract owners by: (1) Providing an underlying investment option for subaccounts invested in a Janus Portfolio that is substantially similar in all material aspects to that Janus Portfolio; and (2) providing such Contract owners with and investment option with the same or lower investment management fee and a lower expense ratio than the current investment option.

3. Contract owners who do not want their assets allocated to the Scudder Portfolios would be able to transfer assets to any one of the other subaccounts available under their Contract without charge until thirty days after the Substitution have elapsed.

4. The Insurance Company, on behalf of itself and its Separate Account, represent that the Substitution will not result in any change in the amount of any Contract owner's Contract value or in the dollar value of his or her investment in such Contract, or the annuity or life benefits, tax benefits or any contractual obligation of the Applicants under the Contracts.

Contract owners will not incur any fees, expenses or charges as a result of the proposed transactions. Furthermore, the proposed transactions will not result in any change to the Contract fees and charges currently being paid by existing Contract owners.

5. Applicants will not complete the Substitution as described in the amended Application unless all of the following conditions are met:

a. The Commission will have issued an order approving the Substitution under Section 26(c) of the 1940 Act.

b. Each Affected Contract Owner will have been mailed initial disclosure of the Substitution following the initial filing of this Application (in the form of a supplement to the applicable Contract prospectus) that will describe the terms of the Substitution Contract owners' rights in connection with them and will have been mailed a prospectus with respect to the Scudder Portfolios.

c. Applicants will have satisfied themselves, based on advice of counsel familiar with insurance laws, that the Contracts allow the substitution of Portfolios as described in this amended Application, and that the transactions can be consummated as described herein under applicable insurance laws and under the various Contracts.

d. Applicants will have complied with any regulatory requirements they believe are necessary to complete the transactions in each jurisdiction where the Contracts are qualified for sale.

#### Conclusion

Applicants assert that, for the reasons summarized above, the requested approval meets the standards set out in Section 26(c) and, therefore, the requested order approving the Substitution should be granted.

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

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 02-29978 Filed 11-25-02; 8:45 am]

**BILLING CODE 8010-01-P**

#### SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

#### Concentrax, Inc.; Order of Suspension of Trading

November 22, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Concentrax, Inc. ("Concentrax"), because of

questions regarding: the accuracy and adequacy of assertions in press releases by Concentrax, concerning, among other things, the existence, status, and description of agreements announced by Concentrax in its press releases of October 9, 2002, October 23, 2002, and October 31, 2002.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed company is suspended for the period from 9:30 a.m. EST, on Friday, November 22, 2002 through 11:59 p.m. EST, on Friday, December 6, 2002.

By the Commission.

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. 02-30097 Filed 11-22-02; 12:50 pm]

**BILLING CODE 8010-01-P**

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46849; File No. SR-Amex-2001-85]

#### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 by the American Stock Exchange LLC, Relating to the Amex's Front-Running Rule

November 19, 2002.

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 October 15, 2001, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule, as amended, change from interested persons.

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

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

<sup>3</sup> On February 4, 2002, the Amex filed Amendment No. 1 to the proposal. Amendment No. 1 clarifies the proposal by indicating that the proposal does not change either paragraph (d) of Commentary .03 to Amex Rule 111, "Restrictions on Registered Traders," or Commentary .05 to Amex Rule 950(d). On November 7, 2002, the Amex filed Amendment No. 2 to the proposal. Amendment No. 2 includes an Amex Notice that provides examples and interpretations of the operation of the proposed rule.

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

The Amex proposes to amend Amex Rules 24, "Block Transactions," 111, "Restrictions on Registered Traders," 175, "Specialist Prohibitions," and 950, "Rules of General Applicability," to develop a single comprehensive rule with respect to front-running. The Amex has submitted a Notice ("Amex Notice"), attached hereto as Exhibit A, that provides examples and interpretations of the operation of the proposed rule.

The text of the proposed rule change appears below. Proposed new language is in italics; proposed deletions are in brackets.

#### Block Transactions

Rule 24. *Rescinded* [(a) After learning in any way about any trade in any security executed or about to be executed on the Floor of the Exchange involving 10,000 shares or more, no member or employee of a member or member organization may initiate or transmit or cause to be transmitted to the Floor, for a period of two minutes following the print of such trade on the ticker tape, an order in the same security for an account in which any member or member organization or employee thereof has an interest. This does not preclude the supplying from the Floor of quotations and size of the market in a particular security or securities when such information has been requested, or when such information is furnished in the normal course of business in servicing public customers. The period during which the order may not be entered or transmitted to the Floor will be measured from the time of learning of the trade or proposed trade until the expiration of two minutes following the print of such trade on the tape, or until the expiration of two minutes following the print of the first of any series of transactions of 10,000 shares or more at the same price as the initial block.

(b) The restrictions of paragraph (a) shall not apply to:

(i) An order entered for the purpose of participating in the purchase or sale of the particular block about which the member or employee has learned;

(ii) A situation where a Floor Official expressly invites a member to participate in a difficult market situation;

(iii) An order to reduce or liquidate a position acquired pursuant to subparagraph (i) or (ii);

(iv) A bona fide arbitrage transaction or a transaction which is part of a

purchase and sale or sale and purchase of securities of companies involved in a publicly announced merger, acquisition, tender offer, etc.;

(v) A transaction to offset a transaction made in error.]

\* \* \* \* \*

#### Restrictions on Registered Traders

Rule 111(a) through (h) No change.

\* \* \* Commentary

.01 and .02 No change.

.03(a) and (b) No change.

(c) [No member or member

organization shall execute or cause to be executed, on the Exchange, any order for any account in which such member, member organization, or any member, allied member, or approved person in such organization or officer or employee thereof, is interested or for any discretionary account serviced by the member or member organization, in contravention of any Exchange policy against front-running of transactions that the Exchange may from time to time adopt and make known to its members.] *Front-Running Policy. If a member or person associated with a member or member organization executes or causes to be executed for an account in which such member, member organization or person has a direct or indirect interest or for an account with respect to which such member or person exercises investment discretion, any transaction to take advantage of material, non-public information which can reasonably be expected to have an immediate, material and favorable impact in relation to any such transaction, such member, member organization or person may be in violation of just and equitable principles of trade (Article V, Section 4(h)). Such transactions include, but are not limited to:*

(i) *A transaction in the same security when such member or person has acquired knowledge of the imminent execution of an order expected to have an immediate, material and favorable impact in relation to the member's or person's transaction;*

(ii) *A transaction in any security-future product or option on a stock or stock index when such member or person has acquired knowledge of the imminent execution of a stock or stock program transaction expected to have an immediate, material and favorable impact in relation to the member's or person's transaction;*

(iii) *A transaction in any option on a stock or stock index or in a stock or stock program, when such member or person has acquired knowledge of the imminent execution of a transaction in any futures, stock index futures, or*

*security-futures product expected to have an immediate, material and favorable impact in relation to the member's or person's transaction;*

(iv) *A transaction in any security-future product or in a stock or stock program, when such member or person has acquired knowledge of the imminent execution of a transaction in any option on a stock, index, or futures expected to have an immediate, material and favorable impact in relation to the member's or person's transaction.*

*Notwithstanding the foregoing, a member, member organization or person associated with a member organization who implements a proprietary market strategy involving, for example, a stock program and a related stock index options transaction by executing the stock index options trade(s) prior to the execution of the stock program will not be deemed to be in violation of this policy. The Front-Running Policy, however, does not create a "safe harbor" with respect to other possible violations of the Exchange's rules or federal securities laws. For example, if the member, member organization or person executes or causes to be executed a transaction in one market to take advantage of such member's, member organization's or person's imminent transaction in a related market, that member, member organization or person may be engaging in manipulative activity in violation of Exchange rules and federal securities laws.*

*In determining whether a member, member organization or person has taken advantage of material, non-public information, it is not necessary for the Exchange to demonstrate that another person has been disadvantaged. Further, such member, member organization or person may be in violation of just and equitable principles of trade regardless of whether any person who may have been disadvantaged has given permission for such trading. The information, however, will only be considered non-public until either (i) all the information and any changes thereto of which that member or associated person has knowledge are disclosed to the trading crowd or (ii) the information can no longer reasonably be expected to have an immediate, material and favorable impact in view of the passage of time since the information was received.*

*For the purposes of this Rule, a person may be deemed to have caused a trade to be executed on the basis of material non-public information if such person transmits information regarding trade negotiation on the Floor so that a*

transaction may be effected in another market center to take advantage of the immediate, material and favorable impact reasonably expected to result from such trade negotiation. Further, this could be the case even if the trade negotiations do not result in a transaction.

This Rule shall apply to any agency or proprietary transaction effected on the Exchange. This is the case if: (i) such transaction ("Exchange transaction") is part of a group of related transactions that together have the effects prohibited by the Rule regardless of whether one or more of the other related transactions were effected on other market centers; or (ii) the Exchange transaction by itself had such effects. Further, a member who issues a commitment or obligation to trade from the Exchange through ITS or any other Application of the System shall, as a consequence thereof, be deemed to be initiating a purchase or sale of a security on the Exchange as referred to in this Rule.

(d) No change.

.04 through end. No change.

\* \* \* \* \*

### Specialist Prohibitions

Rule 175. (a) through (c) No change.

Guidelines for Specialists' Specialty Stock Option Transactions Pursuant to Rule 175 (a) through (f) No change.

(g) Prohibition Against Front-Running of Blocks

[In Information Circulars No. 82-37, No. 85-115 and No. 99-147 (dated July 6, 1982, November 29, 1985 and September 14, 1990 respectively), the Exchange advised members and member organizations that they should not trade in options or in underlying securities by taking advantage of their possession of material, non-public information concerning block transactions in these securities. The Exchange noted that it would be improper for a member or person associated with a member who has knowledge of a block transaction in any security underlying an option or of a block transaction in the option covering that security, before information concerning the block transaction has been made publicly available, to take advantage of the non-public information in his possession and execute or cause to be executed an order (1) to buy or sell an option, while in possession of non-public information concerning a block transaction in the underlying stock, or (2) to buy or sell an underlying security, while in possession of non-public information concerning a block transaction in an option covering that security, for an account in which such member or associated person has an interest or for an account with

respect to which such member or associated person exercises investment discretion.] The prohibitions against front-running stated in [such Information Circulars] *Rule 111, Comm. .03(c)* shall take precedence over any requirements stated in these Guidelines. Thus, a specialist may not establish an offsetting option position in a specialty stock if he is in possession of material, non-public information in any way concerning [a block transaction in] such stock.

(h) through (l) No change.

\* \* \* \* \*

### Rules of General Applicability

Rule 950 (a) through (c) No change.

(d) No change.

\* \* \* Commentary

.01 through .03 No change.

.04 *Rescinded* [It may be considered conduct inconsistent with just and equitable principles of trade for any member or person associated with a member, who has knowledge of all material terms and conditions of (i) an originating order and a solicited order, (ii) an order being facilitated, or (iii) orders being crossed, the execution of which are imminent, to enter, based on such knowledge, an order to buy or sell an option of the same class as any option that is the subject of the order, or an order to buy or sell the security underlying such class, or an order to buy or sell any related instrument until either (i) all the terms of the originating order and any changes in the terms and conditions of the order of which that member or associated person has knowledge are disclosed to the trading crowd or (ii) the trade can no longer reasonably be considered imminent in view of the passage of time since the order was received. For purposes of this Commentary .04, an order to buy or sell a "related instrument," means, in reference to an index option, an order to buy or sell securities comprising ten percent or more of the component securities in the index or an order to buy or sell a futures contract on any economically equivalent index.]

.05 No change.

(e) through end. No change.

\* \* \* \* \*

(b) Not applicable.

(c) Not applicable.

### 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

In the past, the Amex has adopted three rules and one guideline and issued no fewer than five Information Circulars expressing the prohibition against using non-public market information ("front-running").

With some exceptions, Amex Rule 24 prohibits proprietary trades on the Amex floor in equities for two minutes after the tape print of a 10,000-share block on the Amex floor in the same equity. When the Amex adopted Amex Rule 24 in 1971, the Amex only traded equities, and Amex Rule 5, "Over-the-Counter Execution of Equity Securities Transactions," (limiting off-Board trades) was in place. Accordingly, Amex Rule 24 is limited to trades in equity securities occurring on the Amex.

Subsequently, the Amex adopted Amex Rule 111, Commentary .03(c), which prohibits proprietary or discretionary transactions in violation of the Exchange's policies against front-running. The Exchange issued five Information Circulars to express the policy against front-running.<sup>4</sup>

Paragraph (g) of the "Guidelines for Specialists' Specialty Stock Option Transactions Pursuant to Rule 175" applies the front-running prohibitions to equities specialists in connection with their option trades.

In June 2000, the Amex adopted Rule 950(d), Commentary .04, which prohibits proprietary front-running of solicited, facilitated, and/or crossed options transactions with an order to buy or sell an option of the same class, an order to buy or sell the underlying

<sup>4</sup> Specifically, Information Circular 79-12 prohibited proprietary options transactions front-running block transactions in the underlying security. Information Circular 80-36 prohibited proprietary and agency options transactions front-running block transactions in the underlying security as well as equity transactions front-running option blocks. Information Circular 82-37 alerted the membership to disciplinary action taken for options transactions front-running block facilitations in the underlying securities. Information Circular 85-115 prohibited transactions in index options front-running block transactions in the underlying component securities. Information Circular 90-147 prohibited transactions in index warrants front-running block transactions in the underlying component securities.

security of such class, or an order to buy or sell any related instrument.

According to the Amex, these rules and policies developed over time in response to specific needs and are not comprehensive in that they only address certain types of information, specified markets, and/or particular products. For example, Amex Rule 24 prohibits only an equity trade on the Amex that is effected with knowledge of an impending equity block trade also effected on the Amex.

In the course of preparing proposed rules to accommodate the introduction of single stock futures, the Amex realized that its current rules relating to front-running did not cover this new product, and that this served as an occasion to review more generally the Amex's rules governing front-running and related activity. As a result of this review, the Exchange determined that the Amex, its members, and the public would be better served by a front-running rule that was more comprehensive and broader conceptually than the several separate rules and interpretations that the Exchange had adopted and issued over the years.

Accordingly, the proposal has been drafted to clarify that front-running in any "securities" product in any transaction by Amex members or member organizations involving the Amex's market in any way is prohibited. The Exchange also has prepared an "Amex Notice," attached as Exhibit A, that the Amex intends to issue to members and member organizations following Commission approval of the proposed rule change.

#### (2) Basis

The Amex believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5), in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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; and is not designed to permit unfair discrimination between customers, issuers, brokers, and dealers.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex believes that the proposed rule change will impose no burden on competition.

#### 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

(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 and Amendment Nos. 1 and 2 are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., 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-2001-85 and should be submitted by December 17, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Jill M. Peterson,**  
Assistant Secretary.

#### Exhibit A

#### Member Firm Regulation

#### Amex Notice

Date:

To: Members and Member Organizations

From:

Subject: Revised Front-Running Rule

The Exchange recently received SEC approval to consolidate and update our front-running rules and policies. The text of the revised rule, Rule 111, Commentary .03(c), is attached. The revised rule (the "Rule") is designed to cover all types of front-running. Accordingly, Rules 24 and 950(d), Commentary .04, which also dealt with front-running, have been rescinded. The Rule prohibits any front-running involving a trade executed or attempted on the Amex or executed or attempted in any other market based on market information obtained on the Amex or advanced knowledge of other material non-public information. The foundation of the Exchange's front-running prohibition is that it is a violation of just and equitable principles of trade for a person with material non-public information of the pending release of news or an imminent transaction in a security to take advantage of that information by effecting trades in that security or related securities. In the past, it has been most common to think of front-running in terms of options trades executed in front of a block trade in the underlying stock. And we expect questions about front-running will continue to arise most often in that context. However, the revised Rule encompasses the possibility that any imminent, significant transaction in a security (e.g., common stock, options, security futures product, or stock index product) or in stock index futures could have an impact on the price of that security and related securities. Front-running occurs when a person takes advantage of non-public information about such a transaction. Front-running can also arise when a person takes advantage of advanced knowledge of research reports, corporate news or other material non-public information. The purpose of this notice is to provide interpretations and examples to clarify these and other aspects of the Rule.

#### Terms

##### Any Transaction

Typically, only a block (e.g., 10,000 shares or more) or equivalent-sized transaction in an equity, option or security futures product will trigger application of the Rule. A sequence of transactions that aggregate to block size for the same or related accounts can also trigger the Rule. The trades that take advantage of the triggering transaction need not be of block size. Front-running can also arise from advanced knowledge of research

<sup>5</sup> 17 CFR 200.30-3(a)(12).

reports, corporate news or other material non-public information.

Transactions that take advantage of such information must be "purposeful". For example, in the case of research reports, trading activity establishing, increasing, decreasing, or liquidating a position in a security in anticipation of the issuance of a research report in that security is inconsistent with just and equitable principles of trade to the extent that the trading is for the purpose of profiting (or avoiding losses) from the report's anticipated impact on the market. Trading activity is "purposeful" if it is undertaken with the intent of altering a firm's position in a security to take advantage of the investor interest that is anticipated on publication of the research report. Hence, trading activity generally would not violate the Rule if it was conducted while effective information barriers (*i.e.*, "Chinese Walls") were in place between trading and research, it was done in response to unsolicited customer orders or the trading was based on research done solely for in-house use and was not in any way intended for external publication. (This interpretation is derived from language in NASD IM-2110-4.)

#### Non-Public Information

Market information will be considered non-public until either (i) the information and any changes thereto are disclosed to the trading crowd or (ii) the information can no longer reasonably be expected to have an immediate, material and favorable impact in view of the passage of time since the information was received. Corporate information and research reports will be considered non-public until either (i) the information and any changes thereto have been disclosed to the public (via a news service or similarly widespread method of information dissemination) and a reasonable period of time has elapsed for the information to be comprehended or (ii) the information can no longer reasonably be expected to have an immediate, material and favorable impact in view of the passage of time since the information was received.

#### Immediate, Material and Favorable Impact

Immediate impact means that, as soon as it is released, the information (corporate news, research report, order to be executed, etc.) itself would, upon release, be expected by a reasonable market professional to have an impact on the price of any security in which a front-running transaction was effected.

Material means that the information would be considered important by a reasonable market professional in relation to the security in which a front-running transaction was effected.

Favorable means that the information will cause a price movement in the direction needed to profit from (or avoid a loss through) the front-running transaction.

#### Acquired Knowledge

For purposes of this Rule, "acquired knowledge" means both obtaining information and understanding its importance. Violation of the Rule requires the purposeful use of the information

obtained by the member or associated person for personal gain, to benefit a firm account, or to "tip" another person. A member or associated person will not be presumed to have acquired knowledge of non-public information if the information is possessed by an affiliate on the other side of an effective information barrier (*i.e.*, "Chinese Wall").

#### "Related" Security

The following are examples of groups of securities which are related to each other:

1. The underlying stock(s)
  - Listed options on that stock
  - Single-stock future on that stock
  - Any index in which the stock comprises 10% or more of the index value
  - Any equity-linked term notes (derivative products based on performance of the underlying stocks) such as STRIDES<sup>SM</sup> or SPARQS<sup>SM</sup>
  - Any index-linked notes (such as MITTS<sup>®</sup>) in which the underlying stock comprises 10% or more of the index value
2. An Exchange Traded Fund ("ETF": *e.g.*, Portfolio Depository Receipts and Index Fund Shares) or a similar equity-traded derivative or Trust Issued Receipts ("TIR": *e.g.*, a HOLDRS<sup>SM</sup> or similar product)
  - Component stocks comprising, at least, 10% of the NAV of the ETF or TIR
  - Listed option on the ETF or TIR
  - Listed option on component stock(s) comprising, at least, 10% of the NAV of the ETF or TIR
  - Futures contracts on the ETF or TIR, or single stock futures on component stock(s) comprising, at least, 10% of the NAV of the ETF or TIR
  - Any related index, ETF or TIR (which share, to any degree, underlying component stocks) plus all securities related to that related index, ETF or TIR

#### A Proprietary Market Strategy (so-called "self Front-Running")

*Example:* Believing a stock to be undervalued, a trading desk buys the stock, its call options, and its single stock futures. The trader on the desk knows that purchases in one market can be expected to raise the price in the related products. Regardless of the timing or sequence of transactions in these various products, these purchases, to take advantage of the perceived undervaluation of the security, could constitute an acceptable market strategy. The presence of other factors, however, might cause this conduct to be violative activity.

#### Does Not Create a "Safe Harbor"

Even though "self front-running" is not a violation of the front-running Rule, that doesn't mean trades done in anticipation of additional activity in a stock or related security may not constitute manipulation or other violative activity.

*Example:* A trading desk determines to buy 100,000 shares of a stock, knowing that the purchase can be expected to raise the stock's price. Accordingly, and immediately before buying the stock, the desk buys 500 calls and sells 500 puts. After the stock purchase causes the stock price to rise, the desk liquidates the options positions at a profit. While this activity would not violate the

front-running prohibition, it would raise manipulation concerns.

#### Customer May Not Give Permission

*Example:* An institutional customer asks its broker where it can buy 100,000 shares of XYZ. The brokerage house says it can supply the stock up \$1 from the last sale, but, if the customer allows the house to buy calls or sell puts first, it can supply the stock to the customer up only 50¢. The customer agrees, and the house buys 1,000 calls or sells 1,000 puts on the Amex before crossing 100,000 shares up 50 ¢. This is prohibited front-running. Customer permission does not excuse the violation.

#### Transactions

##### In the Same Security

After learning in any way about an imminent trade in a security about to take place on the Amex Floor that is expected to have an immediate, material and favorable impact, no member or employee of a member or member organization ("member") may initiate or transmit or cause to be transmitted to the Floor or to any other market place an order in the same security for an account in which any member or member organization or employee thereof has a direct or indirect interest or for an account with respect to which such member or person exercises investment discretion (collectively, a "member account") until such time as the information concerning the trade is no longer non-public. Similarly, after learning in any way about such an imminent trade in another market, no member may initiate or transmit or cause to be transmitted to the Amex Floor an order in the same security for a member account until information concerning the trade is no longer non-public. This would not, of course, preclude a legitimate, proprietary market activity (such as block facilitation) or a legitimate, proprietary market strategy.

*Example:* An Amex floor broker overhears a second floor broker at an adjacent booth accept an order to execute a facilitation of 100,000 shares of an inactive stock up \$2 from the current offer. Before the facilitation trade is executed, the first floor broker places orders to buy the stock at the current offer price on two ECNs and one regional exchange. These orders are prohibited front-running.

##### In any Security Future Product or Option on a Stock or Stock Index Related to the Imminent Execution of a Stock or Stock Program Transaction

Same concept as that described above in the section titled "In the Same Security" except this section deals with a combination of related securities.

*Example:* After receiving an institutional order to buy a basket of the components of an index expected to have an immediate, material and favorable impact on the prices of the component stocks, but before executing the program order, a brokerage house buys an equivalent amount of the calls or sells an equivalent amount of puts overlying that index on the Amex. This is prohibited front-running.

*A Transaction in any Option on a Stock or Stock Index or in a Stock or Stock Program Related to the Imminent Execution of a Transaction in any Futures, Stock Index Futures, or Security Futures Product (Including Single Stock Futures)*

Same concept as that described above in the section titled "In the Same Security" except this section deals with a combination of related securities.

*Example:* After receiving an institutional order to sell 1,000 futures contracts on a stock expected to have an immediate, material and "favorable" impact on the price of the futures and related securities, but before representing the order in the pit, a brokerage house buys put or sells call options on the stock on the Amex. This is prohibited front-running.

*A Transaction in any Security Futures Product or in a Stock or Stock Program Related to the Imminent Execution of a Transaction in any Option on a Stock, Index, or Futures*

Same concept as that described above in the section titled "In the Same Security" except this section deals with a combination of related securities.

*Example:* After being solicited to participate as seller in a 1,000-contract transaction in near-term, at-the-money calls of XYZ expected to have an immediate, material and "favorable" impact on the price of XYZ stock, but before the options trade is presented to the Amex crowd, the solicited broker/dealer buys an equivalent number of XYZ single-stock futures and/or XYZ shares in the "cash" market. (This is sometimes known as "run fronting" and violates our rules.)

*Example:* After being solicited to participate as buyer in a 5,000-contract transaction in puts of ZYX expected to have an immediate, material and "favorable" impact on the price of ZYX stock, but before the options trade is presented to the CBOE crowd, the solicited broker/dealer sells an equivalent number of ZYX shares on the Amex. (This is also known as "run fronting" and violates our rules.)

*Example:* A member executes a 2,500 contract futures transaction on XYZ stock on a futures market at a price \$1 above the current market. Before that trade is printed, the member takes an offer to buy non-fungible futures on XYZ traded on the Amex. This is prohibited front-running.

*Transactions Covered But Not Expressly Enumerated in the Rule*

*Example:* After receiving an institutional order to buy on the Amex 100,000 shares of a HOLDERS, which order is expected to have an immediate, material and favorable impact on the price of the HOLDERS and related securities, but before representing the order in the crowd, a brokerage house buys on the offers on another exchange shares in (10) component stocks which comprise 50% of the HOLDERS. This is prohibited front-running.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46848; File No. SR-CSE-2002-16]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the Cincinnati Stock Exchange, Inc., To Establish a Pilot Liquidity Provider Fee and Rebate for Intra-CSE Trading in Nasdaq Securities

November 19, 2002.

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 October 22, 2002, The Cincinnati Stock Exchange, Inc. ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change, as described in Items I, II, and III below, which Items have been prepared by the Exchange. On November 13, 2002 the CSE amended the proposed rule change.<sup>3</sup> The Exchange filed this proposal pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>4</sup> and Rule 19b-4(f)(2)<sup>5</sup> thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The CSE proposes to amend its schedule of transaction fees to establish an incentive for providing liquidity on the CSE. The text of the proposed rule change is below. Proposed additions are in italics. Proposed deletions are in brackets.

#### Chapter XI

##### Trading Rules

##### Rule 11.10 National Securities Trading System Fees

###### A. Trading Fees

(a)-(f) No change to text

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

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

<sup>3</sup> See November 12, 2002 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 expiration date of the pilot program from October 31, 2003 to March 31, 2003. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on November 13, 2002, the date the CSE filed Amendment No. 1.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>5</sup> 17 CFR 240.19b-4(f)(2).

(g) Proprietary (principal) Transactions

(1)(A) All Designated Dealers in securities other than Nasdaq securities, except those acting as Preferencing Dealers or Contributing Dealers, will be charged \$0.0025 per share (\$0.25/100 shares) for principal transactions [including ITS transactions].

(1)(B) For a pilot period commencing October 1, 2002 and lasting until March 31, 2003, CSE members that execute orders in Nasdaq securities against previously displayed quotes/orders of other CSE members shall pay \$0.004 per share for such execution. The Exchange shall pass on to the CSE member displaying the quote/order executed against \$0.003 per share and the Exchange shall retain \$0.001 per share.

(2)-(4) No change to text

(h)-(r) No change to text

\* \* \* \* \*

#### 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 Exchange 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 Exchange 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

The CSE proposes to establish a pilot transaction credit for liquidity providers that is paid by liquidity takers on each intra-CSE execution in Nasdaq securities. By "intra-CSE execution" the CSE means any transaction that is executed on the CSE for which the executing member on the buy-side of the transaction differs from the executing member on the sell-side of the transaction. The CSE believes that the proposed rule accomplishes two strategic objectives: (1) It resolves the issue of member-to-member access fees; and (2) it provides an incentive for members to display orders in the CSE, thereby increasing the liquidity available to investors.

The CSE currently does not permit members to charge other members for intra-CSE trades executed through CSE systems. Unlike the Nasdaq