

differences, it is appropriate to apply different financial standards to closed-end funds as compared to regular operating companies.<sup>13</sup>

#### V. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>14</sup> Specifically, the Commission believes the proposal is consistent with the requirements under section 6(b)(5) of the Act<sup>15</sup> that the rules of an exchange be designed 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.

The Commission believes that the proposed rule change will continue to allow the Amex to provide greater transparency to its listing process for closed-end funds. In addition, the Commission believes that the proposed rule change will continue to allow the Amex to strike a reasonable balance between the Exchange's obligation to protect investors and their confidence in the market and the Exchange's obligation to perfect the mechanism of a free and open market by listing funds, including fund families, on the Exchange. Further, the Commission believes that providing an alternative method to list closed-end funds on the Exchange should continue to accommodate the desire of fund families to list groups of closed-end funds on one marketplace. Finally, the Commission notes that it has no knowledge of any problems or regulatory concerns that have developed since the approval of the five-month pilot program.<sup>16</sup>

The Commission finds good cause for approving the proposed rule change prior to the 30th day after publication in the **Federal Register**. The Amex has requested accelerated approval of the proposed rule change to ensure that the proposal is effective on a permanent basis prior to the expiration of the existing pilot program, and because it

<sup>13</sup> *Id.*

<sup>14</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

<sup>16</sup> Telephone conversation between Claudia Crowley, Assistant General Counsel, Amex, and Frank N. Genco, Attorney, Division, Commission, on January 17, 2003.

raises no new or novel issues and is conceptually similar to existing New York Stock Exchange closed-end fund listing standards.<sup>17</sup> The Commission believes that the proposed rule change does not raise any new or significant regulatory issues, and that accelerated approval should permit the Exchange to continue listing funds and accommodating the desire of fund families to list groups of closed-end funds on one marketplace. The Commission notes that it received only one comment letter, which supported File No. Amex-2002-55,<sup>18</sup> in which the Amex originally proposed the changes set forth in this proposal on a five-month pilot basis.<sup>19</sup>

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>20</sup> that the proposed rule change (File No. SR-Amex-2002-113) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>21</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47258; File No. SR-CSE-2003-01]

#### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Cincinnati Stock Exchange, Inc. To Amend Its Market Data Revenue Sharing Program for Tape B Securities

January 27, 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 January 6, 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 Exchange.

<sup>17</sup> See Securities Exchange Act Release No. 46163 (July 3, 2002), 67 FR 46559 (July 15, 2002) (File No. SR-NYSE-2001-45) (approving initial listing standards and allocation policy for closed-end funds).

<sup>18</sup> See ICI letter.

<sup>19</sup> See Securities Exchange Act Release No. 46785 (November 7, 2002) 67 FR 69578 (November 18, 2002) (approving File No. SR-Amex-2002-55).

<sup>20</sup> 15 U.S.C. 78s(b)(2).

<sup>21</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.

On January 24, 2003 the CSE amended the proposal.<sup>3</sup> 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 modify the Exchange's schedule of transaction fees to amend its market data revenue sharing program for Tape B securities ("Program") traded on the Exchange. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

Rule 11.10 National Securities Trading System Fees

##### A. Trading Fees

(a)-(j) (No change to text)

(k) Tape "B" Transactions. The CSE will not impose a transaction fee on Consolidated Tape "B" securities. In addition, Members will receive a 50 percent pro rata transaction credit of [Net]gross Tape "B" revenue; *provided that, however, calculation of the transaction credit will be based on net Tape "B" revenues in those fiscal quarters where the overall revenue retained by the Exchange does not offset actual expenses and working capital needs.* To the extent market data revenue from Tape "B" transactions is subject to year-end adjustment, credits provided under this program may be adjusted accordingly.

(l)-(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.

<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.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Under Exchange Rule 11.10A(k), members have received a 50 percent pro rata transaction credit based on *net* Tape B revenue since July 2001.<sup>4</sup> Prior to that time, the Program was based on *gross* Tape B revenues. In keeping with recent trends in the securities industry, the Exchange is proposing to amend the Program so that the pro rata percentage is once again based on *gross* Tape B revenue, but only in those fiscal quarters where the Exchange's overall revenues (not just Tape B revenues) offset capital expenses and working capital needs. Otherwise, if capital expenses and working capital needs are not met, the calculation based on *net* Tape B revenues will continue to apply.

2. Statutory Basis

The proposed rule change is generally consistent with Section 6(b) of the Act.<sup>5</sup> The proposed rule also furthers the objectives of Section 6(b)(5) of the Act,<sup>6</sup> particularly, in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system and, generally, in that it protects investors and the public interest. The proposal also is consistent with Section 6(b)(4)<sup>7</sup> in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members by crediting members on a pro rata basis.

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

The CSE does not believe that the proposed rule change will impose any inappropriate 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.

<sup>4</sup> See Securities Exchange Act Release No. 44579 (July 20, 2001), 66 FR 39068 (July 26, 2001) (SR-CSE-01-03) (among other things, added the word "Net" before the term "Tape 'B' revenue" to CSE Rule 11.10A(k)).

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

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

**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 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 CSE. All submissions should refer to file number SR-CSE-2003-01 and should be submitted by February 24, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

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

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-47244; File No. SR-NASD-2002-166]

**Self-Regulatory Organizations; Order Granting Approval of a Proposed Rule Change and Amendment No. 1 and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. With Respect to Margin Rule Amendments for Security Futures Contracts on a Pilot Basis**

January 24, 2003.

**I. Introduction**

On November 15, 2002, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change, 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> to amend NASD rule 2520 ("Margin Requirements") to establish margin rules for security futures contracts. On November 22, 2002, NASD filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposal, as amended, was published in the **Federal Register** on December 24, 2002.<sup>4</sup> The Commission received one comment letter on the proposed rule change.<sup>5</sup> This commenter also submitted a comment letter on the NYSE's pilot to amend NYSE rule 431 to establish margin requirements for security futures contracts.<sup>6</sup> On January 15, 2003, NASD filed Amendment No.

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

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

<sup>3</sup> See letter from Gary L. Goldsholle, Associate General Counsel, NASD to Katherine England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated November 22, 2002 ("Amendment No. 1"). Amendment No. 1 makes technical changes to the proposed rule text.

<sup>4</sup> Securities Exchange Act Release No. 46995 (December 13, 2002), 67 FR 78543.

<sup>5</sup> See letter from Edward J. Joyce, President and Chief Operating Officer, Chicago Board Options Exchange ("CBOE"), to Jonathan G. Katz, Secretary, Commission, dated December 20, 2002.

<sup>6</sup> See letter from Edward J. Joyce, President and Chief Operating Officer, CBOE, to Jonathan G. Katz, Secretary, Commission, dated December 9, 2002. On November 7, 2002, the Commission approved, on a 60-day pilot basis, a proposed rule change by the New York Stock Exchange, Inc. ("NYSE") amending NYSE rule 431 ("Margin Requirements") to establish margin requirements for security futures contracts. See Securities Exchange Act Release No. 46782 (November 7, 2002), 67 FR 69052 (November 14, 2002) (SR-NYSE-2002-53). In January 2003, the NYSE pilot was extended for an additional 60 days, expiring on March 6, 2003. See Securities Exchange Act Release No. 47129 (January 6, 2002), 68 FR 2094 (January 15, 2003) (SR-NYSE-2003-01).

<sup>8</sup> 17 CFR 200.30-3(a)(12).