

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by contacting Mr. Howard J. Larson.

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Dated: September 15, 2003.

Andrew L. Bates,

Advisory Committee Management Officer.
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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48491; File No. SR-CSE-2003-10]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by The Cincinnati Stock Exchange, Inc. To Eliminate Market Order Exposure Requirements

September 12, 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 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) to eliminate Interpretation .01, concerning market order exposure requirements ("Market Order Exposure Requirement").³ The CSE is also proposing to amend CSE Rule 8.15 to remove a reference to Interpretation .01 of Rule 11.9(u). The text of the proposed rule change is set forth below. Proposed new language is in *italics*; proposed deletions are in [brackets].⁴

Rule 8.15. Imposition of Fines for Minor Violation(s) of Rules

* * * * *

Interpretations and Policies

.01 List of Exchange Rule Violations and Fines Applicable thereto Pursuant to Rule 8.15:

(a)-(g) No Change to Text.

[(h) Rule 11.9(u) and Interpretation .01 related to the requirement to immediately execute market orders 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.

Recommended Fine Amount
\$1,000 first violation of the 2% quarterly threshold
\$2,500 second violation
Third violation Business Conduct Committee Hearing]

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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,

³ As a result of the amendment, the relevant interpretations and policies contained in CSE Regulatory Circulars 01-07, 99-03, 98-06, 97-07, 96-04 will also be repealed.

⁴ At the request of the Exchange, the Commission has revised the proposed rule text (i) to insert the word "wide" at the end of clauses (a)1, (a)2 and (a)3; (ii) to reflect that the proposed rule change would not change the text of paragraph (g) of CSE Rule 8.15, Interpretation .01; and (iii) to correct a typographical error in paragraph (b)1.i. of Rule 11.9(u), Interpretation .01. Telephone conversation between Jeffrey T. Brown, Senior Vice President, Regulation and General Counsel, Exchange and Ann E. Leddy, Attorney, Division of Market Regulation, Commission (September 12, 2003).

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, 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 (\$.05) wide;

2. market orders with sizes between 1001 shares and 5000 shares when the NBBO at time of order receipt is more than 10 cents (\$.10) wide; and

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

[.02].01 Limit Order Protection

No Change to Text.

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¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 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 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

1. Purpose

The purpose of the proposed rule change is to amend CSE Rule 11.9(u) to eliminate Interpretation .01, which requires preferencing designated dealers ("PDDs") trading Intermarket Trading System ("ITS") securities, except under unusual market conditions or if it is not in the best interest of the customer, when the spread between the national best bid and offer is greater than the minimum price variation, immediately either to execute a market order at an improved price or expose the market order for a minimum of fifteen seconds in an attempt to improve the price.⁵ The CSE believes that it is the only market with such a requirement. In conjunction with the elimination of the requirement, the Exchange is also proposing to remove Interpretation .01 of Rule 11.9(u) from its schedule of Exchange Rules that are subject to the CSE's minor rule violation plan, CSE Rule 8.15.

The Market Order Exposure Requirement was initially adopted as part of the Exchange's PDD program at a time when the industry minimum price variation was 1/8th of a dollar (\$0.125) resulting in the CSE's market order exposure rule applying when bid/ask spreads were 1/4th of a dollar (\$0.25).⁶ Given the advent of decimal

⁵ This provision applies only to public agency buy/sell market orders in securities other than Nasdaq national market securities. Over the years, the CSE has disseminated Regulatory Circulars describing the Exchange's interpretations of "unusual market conditions" or when "it is not in the best interests of the customer" to expose a market order. See CSE Regulatory Circulars 01-07, 99-03, 98-06, 97-07 and 96-04. These interpretations were incorporated into the text of the rule language through File No. SR-CSE-2003-09. Securities Exchange Act Release No. 48388 (August 21, 2003), 68 FR 51820 (August 28, 2003).

⁶ While over time the minimum trading increment has decreased from 1/8th to subpenny increments, until recently the requirements of Rule 11.9(u) Interpretation .01 remained applicable only

pricing and today's narrow spreads, the CSE proposes to eliminate the rule. At the same time, PDDs' best execution responsibilities will continue to apply. This will provide the CSE's PDDs with more flexibility when handling customer market orders while also permitting them to operate on a level playing field with participants that trade ITS securities on other markets without being subject to similar requirements.

2. Statutory Basis

The CSE believes that the proposed rule change is generally consistent with Section 6(b) of the Act.⁷ The proposed rule change also furthers the objectives of Section 6(b)(5) of the Act,⁸ particularly, in that it is designed to prevent fraudulent and manipulative acts and practices, 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.

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

The CSE does not believe that the proposed rule change 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

Written comments were neither solicited nor received.

when the price variation in the spread between the best national bid and offer is greater than or equal to 1/4 of a \$1 (\$0.25). See CSE Regulatory Circular 97-07; see also Securities Exchange Act Release Nos. 39720 (March 4, 1998), 63 FR 11942 (March 11, 1998) (SR-CSE-97-13); 43471 (October 20, 2000), 65 FR 64463 (October 27, 2000) (SR-CSE-00-08); and 43653 (December 1, 2000), 65 FR 77055 (December 8, 2000) (SR-CSE-00-08) (each of which references CSE Regulatory Circular 97-07 for further discussion of CSE's Market Order Exposure Requirement). Through SR-CSE-2003-09, the Exchange modified its Market Order Exposure Requirement by reducing the exposure period from 15 seconds to 5 seconds and imposing the rule based on the size of the market order received by the CSE PDDs. Specifically, the CSE introduced a three-tiered application of the rule to require PDDs to: (1) expose for 5 seconds or execute immediately at an improved price market orders of 1000 shares or less received when the NBBO is more than 5 cents (\$0.05) wide; (2) expose for 5 seconds or execute immediately at an improved price market orders with share size between 1001 and 5000 shares received when the NBBO is more than 10 cents (\$0.10) wide; and (3) expose for 5 seconds or execute immediately at an improved price market orders with size greater than 5001 shares when the NBBO is more than 15 cents (\$0.15) wide. File No. SR-CSE-2003-09, note 4 *supra*.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

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 self-regulatory organization 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 No. SR-CSE-2003-10 and should be submitted by October 10, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Jill M. Peterson,

Assistant Secretary.

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⁹ 17 CFR 200.30-3(a)(12).