

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.⁴

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.

⁴ 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.⁵ 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"),¹ and Rule 19b-4 thereunder,² 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 Act³ and Rule 19b-4(f)(6)⁴ thereunder, which renders the proposal effective upon filing with the Commission.⁵ The Commission is

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

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

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 Exchange proposes to extend its pilot program for the Liquidity Provider Fee and Rebate ("Program") through December 31, 2003. The pilot was originally proposed in SR-CSE-2002-16,⁶ and is set to expire on September 30, 2003.⁷ The CSE proposes no substantive changes to the Program, other than extending its operation through December 31, 2003. The text of the proposed rule change is available at the CSE and at the Commission.

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

On October 22, 2002, CSE filed SR-CSE-2002-16,⁸ which proposed to establish a pilot transaction credit for liquidity providers that is paid by liquidity takers on each intra-CSE execution⁹ in Nasdaq securities. Under the pilot, the Exchange amended CSE Rule 11.10A(g)(1) by adding subparagraph (B) to charge the liquidity taker, *i.e.*, the party executing against a previously displayed quote/order, \$0.004 per share. The Exchange then

operative delay. See Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).

⁶ Securities Exchange Act Release No. 46848 (November 19, 2002), 67 FR 70793 (November 26, 2002) ("Original Pilot").

⁷ The pilot, which was originally set to expire on March 31, 2003, was subsequently extended until September 30, 2003. Securities Exchange Act Release No. 47596 (March 28, 2003), 68 FR 16594 (April 4, 2003) (SR-CSE-2003-03).

⁸ See Original Pilot, *supra* note 6.

⁹ An "intra-CSE execution" is any transaction that is executed on the Exchange for which the executing member on the buy-side of the transaction differs from the executing member on the sell-side of the transaction.

passes on to the liquidity provider, *i.e.*, the party providing the displayed quote/order, \$0.003 per share with the Exchange retaining \$0.001 per share. With this rule filing, CSE is extending the Program through December 31, 2003.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Act¹⁰ in general, and furthers the objectives of section 6(b)(5)¹¹ in particular, 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 CSE believes that the proposed rule change is also consistent with section 6(b)(4) of the Act,¹² in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CSE 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 in connection with the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

- (i) Significantly affect the protection of investors or the public interest;
- (ii) Impose any significant burden on competition; and
- (iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act¹³ and Rule 19b-4(f)(6)¹⁴ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public

interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange has requested that the Commission waive the 5-day pre-filing notice requirement and the 30-day operative delay. The Commission believes that such waivers are consistent with the protection of investors and the public interest, for they will allow the pilot to continue without interruption. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.¹⁵

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 Exchange. All submissions should refer to file number SR-CSE-2003-13 and should be submitted by October 30, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Margaret H. McFarland,
Deputy Secretary.

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DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Cemeteries and Memorials; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92-

¹⁵ For purposes only of accelerating the operative date of the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁶ 17 CFR 200.30-3(a)(12).

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

¹² 15 U.S.C. 78f(b)(4).

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6).