

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 CBOE. All submissions should refer to File No. SR-CBOE-99-14, and should be submitted by June 3, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41366; File No. SR-CSE-99-04]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Cincinnati Stock Exchange, Inc. Amending the Minor Rule Violation Program To Include Violations of Limit Order Display Obligations

May 4, 1999.

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 April 15, 1999, the Cincinnati Stock Exchange, Inc. ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the CSE. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to approve the proposal on an accelerated basis.

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

The CSE proposes to amend Exchange Rule 8.15, Imposition of Fines for Minor Violation(s) of Rules, to include Rule 12.10 and Interpretation .01 under that rule, which requires Members to display customer limit orders by complying with Rule 11Ac1-4 under the Act. The text of the proposed rule change is available at the Office of the Secretary, 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 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 III below. The CSE has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The proposal would amend CSE Rule 8.15, Imposition of Fines for Minor Violation(s) of Rules ("Minor Rule Violation Program" or "Program"), which provides for an alternative disciplinary regimen involving violations of Exchange rules that the Exchange determines are minor in nature. In lieu of commencing a disciplinary proceeding pursuant to Rule 8.1 through 8.14, the Minor Rule Violation Program permits the Exchange to impose a fine, not to exceed \$2500, on any member, member organization, or registered or non-registered employee of a member or member organization ("Member") that the Exchange determines has violated a rule included in the Program. Adding a particular rule violation to the Minor Rule Violation Program does not circumscribe the Exchange's ability to treat violations of those rules through more formal disciplinary measures or deprive a Member of the procedural rights embedded in the disciplinary rules. The Minor Rule Violation Program simply provides the Exchange with greater flexibility in addressing rule violations that warrant a stronger regulatory response after the issuance of cautionary letters and yet, given the nature of the violations, do not rise to the level of requiring formal disciplinary proceedings.

The Exchange is now proposing to add the failure to properly display customer limit orders contained in Interpretation .01 to Rule 12.10 to the list of rule violations and fines included in the Minor Rule Violation Program. The Exchange believes that limit order display violations often are technical in nature and, in most cases, are best addressed in a summary fashion. However, because Interpretation .01 to Rule 12.10 is predicated on compliance

with SEC Rule 11Ac1-4, which provides important customer protections, violations of this Interpretation require sanctions more rigorous than a series of cautionary letters prior to formal proceedings.

Therefore, the Exchange is proposing to use a recommended fine schedule of \$100 per violation of the Interpretation. Exchange regulatory staff will review the facts and circumstances related to a purported violation and determine the appropriateness of a fine or other sanction. The Exchange notes that the minor violation fine schedule is merely a recommended fine schedule and that fines of more or less than the recommended fines can be imposed (up to \$2,500 maximum) in appropriate circumstances. Also, as indicated above the Exchange retains the ability to proceed with formal disciplinary action if the violations, in the Exchange's view, involve circumstances where more severe sanctions would be warranted.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act³ in general, and furthers the objectives of Sections 6(b)(5),⁴ 6(b)(6),⁵ 6(b)(7),⁶ and 6(d)(1)⁷ in particular. The proposed rule change is consistent with Section 6(b)(5) 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 to protect investors and the public interest. Specifically, the proposed rule change will augment the Exchange's ability to police its market and will increase the Exchange's flexibility in responding to minor violations of Exchange rules.

The proposal also is consistent with the Section 6(b)(6) requirement that the rules of an exchange provide appropriate discipline for violations of SEC and Exchange rules. The proposed rule change will provide a procedure to appropriately discipline those Members whose violations are minor in nature. In addition, because Rule 8.15 provides procedural safeguards to the person fined and permits a disciplined person to request a full hearing on the matter, the proposal provides a fair procedure for the disciplining of Members consistent with Sections 6(b)(7) and 6(d)(1) of the Act.

³ 15 U.S.C. 78f(b).

⁴ 15 U.S.C. 78f(b)(5).

⁵ 15 U.S.C. 78f(b)(6).

⁶ 15 U.S.C. 78f(b)(7).

⁷ 15 U.S.C. 78f(b)(1).

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

The Exchange did not solicit or receive written comments on the proposed rule change.

III. 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 filings will also be available for inspection and copying at the principal office of the CSE. All submissions should refer to File No. SR-CSE-99-04 and should be submitted by June 3, 1999.

IV. Discussion

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 and, in particular, the requirements of Section 6 of the Act⁸ and the rules and regulations thereunder.⁹ Section 6(b)(5) of the Act¹⁰ states that the rules of an exchange must be designed to a facilitate securities transactions and to remove implements to and perfect the mechanism of a free and open market. The Commission believes that the proposed rule change will augment the Exchange's ability to

police its market and will increase the Exchange's flexibility in responding to minor violations of limit order display obligations.

Pursuant to Section 19(b)(2) of the Act,¹¹ the Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing of the proposal in the **Federal Register** in that the proposed rule change will further the Exchange's ability to provide effective oversight of SEC and Exchange rules in an expeditious manner. The Commission also believes the proposed rule change will provide the Exchange greater flexibility in punishing violations of these rules.

It is therefore ordered, pursuant to Section 19(b)(2)¹² of the Act, that the proposed rule change (file No. SR-CSE-99-04) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41378; File Nos. SR-MSRB-98-06, SR-NASD-98-20, SR-NYSE-98-07]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; National Association of Securities Dealers, Inc.; and New York Stock Exchange, Inc.; Order Approving Proposed Rule Changes Regarding the Confirmation and Affirmation of Securities Transactions

May 7, 1999.

The Municipal Securities Rulemaking Board ("MSRB"), the National Association of Securities Dealers, Inc. ("NASD"), and the New York Stock Exchange, Inc. ("NYSE") have filed with the Securities and Exchange Commission ("Commission") proposed rule changes pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ proposing amendments to their confirmation/affirmation rules.² Notices of the

proposals were published in the **Federal Register** on April 13, 1998.³ The Commission received two comment letters.⁴ For the reasons discussed below, the Commission is approving the proposed rule changes.

I. Description

Currently, the confirmation/affirmation rules of the MSRB, NASD, and NYSE (collectively referred to as self-regulatory organizations or "SROs")⁵ require the SROs' broker-dealer members to use the facilities of a securities depository⁶ for the electronic confirmation and affirmation of transactions in which the broker-dealer provides either delivery-versus-payment ("DVP") or receive-versus-payment ("RVP")⁷ privileges to its customer. Broker-dealers generally extend DVP and RVP privileges only to their institutional customers.

Certain vendors of electronic trade confirmation ("ETC") services have requested that they be allowed to provide confirmation/affirmation services for DVP and RVP trades even though they are not registered clearing agencies. Under the rule changes, the SROs' broker-dealer members will be able to comply with the confirmation/affirmation rules by using the facilities of either a registered clearing agency or a "qualified vendor" for the confirmation and affirmation of DVP and RVP transactions.⁸

1998, the MSRB filed and on April 16, 1999, amended its proposed rule change (File No. SR-MSRB-98-06). The amendments filed by the MSRB, NASD, and NYSE represent technical amendments to the proposed rule changes and as such do not require republication of notice.

³ Securities Exchange Act Release Nos. 39830 (April 6, 1998), 63 FR 18060 (NYSE); 39831 (April 6, 1998), 63 FR 18057 (NASD); 39833 (April 6, 1998), 63 FR 18055 (MSRB). On May 1, 1998, the Commission extended the comment period for the proposals for thirty days. Securities Exchange Act Release No. 39944 (May 1, 1998), 63 FR 25531.

⁴ Letters from Mari-Anne Pisarri, Esq., Pickard and Djinis, on behalf of Thomson Financial Services ("Thomson") (May 12, 1998) and Ronald J. Kessler, Chairman, Operations Committee, Securities Industry Association ("SIA") (June 1, 1998).

⁵ The confirmation/affirmation rules are MSRB Rule G-15(d)(ii), NASD Rule 11860(a)(5), and NYSE Rule 387(a)(5).

⁶ The term "securities depository" is defined in the SROs' confirmation/affirmation rules as a clearing agency that is registered under Section 17A of the Act, 15 U.S.C. 78q-1.

⁷ DVP privileges allow an institutional seller to require cash payment before delivering its securities at settlement. RVP privileges allow an institutional buyer to pay for its purchased securities only when the securities are delivered.

⁸ Just being a qualified vendor will not entitle an ETC vendor to provide "matching" services (in which broker-dealer confirmations are matched with institutional allocation instructions to produce affirmed confirmations) as part of its confirmation/affirmation system. The Commission has concluded

⁸ 15 U.S.C. 78f.

⁹ In approving this rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 3 of the Act. 15 U.S.C. 78c(f)

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78s(b)(2).

¹² 15 U.S.C. 78s(b)(2).

¹³ 7 CFR 200.30-3(a)(12).

¹⁴ 15 U.S.C. 78s(b)(1).

² On February 18, 1998, the NYSE filed and on March 26, 1999, amended its proposed rule change (File No. SR-NYSE-98-07). On March 5, 1998, the NASD filed and on December 22, 1998, and February 17, 1999, amended its proposed rule change (File No. SR-NASD-98-20). On April 3,