SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44426; File No. SR–CSE–2001–02]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the Cincinnati Stock Exchange, Inc. Relating to the Elimination of the Requirement To Expose Market and Marketable Limit Orders for Fifteen Seconds Before Formatting as Intermarket Trading System Trade Commitments

June 14, 2001.

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 May 25, 2001, the Cincinnati Stock Exchange, Incorporated (''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 comment 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 proposes to amend CSE Rules 11.9(o)(2) and 11.9(o)(3) to eliminate the Exchange requirement that public agency market and marketable limit orders be exposed for fifteen seconds to all Approved Dealers[3] before being formatted into an Intermarket Trading System (''ITS'') outbound commitment to trade. The text of the proposed rule change is available at the Office of the Secretary, the CSE and 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 IV below. The CSE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* CSE Rule 11.9(a)(4) (defining the term ''Approved Dealer''.

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

1. Purpose

The purpose of this proposed rule change is to eliminate the Exchange requirement that market and marketable limit orders be exposed for fifteen seconds (the ''Additional Probe'' or ''Additional Probing Requirement'') to all Approved Dealers[4] before being formatted as an ITS outbound commitment to trade. The Operating Committee of the Intermarket Trading System (the ''ITS Committee'' or ''ITSOC'') imposed the Additional Probing Requirement, codified as CSE Rules 11.9(o)(2) and 11.9(o)(3), as a condition for implementing an automated interface with ITS in 1985.[5] The ITS Committee claimed that such an Additional Probe was necessary because the CSE systems would be submitting computer generated commitments to ITS in lieu of using ITS stations located on an exchange floor. The ITSOC's concern was that such a practice would turn ITS into an order routing mechanism on behalf of CSE Members. However, the CSE maintains that the Additional Probing Requirement is an unfair anticompetitive burden upon the CSE because (1) the ITS Plan imposes no such systemic Additional Probing Requirement upon all ITS Participants; (2) the CSE ensures that it satisfies the ITS Plan's restrictions on automated routing practices by operating within the imposed formula restrictions; and (3) the ITS Committee has voted to accept the computer generated commitments of the Pacific Exchange in combination with Archipelago, LLC (''PCX/ARCA'') without an Additional Probing Requirement.

The CSE believes that the imposition of the extraordinary Additional Probing Requirement upon the CSE has always been an unreasonable condition for automated participation in the ITS Plan. The ITS Plan itself does not impose specific Additional Probing Requirements for any ITS Participant, but instead states that ITS Participants should not automatically reroute orders to other ITS Participant markets without first making reasonable efforts to probe the market and achieve satisfactory execution in their own market. Section 8(a)(iv) (''Automated Generation of Commitments'')[6] of the ITS Plan provides that ITS Participants should not routinely use ITS as an order delivery system to reroute a substantial portion of orders to ITS when those orders were originally sent to another Participant market for execution. As section 8(a)(iv) of the ITS Plan requires, ''* * * most orders received within the market of an Exchange Participant are expected to be executed within that market.'' CSE would not violate section 8(a)(iv) without the Additional Probe.

In the CSE's electronic market environment, the CSE represents that every order entering its National Securities Trading System (''NSTS'') is exposed to all open interest on the Exchange. CSE Designated Dealers, in fulfilling their duties as specialists, display their best bids and offers and customer limit orders as required. Unlike in 1986 when the ITS Committee imposed the Additional Probing Requirement, the CSE believes that the Commission's Limit Order Display Rule ensures that any agency interest in a given security is displayed in accordance with the Rule, and therefore subject to execution against contra-side interest. The CSE believes that its electronic market fully complies with section 8(a)(iv) of the ITS Plan. Moreover, with the CSE continuing to be subject to the ITS formula restrictions contained in section 8(e)(iv) of the ITS Plan, the CSE believes that the Additional Probe requirement is a redundant impediment that imposes anti-competitive restrictions on the CSE, while providing little, if any, support to the policies expressed in section 8(a)(iv) of the ITS Plan. The ITS Committee itself has supported this position in a recent action, unanimously approving the 18th Amendment to the ITS Plan.

As part of the approval process for the proposed 18th Amendment to the ITS Plan, which incorporates the configuration of the Pacific Exchange—Archipelago, LLC merger into the ITS Plan, the ITS Committee determined that PCX/ARCA would not be required to implement an Additional Probing Requirement despite the fact that PCX/ARCA computer generates orders into ITS commitments in a manner substantially similar to that of CSE.[7]

[4] *Id.*

[5] The ITS Committee also imposed a formula restriction on CSE outbound commitments, as well as the requirement that all CSE rule filings be submitted for review by the ITS Committee before filing with the Commission.

[6] *See* Section 8(a)(iv) of the ITS Plan. On November 3, 2000, the Commission approved the Fifteenth Amendment to the ITS Plan, which the ITSOC, among other things, relabeled section 8(a)(v) as section 8(a)(iv). *See* Securities Exchange Act Release No. 43520 (Nov. 3, 2000), 65 FR 68165 (Nov. 14, 2000).

[7] On April 16, 2001, the Sub-Committee of the ITS Committee met and determined that the Additional Probing Requirement was not a necessary condition for PCX/ARCA to generate

The ITS Committee's rationale was that PCX/ARCA's Facility Formula [8] provided a sufficient mechanism to comply with section 8(a)(iv) of the ITS Plan. This position was reiterated in a recent letter drafted after the ITSOC's approval of the 18th Amendment to the ITS Operating Committee from the Committee's Chairman.[9] In the letter, the Chairman emphasizes that compliance with the operational parameters (*i.e.*, the PCX/ARCA Facility Formula) would satisfy the requirements of section 8(a)(iv) of the ITS Plan.[10] Although CSE believed that its affirmative vote on the 18th Amendment would be in return for ITSOC support for eliminating CSE's probe, the letter states that the New York Stock Exchange's (''NYSE'') proposal [to eliminate CSE's Additional Probe] was predicated on CSE signing on to the same operational parameters as PCX/ARCA.[11]

The CSE fails to see any rational basis for applying an Additional Probe under the CSE formula, while eliminating the Additional Probe under the PCX/ARCA formula.[12] CSE bases this position on the complete reversal of positions by the NYSE and the ITS Committee. The Additional Probe requirement was originally claimed by the NYSE to be based on the methodology used by Participants to generate ITS commitments. The NYSE has long claimed that the probe requirement is paramount to the formula restriction. The NYSE has stated in the past: ''* * * assuming its compliance with the Plan's probing requirement, it would somewhat lessen our concerns that a primary market function of optimark would be to provide access to the primary market. In that event, we would have some flexibility in establishing the ''ceiling'' numbers in the formula.'' [13]

The CSE believes that the ITSOC has now turned the probe and formula requirements on their respective heads. The ITS Committee proposed that if CSE is willing to accept the PCX/ARCA Formula, it may, with the support of the ITSOC, remove its Additional Probe. What this means is that *the methodology for generating ITS commitments is now secondary* to the limitation on outbound commitments. PCX/ARCA is in compliance with section 8(a)(iv) of the ITS Plan because it has agreed to the limitations contained in the PCX/ARCA Formula. Primarily, PCX/ARCA is subject to an immediate cessation of access, not because it modified its systems to impose a probe. Today, the PCX/ARCA proposal is exactly as it was months ago when the NYSE begain its campaign to require PCX/ARCA to institute an Additional Probe.

If PCX/ARCA need not impose a fifteen second delay before computer generating outbound ITS commitments, CSE believes it should be relieved of that obligation as well. The CSE remains willing to comply with the CSE Formula so as to ensure that it does not send a significant portion of its order flow through ITS. Since the imposition of the formula restriction, CSE has never exceeded its formula limitations. However, based on the recent ITSOC action to emasculate the probe requirement, the CSE respectfully proposes that its Additional Probing Requirement is no longer an ITS requirement, and therefore requests Commission approval of its proposed rule change.

In the interest of maintaining efficient trading rules and in order to conform CSE rules to the rules and procedures of other ITS Participants and the ITS Plan itself, the CSE proposes to eliminate the Additional Probing Requirement contained in CSE Rules 11.9(o)(2) and 11.9(o)(3).

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act in general,[14] and furthers the objectives of sections 6(b)(5) in particular.[15] 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, in general, to protect 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 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 CSE has neither solicited nor received written comments on the proposed rule change, not necessary or appropriate in furtherance of the purposes of the Act.

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

Within 35 days of the 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 Exchange.

automated computerized submissions of ITS formatted trades.

[8] Section 8(a)(ii)(B) (''Percentage of ARCA Facility ITS Volume'') of the proposed 18th Amendment to the ITS Plan.

[9] *See* Letter from Mr. Allen Bretzer, Senior Vice President, CHX, to the ITSOC (May 14, 2001).

[10] *Id.*

[11] *Id.* CSE Rejected the NYSE's proposal because the PCX/ARCA Facility Formula, designed to accommodate PCX/ARCA's market structure, failed to provide a ''period to cure.'' A period to cure is a period of time during which an ITS Participant that has violated the formula restrictions may take appropriate measures to address such violations without being subject to immediate prohibition of ITS use. Immediate cessation of ITS access is unacceptable to the CSE market model and is not contemplated by CSE's current forumla restrictions.

[12] As noted above, the most significant difference between the two formulae is that PCX/ARCA's formula does not provide a period to cure. Apparently, the NYSE will not require an Additional Probe as long as it can ''pull the plug'' on a National Market System participant should such participant violate the PCX/ARCA formula.

[13] *See* letter from Mr. James E. Buck, Senior Vice-President, NYSE, to mr. Jonathan Katz, Secretary,

All submissions should refer to File No. SR–CSE–2001–02 and should be submitted by July 11, 2001.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–15530 Filed 6–19–01; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3346]

State of Kentucky

Laurel County and the contiguous counties of Clay, Jackson, Knox, McCreary, Pulaski, Rockcastle and Whitley constitute a disaster area due to damages caused by severe storms and tornadoes that occurred on June 2, 2001. Applications for loans for physical damage may be filed until the close of business on August 10, 2001 and for economic injury until the close of business on March 11, 2002 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

For Physical Damage

Homeowners With Credit Available Elsewhere: *6.625%*

Homeowners Without Credit Available Elsewhere: *3.312%*

Businesses With Credit Available Elsewhere: *8.000%*

Businesses and Non-Profit Organizations Without Credit Available Elsewhere: *4.000%*

Others (Including Non-Profit Organizations) With Credit Available Elsewhere: *7.125%*

For Economic Injury

Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere: *4.000%*

The number assigned to this disaster for physical damage is 334611 and for economic injury the number assigned is 9L8500.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 11, 2001.

John Whitmore,

Acting Administrator.

[FR Doc. 01–15454 Filed 6–19–01; 8:45 am]

BILLING CODE 8025–01–U

[16] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3348]

State of Louisiana

As a result of the President's major disaster declaration on June 11, 2001, I find that the following Parishes in the State of Louisiana constitute a disaster area due to damages caused by Tropical Storm Allison occurring on June 5, 2001 and continuing: Ascension, Assumption, East Baton Rouge, Iberville, Lafayette, Lafourche, Livingston, St. Martin, Terrebonne and Vermilion Parishes. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on August 10, 2001, and for loans for economic injury until the close of business on March 11, 2002 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Fort Worth, TX 76155.

In addition, applications for economic injury loans from small businesses located in the following contiguous Parishes may be filed until the specified date at the above location: Acadia, Cameron, East Feliciana, Iberia, Jefferson, Jefferson Davis, Pointe Coupee, St. Charles, St. Helena, St. James, St. John The Baptist, St. Landry, St. Mary, Tangipahoa, West Baton Rouge and West Feliciana Parishes in Louisiana.

The interest rates are:

For Physical Damage

Homeowners With Credit Available Elsewhere: *6.625%*

Homeowners Without Credit Available Elsewhere: *3.312%*

Businesses With Credit Available Elsewhere: *8.000%*

Businesses and Non-Profit Organizations Without Credit Available Elsewhere: *4.000%*

Others (Including Non-Profit Organizations) With Credit Available Elsewhere: *7.125%*

For Economic Injury

Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere: *4.000%*

The number assigned to this disaster for physical damage is 334808 and for economic injury the number assigned is 9L8800.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 12, 2001.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 01–15453 Filed 6–19–01; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3345]

State of West Virginia: Amendment #1

In accordance with a notice received from the Federal Emergency Management Agency, dated June 11 2001, the above-numbered Declaration is hereby amended to include Cabell, Clay, Lincoln, Mason, McDowell, Mingo, Roane, Summers, and Wayne Counties in the State of West Virginia as disaster areas caused by flooding, severe storms, and landslides beginning on May 15, 2001 and continuing.

In addition, applications for economic injury loans from small businesses located in Braxton, Calhoun, Greenbrier, Monroe and Wirt Counties in the State of West Virginia; Buchanan in the State of Virginia; Boyd, Martin, Lawrence and Pike Counties in the State of Kentucky; and Gallia, Lawrence and Meigs Counties in the State of Ohio may be filed until the specified date at the previously designated location. Any counties contiguous to the above named primary counties and not listed here have been previously declared.

The economic injury numbers assigned are 9L8900 for Kentucky and 9L9000 for Ohio.

All other information remains the same, i.e., the deadline for filing applications for physical damage is August 2, 2001, and for loans for economic injury is March 4, 2002.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 12, 2001.

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 01–15452 Filed 6–19–01; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Pub. L. 104–13 effective October 1, 1995, The Paperwork Reduction Act of