

Commission believes that accelerated approval will enable the Exchange to move to its new Floor with minimal disruptions in trading.<sup>7</sup>

#### V. 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, N.W., Washington, D.C. 20549. Copies of the submissions, 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 at the Commission's Public Reference Room in Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office at the above-mentioned self-regulatory organization. All submissions should refer to File No. BSE-98-10 and should be submitted by January 8, 1999.

#### VI. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (SR-BSE-98-10), hereby is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40782; File No. SR-CSE-98-03]

#### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Cincinnati Stock Exchange, Inc. Regarding Regulatory Cooperation

December 11, 1998.

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 October 26, 1998, 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. 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 Exchange hereby proposes to amend its disciplinary jurisdiction rules to provide explicitly for regulatory cooperation by exchange members in connection with certain investigations and proceedings initiated by other self-regulatory organizations. The text of the proposed rule change is available at the Office of the Secretary, 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 IV 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

Currently, Chapter VIII, Rule 8.2 of the Exchange's Rules requires a member and persons associated with a member to appear and testify, and to respond in writing to interrogatories and to furnish documentary materials and other information requested by the Exchange in connection with: (i) an investigation initiated pursuant to paragraph (a) of Rule 8.2, or (ii) a hearing or appeal conducted pursuant to Chapter VIII or preparation by the Exchange in anticipation of such a hearing or appeal. While the Exchange believes that the current rule provides adequate authority to require a member and persons associated with a member to provide information to other regulatory

organizations, the Exchange believes that clarifying this provision to expressly provide for such information is desirable, especially because other self-regulatory organizations have recently amended their rules to clarify their information-sharing authority.<sup>3</sup>

The proposed rule change would expressly provide that no member or person associated with a member or other person or entity subject to the jurisdiction of the Exchange shall refuse to appear and testify before another exchange or other self-regulatory organization in connection with a regulatory investigation, examination or disciplinary proceeding, or refuse to furnish documentary materials or other information, or otherwise impede or delay such investigation, examination or disciplinary proceeding if the Exchange requests such information or testimony in connection with an inquiry resulting from an agreement entered into by the Exchange and another self-regulatory organization for the sharing of information and other forms of mutual assistance, including but not limited to members and affiliate members of the Intermarket Surveillance Group.<sup>4</sup> The proposed rule change would explicitly provide that the Exchange may enter into agreements with domestic and foreign self-regulatory organizations providing for the exchange of information and other forms of mutual assistance for market surveillance, investigative, enforcement or other regulatory purposes. The requirements of the proposed rule would apply regardless of whether the Exchange has initiated a formal investigation or disciplinary proceeding, so long as the Exchange has been notified of the request and then requests in writing that the person or entity provide the information requested.

The proposed rule change would also provide that any person or entity required to furnish information or testimony pursuant to the new rule shall be afforded the same rights and procedural protections as that person or entity would have if the Exchange had

<sup>3</sup> See, e.g., Securities Exchange Act Release Nos. 39557 (Jan. 16, 1998), 63 FR 3940 (Jan. 27, 1998) (notice of filing and immediate effectiveness of SR-CHX-97-33); and 35646 (April 25, 1995), 60 FR 21227 (May 1, 1995) (order approving SR-PSE-95-02).

<sup>4</sup> The Intermarket Surveillance Group ("ISG") is an organization of securities industry self-regulatory organizations formed in 1983 to coordinate and develop intermarket surveillance programs designed to identify and combat fraudulent and manipulative acts and practices. To promote its purposes, members agree to exchange such information as is necessary for ISG members to perform their self-regulatory and market surveillance functions.

<sup>7</sup> In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</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.

initiated the request for information or testimony.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general, and furthers the objectives of Section 6(b)(5)<sup>5</sup> 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, in general, to protect investors and the public interest. Specifically, the proposed rule change will foster regulatory cooperation among self-regulatory organizations and thereby promote better regulated and fairer markets.

### *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 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

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 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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 principle office of the CSE. All submissions should refer to File No. SR-CSE-98-03 and should be submitted by [insert date 21 days from the date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40784; File No. SR-NASD-98-44]

### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Enhanced Supervision of Unregistered Persons Performing Limited Marketing Activities**

December 11, 1998.

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 July 6, 1998, the National Association of Securities Dealers, Inc. ("NASD" or "Association") through its wholly-owned subsidiary, the NASD Regulation, Inc. ("NASDR") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASDR. On December 2, 1998, the NASDR submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit

<sup>6</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.

<sup>3</sup> See Letter from Gary L. Goldsholle, Assistant General Counsel, NASDR, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated November 30, 1998 ("Amendment No. 1"). In Amendment No. 1, the NASDR proposes to amend its filing by deleting its reference to the use by member firms of third-party telemarketing firms for limited marketing activities.

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 NASDR is proposing to amend Rule 1060 and create a new Interpretative Material, IM-3010, to codify existing practice by exempting from registration persons whose securities business is limited to certain limited marketing activities and specify supervisory requirements for members concerning such unregistered persons. Below is the text of the proposed rule change. Proposed new language is in *italics*.

### **1060. Persons Exempt From Registration**

(a) The following persons associated with a member are not required to be registered with the Association:

- (1) persons associated with a member whose functions are solely and exclusively clerical or ministerial;
- (2) persons associated with a member who are not actively engaged in the investment banking or securities business;

(3) persons associated with a member whose functions are related solely and exclusively to the member's needs for nominal corporate officers or for capital participation; and

(4) persons associated with a member whose functions are related solely and exclusively to:

(A) effecting transactions on the floor of a national securities exchange and who are registered as floor members with such exchange;

(B) transactions in municipal securities, except as provided in Rule 1110 hereof, or

(C) transactions in commodities; and  
(5) *persons associated with a member whose investment banking or securities business is limited to marketing activities through the telephone or other electronic communications media for the following:*

- (A) *extending invitations to firm-sponsored events at which any substantive presentations and account or order solicitation will be conducted by appropriately registered personnel;*
- (B) *inquiring whether the prospective or existing customer wishes to discuss investments with a registered person; and*

(C) *inquiring whether the prospective or existing customer wishes to receive investment literature from the firm.*

*In connection with subparagraphs (A), (B) and (C), unregistered persons shall be permitted to mention the products and services generally available from*

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