

shareholders will state that an exemptive order has been granted pursuant to sections 6(c) and 6(e) of the Act and that applicant and other persons, in their transactions and relations with applicant, are subject to sections 9, 17(a), 17(d), 17(e), 17(f), 36 through 45, and 47 through 51 of the Act, and the rules thereunder, as if applicant were a registered investment company, except insofar as permitted by the order requested hereby.

3. Notwithstanding sections 17(a) and 17(d) of the Act, an affiliated person (as defined in section 2(a)(3) of the Act) of applicant may engage in a transaction that otherwise would be prohibited by these sections with applicant:

(a) if such proposed transaction is first approved by a bankruptcy court on the basis that (i) the terms thereof, including the consideration to be paid or received, are reasonable and fair to applicant, and (ii) the participation of applicant in the proposed transaction will not be on a basis less advantageous to applicant than that of other participants; and

(b) in connection with each such transaction, applicant shall inform the bankruptcy court of (i) of the identity of all of its affiliated persons who are parties to, or have a direct or indirect financial interest in, the transaction;

(ii) the nature of the affiliation; and (iii) the financial interests of such persons in the transaction.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-38181; File No. SR-CSE-97-02]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Cincinnati Stock Exchange, Inc., Relating to Limit Order Exposure Requirements

January 16, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on January 10, 1997, 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 self-regulatory organization. On January 15, 1997, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule

change.¹ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change.

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

The Exchange hereby proposes to amend Rule 12.10 to delete Interpretation .01 concerning customer limit order exposure. The Exchange believes that recently enacted Commission order handling rules have rendered this interpretation obsolete.

The text of the proposed rule change is available at 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 self-regulatory organization 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 self-regulatory organization 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

As part of its order approving the Exchange's preferencing program, on March 29, 1996, the Commission approved Exchange Rule 12.10, Interpretation .01, which sets forth the Exchange's limit order exposure policy. On September 6, 1996, the Commission approved new order handling rules, including new Rule 11Ac1-4, the Limit Order Display Rule.² As a result, the CSE believes that its limit order exposure requirements are now obsolete. The Exchange proposes to delete these obsolete requirements from its Rules, and to insert a reference to the Commission's new limit Order Display Rule. The Exchange believes this

¹ See letter from Adam W. Gurwitz, Director of Legal Affairs, CSE, to Ivette Lopez, Assistant Director, Division of Market Regulation, SEC, dated January 15, 1997. Amendment No. 1 clarifies that Interpretation .01 of Rule 12.10 applies to customer limit orders.

² See Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) ("Order Handling Rules Adopting Release").

reference will assist CSE members in complying with the Commission's new limit order display requirements.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5) that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

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

The proposed rule change will impose no 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 with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. 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 at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. 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 No. SR-CSE-97-02 and should be submitted by February 14, 1997.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

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, with the

requirements of Section 6(b).³ Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect fraudulent and manipulative acts, and, in general, to protect investors and the public interest.⁴

On September 6, 1996, the Commission adopted new Rule 11Ac1-4 ("Display Rule"), which requires OTC market makers and specialists to display the price and full size of customer limit orders when these orders represent buying and selling interest that is at a better price than a specialist's or OTC market maker's public quote. Moreover, the Display Rule requires OTC market makers and specialists to increase the size of the quote for a particular security to reflect a limit order of greater than *de minimis* size when the limit order is priced equal to the specialist's or OTC market maker's disseminated quote and that quote is equal to the national best bid or offer.⁵

Currently, the Exchange has its own limit order exposure policy, which is set forth in Interpretation .01, Rule 12.10 of the CSE's rules. The Exchange believes that with the adoption of the Display Rule, the requirements in CSE's limit order exposure policy have become obsolete. The Exchange, therefore, proposes to delete these requirements and insert a reference to the Display Rule. The Commission finds that eliminating the current Exchange requirements for exposure of limit orders and referencing the Commission's rule is appropriate and will assist CSE members to comply with the new obligations for handling limit orders under the federal securities laws.

Based on the above, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act, to accelerate approval of the proposed rule change prior to the 30th day of the publication of this notice in the Federal Register. Moreover, the Commission believes that it is appropriate to accelerate approval of the proposed rule change so that the Exchange may accurately reflect in its rules by January 20, 1997, the effective date of the Order Handling Rules, the new obligations of its members.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁶ that the proposed rule change (SR-CSE-97-020) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Jonathan G. Katz,
Secretary.

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[Release No. 34-38180; File No. SR-NASD-96-50]

**Self-Regulatory Organizations;
National Association of Securities
Dealers, Inc.; Order Granting
Accelerated Temporary Approval and
Notice of Filing and Accelerated
Approval of Amendment No. 1 of
Proposed Rule Change Relating to
Amendments to the NASD's Excess
Spread Rule Applicable to Market
Maker Quotations Through July 1, 1997**

January 16, 1997.

I. Introduction

On December 16, 1996, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")¹ and Rule 19b-4 thereunder.² The NASD proposed to amend NASD Rule 4613(d) on a pilot basis through January 31, 1998, to provide that a registered market maker in a security listed on The Nasdaq Stock Market ("Nasdaq") shall be precluded from being a registered market maker in that issue for twenty business days if its average spread in the security over the course of any full calendar month exceeds 150 percent of the average of all dealer spreads in such issue for the month.³

Notice of the proposed rule change was published in the Federal Register.⁴ No comments have been received in response to the Commission release.

Subsequent to publication of the NASD filing, on January 9, 1997, the NASD filed with the Commission Amendment No. 1, which proposes to shorten the length of the pilot period

from January 31, 1998, to July 1, 1997.⁵ This order approves the proposed rule change, including Amendment No. 1, on an accelerated basis.

II. Description

NASD Rule 4613(d), which is commonly known as the NASD's "excess spread rule," presently provides that registered market makers in Nasdaq securities shall not enter quotations that exceed the NASD's parameter for maximum allowable spreads. Specifically, the rule provides that the maximum allowable spread for any Nasdaq security is 125 percent of the average of the three narrowest market maker spreads in that issue ("125 percent test"), provided, however, that the maximum allowable spread shall never be less than 1/4 of a point.⁶

In its filing with the Commission, the NASD stated that the proposed rule change is an attempt to strike a reasonable balance between the need to eliminate any disincentive that the excess spread rule places on firms to improve their quotations and the need to avoid fostering a market environment where registered market makers can maintain inordinately wide spreads and still receive the benefits of market maker status. Under the amendment, a registered market maker will be required to maintain an average spread over the course of any full calendar month equal to or less than 150 percent of the average spread of all market makers in the issue over the course of the month ("150 percent test"). If a market maker fails to satisfy this standard with respect to a particular Nasdaq security, it will be forced to withdraw from market making in that issue for at least 20 business days.

Amended Rule 4613(d) will afford market makers that opportunity to request reconsideration of their withdrawal notices. Requests for reconsideration will be reviewed by the Market Operations Review Committee, whose decisions will be final and

⁵ See Letter from Robert E. Aber, Vice President and General Counsel, Nasdaq, to David Oestreicher, Esq., Division of Market Regulation, SEC, dated January 8, 1997. A copy of this amendment is available for inspection and copying in the Commission's Public Reference Room.

⁶ Unrelated to the excess spread rule, there is also a dealer spread test that is part of the NASD's Primary Market Maker ("PMM") standards that are used to determine the eligibility of market makers for an exemption from the NASD's short sale rule for short sales effected during the course of bona fide market making activity. Specifically, the market maker spread component of the PMM standards provides that a market maker must maintain a spread no greater than 102 percent of the average dealer spread. The NASD recently filed a proposed rule change related to the PMM standards. See Securities Exchange Act Release No. 38091 (December 27, 1996), 62 FR 778 (January 6, 1997).

¹ 15 U.S.C. § 78s(b)(2).

² 17 CFR 200.30-3(a)(12).

³ 15 U.S.C. § 78s(b)(1).

⁴ 17 CFR 240.19b-4.

⁵ The NASD requested accelerated approval of its proposed rule change.

⁶ Securities Exchange Act Release No. 38089 (December 27, 1996), 62 FR 436 (January 3, 1997).

³ 15 U.S.C. § 78f(b).

⁴ In approving these rules, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. § 78c(f).

⁵ See *supra* note 2.