Index warrants at the Exchanges and of the securities of which the DAX Index is composed. As a result, the Commission believes that the trading of DAX Index warrants by the Exchanges in the absence of comprehensive surveillance sharing agreements between the Exchanges and the relevant German entity(ies) does not raise any significant regulatory concerns.

Similarly, the Commission believes that the commenters' concerns over the FSE's proprietary interest in the DAX Index and the DAX name do not preclude the Commission from approving the proposed rule changes. Specifically, to the extent that the commenters' argument raises a claim of misappropriation or infringement of a protected property right, the Commission believes it is inappropriate for the Commission to attempt to resolve these issues in a proceeding involving the approval of an exchange's proposed rule change under the federal securities laws. To take such delaying action whenever a third party claim is asserted could stifle Commission review of new products proposed by self-regulatory organizations. The plain language of the U.S. securities laws does not suggest that Congress intended that the Commission attempt, in the context of an approval proceeding for a securities product, to resolve intellectual property right claims that can be pursued elsewhere.35 Accordingly, the commenters' assertions do not form a basis for the Commission to either disapprove or delay approval of the Exchanges' proposals.36

V. Conclusion

For the reasons described above, the Commission finds that the proposed rule changes by the Exchanges are 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(b)(5).³⁷ Specifically, the Commission finds that the listing and trading of warrants based on the DAX Index will serve to promote the public interest and help to remove

impediments to a free and open securities market by providing investors with a means to hedge exposure to market risk associated with the German equity market and provide a surrogate instrument for trading in the German securities market.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,³⁸ that the proposed rule changes (File Nos. SR–Amex–94–55 and SR–CBOE–95–01), are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³⁹

Jonathan, G. Katz,

Secretary.

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[Release No. 34–36092; File No. SR–CSE–95–03, Amendment No. 1]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by The Cincinnati Stock Exchange, Inc. Relating to Customer Order Executions

August 11, 1995.

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 August 11, 1995, 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. 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 CSE hereby proposes to adopt certain order exposure and limit order protection policies for Exchange Rules 11.9(u) and 12.10.

The text of the proposed rule change is as follows, where additions are *italicized* and deleations are [bracketed].

Rule 11.9(u)

No Change

Interpretations and Policies:

.01 Price Improvement Opportunity

Consistent with his or her agency responsibility to exercise due diligence, a member must comply with the following procedures which provide the opportunity for public agency buy/sell orders to receive a price lower/higher than the disseminated national best offer/bid.

(a) Market Order Exposure—Except under unusual market conditions or if it is not in the best interest of the customer, when the spread between the national best bid and offer is greater than the minimum price variation, a member must either immediately execute the order at an improved price or expose the order on the Exchange for a minimum of thirty seconds in an attempt to improve the price.

.02 Limit Order Protection

Public agency limit orders shall be filled if one of the following conditions occur:

- (a) the bid or offering at the limit price has been exhausted in the primary market (NOTE: orders will be executed in whole or in part, based on the rules of priority and precedence, on a share for share basis with trades executed at the limit price in the primary market);
- (b) there has been a price penetration of the limit in the primary market; or
- (c) the issue is trading at the limit price on the primary market unless it can be demonstrated that such order would not have been executed if it had been transmitted to the primary market or the customer and the Designated Dealer agree to a specific volume related or other criteria for requiring a fill.

In unusual trading situations, a Designated Dealer may seek relief from the above requirements from two Trading Practices Committee members or a designated member of the Exchange staff who would have the authority to set execution prices.

Rule 12.10 Best Execution No Change

Interpretations and Policies

- .01 As part of a member's fiduciary obligation to provide best execution for its customer orders, the member shall expose *on the Exchange* [to the national market system] all or a representative portion of any public agency limit order which is priced either on or between the national best bid and offer, unless:
- (i) such order is immediately executed; or
- (ii) the customer expressly requests that the order not be exposed.

If a representative portion of his or her limit order is executed, a member must treat the remainder of the order as a new order for the purpose of compliance with the Exchange's limit order exposure policy.

³⁵ Congress has enacted an elaborate statutory framework for the establishment, preservation, and protection of intellectual property rights and has established specific federal agencies to administer these laws. Separate state causes of action also may be available to the holders of these proprietary rights, as well as possible recourse to German laws.

³⁶ See Securities Exchange Act Release Nos. 26709 (April 11, 1989), 54 FR 15280 (April 17, 1989) (order approving the listing of index participations by the Amex, CBOE, and Philadelphia Stock Exchange), and 28475 (September 27, 1990), 55 FR 40492 (October 3, 1990) (order approving the trading by the Amex of options on the Japan Index).

³⁷ 15 U.S.C. § 78f(b)(5) (1988).

^{38 15} U.S.C. § 78s(b)(2) (1984).

^{39 17} CFR 200.30-3(a)(12) (1994).