

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹³ that the portion of the proposed rule change (SR-Amex-95-35) amending Amex Rules 904 and 905 is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,

Deputy Secretary.

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Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by Cincinnati Stock Exchange, Inc., Relating to the Definitions of Public and Professional Agency Orders

December 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 November 29, 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 amend the definition of public agency order and professional agency order as follows, with added language in italics and deletions in brackets:

Rule 11.9 National Securities Trading System

(a) No Change.

(1) through (6) No Change.

(7) The term "public agency order" means any order *for an account covered by Section 11(a)(1)(E) of the Securities Exchange Act of 1934* [the account of a person other than a member, an Approved Dealer, or a person who could become an Approved Dealer by complying with this Rule with respect to his use of the System], which is represented, as agent, by a User.

(8) The term "professional agency order" means an order entered by a User as agent for the account of a broker-dealer *or for an account which is not*

covered by Section 11(a)(1)(E) of the Securities Exchange Act of 1934.

(b) through (u) No Change.

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 IV 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

CSE Rule 11.9(I) grants "public agency" orders a special time priority on the CSE, *i.e.*, public agency orders have priority over professional agency orders at the same price. The intent of the proposed rule change is to ensure that the privilege of this super-priority is granted only to those for whom it was originally intended by clarifying the distinction between "public agency" and professional agency" order flow.¹

Paragraph (1)(E) in Section 11(a) of the Act, which addresses certain issues related to trading by Exchange members, segregates for special treatment "any transaction for the account of a natural person, the estate of a natural person, or a trust created by a natural person for himself or another natural person." The New York Stock Exchange ("NYSE") utilizes this definition of public agency business in NYSE Rule 80A, its rule for limiting trading during significant market declines. Specifically, NYSE Rule 80A(e)(iii) defines an "account of an individual investor" as "an account covered by Section 11(a)(1)(E) of the Securities Exchange Act of 1934." The CSE is proposing to incorporate Section 11(a)(1)(E) into its definition of public and professional agency orders. The Exchange believes that it is appropriate to articulate definitions of agency business that are consistent with the general understanding and practice of the securities industry.

¹ The Commission notes that several of the Exchanges' rules, such as its order guarantee and preferencing rules, distinguish between public and professional agency orders. Thus, the proposed rule change would affect certain orders in these contexts as well. See, *e.g.*, CSE Rules 11.9(c) and (u).

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) in particular, in that it is designed to promote just and equitable principles of trade and 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 informed the other Intermarket Trading System participants of its intent to file this rule proposal, and no comments were received.

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 other 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 the 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 forgoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 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 maybe 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 NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CSE. All submissions

¹³ 15 U.S.C. 78s(b)(2) (1988).

¹⁴ 17 CFR 200.30-3(a)(12) (1994).