

Agreement and that the Exchange will comply with the terms of paragraph (b) of rule 17a-7, except as described in the application, paragraphs (c), (d), (e), (f) and (g) of rule 17a-7 and the provisions of rule 17a-8 (as those provisions apply to a merger of an Eligible Unregistered Fund with a registered investment company).

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition: The Exchange will comply with the terms of paragraph (b) of Rule 17a-7, except as described in the application, paragraphs (c), (d), (e), (f) and (g) of Rule 17a-7 and the provisions of Rule 17a-8 (as these provisions apply to a merger of an Eligible Unregistered Fund with a registered investment company).

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-30914 Filed 12-5-02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 67 FR 71599, December 2, 2002.

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

ANNOUNCEMENT OF CLOSED MEETING: Additional Meeting.

The Securities and Exchange Commission held an additional Closed Meeting on December 3, 2002 at 2:30 p.m. The subject matter of that meeting was a regulatory matter bearing enforcement implications.

Commissioner Glassman, as duty officer, determined that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942-7070.

Dated: December 4, 2002.

Jonathan G. Katz,

Secretary.

[FR Doc. 02-31021 Filed 12-4-02; 12:57 pm]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of December 9, 2002:

A Closed Meeting will be held on Tuesday, December 10, 2002, at 10 a.m., and an Open Meeting will be held on Wednesday, December 11, 2002, at 10 a.m., in Room 1C30, the William O. Douglas Room.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(B) and (10) and 17 CFR 200.402(a)(5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

The subject matter of the Closed Meeting scheduled for Tuesday, December 10, 2002 will be: Formal orders of investigation; Institution and settlement of administrative proceedings of an enforcement nature; and Institution and settlement of injunctive actions.

The subject matter of the Open Meeting scheduled for Wednesday, December 11, 2002 will be:

1. The Commission will consider whether to adopt the repeal of Rule 11Ac1-7 under the Securities Exchange Act of 1934. Rule 11Ac1-7 requires a broker-dealer to disclose to its customer when the customer's order for listed options is executed at a price inferior to a better published quote, and to disclose the better published quote available at that time, unless the broker-dealer effects the transaction on an exchange that participates in an approved linkage plan.

2. The Commission will consider whether to propose amendments to Forms N-1A, N-2, N-3, proposed Form N-CSR, and Articles 6 and 12 of Regulation S-X as well as new rule 30b1-4 and new Form N-Q under the Investment Company Act. The proposals would (1) require a registered management investment company to file a schedule of its complete portfolio holdings with the Commission on a

quarterly basis; (2) permit a registered management investment company to include a summary portfolio schedule in reports to shareholders and exempt money market funds from including a portfolio schedule in reports to shareholders, provided that the complete portfolio schedule is filed with the Commission and available to shareholders upon request; (3) require a registered management investment company to include a tabular or graphic presentation of a fund's portfolio holdings in its reports to shareholders; (4) require a mutual fund to disclose in its reports to shareholders fund expenses borne by shareholders during the reporting period; and (5) require a mutual fund to include Management's Discussion of Fund Performance in its annual report to shareholders.

3. The Commission will consider whether to adopt amendments to rule 203A-2(f) under the Investment Advisers Act of 1940 to exempt certain investment advisers that provide advisory services through the Internet from the prohibition on Commission registration.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942-7070.

Dated: December 3, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-31022 Filed 12-4-02; 12:58 pm]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46929; File No. SR-CSE-2002-17]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Cincinnati Stock Exchange, Inc. Relating to an Extension of an Existing Pilot Amending CSE Rule 12.6, Customer Priority, To Require Designated Dealers to Better Customer Orders at the National Best Bid or Offer by Whole Penny Increments

November 27, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and rule 19b-4 thereunder,²

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

notice is hereby given that on November 21, 2002, 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 and II 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 and to grant accelerated approval of the proposed rule change for a pilot period through May 31, 2003.

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

The Exchange proposes to extend the termination date of the pilot that amends CSE rule 12.6, Customer Priority, by adding new Interpretation .02, which requires a CSE Designated Dealer ("Specialist") to better the price of a customer limit order that is held by that Specialist if that Specialist determines to trade with an incoming market or marketable limit order.³ Under the pilot rule, the Specialist is required to better a customer limit order at the NBBO by at least one penny and at a price outside the current NBBO by at least the nearest penny increment. The Exchange is requesting an extension of the pilot, and the exemption letters associated therewith.⁴ The proposed extension of the pilot requires no changes to the Initial Pilot rule text, which is available at the 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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

³ See Securities Exchange Act Release No. 46274 (July 29, 2002), 67 FR 50743 (August 5, 2002) (File No. SR-CSE-2001-06) ("Initial Pilot"). See also Securities Exchange Act Release No. 46554 (September 25, 2002), 67 FR 6276 (October 4, 2002) ("Pilot Extension").

⁴ See letter from Robert L.D. Colby, Deputy Director, Division of Market Regulation ("Division"), Commission, to Jeffrey T. Brown, General Counsel, CSE (July 26, 2002) ("Initial Exemption Letter") and letter from Jeffrey T. Brown, General Counsel, CSE, to Annette Nazareth, Director, Division, Commission (November 27, 2001) ("Initial Exemption Request"). See also letter from Robert L.D. Colby, Deputy Director, Division, Commission, to Jeffrey T. Brown, General Counsel, CSE (September 25, 2002) (amending and extending the Initial Exemption Letter) ("Amended Exemption Letter") and letter from Jeffrey T. Brown, General Counsel, CSE, to Annette Nazareth, Director, Division, Commission (September 18, 2002) ("Amended Exemption Request").

proposed rule change. The text of these statements may be examined at the places specified in item III below. The Exchange 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

The Exchange proposes to amend Exchange rule 12.6⁵ by adding an interpretation to the rule covering the trading of securities in subpenny increments.⁶ New Interpretation .02 to the rule will require a Specialist to better the price of a customer limit order held by the Specialist by at least one penny (for those customer limit orders at the NBBO) or by at least the nearest penny increment (for those customer limit orders that are not at the NBBO) if the Specialist determines to trade with an incoming market or marketable limit order.⁷

The purpose of the new Interpretation is to prevent a Specialist from taking unfair advantage of customer limit orders held by that Specialist by trading ahead of such orders with incoming market or marketable limit orders.

⁵ CSE rule 12.6 provides, in pertinent part, that no member shall (i) personally buy or initiate the purchase of any security traded on the Exchange for its own account or for any account in which it or any associated person of the member is directly or indirectly interested while such a member holds or has knowledge that any person associated with it holds an unexecuted market or limit price order to buy such security in the unit of trading for a customer, or (ii) sell or initiate the sale of any such security for any such account while it personally holds or has knowledge that any person associated with it holds an unexecuted market or limit price order to sell such security in the unit of trading for a customer.

⁶ In conjunction with this proposed rule change, the CSE has requested that the Commission extend the relief provided by the Initial Exemption Letter and the Amended Exemption Letter pursuant to rules 11Ac1-1(e) (17 CFR 240.11Ac1-1(e)), 11Ac1-2(g) (17 CFR 240.11Ac1-2(g)) and 11Ac1-4(d) (17 CFR 240.11Ac1-4(d)) to allow subpenny quotations to be rounded down (buy orders) and rounded up (sell orders) to the nearest penny for quote dissemination for Nasdaq and listed securities. See Letter to Annette Nazareth, Director, Division, Commission, from Jeffrey T. Brown, Senior Vice President & General Counsel, CSE (November 20, 2002) ("Instant Exemption Request"). Concurrent with the instant accelerated approval, the Commission has granted the Instant Exemption Request. See letter from Alden S. Adkins, Associate Director, Division, Commission, to Jeffrey T. Brown, Senior Vice President & General Counsel, CSE (November 27, 2002) ("Instant Exemption Letter").

⁷ Interpretation .01 to rule 12.6 provides that "[i]f a Designated Dealer holds for execution on the Exchange a customer buy order and a customer sell order that can be crossed, the Designated Dealer shall cross them without interpositioning itself as a dealer."

Notwithstanding the fact that a Specialist may price-improve incoming orders by providing prices superior to that of customer limit orders it holds, customers should have a reasonable expectation to have their orders filled at their limit order prices. This expectation should be reflected in reasonable access to incoming contra-side order flow, unless other customers place better-priced limit orders with the Specialist or the Specialist materially improves upon the customer limit order prices (not the customers' quoted prices) it holds.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of section 6(b) of the Act,⁸ in general, and section 6(b)(5) of the Act,⁹ in particular, which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, 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. The Exchange requests that this rule be approved on a pilot basis through May 31, 2003, to be co-extensive with the conditional temporary exemptive relief granted concurrently by the Commission in the Instant Exemption Letter.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. 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

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

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. All submissions should refer to File No. SR-CSE-2002-17 and should be submitted by December 27, 2002.

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 Act and the rules and regulations thereunder applicable to a national securities exchange,¹⁰ and, in particular section 6(b)(5) of the Act.¹¹ As discussed above, through the Instant Exemption Letter, the Division has extended the relief granted by the Amended Exemption Letter. The Commission believes that the proposed rule change should provide protection to customer limit orders in the subpenny trading environment by helping to ensure that such orders will continue to have access to market liquidity ahead of Exchange Specialists in appropriate circumstances.

The Commission finds good cause for approving the proposed rule change on a pilot basis prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that granting accelerated approval to the proposed rule change will allow the Exchange to provide uninterrupted protection to customer limit orders in subpenny increments in Nasdaq securities and expedite the protection of customer limit orders in subpenny increments in listed securities.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹² that the proposed rule change (SR-CSE-2002-17) is hereby approved on an accelerated basis for a pilot period through May 31, 2003.

¹⁰ In granting approval of the proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹¹ 15 U.S.C. 78f(b)(5).

¹² 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02-30887 Filed 12-5-02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46930; File No. SR-DTC-2002-08]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change Relating to Unitary Action Procedures

November 27, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on June 13, 2002, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-DTC-2002-08) as described in Items I, II, III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments from interested persons.

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

DTC proposes to adopt procedures to enable its nominee, Cede & Co., to exercise certain rights as the recordholder of securities on deposit at DTC where Cede & Co. is permitted to act with respect to 100% of the securities on deposit or not act at all under applicable law. (This is known as a "Unitary Action" situation.) When involved in a situation that purports to require a Unitary Action under applicable law, DTC would still attempt to follow the procedures it applies when exercising rights that do not purport to require a Unitary Action.

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

In its filing with the Commission, DTC 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. DTC has prepared summaries set forth in sections A, B,

and C below of the most significant aspects of such statements.²

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

Under DTC's current procedures in situations not involving Unitary Actions for solicitations when an issuer has announced an annual or special shareholders meeting or consent solicitation and where a record date has been established, DTC assigns applicable Cede & Co. voting rights or consenting rights to its participants that have securities credited to their accounts on the record date and issues an omnibus proxy and forwards it to the issuer or trustee. DTC also assists its participants in exercising other rights available to Cede & Co. as the recordholder of securities on deposit at DTC. Examples of the rights that participants may exercise through DTC are the right to dissent and seek an appraisal of stock, the right to inspect a stock ledger, and the right to accelerate a bond. Participants may seek DTC's assistance in exercising such rights on their own behalf or on behalf of their customers. DTC will act in these matters only upon written instructions from participants with securities credited in their DTC free accounts.

When involved in a situation that purports to require a Unitary Action under applicable law, DTC would nevertheless attempt to follow the procedures described in the preceding paragraph. If, for example, a foreign bankruptcy court stated that it would accept votes for approval of a plan of bankruptcy from bondholders holding through DTC from Cede & Co. but only in the form of a 100% yes or no vote or not at all, DTC would attempt to assign its voting rights to its participants or otherwise act in accordance with its participants' instructions.

DTC will not be liable for any losses arising from actions it takes or fails to take in connection with Unitary Actions other than those losses that are directly caused by DTC's gross negligence or willful misconduct.

In Unitary Action situations, DTC may incur unusual expenses (e.g., hiring outside counsel) that are specifically attributable to the securities that are subject to the Unitary Action. Under DTC Rule 20, DTC may charge back to each participant holding a position in Unitary Action security such participant's pro rata share (based on the number of shares or the principal

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² The Commission has modified the text of the summaries prepared by DTC.