

authority having jurisdiction) in excess of \$100,000 from a Non-Utility Business through a competitive bidding processes; and

(4) Approve an allocation methodology whereby profits derived from the marketing to nonaffiliates of products developed by a Regulated Utility and actually used by a Regulated Utility, will be divided evenly between the Regulated Utility responsible for developing the product and the Non-Utility Business responsible for marketing the product after deducting all incremental costs associated with making the product available for sale, including all costs of marketing such product. However, in the event that a product developed by a Regulated Utility to be used in its utility business is not actually so used, and subsequently is marketed by a Non-Utility Business to third parties, such Regulated Utility shall be entitled to recover all of its costs to develop such product before any profits derived from its marketing shall be so divided.

Entergy further proposes that the Commission approve, effective for those services rendered and those assets transferred subsequent to October 31, 1992, the use of other than cost-based pricing for services and transfers of Assets, Data or Intellectual Property, subject to the existence or receipt of requisite Commission authorization in the specific case of any such transfers, and subject further to the terms and conditions of the settlement arrangements. Prior to the time of any such transfer, Entergy and the state regulatory commission(s) having jurisdiction would agree on the consideration to be paid to the particular Regulated Utility by Entergy or its Non-Utility Businesses for the transferred assets. Upon reaching agreement, Entergy would seek any necessary Commission authorization for such transfer, including appropriate exemptions under section 13(b) of the Act.

Finally, GSU, Enterprises and EPI request authority for GSU to provide services to, and receive services from, those respective companies on the same revised terms as the other System Operating Companies.

**Central and South West Services, Inc. [70-8531]**

Central and South West Services, Inc. ("CSWS"), 1616 Woodall Rodgers Freeway, Dallas, Texas 75202, a wholly owned nonutility subsidiary of Central and South West Corporation ("CSW"), a registered holding company, has filed an application-declaration under

sections 9(a) and 10 of the Act and rule 23 thereunder.

CSWS operates an engineering and construction department that provides power plant control system procurement, integration and programming services, and power plant engineering and construction services to associates within the CSW system, including CSW's electric utility subsidiaries and CSW Energy, Inc. CSWS states that, due to changing needs of the CSW system, it is necessary to maintain flexible staffing capabilities and knowledgeable personnel. CSWS also states that the needs of the CSW system for these services change from time to time, and that, as a result, excess resources are sometimes available in its engineering and construction department. CSWS therefore proposes to provide such services to nonassociates at charges to be negotiated between CSWS and such customers. CSWS states that in providing services to nonassociates, it believes it will be serving the public interest as well as most efficiently utilizing its power engineering resources.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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[Release No. 34-35230; File No. SR-NYSE-94-45]

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange, Inc. Relating to Member Organization Facilitation of Customer Stock or Program Orders**

January 13, 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 December 6, 1994, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") 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 11, 1995, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change in order to make certain technical corrections to the text of the proposal.<sup>1</sup> The Commission is

<sup>1</sup> See letter from Donald Siemer, Director, Market Surveillance, NYSE, to Beth Stekler, Attorney,

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 proposed rule change consists of an Information Memorandum ("Memorandum") that states the NYSE's policy regarding member organization facilitation of customer stock or program orders.<sup>2</sup>

**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**

The purpose of the proposed Memorandum is to advise the Exchange's membership of certain activities that the Exchange believes would be inconsistent with just and equitable principles of trade.

The Memorandum describes a situation where a member organization commits to sell securities to a customer, after the close, at the closing price on the Exchange. To position itself to facilitate the transaction, the member organization buys the stock(s) throughout the day, in a proprietary account, assuming the risk of the market. To reduce its risk, the member organization leaves a portion of the order to be executed at the close. The Memorandum states that, if the size of the transaction(s) that the member organization intends to execute at the close can reasonably be expected to impact the closing price(s), the member organization should not buy any stock related to that position "near the close." Whether or not the purchase would be

Division of Market Regulation, SEC, dated January 11, 1995 ("Amendment No. 1").

<sup>2</sup> NYSE Rule 80A defines the term "program trading" as (1) index arbitrage or (2) any trading strategy involving the related purchase or sale of a "basket" or group of 15 or more stocks having a total market value of \$1 million or more.

deemed to be "near the close" would depend on the degree of risk that could reasonably be attributed to the position established by that trade, versus the reasonably anticipated impact the trade at the close would have on the closing price. Generally, however, trades executed after 3:40 p.m. would be considered to be "near the close." The Memorandum notes that the member organization would not be precluded from executing the customer's order on an agency basis at any time, including at or near the close, but cautions that this would not preclude the Exchange from determining that such activity might be a violation of the anti-manipulation provisions of the Act or Exchange rules.

The Memorandum also restates that the Exchange would deem conduct to be inconsistent with just and equitable principles of trade where a member organization effects any transactions in a stock, knowing of the imminent execution of a block, in order subsequently to liquidate the position by participating on the contra-side of the block transaction. The Memorandum also provides that a person should not disclose to any other person trading strategies or customers' orders for the purpose of that person taking advantage of the information for his or her personal benefit or for the benefit of a member organization.

The Memorandum notes, however, that this would not preclude a member organization from soliciting interest to trade with the contra-side of a block in the normal course of engaging in block facilitation activities.

Finally, the Memorandum reminds the Exchange's membership that they are required to establish and maintain procedures reasonably designed to review facilitation activities for compliance with Exchange rules and federal securities laws. It also states that member organizations must ensure that trading strategies engaged in by their proprietary traders to facilitate customers' orders have an economic basis and are not engaged in to mark the close or to mark the value of a position and that before any at-the-close customer orders are transmitted to the Floor, member organizations accepting such orders must exercise due diligence to learn the essential facts relative to these orders.

## 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. The proposed Information Memorandum is consistent with these objectives in that it enhances the Exchange's efforts to educate its membership about practices that the Exchange believes are inconsistent with just and equitable principles of trade.

### 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. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

By no later than February 27, 1995, 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 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 NYSE. All submissions should refer to File No. SR-NYSE-94-45 and should be submitted by February 13, 1995.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Index of Administrator's Decisions and Orders in Civil Penalty Actions; Publication

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of publication.

**SUMMARY:** This notice constitutes the required quarterly publication of an index of the Administrator's decisions and orders in civil penalty cases. The FAA is publishing an index by order number, an index by subject matter, and case digests that contain identifying information about the final decisions and orders issued by the Administrator. Publication of these indexes and digests is intended to increase the public's awareness of the Administrator's decisions and orders and to assist litigants and practitioners in their research and review of decisions and orders that may have precedential value in a particular civil penalty action. Publication of the index by order number, as supplemented by the index by subject matter, ensures that the agency is in compliance with statutory indexing requirements.

**FOR FURTHER INFORMATION CONTACT:** James S. Dillman, Assistant Chief Counsel for Litigation (AGC-400), Federal Aviation Administration, 701 Pennsylvania Avenue NW, Suite 925, Washington, DC 20004; telephone (202) 376-6441.

**SUPPLEMENTARY INFORMATION:** The Administrative Procedure Act requires Federal agencies to maintain and make available for public inspection and copying current indexes containing identifying information regarding materials required to be made available or published. 5 U.S.C. 552(a)(2). In a notice issued on July 11, 1990, and published in the **Federal Register** (55 FR 29148; July 17, 1990), the FAA announced the public availability of several indexes and summaries that provide identifying information about