

body, other than the full Floor Procedure Committee, may appeal to the full Floor Procedure Committee within five days of receiving notice of the action by making a written request. Upon appeal, the full Floor Procedure Committee may increase or decrease the amount of a summary fine or the length of an exclusion from the Exchange. The Floor Procedure Committee, however, may not fine a member in an amount in excess of \$2,500 or exclude a member from the Exchange in excess of five full business days. The decision of the Floor Procedure Committee is deemed final with respect to any action involving no more than a \$100 fine.

By written request, a member may appeal a determination of the full Floor Procedure Committee involving more than a \$100 fine to the Executive Committee. The Executive Committee will review the report of the action as certified by the Secretary unless it decides to open the record for additional evidence. The Executive Committee may increase or decrease the amount of a summary fine or the length of an exclusion after review. The Executive Committee, however, may not fine a member in an amount in excess of \$2,500 or exclude a member from the Exchange in excess of five full business days.

## 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

At present, CHX Rule 3 of Article XII describes the ability of the Exchange's Committee on Floor Procedure to summarily fine *members* and exclude them from the Exchange premises. The purpose of the proposed rule change is to give the Committee on Floor Procedure the same authority over *persons associated with a member*.

#### 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to prevent fraudulent and manipulative acts and practices and to perfect the mechanisms of a free and open market.

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

The Exchange 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

No written comments were either solicited or 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 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-CHX-95-5

and should be submitted by April 3, 1995.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95-6086 Filed 3-10-95; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-35448; File No. SR-CSE-95-03]

## Self-Regulatory Organization; Notice of Filing of Proposed Rule Change by the Cincinnati Stock Exchange, Inc. Relating to Preferring of Agency Orders by Approved Dealers

March 7, 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 March 1, 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 permanently adopt Exchange Rule 11.9(u) and related portions of Rule 11.9(a) and (m). The rules were approved by the Commission on a pilot basis on February 7, 1991, and have been in effect since then.<sup>1</sup> The current pilot expires May 18, 1995.

The Exchange is also requesting that, in granting permanent approval, the Commission not impose two restrictions related to payment for order flow and the number of securities in which an Exchange specialist may preference. These conditions appear only in the text of certain Commission releases approving and extending the pilot program; they are not part of the text of the Exchange's rules. The text of the proposed rule change is as follows

<sup>1</sup> See, Securities Exchange Act Release Nos. 28866 (February 7, 1991), 56 FR 5854 (February 13, 1991); 29524 (August 5, 1991), 56 FR 38160 (August 12, 1991), 30353 (February 7, 1992), 57 FR 5918 (February 18, 1992); 31011 (August 7, 1992), 57 FR 38704 (August 26, 1992); 32280 (May 7, 1993), 58 FR 28424 (May 13, 1993); 33975 (April 28, 1994), 59 FR 23243 (May 5, 1994); 34493 (August 5, 1994), 59 41531 (August 12, 1994).

whereby the additions are *italicized* and deletions are [bracketed]:

**Rule 11.9 National Securities Trading System**

(a) through (k)—No change.

(l) Public agency orders to buy or sell at a particular price shall, in all cases except execution of such an order pursuant to a limit order guarantee, have priority over all other bids and offers in the System at the same price. Subject to the foregoing condition,

(1) All bids entered in the System shall be queued for execution so that the highest price bid shall be the first to be executed and so that, in the case of bids at the same price, *except in the case of Approved Dealer bids entered pursuant to subparagraph (u)*, the bid entered earliest in time shall be the first to be executed; and

(2) all offers entered in the System shall be queued for execution so that the lowest price offered shall be the first to be executed and so that, in the case of offers at the same price, *except in the case of Approved Dealer [bids] offers entered pursuant to subparagraph (u)*, the offer entered earliest in time shall be the first to be executed.

(m) It shall be the responsibility of each Approved Dealer or other Proprietary Member when trading on the Exchange for his own account or as agent for professional agency orders in round lots of designated Issues to effect such transactions through the System and, in so doing, to yield priority to:

(1) all public agency orders in the System at prices equal to, or better than, his order, bid, or offer; and

(2) all orders, bids and offers of Approved Dealers and other Proprietary Members for their own accounts and as agents for professional agency orders in the System at prices better than his order, bid or offer or at the same price in the event any such orders, bids or offers were entered in the System (i) at an earlier time than his order, bid or offer, or (ii) *in the case of Approved Dealers, for the purpose of trading for their own account against public agency orders which such approved Dealers are representing as agent pursuant to subparagraph (u)*.

(n) through (t)—No change.

(u) *Public agency market and marketable limit orders which an Approved Dealer represents as agent may be preferred to such Approved Dealer in accordance with the price-time and agency/principal priorities set forth in Rule 11.9(l) and (m).*

*Notwithstanding subparagraphs (c) and (n), an Approved Dealer shall be Dealer of the day with respect to orders preferred under this subparagraph (u). Additionally, Designated Dealers shall be allowed to preference their customer order flow that is related to index arbitrage only on plus or zero plus ticks when the Dow Jones Industrial Average ("DJIA") declines by fifty points or more from the previous day's closing value.*

**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 the 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 Exchange proposes to make permanent Rule 11.9(u) and selected portions of Rule 11.9(l) and (m), which were approved by the Commission on a pilot basis in February, 1991. The rules provide an exception to the Exchange's time priority requirements between competing specialists when one specialist is interacting with his or her own customer order flow.

On the New York Stock Exchange ("NYSE") and other exchanges, a unitary specialist can, without the price competition of other specialists, internalize the order flow of his or her firm or an affiliated firm. On CSE, however, a competing specialist system limited the ability of a specialist to interact with his or her own order flow. Therefore, in order to provide the same advantage which specialists on other exchanges have vis-a-vis their own customer order flow, the CSE modified its time priority rules in order to permit one specialist to step ahead of another specialist at the same price when that first specialist is trading with his or her own customer order. This is the essence of the Exchange's program. All other aspects of a traditional auction market are preserved on CSE: public orders in the CSE book continue to have priority over all competing specialist interest, and a specialist who participates in the program must still provide "best execution" to his customer's order.

CSE's pilot has been operating for over four years and as documented within the Exchange's "Quality of Markets Analysis" dated January 18, 1995,<sup>2</sup> the program has served as a means of improving the Exchange's market. In light of the favorable impact

<sup>2</sup>The report is available in the Commission Public Reference room.

the program has exhibited on CSE's market and CSE's participation in the National Market System, the Exchange is requesting that the rules be approved on a permanent basis.

The Exchange is also requesting that the Commission eliminate two of the three restrictions imposed on the pilot when permanently approving the rules. When the pilot was first approved, Approved Dealers could only execute preferred trades in 60 securities to which they had been appointed. With the approval of subsequent pilot extensions the number has been raised to 350 securities, where it has been capped for over two years. The Exchange believes that this restrictive cap should be removed since it serves no regulatory purpose.

The second restriction, prohibiting preferencing specialists from making direct cash payments for retail orders, conflicts with the practice of specialists on other regional markets. When the CSE program was initially approved, the Commission had not yet reached a determination and was studying what impact the payment for order flow had on the market. Recently, the Commission reached a conclusion and decided that payment for order flow should be addressed through enhanced disclosure requirements to make investors aware of how their orders were handled. CSE specialists must abide by these disclosure standards just as their counterparts on other markets. On the other hand, CSE specialists currently have the additional restrictions that prohibits payment for order flow. The Exchange believes that this restriction is now unnecessary in light of the Commission's decision.

The third restriction addresses trading when the Dow Jones Industrial Average declines by more than fifty points from the previous day's closing value. The Exchange has included this restriction as part of paragraph (u).

2. Statutory Basis

The CSE believes that 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 will promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system as required by Section 6(b)(5).

*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*

On February 10, 1995, the Exchange requested comments from the participants of the Intermarket Trading System ("ITS") pursuant to Section 8(e)(iii) of the ITS Plan. On February 17, 1995, the NYSE submitted a brief comment letter in which they had only one substantive and one procedural comment. The NYSE believes that the CSE mischaracterized the functioning of NYSE specialists and misapplied the term "internalize" within the Statement of Purpose of the filing. The NYSE contends that the term "internalize" is inapplicable to the NYSE. The CSE, within the Statement of Purpose, states "On the NYSE and other exchanges, a unitary specialist *can* (emphasis added), without the price competition of other specialists, internalize order flow of his or her firm or an affiliated firm."

Regarding the procedural comment, the NYSE states that the CSE has not summarized or responded in detail to prior comments made on CSE's preferencing pilot. The CSE has not received any comments, prior to this NYSE letter, on either CSE's initial filing proposing preferencing (SR-CSE-90-06, Release No. 34-27910) or any of the six amendments/extensions subsequently approved by the Commission. However, on August 25, 1993, the NYSE took the opportunity to include within their comment letter regarding the Boston Stock Exchange's Competing Specialists proposal (SR-BSE-93-12, Release No. 34-32549), comments on the preferencing pilot at the CSE. The CSE, in a letter to Brandon Becker, Director, Division of Market Regulation dated March 18, 1994, accordingly addressed certain assertions concerning the CSE which appeared in correspondence from the NYSE. The CSE, under separate letter, requested the Secretary to place copies within files SR-CSE-93-03 and SR-CSE-94-01.

**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 longer 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, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CSE. All submissions should refer to File No. (SR-CSE-95-03) and should be submitted by April 3, 1995.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95-6085 Filed 3-10-95; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-35447; File No. SR-MSTC-95-03]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by Midwest Securities Trust Company Relating to the Legal Expert System Fees**

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on January 27, 1995, the Midwest Securities Trust Company ("MSTC") 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 MSTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1988).

**I. Self-Regulatory Organizations Statement of the Terms of Substance of the Proposed Rule Change**

MSTC proposes to waive the fees associated with the Legal Expert System until March 1, 1995.<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, MSTC 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. MSTC has prepared summaries, set forth in section (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*

The purpose of the proposed change is to waive the fees for the Legal Expert System until March 1, 1995.

The text of the proposed rule change is as follows with additions italicized:

MSTC LEGAL EXPERT SYSTEM

Terminal inquiry	
1-2,500 inquiries per month.	\$0.50/inquiry.
2,501-5,000 .....	0.35/inquiry.
5,001-10,000 .....	0.26/inquiry.
10,001 and over .....	0.17/inquiry.

MSTC full legal deposit participants will receive a free inquiry for each legal deposit submitted to MSTC. The free inquiries are only valid in the month the legal deposit is made.

*The above terminal inquiry fees are waived until March 1, 1995.*

The proposed rule change is consistent with Section 17A of the Act in that it provides for the equitable allocation of reasonable fees and other charges among participants using its facilities.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

MSTC does not believe that the proposed rule change will impose a

<sup>2</sup> For a complete description of the Legal Expert System, refer to Securities Exchange Act Release Nos. 33756 (March 11, 1994), 59 FR 13350 [File No. SR-MSTC-94-02] (order approving a rule change regarding the Legal Expert System's fees and a clarification disclaiming any liability on MSTC's part for any misinformation contained in the Legal Expert System) and 35098 (December 13, 1994), 59 FR 65551 [SR-MSTC-94-17] (order modifying the pricing structure of the Legal Expert System).