

facilities aggregating up to \$360 million; (ii) issue notes ("Notes") evidencing borrowing under such new revolving credit facilities; (iii) allow Northeast to guarantee the obligations of Nuclear and Rocky River under such new revolving credit facilities; and (iv) allow NUSCO to act as agent for such new revolving credit facilities.

Declarants now propose to: (i) extend through December 31, 2000 the existing revolving credit agreements pursuant to their terms; and (ii) amend the existing revolving agreements to, as described below—(a) change the margin rate applicable to the determination of the interest rate charged under the credit agreements, and (b) change the facility fees charged in connection with the credit agreements.

Pursuant to the 1992 Order, the interest rate under the Eurodollar interest option equals the Eurodollar Rate (as defined in the 1992 Order) plus a certain margin rate ("Margin"). The Margin for each Borrower varies, depending on the debt ratings provided by Moody's Investors Service Inc. and Standard and Poor's Corporation. Currently under the credit agreement, the Margin cannot exceed 0.625% for loans made at CL&P and WMECO and 0.75% for loans made to Northeast, Holyoke, Nuclear, and Rocky River. The Declarants request the flexibility to increase or decrease the Margins under the credit agreements from time to time during the term of the credit agreements, provided that the Margins will not exceed 1%.

The initial credit agreement facility fees under the 1992 Order equaled 0.2% per annum for the three-year credit agreement and 0.135% per annum for the 364-day credit agreements. The Declarants propose to increase either or both credit agreement facility fees by not more than 10 basis points during the term of the credit agreements if such an increase is needed to respond to changing market conditions.

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

Jonathan G. Katz,

Secretary.

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[Release No. 34-36324; File No. SR-CSE-95-07]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Cincinnati Stock Exchange, Inc., Relating to the Preferecing of Public Agency Market and Marketable Limit Orders by Approved Dealers and Other Proprietary Members

September 29, 1995.

I. Introduction

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 22, 1995, the Cincinnati Stock Exchange, Inc. ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change, and on September 28, 1995, Amendment No. 1 thereto,³ as described in Items 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.

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

The CSE hereby proposes to extend the CSE's pilot program regarding preferencing until March 29, 1996. The pilot was initially approved by the Commission on February 7, 1991, and is currently extended until October 2, 1995.

III. 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 rule filing is to extend the existing pilot program of the Exchange relating to the preferencing of public agency market and marketable limit orders by approved dealers and other proprietary members. The Commission originally approved the pilot on February 7, 1991.⁴ The Commission has subsequently extended the pilot several times.⁵ The Exchange now seeks an extension of the program until March 29, 1996.

2. Statutory Basis

The exchange 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 mechanisms of a free and open market and a national market system.

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 ("ITS") participants of its intention to file this proposal to extend the preferencing pilot through March 29, 1996. The CSE previously solicited comments from other participants on its request for permanent approval.⁶ The proposed extension would continue the program under the same terms and conditions as the existing pilot that was previously commented upon.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions

⁴ See Securities Exchange Act Release No. 28866 (February 7, 1991), 56 FR 5854 (February 13, 1991).

⁵ See Securities Exchange Act Release Nos. 29524 (August 5, 1991), 56 FR 38160 (August 5, 1991); 30353 (February 7, 1992), 57 FR 5918 (February 18, 1992); 31011 (Aug. 7, 1992), 57 FR 38704 (August 26, 1992); 32280 (May 7, 1993), 58 FR 28422 (May 13, 1993); 33975 (April 28, 1994), 59 FR 23243 (May 5, 1994); 34493 (August 5, 1994), 59 FR 41531 (August 12, 1994); 35717 (May 15, 1995), 60 FR 26909 (May 19, 1995).

⁶ See *infra* note 14.

¹ 15 U.S.C. 78s(b)(1) (1988).

² 17 CFR 240.19b-4 (1994).

³ See letter from Robert Ackerman, Vice President, CSE, to Sharon Lawson, Senior Special Counsel, SEC, dated September 28, 1995. Amendment No. 1 amended the request for an extension through June 28, 1996, to an extension through March 29, 1996.

should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., 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 CSE. All submissions should refer to File No. SR-CSE-95-07 and should be submitted by [insert date 21 days from date of publication].

V. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

A. Description

The CSE is an electronic exchange that uses multiple competing dealers rather than a single specialist. CSE members transmit orders, make markets, and receive executions and reports through remote terminals or computer interfaces from around the country. The preferencing program permits CSE dealers to retain and execute their internal order flow at the prevailing ITS best bid or offer ("ITS/BBO"), provided that there are no public agency limit orders on the CSE's National Securities Trading System ("NSTS") limit order book at that price or better. To this end, the preferencing program permits CSE dealers to internalize order flow by eliminating price and time priority between CSE dealers, thereby enabling preferencing dealers to interact with public market and marketable limit orders they represent as agent.

Specifically, the preferencing program gives preferencing dealers priority over same-priced (or superior-priced) professional agency or principal orders entered prior in time when interacting with a public order it represents as agent.⁷ The dealer may interact with such orders either by (1) taking the contra-side position on the trade as principal ("paired order trade"), or (2) crossing the order with another customer order it represents as agent ("agency cross").⁸

By way of example, if dealer A on the CSE is quoting at the ITS/BBO, dealer B can still internalize its order flow (even if he is not quoting at the ITS/BBO so long as dealer B executes the order at the ITS/BBO (or better) and there is no contra-side public agency order in NSTS at that price. If there is a public agency limit order in NSTS with priority, however, NSTS will automatically break the cross and match the incoming public agency order with the public limit order on the CSE book. The system rejects the CSE dealer's principal side of the attempted cross or, in the case of an attempted public agency cross, rejects the agency order required to yield priority to the order that was on the NSTS book.

In approving the initial preferencing program pilot, and subsequent extensions and expansions, the Commission imposed certain limitations and requirements on its operation. These conditions limit the number of issues in which a preferencing dealer may be registered to 350; require the Exchange to provide certain information to the Commission; prohibit preferenced trading for index arbitrage purposes when certain "circuit breakers" are in effect;⁹ and prohibit a dealer from making cash payments for order flow that it preferences to itself.

The CSE proposes to extend the preferencing program pilot through March 29, 1996.

B. Discussion

After considering carefully the data and comments received on the CSE's preferencing program, the Commission finds that the CSE's proposal to extend its preferencing pilot program to March 29, 1996, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁰ which requires that the rules of an exchange be designed to promote just and equitable principles of trade, prevent fraudulent

system at the ITS/BBO, which is matched with an incoming contra-side market order. For example, if the market is 20 bid—20 $\frac{1}{8}$ asked, and a dealer has a limit order to buy at 20, an incoming market sell order will be matched with that limit order because the dealer may not trade for its own account ahead of its own customer limit order. See CSE Rule 12.6(b).

⁹Specifically, the index arbitrage restriction permits preferencing dealers 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. See Securities Exchange Act Release No. 28866, *supra* note 4.

¹⁰ 15 U.S.C. § 78f(b)(5) (1988).

and manipulative acts, remove impediments to and perfect the mechanism of a free and open market and a national market system ("NMS"), and in general, to protect investors and the public interest.

In its August 1994 order extending the preferencing program,¹¹ the commission expressed concerns regarding what impact preferencing might have on the quality of the CSE market and the national market system. The Commission enumerated six reporting requirements to be submitted quarterly in order to facilitate evaluation of the CSE's preferencing program. In addition, the Commission required the CSE to submit an analysis detailing how the preferencing program has affected the quality of the CSE's market, including its effect on quote competition, market transparency, depth and liquidity, and improved quotations.¹² Specifically, the Commission instructed the CSE to analyze the effects of the preferencing program on the quality of market making by CSE preferencing dealers, and demonstrate that the preferencing program has resulted in added depth and liquidity to its market and improved quotations. The CSE subsequently filed interim reports with the Commission and submitted its pilot analysis.¹³

The data provided by the CSE attempts to prove that the Exchange's preferencing dealers add to the national market system because, among other things, (1) the average spread of CSE quotes in issues that have only preferencing dealers is $\frac{1}{4}$ point, which is narrower than any other regional exchange for these securities; (2) preferencing dealers are responsible for generating 4% of all quotes that establish a new ITS/BBO, more than twice the percentage of CSE's market share in NYSE-listed stocks; (3) preferencing dealers account for 46% of all ITS inbound orders in those issues that have both preferencing dealers and non-preferencing dealers; and (4) preferencing dealers execute approximately 62% of their orders between the ITS/BBO when the spread is greater than $\frac{1}{8}$ point.

The Commission received several comment letters on the CSE proposal to adopt permanently the preferencing

¹¹ See Securities Exchange Act Release No. 34493, *supra* note 5.

¹² See *id.*

¹³ See letters from David Colker, Executive Vice President and Chief Operating Officer, CSE, to Arthur Levitt, Chairman, SEC, dated January 18, 1995 ("January Report"), and to Jonathan Katz, SEC, dated June 14, 1995 ("June Report") (available to the public in File No. SR-CSE-95-03).

⁷ See CSE Rule 11.9(u).

⁸ The majority of agency crosses are the result of a limit order resident in the dealer's proprietary

pilot, many of which challenged the CSE's statistics.¹⁴ Some of the commenters proffered statistics to support their contention that the CSE merely serves as a means for firms to internalize order flow. Among other things, commenters alleged that (1) over 94% of preferencing dealers' executions are paired order trades; (2) only 4.8% of CSE trades can be characterized as trades between CSE dealers; and (3) CSE quotes are inaccessible to other ITS participants.

The Commission has examined the data provided by the CSE and commenters and believes it would be useful to analyze additional data before making a definitive determination on the pilot. To allow further evaluation of the market structure implications of permanently approving the CSE's preferencing program, the Commission requests that the CSE continue to submit the quarterly reports described in the Commission's previous orders approving extensions of the pilot. The Commission also will collect relevant data on its own to evaluate the pilot.

More importantly, the Commission is interested in exploring whether broader market structure initiatives can address the commenters' concerns regarding order interaction and the effects of preferencing on the NMS in general, and on order execution quality in particular. In this regard, the Commission recently proposed rules that attempt to address, among other things, the order interaction and best execution issues presented by preferencing of order flow.¹⁵ Extension of the CSE pilot will allow the Commission an opportunity to study the implications of the proposals for the CSE's preferencing pilot during the pendency of the rulemaking process.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. The Commission believes that accelerated approval of the proposal is appropriate in order to avoid an interruption to the existing pilot while the Commission continues to collect data and consider broader market structure rules to address internalization.

¹⁴ The Commission received negative comment letters from, among others, the New York Stock Exchange, American Stock Exchange, and Boston Stock Exchange. These and other correspondence received regarding the CSE's request for permanent approval of the pilot program are available to the public in File No. SR-CSE-95-03.

¹⁵ See Securities Exchange Act Release No. 36310 (September 29, 1995).

VI. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2)¹⁶ that the proposed rule change, as amended, is hereby approved on an accelerated basis, and the preferencing pilot is extended through March 29, 1996.

By the Commission.

Jonathan G. Katz,

Secretary.

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[Release No. 34-36311; File No. SR-NASD-95-34]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Temporary Approval of Proposed Rule Change to Extend Certain SOES Rules Through January 31, 1996

I. Introduction

On August 11, 1995, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder.² The NASD proposes to extend through January 31, 1996 certain changes to its Small Order Execution System ("SOES") that were originally implemented in January 1994 for a one-year pilot period ("January 1994 Amended SOES Rules").³ These rules subsequently were modified in January 1995 ("January 1995 Amended SOES Rules")⁴ and further modified in March 1995 ("March 1995 Amended SOES Rules").⁵ The March 1995

¹⁶ 15 U.S.C. § 78s(b)(2) (1988).

¹ 15 U.S.C. § 78s(b)(1) (1988).

² 17 CFR 240.19b-4 (1994).

³ Securities Exchange Act Release No. 33377 (Dec. 23, 1993), 58 FR 69419 (Dec. 30, 1993) (approving the Interim SOES Rules on a one-year pilot basis effective January 7, 1994). See also Securities Exchange Act Release No. 33424 (Jan. 5, 1994) (order denying stay and granting interim stay through January 25, 1994) and Securities Exchange Act Release No. 33635 (Feb. 17, 1994) (order denying renewed application for stay).

⁴ Securities Exchange Act Release No. 35275 (Jan. 25, 1995), 60 FR 6327 (Feb. 1, 1995).

⁵ Securities Exchange Act Release No. 35535 (Mar. 27, 1995), 60 FR 16690 (Mar. 31, 1995).

The March 1995 Amended SOES Rules did not include the two features found in the January 1994 Amended SOES Rules that:

(1) Reduced the maximum size order eligible for SOES execution from 1,000 shares to 500 shares; and

(2) Prohibited short sale transactions through SOES.

The January 1995 Amended SOES Rules continued all of the January 1994 Amended SOES Rules, except for the short sale prohibition and, as

Amended SOES Rules are scheduled to expire on October 2, 1995, and the NASD seeks to extend these until January 31, 1996. Without further Commission action, the SOES rules would revert to those in effect prior to January 1994.

Notice of the proposed rule change appeared in the Federal Register on August 31, 1995.⁶ Eleven comments were received in response to the Commission release. For the reasons discussed below, this order approves the proposed rule change until January 31, 1996.

II. Description of the Current and Prior Proposals

The NASD proposes to extend until January 31, 1996 the March 1995 Amended SOES Rules. Specifically, the NASD proposes to extend until January 31, 1996 changes that:

- (1) Reduce the minimum exposure limit for "unpreferenced" SOES orders from five times the maximum order size to two times the maximum order size, and eliminate the exposure limits for "preferenced" SOES orders; and
- (2) Maintain the availability of an automated function for updating market maker quotations when the market maker's exposure limit has been exhausted (market makers using this update function may establish an exposure limit equal to the maximum order size for that security).

III. Comments

The current proposal attracted eleven comments, eight supporting the proposal and three opposing it. The comments raised issues similar to those raised in connection with previous amendments to the SOES Rules.

Generally, commenters supporting the proposals have argued that the various amendments to the SOES Rules have been necessary to limit the exposure of market makers to multiple SOES executions, which benefits retail investors by producing narrower spreads and more liquid markets. Some commenters supporting the proposal also argued for additional limits on market makers' SOES exposure, such as a reduction in the SOES maximum order size to 500 shares.

Commenters opposed to the proposals have argued that the statistical and market quality data cited by the NASD⁷ in support of the various amendments to the SOES Rules are not sufficient to

noted, the March 1995 Amended SOES Rules continued only the first two January 1994 Amended SOES Rules.

⁶ Securities Exchange Act Release No. 36154 (Aug. 25, 1995), 60 FR 45502 (Aug. 31, 1995).

⁷ See *infra* notes 16-20 and accompanying text.