compensation based upon Exchange transactions or breach of contract claims with a nexus to Exchange business) may be appropriate for arbitration at the Exchange. Furthermore, Exchange Rule 181.(c) provides a mechanism for parties to challenge the appropriateness of submitting a claim to arbitration.

In deference to the federal policy favoring alternate dispute resolution and to accommodate those members and associated persons who may choose to resolve a discrimination claim through arbitration, proposed paragraph (b) of Interpretation .03 under Exchange Rule 18.1 provides that the Exchange may make its arbitration facilities available for the resolution of such claims if the parties mutually agree to arbitrate the claim after the claim has arisen. As with all claims filed with the CBOE, a decision to allow a discrimination claim to proceed under Exchange rules would be made by the Director of Arbitration, which is subject to Board of Directors' review, and would be based upon a finding that a claim has at least an indirect nexus to Exchange business. For example, the Exchange may make its forum available for the resolution of a claim involving discrimination, upon the mutual request of the parties, if the claim involves an allegation that the conduct has an effect upon CBOE trading activities, if the primary business of the parties is trading or facilitating exchange transactions, or if the member and associated person are only members of the CBOE.[12]

CBOE believes that its policy allowing voluntary, post-dispute agreements to arbitrate is consistent with the EEOC's ''Policy Statement on Mandatory Binding Arbitration of Employment Discrimination Disputes as a Condition of Employment,'' [13] which supports alternate dispute resolution programs that are entered into after a dispute has arisen. This policy also furthers the Exchange policy that allows the parties to an arbitration to mutually agree to alter the arbitration procedures set forth in Chapter XVIII of the Exchange's *Constitution and Rules,* upon the consent of the Director of Arbitration.

[12] The Exchange clarified that the examples provided must still satisfy the ''Exchange business'' requirement. As a result, even if members or associated persons are only members of CBOE, the claim still must have a nexus with Exchange business before the claim could proceed under the Exchange's arbitration program. Telephone conversation between Timothy Thompson, Director-Regulatory Affairs, CBOE, Nancy Nielsen, Assistant Corporate Secretary, CBOE, and Terri Evans, Attorney, Division of Market Regulation, Commission, on February 17, 1999.

[13] EEOC Notice 915.002, issued July 10, 1997.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act,[14] in general, and furthers the objectives of section 6(b)(4) of the Act [15] in particular, in that it is designed to promote just and equitable principles of trade and the protection of investors and the public interest by improving the administration of an impartial arbitration forum for the resolution of disputes between members and persons associated with members.

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.

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

No written comments were solicited or received with respect to the proposed rule change.

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

The foregoing rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange and, therefore, has become effective pursuant to section 19(b)(3)(A)(i) of the Act,[16] and subparagraph (e)(1) of Rule 19b–4 [17] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. 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.[18] Persons making written submissions should file six copies thereof with 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 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 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 CBOE. All submissions should refer to File No. SR–CBOE–99–01 and should be submitted by March 22, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

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[14] 15 U.S.C. 78f.

[15] 15 U.S.C. 78f(b)(4).

[16] 15 U.S.C. 78s(b)(3)(A)(i).

[17] 17 CFR 240.19b–4.

[18] In reviewing this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41082; File No. SR–CSE–99–02]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Cincinnati Stock Exchange, Inc. Relating to a Specialist Revenue Sharing Program

February 22, 1999.

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 February 18, 1999, 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 CSE. 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 proposes to amend the schedule of fees set forth in Exchange Rule 11.10. The text of the proposed rule change is as follows (additions are italicized; deletions are bracketed):

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Rule 11.10 National Securities Trading System Fees

A. Trading Fees.

(a) Agency Transactions. As in the case for Preferenced transactions members acting as an agent will be charged the per share incremental rates as noted below for public agency transactions:

Avg. daily share* volume	Charge per share
1 to 250,000	$0.0015
250,001 to 500,000	0.0013
500,001 to 750,000	0.0009
750,001 to 1,250,000	0.0007
1,250,001 *and higher* [2,000,000]	0.0005

*Odd-Lot Shares Excluded.

(b)–(g) No Change.

(h) Preferenced Transactions. Designated Dealers that are Preferencing transactions are charged for one side of their preferenced transactions and are subject to the incremental rates as noted below:

Avg. daily share* volume	Charge per share
1 to 250,000	$0.0015
250,001 to 500,000	0.0013
500,001 to 750,000	0.0009
750.001 to 1,250,000	0.0007
1,250,001 *and higher* [2,000,000]	0.0005

* Odd-Lot Shares Excluded.

(i) No Change.

(j) Revenue Sharing Program. After the Exchange earns total operating revenue sufficient to offset actual expenses and working capital needs, a percentage of all Specialist Operating Revenue (''SOR'') shall be eligible for sharing with Designated Dealers. SOR is defined as operating revenue which is generated by specialist firms. SOR consists of transaction fees, book fees, technology fees, and market data revenue which is attributable to specialist firm activity. SOR shall not include any investment income or regulatory monies. The sharing of SOR shall be based on each Designated Dealers' pro rata contribution to SOR. In no event shall the amount of revenue shared with Designated Dealers exceed SOR.

(j)–(o) To be renumbered (k)–(p).

* * * * *

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 CSE 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 CSE 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 rule change is to provide an incentive for growth in specialist activity on the Exchange. CSE believes that its strength lies in its ability to operate at significantly lower expense levels than its competitors. To utilize this operating leverage and compete more effectively for order flow, the Exchange proposes to significantly reduce the cost of doing business for specialist firms by means of a quarterly revenue sharing program.

The proposed rule change contemplates the Exchange sharing with specialist firms all or a portion of CSE's Specialist Operating Revenue (''SOR''), after operating expenses and working capital needs have been met. SOR is defined as all operating revenue which is generated by specialists. Such revenue consists of transaction fees, book fees, technology fees, and Consolidated Tape Network A and B market data (''Tape A'' and ''Tape B'') revenue which is attributable to specialist trade activity. All regulatory monies and investment income are excluded from SOR.

Under the proposal, CSE's Board of Trustees would have the authority to determine on an ongoing basis the appropriate amount of SOR to be shared with specialist firms. In making this determination, the Board would be guided first by CSE's objective of offsetting all specialist fees and then by the need to balance the objective of sharing the remainder of SOR with the objective of retaining the financial integrity of the Exchange. To simplify the administration of the revenue sharing program and smooth out monthly expense fluctuations, the program will operate on a quarterly basis. Initially, the Board has determined to share 100% of the first $750,000 in quarterly SOR and 50% of all quarterly SOR over $750,000, after actual expenses have been paid and the budgeted working capital goal has been set aside.

SOR will be shared with specialist firms on a pro rata basis. After the Exchange has accounted for operating expenses and working capital contributions, each specialist firm will receive a percentage of the SOR to be shared which is equal to that specialist firm's percentage contribution to SOR. In no event will the amount of revenue shared with specialist firms exceed SOR. Furthermore, while Tape B revenue is included in SOR, it is excluded from the specialist firm percentage contribution calculation because CSE's current transaction charge on Tape B activity is already zero and the Exchange already has in place a program which shares up to 40% of Tape B revenue with its specialist firms.[3] Finally, the proposed rule

[3] *See* Securities Exchange Act Release No. 39395 (December 3, 1997) 62 FR 65113 (December 10, 1997).

change eliminates the current two-million-share average daily cap on preferencing charges.

The application of the proposed revenue sharing program can be demonstrated by the following example. Assume that the Exchange has SOR in a given quarter of $2 million, that all other operating revenue equals $250,000 during that quarter, that actual quarterly expenses equal $1.5 million, and that the working capital target for the quarter is $250,000. In addition, assume that Specialist Firm #1 contributes $500,000 in quarterly SOR (or 25% of total SOR), Specialist Firm #2 contributes $300,000 (15%), and Specialist Firms #3, #4, and #5 each contribute $200,000 (10%). In this event, $500,000 (*i.e.* $2.25 million minus $1.75 million) would be available for sharing with specialist firms. Specialist Firm #1 would receive $125,000, or 25% of $500,000; Specialist Firm #2 would receive $75,000; and Specialist Firms #3, #4, and #5 would each receive $50,000. In this example, the Exchange would never share more than $2 million with its specialist firms even if actual expenses and working capital needs were less than $250,000.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of section 6(B)(5)[5] in particular, in that it is 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 believes that the proposed rule change will create an incentive for members to bring order flow to the Exchange, thereby increasing competition which, in turn, will enhance the National Market System.

In addition, the Exchange believes the proposed rule change furthers the objectives of section 6(b)(4)[6] in that it is designed to provide for the equitable allocation of reasonable fees among its members. Specifically, the proposal provides for revenue sharing with CSE's specialist firms, who are primarily responsible for the Exchange's financial viability and growth.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f(b)(4).

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

The CSE does not believe that the proposed rule change would 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

Written comments on the proposed rule change were neither solicited nor 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 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 Exchange 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, 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. 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 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 CSE. All submissions should refer to File No. SR–CSE–99–02 and should be submitted by March 22, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41075; File No. SR–NASD–99–4]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Microcap Initiative—Recommendation Rule

February 19, 1999.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 13, 1999, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly-owned subsidiary, NASD Regulation, Inc. (''NASD Regulation'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. 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 Association is proposing new NASD Rule 2315, which requires members to review current financial statements of, and current business information about, an issuer prior to recommending a transaction to a customer in an over-the-counter (''OTC'') equity security. Additionally, the proposed rule change would amend NASD Rule 6740 to permit members to submit a certification to the Association that states that the member has conducted a review of specified information and has fulfilled its obligations under Rule 15c2–11 under the Act[3] for documents that currently reside on the SEC's Electronic Data Gathering and Retrieval System (''EDGAR'') database. Below is the text

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.15c2–11.