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 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-Amex-96–45 and should be submitted by February 3, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegate authority.[6]

[FR Doc. 97–688 Filed 1–10–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38119; File No. SR–CHX–96–16]

Self-Regulatory Organizations; the Chicago Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to the Trading of Nasdaq/NM Securities on the CHX

January 3, 1997.

I. Introduction

On June 14, 1996, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Article XX, Rule 37 and Article XX, Rule 43 relating to the trading of Nasdaq National Market (''Nasdaq/NM'') securities (previously known as NASDAQ/NMS securities) on the Exchange.[3]

The proposed rule change was published for comment in the Federal Register on July 2, 1996.[4] No comments were received on the proposal.

II. Background

On May 4, 1987, the Commission approved certain Exchange rules and procedures relating to the trading of Nasdaq/NM securities on the Exchange.[5] Among other things, these rules made the Exchange's BEST Rule guarantee (Article XX, Rule 37(a)) applicable to Nasdaq/NM securities and made Nasdaq/NM securities eligible for the automatic execution feature of the Exchange's Midwest Automated Execution System (''MAX system'').[6]

1. BEST Rule[7]

Currently, under the BEST Rule, Exchange specialists are required to guarantee executions of all agency[8] market and limit orders for Dual Trading System issues[9] and all agency market orders for Nasdaq/NM securities, from 100 up to and including 2099 shares. Subject to the requirements of the short sale rule,[10] the specialist must fill all agency market orders at a price equal to or greater than the national best bid or best offer (''NBBO''). For all agency limit orders in Dual Trading System issues, the specialist must fill the order if: (1) the NBBO at the limit price has been exhausted in the primary market; (2) there has been a price penetration of the limit in the primary market (generally known as a trade-through of a CHX limit order); or (3) the issue is trading at the limit price on the primary market unless it can be demonstrated that the order would not have been executed if it had been transmitted to the primary market or the broker and specialist agree to a specific volume related to, or other criteria for, requiring a fill.

2. MAX System

The Exchange's MAX system provides for the automatic execution of orders that are eligible for execution under the Exchange's BEST Rule (*i.e.*, agency market orders in securities listed on the NYSE or AMEX and Nasdaq/NM securities, as discussed above), and certain other orders.[11]

The MAX system has two size parameters which must be designated by the specialist on a stock-by-stock basis. Currently, the specialist must set the auto-execution threshold at 1099 shares or greater and the auto-acceptance threshold at 2099 shares or greater. In no event may the auto-acceptance threshold be less than the auto-execution threshold. If the order-entry firm sends an order through the MAX system that is greater than the specialist's auto-acceptance threshold, a specialist may cancel the order within three minutes of it being entered into MAX. If not canceled by the specialist, the order is designated as an open order.[12] If the order-entry firm sends an order through MAX that is less than the auto-acceptance threshold but greater than the auto-execution threshold, the order is not available for automatic execution but is designated in the open order book. A specialist may manually execute any portion of the order; the difference must remain as an open order. If the order-entry firm sends an order through MAX that is less than or equal to the auto-execution threshold, the order is executed automatically.

The MAX system currently provides for a fifteen second delay between the time an agency market order is entered into the MAX system and the time it is automatically executed at the NBBO in

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[6] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] On Dec. 19, 1996, the CHX filed Amendment No. 1 to its proposal. Letter from J. Craig Long, Attorney, Foley & Lardner, to Howard L. Kramer, Associate Director, Division of Market Regulation, SEC, dated Dec. 19, 1996. In Amendment No. 1, the CHX requested that the Commission approve the proposal on a pilot basis for a one year period.

[4] *See* Securities Exchange Act Release No. 37369 (June 25, 1996), 61 FR 34462 (July 2, 1996) (notice of File No. SR–CHX–96–16) (''Notice'').

[5] Securities Exchange Act Release No. 24424 (May 4, 1987), 52 FR 17868 (May 12, 1987) (order approving File No. SR–MSE–87–2). *See* Securities Exchange Act Release Nos. 28146 (June 26, 1990), 55 FR 27917 (July 6, 1990) (order expanding the number of eligible securities to 100); 36102 (August 14, 1995), 60 FR 43626 (August 22, 1995) (order expanding the number of eligible securities to 500).

[6] The MAX system may be used to provide an automated delivery and execution facility for orders that are eligible for execution under the Exchange's BEST Rule and certain other orders. *See* CHX, Art. XX, Rule 37(b).

[7] *See* CHX Manual, Art. XX, Rule 37(a).

[8] The term ''agency order'' means an order for the account of a customer, but shall not include professional orders as defined in CHX, Article XXX, Rule 2, interpretation and policy .04. The Rule defines a ''professional order'' as any order for the account of a broker-dealer, the account of an associated person of a broker-dealer, or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest. *Id*.

[9] According to the Exchange, Dual Trading System Issues are issues that are traded on the CHX, pursuant to unlisted trading privileges, and listed on either the New York Stock Exchange or American Stock Exchange. Telephone conversation on June 5, 1996 between David T. Rusoff, Attorney, Foley & Lardner, and George A. Villasana, Attorney, Division of Market Regulation, SEC.

[10] While the Commission and the NASD have rules that prohibit short sales, under certain conditions, or securities registered on, or admitted to unlisted trading privileges on, a national securities exchange and short sales of securities traded on Nasdaq, there is no rule governing short sales in Nasdaq/NM securities traded on the CHX. *See* 17 CFR § 240.10a–1 and NASD Rule 3350.

[11] A MAX order that fits under the BEST parameters must be executed pursuant to BEST Rules via the MAX system. If the order is outside the BEST parameters, the BEST Rules do not apply, but MAX system handling rules do apply.

[12] If an oversized market or limit order is received by the specialist, he will either reject the order immediately or display it. If the order is displayed, the specialist will check with the order entry broker to determine the validity of the oversized order. During the three minute period, the specialist can cancel the order and return it to the order entry firm, but until it is cancelled the displayed order is eligible for execution. Although these procedures currently exist under CHX rules, the Commission has concerns as to whether the three minute period is necessary and urges the CHX to reduce the time period or otherwise address the necessity of the specialists' discretion during the three minute period. Moreover, the handling of orders by CHX specialists must still comply with the Commission's recently adopted Order Execution Rules (Securities Exchange Act Release No. 37619A (Sept. 6, 1996), 61 FR 48290 (Sept. 12, 1996)) and any subsequently issued interpretations of the Order Execution Rules.

order to provide the specialist with an opportunity to provide price improvement to the order. If, however, the spread between the NBBO in a stock eligible for automatic execution in the MAX system is ⅛ point at the time an order is entered into the MAX system, that order is executed immediately without the fifteen second delay. Non-marketable agency limit orders, subject to the BEST Rule, are automatically filled at the limit price when there is a price penetration of the limit price in the primary market.[13]

III. Description of Proposal

The Exchange proposes to end its requirement that CHX specialists automatically execute orders in Nasdaq/NM securities when the specialist is not quoting at the NBBO.

Under the proposed revisions to the BEST Rule, specialists must continue to accept agency market orders or marketable limit orders, but only for orders of 100 to 1000 shares in Nasdaq/NM securities rather than the 2099 shares limit previously in place.[14] Specialists must accept all agency limit orders in Nasdaq/NM securities from 100 up to and including 10,000 shares for placement in the limit order book. As described below, however, specialists would be required to automatically execute Nasdaq/NM orders only when they were quoting to the NBBO when the order was received.

The proposal requires the specialist to set the auto-executive threshold at 1000 shares or greater for Nasdaq/NM securities. Orders for a number of shares less than or equal to the auto-execution threshold set by the specialist will be automatically executed if the CHX specialist is quoting at the NBBO for the lesser of the size of the order or the specialist's quote. The orders are executed automatically after a fifteen second delay from the time the order is entered into MAX. The size of the specialist's bid or offer will automatically be decremented by the size of the execution. When the specialist's quote is exhausted, the system will generate an autoquote at ⅛ point away from the NBBO for 1000 shares.

When the specialist is not quoting a Nasdaq/NM security at the NBBO, it can elect, on an order-by-order basis, to manually execute orders in that security. If the specialist does not elect manual execution, MAX market and marketable limit orders in that security that are of a size equal to or less than the auto-execution threshold will automatically be executed at the NBBO after a twenty second delay.[15]

Under the proposal, if the specialist elects manual execution, the specialist must either manually execute the order at the NBBO or a better price or act as agent for the order in seeking to obtain the best available price for the order on a marketplace other than the Exchange.[16] If the specialist decides to act as agent for the order, the proposed rule requires the specialist to use order-routing systems to obtain an execution where appropriate. Market and marketable limit orders that are for a number of shares greater than the auto-execution threshold are not subject to these requirements, and may be canceled within three minutes of being entered into MAX or designated as an open order.

IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[17] In particular, the Commission believes the proposal is consistent with the requirements of Section 6(b)(5) that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest. The Commission also believes that the proposal is consistent with Sections 11A(1)(D) and 11A(1)(C) of the Act.

The CHX's proposal to not require automatic execution for Nasdaq/NM securities when the specialist is not quoting at the NBBO, and to allow the specialist to execute the order as agent, is intended to conform CHX specialist obligations to those applicable to OTC market makers in Nasdaq/NM securities, while recognizing that the CHX provides a separate, competitive market for Nasdaq/NM securities. The rules establish execution procedures and guarantees that attempt to provide an execution reflective of the best quotes among OTC market makers and specialists in Nasdaq/NM securities without subjecting CHX specialists to execution guarantees that are substantially greater than those imposed on their competitors.

The Commission does not believe that the Act necessarily requires the CHX to provide automatic execution of orders. Nonetheless, if the CHX chooses to make available an order-routing system to its members, to be consistent with the Act, this system must not be designed in a manner that will result in customer orders receiving executions at prices worse than those reasonably available in the market, which generally would be the NBBO. Otherwise, members could violate their best execution duty to their customers if they used the system. The CHX's proposed modification of its MAX system seeks to ensure that customer orders receive the best prices by requiring specialists, if they do not execute orders automatically at the NBBO or better, at a minimum to represent the orders as agent off the Exchange.

Under these circumstances, CHX Rule 43 requires a specialist to use order-routing systems where appropriate. At present, however, CHX specialists have available only limited order-routing systems. A CHX specialist currently can route orders to Nasdaq market makers only via the telephone or, if the CHX specialist is an NASD member, through Selectnet and SOES.[18] Clearly, a more efficient linkage between the CHX and Nasdaq would better enable CHX specialists to access OTC market makers quickly on a consistent basis.

While operation of the proposed system is not necessarily inconsistent with the duty of CHX specialists to provide best execution of customer orders, the Commission believes that the arrangement in place for specialists to access OTC market makers is not an ideal linkage between two markets on a permanent basis. Consequently, the CHX has represented that it intends to

[13] If, however, the difference between the trade-through price and the last sale price is greater than ¼ point or 1% of the value of the trade-through price, whichever is less, a second print at a trade-through price, which is less than ¼ point or 1% away from the previous trade-through price is necessary before that MAX system will automatically execute the agency limit order.

[14] The 100 to 2099 share auto-acceptance threshold previously in place will only continue to apply to Dually Listed securities.

[15] The CHX has clarified that the twenty second delay is designed, in part, to provide an opportunity for the order to receive price improvement from the specialist's displayed quote. *Id.*

[16] Letter dated Aug. 1, 1996 from David Rusoff, Attorney, Foley & Lardner, to George A. Villasana, Attorney, Securities & Exchange Commission.

[17] 15 U.S.C. 78f(b).

[18] The CHX has represented that a CHX specialist in Nasdaq/NM securities, if not an NASD member, currently may use a CHX member that is also an NASD member to route orders via SelectNet and SOES to Nasdaq/NM market makers. The CHX has explained further that this access currently is provided by the NASD member to an existing CHX specialist in Nasdaq/NM securities, but the arrangement may not necessarily apply to any future CHX specialists in Nasdaq/NM securities. Thus, the CHX has indicated that it will not allocate any Nasdaq/NM securities to any additional CHX specialists until an order-routing linkage is completed between the CHX and the Nasdaq. Telephone conversation on October 29, 1996 between Craig Long, Esq., Foley & Lardner, and Betsy Prout Lefler, Esq., Division of Market Regulation, SEC.

work towards quickly establishing a linkage between the CHX systems and Nasdaq systems in order to permit market makers in each market to route orders to the other market center.[19] Consequently, the Commission is approving the CHX proposal for only one year, during which time the Commission expects the CHX and Nasdaq to effectuate a linkage. The Commission also expects the CHX to monitor closely the executions provided to CHX market and marketable limit orders for Nasdaq/NM securities that are not automatically executed at the NBBO (or better) at the time the order is received. The Commission further requests that the Exchange submit to the Commission a report, based on six months of trading data, on or before 240 days following the issuance of this order, that describes the executions provided these orders.

The Commission is approving the CHX proposal on a pilot basis for a one-year period beginning in January 1997 and extending through December 1997. The Commission's approval is based, in part, on CHX's expressed commitment to work in good faith with the Nasdaq, during the one-year pilot period, to set up an order routing system between the Nasdaq and the CHX.[20]

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[21] that the proposed rule change (SR–CHX–96–16) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–690 Filed 1–10–97; 8:45 am]

BILLING CODE 8010–01–M

[19] *See* Amendment No. 1, *supra* note 3.

[20] *Id.*

[21] 15 U.S.C. 78s(b)(2)

[22] 17 CFR 200.30–3(a)(12).

[Release no. 34-38120; File No. SR–Philadep–96–22]

Self-Regulatory Organizations; Philadelphia Depository Trust Company; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change to Establish Family of Account Processing Procedures

January 3, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 17, 1996, the Philadelphia Depository Trust Company (''Philadep'') filed with the Securities and Exchange Commission (''Commission'') that proposed rule change (File No. SR–Philadep–96–22) as described in Items I and II below, which items have been prepared primarily by Philadep. On December 31, 1996, Philadep filed an amendment to the proposed rule change to make certain technical corrections.[2] The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

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

The purpose of the proposed rule change is to establish an automated family of accounts risk review for omnibus settlement accounts.

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

It its filing with the Commission, Philadep included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the propose rule change. The text of these statements may be examined at the places specified in Item IV below. Philadep has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

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

The purpose of the proposed rule change is to establish an automated family of accounts risk review for settlement activity in omnibus accounts. Philadep currently monitors individual subaccount activity underlying omnibus settling accounts and applies its risk management controls (*i.e.,* collateral monitor and net debit caps) to such subaccounts in a manual fashion.[4] Philadep proposes to automate its risk management procedures in this area by incorporating an automated family of accounts risk monitoring system. In accordance with this proposal, Philadep will apply this family of accounts system to its only omnibus account (Canadian Depository for Securities) and to any future omnibus accounts.

The family of accounts risk monitoring system will group together the activity of subaccounts which underlie a participant's omnibus settlement account. The delivery and receive activity of individual subaccounts will be reviewed in connection with the omnibus account's aggregate net debit cap and collateral monitor. For each receive or delivery transaction, the system will update the omnibus account's settlement balance and will automatically calculate the net debit impact and the collateral monitor impact that the receive and/or delivery have on a group basis. In this regard, it a subaccount's receive or delivery, adjusted for the appropriate haircut and added or subtracted to or from the omnibus account's collateral monitor, results in the omnibus account's collateral monitor being less than the omnibus account's accumulated net debit amount, the receive or delivery will pend. As the settlement balance changes as a result of other activity, the system will continuously determine whether pending items may be processed. Receives and deliveries that are still pending by the settlement cutoff time will be dropped from the system.

Philadep believes the proposed rule change is consistent with Section 17A of the Act and the rules and regulations thereunder because the proposal will promote the prompt and accurate clearance and settlement of securities transactions and will assure the safeguarding securities and funds which are in the custody or control of Philadep or for which it is responsible.

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

Philadep 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 relating to the proposed rule change have been solicited or received. Philadep will notify the Commission of any written comments received by Philadep.

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

[2] Letter from J. Keith Kessel, Compliance Officer, Philadep (December 31, 1996).

[3] The Commission has modified the text of the summaries submitted by Philadep.

[4] For a description of Philadep's risk management controls for its same-day funds settlement (''SDFS'') system, refer to Securities Exchange Act Release no. 36876 (February 22, 1996), 61 FR 7841 [SR-Philadep-95-08] (order granting partial temporary approval and partial permanent approval of a proposed rule change to convert the settlement system to a same-day funds settlement systems).