(10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Johnson, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Thursday, July 23, 1998, at 10:00 a.m., will be:

Instituion and settlement of injunctive actions.

Instititon and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: July 16, 1998.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–19434 Filed 7–16–98; 3:44 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40196; File No. SR–CHX–98–01]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 by The Chicago Stock Exchange, Incorporated Relating to the Stopping of Market and Marketable Limit Orders

July 13, 1998.

I. Background

On January 16, 1998, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change relating to the stopping of market and marketable limit orders pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] On February 12, 1998, the Exchange filed amendment No. 1 with the Commission.[2] The proposed rule change, as amended, was published for comment in Securities Exchange Act Release No. 39956 (May 5, 1998), 63 FR 26233 (May 12, 1998). No comments were received on the proposal. For the reasons discussed below, the Commission is approving the proposed rule change.[3]

II. Description of the Proposal

The Exchange proposes to amend Article XX, Rule 37(b) relating to the stopping of market orders and marketable limit orders in the Midwest Automated Execution System (''MAX System''). The purpose of the proposed rule change is to amend CHX rules relating to ''stopped'' orders[4] in the MAX System[5] (i) to permit specialists to stop a marketable limit order[6] if the order is not immediately executed, and (ii) to automate the stopping of certain market orders that are not automatically executed.

Under the Exchange's BEST Rule, Exchange specialists are required to guarantee executions of all agency[7] market and limit orders for Dual Trading System issues[8] from 100 shares up to and including 2099 shares. Subject to the requirements of the short sale rule, market orders in Dual Trading System issues must be executed at a price equal to or better than the Intermarket Trading System (''ITS'') best bid or offer (''BBO''), up to the size associated with the ITS BBO. Limit orders must be executed at their limit price or better when: (1) the ITS BBO 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 an execution.[9]

The Exchange's MAX System provides for the automatic execution of orders that are eligible for execution under the Exchange's BEST Rule and certain other orders.[10] The MAX System has two size parameters which must be designated by the specialist on a stock-by-stock basis. For Dual Trading System issues, 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 one minute of it being entered into the MAX System. If the order is not canceled by the specialist, the order is designated as an open order.[11] If the order-entry firm sends an order through the MAX System 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

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

[2] *See* letter from David T. Rusoff, Foley & Lardner, to Gail A. Marshall, Division of Market Regulation, Commission, dated February 12, 1998.

[3] This approval includes a technical amendment that the Commission received which deleted an inappropriate reference in the proposed rule text. Article XX, Rule 37(b)(10) should not have referenced automatic executions under Article XX, Rule 37(b)(7). *See* letter David T. Rusoff, Foley & Lardner, to Gail A. Marshall, Division of Market Regulation, Commission, dated July 13, 1998.

[4] *See* CHX Manual, Art. XX, Rule 28 regarding member liability for stopped orders.

[5] The MAX System provides an automated delivery and, in certain cases, execution facility for orders that are eligible for execution under Article XX, Rule 37(a), and in certain other orders. *See* CHX Manual, Art. XX, Rule 37(b).

[6] For purposes of this filing, a marketable limit order is a limit order that is marketable when entered into the MAX System, *i.e.*, the limit price of the order is at or past (higher for a buy order or lower for a sell order) the relevant side of the ITS BBO at the time the order is received in the MAX System. If the ITS BBO subsequently moves away from the limit price (*i.e.*, if the limit price is lower than the ITS best offer for a buy order or higher than the ITS best bid for a sell order) after receipt of the order but before execution of the order, the order will still be considered a marketable limit order for purposes of pending auto-stop. Conversely, if a limit order is not marketable when received by the MAX System, the order will not be considered a marketable limit order for purposes of pending auto-stop, even if the ITS BBO subsequently becomes equal to or past the limit price of the order.

[7] The term ''agency order'' means an order for the account of a customer, but does not include professional orders as defined in CHX, Art. XXX, Rule 2, interpretation and policy .04. That rule defines a ''professional order'' as any order for the account 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.

[8] Dual Trading System Issues are issues that are traded on the CHX, either through listing on the CHX or pursuant to unlisted trading privileges, and are also listed on either the New York Stock Exchange or the American Stock Exchange.

[9] It is the responsibility of the specialist to be able to demonstrate that the order would not have been executed had it been routed to the other market. This is often accomplished by sending a ''marker'' order to the primary market.

[10] A MAX order fits under the BEST parameters must be executed pursuant to BEST Rules via the MAX System. (*See* Art. XX, Rule 37(a) for BEST Rules). While the BEST Rules do not apply if the order is outside the BEST parameters, MAX System handling rules are still applicable. (*See* Art. XX, Rule 37(b) for MAX System handling rules)

[11] If an oversized market or limit order is received by the specialist, he will either reject the order immediately or display it immediately, in accordance with CHX Article XX, Rule 7 and the SEC's recently adopted Order Execution Rules (Securities Exchange Act Release No. 37619A (Sept. 6, 1996), 61 FR 48290 (Sept. 12, 1996)). If the order is displayed, the specialist will check with the order entry broker to determine the validity of the oversized order. During the one minute period, the specialist can cancel the order and return it to the order entry firm, but until it is canceled the displayed order is eligible for execution.

difference must remain as an open order. If the order-entry firm sends an order through the MAX System that is less than or equal to the auto-execution threshold, the order is executed automatically, unless an exception applies.[12]

The MAX Rules currently provide several exceptions to automatic execution, even for orders that are less than or equal to the auto-exeuction threshold. First, unless a professional order is received with a ''Z'' designator, it is not automatically executed, regardless of size. Second, all market orders for Dual Trading System issues received through the MAX System that would result in an out of range [13] execution are deemed to be received with a request to ''stop.''[14] Stopped orders for Dual Trading System issues are not automatically executed in the usual course (*i.e.*, pursuant to Rule 37(b)(6)), but are placed in the open order file.[15] The order sending firm then receives a ''UR Stopped'' message. The specialist is then required to include the order in its quote by bidding (if it is an order to buy) or offering (if it is an order to sell) the shares at one minimum variation better than the current market, in an effort to obtain price improvement for the order. Third, the MAX System will not automatically execute a market order or marketable limit order if the size associated with the ITS BBO, for Dual Trading System issues, is less than the size of the market or marketable limit order.[16]

Currently, the MAX System has no functionality to automatically ''stop'' marketable limit orders; only market orders are stopped, and then only for Dual Trading System issues if the order would result in out of range execution or the size of the order is greater than the size associated with the ITS BBO.[17] Consequently, if a marketable limit order is not immediately executed (*e.g.*, it is out of range, the order is greater than the size associated with the ITS BBO, etc.), it is merely added to the open order book. No message is sent to the order sending firm until the order is executed. The same is true for market orders that are not automatically stopped and are not automatically executed.

Because no message is sent to the order sending firm, the firm is uncertain as to the current status of its order. As a result, as stated above, the puprose of the proposed rule change is (i) to permit specialist to stop a marketable limit order, and (ii) to automate the stopping of certain market orders. Once stopped, the order sending firm will then receive a stopped message, rather than being unsure as to the current status of the order, as is currently the case.

Specifically, the CHX is proposing to amend Article XX, Rule 37 (b)(10) to provide that all MAX market orders that are from 100 up to and including 599 shares (or such higher amount determined by a specialist on a stock by stock basis) that are not automatically executed in the normal course pursuant to Rule 37(b)(6) (*i.e.*, because there is insufficient size associated with the ITS BBO, because the order would result in an out of range execution, because the order is a professional order and the specialist has not yet decided whether to accept the order, or because of any other reason permitted under CHX rules) will be identified as a ''pending auto stop'' order.[18]

These orders will retain their ''pending auto-stop'' status for 30 seconds. At the end of this 30 second period, the MAX System will automatically stop the order and send a ''UR Stopped'' message to the order sending firm, *unless*, before the end of the 30 second period, the order is executed, canceled, manually stopped by the specialist or ''put on hold.'' If any of these events occur, the ''pending auto-stop'' status will be removed from the order and the order will not automatically be stopped.[19] If an order is ''put on hold, the CHX's existing rules for the order will apply. If the order is stopped, the stop price will be the ITS BBO at the time the order is received in the MAX System. Furthermore, if the order is stopped after the ''pending auto-stop'' period, the *entire* order will be stopped.

The change to Rule 37(b)(10) to stop the entire order will result in better guarantees for the order than are required by existing CHX Rules. For example, professional orders are currently not guaranteed an execution under the BEST Rule. Under this change, eligible professional market orders will not be guaranteed an execution at the stopped price. Additionally, pursuant to Article XX, Rule 28, a stopped order constitutes a guarantee that the order will be executed at the stopped price or better. However, under existing rules, if the size of the order is greater than the size of the ITS BBO in existence when the order is received, there is merely no automatic execution of the order, the order does not have to be ''stopped.'' Moreover, even if the order is ''stopped'' under Rule 28 only that portion of the order that is less than or equal to the size of the ITS BBO is stopped. The portion of the order that exceeds the ITS BBO is not stopped. As proposed, the entire size of the order (up to 599 shares) would be automatically stopped after the seeond delay unless an exception applies.

The Exchange believes that the 30 second delay between the time the order is entered and the time the order is stopped is appropriate. The 30 seconds will give the specialist an opportunity to review the order to determine whether a stop is appropriate under the circumstances.

The ''pending auto-stop'' feature of the MAX System will operate from 8:45 a.m. until 2:57 p.m. Thus, only orders entered into the MAX System after 8:45 a.m. but before 2:57 p.m. will be eligible to be ''pending auto-stop'' orders.

In addition to adding the new ''pending auto stop'' order to the MAX System the CHX is proposing changes to the MAX System that would permit a specialist to manually ''stop'' a marketable limit order, regardless of size.

III. Discussion

The Commission believes that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange, and, in particular with Section 6(b)(5),[20] which requires that the rules of an exchange be designed, among other things, 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

[12] *See* CHX Article XX Rule 37(b)(6) and (7).

[13] ''Out of range'' means either higher or lower than the range in which the security has traded on the primary market during a particular trading day.

[14] *See* CHX Manual, Art. XX, Rule 37(b)(11).

[15] *See* CHX Manual, Art. XX, Rule 37(b)(2).

[16] *See* CHX Manual, Art. XX, rule 37(b)(12).

[17] *See* CHX Manual, Art. XX, Rule 37(b)(10) and (11). While makret orders may also be stopped under the Exchange's Enhanced SuperMAX program, these orders are not subject to this filing.

[18] While both agency and professional orders will be eligible to be ''pending auto-stop'' orders, all or none orders, odd-lot orders, fill or kill orders, immediate or cancel orders, orders that are or will be stopped under the Enhanced SuperMAX program, and other orders that cannot be entered into the MAX System (*i.e.*, not held orders, sell short exempt orders and special settlement orders) will not be eligible to be ''pending auto stop'' orders.

[19] As is the case for all features of the MAX System, in unusual trading conditions, this feature of MAX can be de-activated (in its entirety or on an issue by issue basis) with the approval of two members of the Exchange's Committee on Floor Procedure or designated member of the Exchange staff who would have authority to set execution prices. *See* CHX Article XX, Rule 37(b)(8).

[20] 15 U.S.C. 78f(b)(5).

general, to protect investors and the public interest.

The Commission believes that the proposal to add the functionality to the MAX System to automatically stop unexecuted market orders and marketable limit orders will provide investors additional benefits. First, specialists will now have the ability to automatically stop marketable limit order which provides investors with improved opportunities for price improvement on these orders. Second, investors trading in Dual Trading System issues will be provided with more certainty as to the status of their orders because the auto-stop feature results in a message being sent to the order sending firm notifying that firm that the order has been stopped.[21] Third, investors may receive improved executions on their orders because, once auto-stopped, the entire order (up to 599 shares) in Dual Trading System issues will now be guaranteed an execution at the stopped price, regardless of whether it is an eligible professional market order or an order greater than the size of the ITS BBO.

The Commission believes that the proposed 30 second ''pending auto-stop'' period prior to the order being automatically stopped was designed to provide specialists with an opportunity to determine the best course for the order, consistent with best execution principles, whether that be executing the order, manually stopping the order, canceling the order, or putting the order on hold.[22] The Commission, however, expects the Exchange, as it gains experience with the auto-stop feature, to review whether the ''pending auto-stop'' period should be less than 30 seconds. In addition, the Commission anticipates that the Exchange will surveil to determine that specialists are not eluding the auto-stop feature, and thereby the benefits to investors, by routinely putting orders on hold or canceling them.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange. In addition, in approving this rule, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation.[23]

[21] The stopped price will be the price at the time the order was received in the MAX System, consistent with CHX Rules for stopped orders.

[22] If an order is ''put on hold,'' the existing CHX Rules on order handling apply.

[23] 15 U.S.C. 78c(f).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[24] that the proposed rule change (CHX–98–01) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–19182 Filed 7–17–98; 8:45 am]

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[24] 15 U.S.C. 78s(b)(2).

[25] 15 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40195; File No. SR–MSRB–98–7]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Fee for Backlog Document Collection of its Official Statement/Advance Refunding Document Subsystem of the Municipal Securities Information Library

July 13, 1998.

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 June 16, 1998, the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change is described in Items I, II, III below, which Items have been prepared by the Board. 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 Board is filing herewith a proposed rule change to change certain fees relating to the operation of its Official Statement/Advance Refunding Document (''OS/ARD'') subsystem of the Municipal Securities Information Library® (''MSIL®'') system.[3] The Board is establishing a price of $8,000 (plus delivery or postage charges) of each of its annual ''backlog'' collections of official statements and refunding documents.

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 Board included statements concerning the purpose of, and basis for, the purposed rule change and discussed any comments it received on the proposed rule change. The texts of these statements may be examined at the places specified in Item IV below. The U.S. 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 Purposed Rule Change

1. Purpose

The OS/ARD subsystem is a central electronic facility through which information collected and stored pursuant to MSRB Rule G–36 is made available electronically and in paper form to market participants and information vendors.[4] The annual subscription fee for daily electronic images of current year documents from the OS/ARD system currently is $14,000.[5] The fees for backlog document collections are substantially less than fees for an annual subscription because an annual subscription requires the Board to send electronic media to the subscriber each business day, but a backlog collection requires fewer resources.[6]

As of January 1, 1998, the Board terminated its contract with its imaging contractor and began operating the Board's own imaging subsystem. Part of this change was to begin storing OS/ARD images on CD–ROM instead of

[1] 15 U.S.C. 78s(b)(1) (1994).

[2] 17 CFR 240.19b–4 (1997).

[3] Municipal Securities Information Library and MSIL are registered trademarks of the Board. The MSIL® system, which was approved in Securities Exchange Act Release No. 29298 (June 13, 1991), 56 FR 28194 (June 19, 1991, is a central facility through which information about municipal securities is collected, stored and disseminated.

[4] Rule G–36 requires underwriters to provide copies of final official statements and advance refunding documents within certain specified time frames for most new issues issued since January 1, 1990.

[5] Securities Exchange Act Release No. 37361 (June 25, 1996), 61 FR 34463 (July 2, 1996).

[6] The backlog fee plus delivery costs for 1996 if $7,000; 1995 is $9,000; 1994 is $7,000; 1993 is $9,000; 1992 is $7,000; 1991 is $8,000; 1990 is $6,000. *See* Securities Exchange Act Release No. 38694 (May 29, 1997), 62 FR 30919 (June 5, 1997) (1996 fee); Securities Exchange Act Release No. 37361 (June 25, 1996), 61 FR 34463 (July 2, 1996) (1995 fee); Securities Exchange Act Release No. 35848 (June 14, 1995), 60 FR 32187 (June 20, 1995) (1994 Fee); Securities Exchange Act Release No. 34602 (Aug. 25, 1994), 59 FR 45319 (Sept. 1, 1994) (1993 and 1991 fees); and Securities Exchange Act Release No.32482 (June 16, 1993), 58 FR 34115 (June 23, 1993) (1992 and 1990 fees). The fees for the backlog collections vary based on the number of documents received and processed in any given year.