

series to be listed pursuant to Rule 19b-4(e). The notice will describe the characteristics of the securities and will inform members of any obligation to deliver a written product description or prospectus, as applicable, to purchasers of PDR or Index Fund Shares. In addition, the notice will inform members of their responsibilities under Amex Rule 411 (Duty to Know and Approve Customers) in connection with customer transactions in these securities.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act<sup>16</sup> in general and furthers the objectives of Section 6(b)(5)<sup>17</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general to protect investors and the public interest.

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

The proposed rule change will impose no 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

Within 35 days of the date of 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 such 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, N.W., Washington, D.C. 20549-0609. 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 in Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the file number SR-AMEX-00-14 and should be submitted by April 18, 2000.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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**BILLING CODE 8010-01-M**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42553; File No. SR-CHX-99-30]

### **Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change by the Chicago Stock Exchange, Incorporated, Relating to Amendments to the Exchange's Procedures for Market-at-the-Close Orders**

March 21, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 28, 1999, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to

grant accelerated approval to the proposed rule change.

### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Purposed Rule Change**

The Exchange proposes to amend its procedures for the cancellation of Market-at-the-Close orders ("MOC orders") under CHX Article XX, Rule 44. The text of the proposed rule change is available at the CHX and at the Commission.

### **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 Exchange 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 III below. The Exchange 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

On November 10, 1998, the Commission approved a rule change that established formal procedures governing the entry, executions and cancellation of MOC orders on the CHX.<sup>3</sup> Those procedures were designed to mirror procedures in use by the New York Stock Exchange ("NYSE") and the American Stock Exchange ("AMEX") to ensure that MOC orders sent to the CHX receive treatment comparable to MOC orders sent to the NYSE or AMEX, and to prevent the entry, execution or cancellation of MOC orders on the CHX that would otherwise be prohibited on those primary markets.

As defined in CHX Article XX, Rule 44, an MOC order is a market order which is to be executed in its entirety at the closing price on the primary market of the stock named in the order, and if not so executed, is to be treated as cancelled. MOC orders may not be entered on the CHX after 2:40 p.m. (Central Time) unless the specialist determines that an order could have been entered on the primary market. This is done by monitoring published MOC order imbalances on the primary

<sup>3</sup> See Securities Exchange Act Release No. 40655 (November 10, 1998), 63 FR 64299 (November 19, 1998)(SR-CHX-97-19).

<sup>16</sup> 15 U.S.C. 78f(b).

<sup>17</sup> 15 U.S.C. 78f(b)(5).

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

<sup>2</sup> 17 CFR 240.19b-4.

market. Current CHX MOC order procedures also prohibit Exchange members from canceling MOC orders after 2:40 p.m. (Central Time) except in the case of a legitimate error.

On June 9, 1999, the Commission approved an NYSE rule change amending NYSE's MOC (and limit-on-close) order entry and cancellation procedures during regulatory halts.<sup>4</sup> That change amended, among other things, the NYSE's MOC procedures to allow market participants to cancel MOC orders if a regulatory halt is in effect at 2:40 p.m. (Central Time) or later, until 2:50 p.m. (Central Time) or the reopening of the stock, whichever occurs first. The Commission, on September 14, 1999, approved a corresponding rule change submitted by the AMEX.<sup>5</sup>

On October 20, 1999, the Commission approved an additional NYSE rule change concerning MOC order cancellation procedures.<sup>6</sup> That change further amended the NYSE's MOC cancellation procedures to prohibit the cancellation or reduction in size of MOC orders after 2:50 p.m. (Central Time) for any reason.

Therefore, until recently, the NYSE only allowed cancellation of MOC orders after 2:40 p.m. (Central Time) to correct a legitimate error. However, under the revised NYSE procedures, if a regulatory halt has been instituted for a stock at or after 2:40 p.m., NYSE members will be permitted to cancel MOC orders between 2:40 p.m. and 2:50 p.m. (Central Time) or when the stock reopens, whichever occurs first. This allows market participants to react to news generated during a regulatory halt that could result in the stock reopening at a price substantially different from the last sale. Furthermore, the NYSE now prohibits cancellation or reduction in size of MOC Orders after 2:50 p.m. for any reason, including legitimate error.

The CHX proposal would amend the CHX policy to allow for cancellations if such cancellation would be allowed on the primary market (*i.e.*, if a regulatory halt has been instituted at or after 2:40 p.m. Central Time). The proposed rule change would also prohibit cancellation or reduction in size of MOC orders after 2:50 p.m. for any reason.

While CHX Article XX, Rule 44 by its nature can only apply to Dual Trading

System Issues,<sup>7</sup> the proposed rule change also amends the title of Rule 44 to explicitly state that the rule only applies to MOC orders in Dual Trading System Issues.

## 2. Statutory Basis

The CHX believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>8</sup> 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.

### *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 either solicited or received.

## III. 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, N.W., Washington, DC 20549-0609. 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 Exchange. All submissions should refer to file number SR-CHX-99-30 and should be submitted by April 18, 2000.

<sup>7</sup> 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 NYSE or AMEX.

<sup>8</sup> 15 U.S.C. 78f(b)(5).

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

The Commission has reviewed carefully the Exchange's proposed rule change and finds, for the reasons set forth below, the proposal is consistent with the requirements of Section 6 of the Act<sup>9</sup> and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds the proposal is consistent with Section 6(b)(5) of the Act<sup>10</sup> because the proposal will promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of a free and open market, by (1) allowing for cancellations of MOC orders if such cancellation would be allowed on the primary market; and (2) prohibiting cancellation or reduction in the size of MOC orders after 2:50 p.m. for any reason consistent with primary market requirements. The Commission also finds the proposal is consistent with Section 6(b)(5) of the Act<sup>11</sup> because it will allow the Exchange to handle MOC orders in conformity with procedures in place on other Exchanges.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that accelerated approval would afford investors the benefits to be realized under this proposal as soon as possible. Additionally, the Commission notes that the proposal is similar to proposals filed by other self-regulatory organizations that the Commission has approved.<sup>12</sup> These were noticed for the full 21 day comment period, and no comments were received. For these reasons, and because the proposal is unlikely to raise new issues, the Commission deems it appropriate to approve the proposed rule change on an accelerated basis. The Commission finds, therefore, that good cause exists, consistent with Section 19(b)<sup>13</sup> and Section 6(b)<sup>14</sup> of the Act, to grant accelerated approval of the proposed rule change.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>15</sup> that the proposed rule change (SR-CHX-99-30) is hereby approved on an accelerated basis.

<sup>9</sup> 15 U.S.C. 78f.

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> See footnotes 4 and 6, *supra*.

<sup>13</sup> 15 U.S.C. 78s(b).

<sup>14</sup> 15 U.S.C. 78f(b).

<sup>15</sup> 15 U.S.C. 78s(b)(2).

<sup>4</sup> See Securities Exchange Act Release No. 41497 (June 9, 1999), 64 FR 32595 (June 17, 1999) SR-NYSE-98-42).

<sup>5</sup> See Securities Exchange Act Release No. 41877 (September 14, 1999), 64 FR 51566 (September 23, 1999) (SR-AMEX-99-32).

<sup>6</sup> See Securities Exchange Act Release No. 42040 (October 20, 1999), 64 FR 57681 (October 26, 1999) (SR-NYSE-99-26).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42565; File No. SR-CHX-99-24]

### Self-Regulatory Organizations; Order Granting Accelerated Approval and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Price Improvement for Securities that Trade in Minimum Variations of $\frac{1}{64}$ th of \$1.00

March 22, 2000.

#### I. Background

On October 20, 1999, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend Article XX, Rule 37, of the Exchange's rules relating to price improvement. The proposed rule change was published for comment in the *Federal Register* on February 28, 2000.<sup>3</sup> On March 21, 2000, the Exchange filed Amendment No. 1 to the proposal.<sup>4</sup> The Commission received no comments on the proposal. This order approves the proposal, as amended on an accelerated basis.

#### II. Description of the Proposal

The Exchange proposes to amend Article XX, Rule 37, of the Exchange's rules, governing price improvement, to

add section 37(g) to provide for an algorithm for price improvement for issues trading in minimum variations of  $\frac{1}{64}$ th of \$1.00. The primary purpose of the proposed rule change is to afford specialists a viable means of offering customers price improvement for securities that trade in minimum variations of  $\frac{1}{64}$ th.

Presently, three existing CHX programs within the MAX system, SuperMAX, Enhanced SuperMAX and SuperMAX Plus, use computerized algorithms to provide automated price improvement. These programs were created for securities that trade in minimum variations of  $\frac{1}{16}$ th to provide for price improvement of  $\frac{1}{16}$ th of a point when the spread is  $\frac{1}{8}$ th or greater. Specialist participation in all three of these programs is voluntary. Each of these price improvement programs were approved by the Commission on a permanent basis.<sup>5</sup> Under this proposal, the CHX would add a fourth voluntary program, Derivative SuperMAX, within the MAX system to provide for price improvement for securities trading in minimum variation of  $\frac{1}{64}$ th.<sup>6</sup> The addition of the proposed price improvement algorithm for Derivative SuperMAX should enhance the ability of CHX specialists to offer customers price improvement for all securities at the minimum increment, even those securities that trade in  $\frac{1}{64}$ th increments.

Under Derivative Super MAX, which would be available only for those securities trading in minimum variation of  $\frac{1}{64}$ th of \$1.00, small agency market order (*i.e.* orders from 100 shares up to and including 500 shares (or such greater amount designated by the specialist and approved by the Exchange)) would be eligible for price improvement if the market for the security is quoted with a spread of  $\frac{1}{16}$ th of a point or greater. The new algorithm would provide  $\frac{1}{64}$ th of a point price improvement from the ITS BBO. Specialist participation in the Derivative SuperMAX would be on a security-by-

security basis and would be limited to securities that trade in minimum variations of  $\frac{1}{64}$ th of \$1.00.

The addition of Derivative SuperMAX would become operative shortly after Commission approval of this proposed rule change, on a date to be determined by the Exchange.<sup>7</sup>

#### III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments conceding Amendment No. 1, including whether Amendment No. 1 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 20549-0609. 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR-CHX-99-24 and should be submitted by April 18, 2000.

#### IV. Commission findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange.<sup>8</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>9</sup> which requires that the rules of an exchange be designed, among other things, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediment and to perfect the mechanism of a free and open market and a national market

<sup>16</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 789s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Securities Exchange Act Release No. 42442 (February 18, 2000), 65 FR 10575.

<sup>4</sup> See letter from Paul B. O'Kelly, Executive Vice President, Market Regulation and Legal, CHX to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated March 21, 2000. ("Amendment No. 1"). In Amendment No. 1, the CHX confirmed its readiness and intention to activate the price improvement algorithm described in this proposal within one day following the Commission's approval of this proposed rule change. The CHX also indicated that it intended to implement the proposal as soon as practicable in order to remain competitive with other market centers that trade the securities that trade at the CHX in minimum increments of  $\frac{1}{64}$ th. Finally, the CHX noted that approximately 88% of the trades in such securities are for 599 shares or less.

<sup>5</sup> See Securities Exchange Act Release Nos. 40017 (May 20, 1998), 63 FR 29277 (May 28, 1998) and 40235 (July 17, 1998), 63 FR 40147 (July 27, 1998) (File No. SR-CHX-98-9) (orders approving revised SuperMAX and Enhanced SuperMAX algorithms); 41480 (June 4, 1999), 64 FR 32570 (June 17, 1999) (order approving revised SuperMAX Plus algorithm).

<sup>6</sup> Presently, only securities derivative equity products trade in a minimum increment of  $\frac{1}{64}$ th on the Exchange. However, the Derivative SuperMAX algorithm is not limited to derivative products, thus non-derivative securities traded in  $\frac{1}{64}$ th increments on the Exchange in the future would be eligible for price improvement under this proposal. Telephone conversation between Paul B. O'Kelly, Executive Vice President, Market Regulation and Legal, CHX, and Marc McKayle, Attorney, Division, Commission on March 20, 2000.

<sup>7</sup> See Amendment No. 1, note 4, *above*.

<sup>8</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation.

<sup>9</sup> 15 U.S.C. 78f(b)(5).