

Exchange's quotation system. The proposal would require bids or offers that better the Exchange market<sup>6</sup> to be provided to the specialist via written ticket, or by any other form agreed upon by the specialist and market maker or floor broker. The proposed rule change also contains a similar requirement for limit orders left with the specialist by market makers or floor brokers.

The CHX is making a few changes to its CHX Rule 10 of Article XX. The first change would reflect the changes made to CHX Rule 7 of Article XX by removing the audibalization requirement. Because bids and offers will have to be provided to the specialist for input into the Exchange's quotation system, the audibalization requirement is no longer necessary. The proposed rule change also adds language to require specialists to adhere to agency/auction market principles. Among other things, specialists are required to clear the post of exposable orders they received on the floor.<sup>7</sup> Thus, a specialist would not be permitted to route exposable orders to another market until the specialist has first exposed the portion of the order that he intends to route to another market to market makers and floor brokers at the post. The intent of the proposed rule change is to extend to specialists the requirement of clearing the post that now applies to orders received by floor brokers and market makers on the floor of the Exchange. The CHX believes it is consistent with exchange auction market principles to require all market orders and marketable or displayable limit orders received by the specialist to have the opportunity to interact with other interest on the Exchange floor before being routed to another market.

Finally, the CHX is proposing to amend CHX Rule 37 of Article XX to limit the automatic execution feature of MAX, the Exchange's automatic execution system, for limit orders at or less than the specialist's auto acceptance level. Currently, if a specialist chooses to activate the limit order auto-ex feature, he must do so for all limit orders on the book regardless

<sup>6</sup> To better the market, the quote would have to improve the CHX quote by one quoting increment, or otherwise cause the specialist to change the existing CHX quotation. Currently, Article XX, Rule 7, Interpretation .05 requires a specialist to input any bids or offers that increase the size that has been bid or offered at the current price. The CHX has proposed an amendment to this provision in SR-CHX-99-18, which is pending with the Commission.

<sup>7</sup> An exposable order will be defined in the proposed rule change as "all or any part of an order for more than 100 shares that is either (i) a market order or (ii) a limit order that is at or better than the ITS best bid or offer or the national best bid or offer."

of size. By allowing the specialist to automatically execute these limit orders only when the orders are of a size at or less than his auto acceptance level, the specialist will be required to present larger orders to the crowd as required by the new market maker participation rules. Of course, specialists will still be obligated to exercise care and diligence to provide quality executions to manually handled limit orders if the two conditions of paragraph (b)(12) of CHX Rule 37 of Article XX are triggered by executions in the primary market.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6<sup>8</sup> and Section 11<sup>9</sup> of the Act. The proposal furthers the objectives of Section 6(b)(5)<sup>10</sup> of the Act in particular in that it should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. The proposal is also consistent with Rule 11b-1<sup>11</sup> of the Act because it is designed to require specialists and market makers to assist in the maintenance of a fair and orderly market.

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

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The CHX believes that the proposed rule change will enhance competition on the Exchange by providing an incentive for the CHX market makers to aggressively compete on quotes.

### *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. 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

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

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

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

<sup>11</sup> 17 CFR 240.11b-1.

(ii) as to which the Exchange 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, 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 CHX. All submissions should refer to File No. SR-CHX-00-34 and should be submitted by December 20, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43577; File No. SR-CHX-00-37]

### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the Chicago Stock Exchange, Incorporated, Relating to the Exchange's SuperMAX 2000 Price Improvement Program**

November 16, 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 November

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

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

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

6, 2000, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On November 16, 2000, the CHX amended the proposal.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to amend the CHX rules governing its voluntary price improvement programs. Specifically, the Exchange proposes to amend Article XX, Rule 37 to add a new price improvement algorithm entitled SuperMAX 2000, applicable to all issues trading in decimal price increments. The CHX anticipates that SuperMAX 2000 will supplant all of the Exchange's existing price improvement algorithms upon completion of the securities industry transition to decimal pricing. The text of the proposed rule change is below. Additions are in italics.

#### ARTICLE XX

##### Regular Trading Sessions

\* \* \* \* \*

Guaranteed Execution System and Midwest Automated Execution System Rule 37.

\* \* \* \* \*

##### (h) SuperMAX 2000

*SuperMAX 2000 shall be a voluntary automatic execution program within the MAX System. SuperMAX 2000 shall be available for any security trading on the Exchange in decimal price increments. A specialist may choose to enable this voluntary program within the MAX System on a security-by-security basis.*

##### (1) Pricing

*(i) In the event that an order to buy or sell at least 100 shares is received in a security in which SuperMAX 2000 has been enabled, such order shall be executed at the ITS Best Offer or NBO (for a buy order) or the ITS Best Bid or NBB (for a sell order) if (A) the spread between the ITS Best Bid and the ITS Best Offer (or NBB or NBO, for Nasdaq/*

*NM issues) in such security at the time the order is received is less than \$.03.*

*(ii) In the event that an order to buy or sell 100 shares is received in a security in which SuperMAX 2000 has been enabled, and (a) the spread between the ITS Best Bid and the ITS Best Offer (or NBB and NBO, for Nasdaq/NM issues) in such security at the time the order is received is \$.03 or greater, such order shall be executed (subject to the short sale rule) at a price at least \$.01 lower than the ITS Best Offer or NBO (for a buy order) or at least \$.01 higher than the ITS Best Bid or NBB (for a sell order).*

*(iii) In the event that an order to buy or sell more than 100 shares is received in a security in which SuperMAX 2000 has been enabled, such order shall be executed at the ITS Best Offer or NBO, or better (for a buy order) or the ITS Best Bid or NBB, or better (for a sell order) as the specialist may designate and as is approved by the Exchange.*

*(2) Operating Time. SuperMAX 2000 will operate each day that the Exchange is open for trading from the commencement of the Primary Trading Session until the close of the Primary Trading Session; provided, however, that preopening orders shall not be eligible for SuperMAX 2000 price improvement. A specialist may enable or remove SuperMAX 2000 for a particular security only on one given day each month, as determined by the Exchange from time to time. Notwithstanding the previous sentence, during unusual market conditions, individual securities or all securities may be removed from SuperMAX 2000 with approval of two members of the Committee on Floor Procedure.*

*(3) Timing. Orders entered into SuperMAX 2000 shall be immediately executed upon completion of the foregoing price improvement algorithm without any delay (i.e., in 0 seconds).*

*(4) Applicability to Odd Lots. Although an order generated by the Odd-Lot Execution Service ("OLES") is a professional order (because it is deemed to be for the account of a broker-dealer), it is nonetheless eligible for SuperMAX 2000 execution if (i) the order is for 100 to 199 shares and (ii) the order is an OLES passively-driven system-generated market order (and not an actively managed order).*

*(5) Out of Range. Notwithstanding anything herein to the contrary, SuperMAX 2000 will not automatically execute an order if such execution would result in an out of range execution.*

*(6) Other. Any eligible order in a security for which SuperMAX 2000 has been enabled which is manually*

*presented at the post by a floor broker must also be guaranteed an execution by the specialist pursuant to the pricing criteria set forth in paragraph (1) above. If the contra side order which would better a SuperMAX 2000 execution is presented at the post, the incoming order which is executed pursuant to the SuperMAX 2000 criteria must be adjusted to the better price.*

\* \* \* \* \*

### 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 IV 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

According to the CHX, the primary purpose of the proposed rule change is to increase the number of orders that are eligible for price improvement and to afford CHX specialists the opportunity to provide price improvement alternatives equal to or more favorable than existing alternatives.

##### Background

On May 22, 1995, the Commission approved a proposed CHX rule change that allows specialists on the Exchange, through the Exchange's MAX system, to provide order execution guarantees that are more favorable than those required under CHX Rule 37(a), Article XX.<sup>4</sup> That approval order contemplated that the CHX would file with the Commission specific modifications to the parameters of MAX that are required to implement various options under this new rule.

SuperMAX, Enhanced SuperMAX, SuperMAX Plus and Derivative SuperMAX are four existing CHX programs within the MAX system that use computerized algorithms to provide automated price improvement. The Commission has approved each of these

<sup>3</sup> See November 15, 2000 letter from Kathleen M. Boege, Associate General Counsel, CHX, to Joseph Morra, Special Counsel, Division of Market Regulation, SEC ("Amendment No. 1"). In Amendment No. 1, the CHX made a minor, technical correction to the language of proposed Rule 37(h).

<sup>4</sup> See Securities Exchange Act Release No. 35753 (May 22, 1995), 60 FR 28007 (May 26, 1995)(SR-CHX-95-08).

price improvement programs on a permanent basis.<sup>5</sup>

The Exchange believes that, for it to remain competitive, its specialists must be able to swiftly and meaningfully respond to the price improvement considerations articulated by the Exchange's order sending firms and their customers. To this end, the Exchange proposes the following change to its existing price improvement program.

#### *Proposal*

At present, Exchange specialists may voluntarily participate, on an issue-by-issue basis, in one of the four price improvement programs referenced above. Each of the existing price improvement programs provides for a fixed amount of price improvement when the national BBO spread meets certain spread parameters (e.g., in SuperMAX Plus, \$.01 on a BBO spread of \$.03 on orders from 100 to 199 shares).

Under the proposed SuperMAX 2000, customers would be guaranteed the same minimum amount of price improvement they would receive under SuperMAX Plus (i.e., \$.01 on a spread of \$.03 on orders of 100 shares) if a specialist has enabled SuperMAX 2000; in addition, specialists would be permitted to provide additional automated price improvement on an issue-by-issue basis. This opportunity for additional price improvement would exist for all orders of 100 shares or greater.

The Exchange believes that SuperMAX 2000 will provide CHX specialists with the requisite flexibility to respond to customer price improvement requirements in a decimal pricing environment. Significantly, the proposal contemplates equality among order-sending firms (and their customers) by mandating that CHX specialists provide additional price improvement on an issue-by-issue basis; specialists would not be permitted to distinguish among order-sending firms when designating price improvement levels.

The Exchange also believes that SuperMAX 2000 would simplify the Exchange's existing price improvement framework by eliminating multiple

price improvement programs with different names, requirements and results.<sup>6</sup> By replacing four existing price improvement programs with one comprehensive program that will incorporate (as a minimum threshold) the level of price improvement currently available, the Exchange will afford its specialists the flexibility to provide a wide variety of price improvement alternatives, all of which will be equal to or more favorable than existing alternatives.

#### 2. Statutory Basis

The CHX believes the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>7</sup> in that it is designed to promote just and equitable principles of trade, to remove impediments and to 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. 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 Exchange 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.

The CHX has requested accelerated approval of the proposed rule change.

<sup>6</sup> The Exchange anticipates that its existing price improvement programs, which have been amended on a pilot basis to include decimal price increments, would become obsolete once the pilot expires on February 28, 2001. In accordance with an Exchange rule approved by the Commission, the four existing price improvement programs would be deemed deleted from the Exchange's rules upon the completion of the securities industry transition to a decimal pricing environment. See Article XXB, Rule 4, which provides, in pertinent part, that all rule references to fractional price increments shall be deemed deleted.

<sup>7</sup> 15 U.S.C. 78f(b)(5).

While the Commission is not prepared to grant accelerated approval at this time, the Commission will consider granting accelerated approval of the proposal at the close of an abbreviated comment period of 15 days from the date of publication of the proposal in the **Federal Register**.

#### **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, 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 filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR-CHX-00-37 and should be submitted by December 14, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

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#### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-43565; File No. SR-CHX-00-36]

#### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by The Chicago Stock Exchange; Incorporated Relating to the Trading of Nasdaq/NM Securities on the CHX**

November 15, 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>

<sup>8</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>5</sup> See Securities Exchange Act Release Nos. 40017 (May 20, 1998), 63 FR 29277 (May 28, 1998)(SR-CHX-98-9) and 40235 (July 17, 1998), 63 FR 40147 (July 27, 1998), (SR-CHX-98-09)(orders approving revised SuperMAX and Enhanced SuperMAX algorithms); 41480 (June 4, 1999), 64 FR 32570 (June 17, 1999)(SR-CHX-99-04)(order approving revised SuperMAX Plus algorithm); and 42565 (March 22, 2000), 65 FR 16442 (March 28, 2000)(SR-CHX-99-24)(order approving Derivative SuperMAX algorithm).