

arguments will be considered by the Commission in granting registration or instituting proceedings to determine whether registration should in accordance with Section 19(a)(1) of the Act.<sup>7</sup> 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. Copies of the amended application for registration and all written comments will be available for inspection at the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. All submissions should refer to File No. 600-22 and should be submitted by April 18, 2001.

*It is therefore ordered* that MBSCC's temporary registration as a clearing agency (File No. 600-22) be and hereby is extended through September 30, 2001.

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. 34-44090; File No. SR-CHX-01-06]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Incorporated, To Amend the Exchange's SuperMAX 2000 Price Improvement Program To Include Odd Lot Orders

March 21, 2001.

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 March 19, 2001, 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, II and III 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.

### 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 program. Specifically, the Exchange proposes to amend Article XX, Rule 37(h) to permit application of the Exchange's SuperMAX 2000 price improvement algorithm to odd lot orders, thereby increasing the opportunities for price improvement. 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 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 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 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 is approved by the Exchange.

(iv) *Odd Lot Market Orders.* In the event that a market order to buy or sell less than 100 shares (or a market order otherwise deemed an odd lot by the Exchange) is received in a security in which SuperMAX 2000 has been enabled, and 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 (A) less than \$.05, 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); or (B) \$.05 or greater, such order shall be executed 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).

(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 delay (i.e., in 0 seconds).

(4) Applicability to Odd Lots Generated by OLES. 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

<sup>7</sup> 15 U.S.C. 78s(a)(1).

<sup>8</sup> 17 CFR 200.30-3 (a)(16).

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

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

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 automated price improvement. To this end, the CHX proposes to amend the CHX rules governing its voluntary automated price improvement program, known as SuperMAX 2000, for issues quoting in decimal price increments. Specifically, the Exchange proposes to amend Article XX, Rule 37(h) to permit application of the SuperMAX 2000 algorithm to odd lot orders, thereby increasing the opportunities for price improvement.

On December 19, 2000, the Commission approved (SR-CHX-00-37),<sup>3</sup> implementing SuperMAX 2000, the CHX's new price improvement program, which will govern price improvement of all orders for issues quoting in decimal price increments. SuperMAX 2000 was designed to afford specialists the flexibility to provide a wide variety of price improvement alternatives, all of which will be equal to or more favorable than alternatives that existed previously. SuperMAX 2000 originally did not by its terms permit price improvement of odd lot orders.

In assessing price improvement offered by other members of the securities industry, the Exchange

believes that, in order to be competitive, its odd lot dealers must be permitted (but not obligated) to offer price improvement of odd lot orders. The proposal would permit odd lot dealers to provide price improvement of \$.01 or better, in the case of odd lot orders received when the national best bid and offer spread is \$.05 or larger.

The Exchange believes that the proposal will ensure that SuperMAX 2000 provides CHX odd lot dealers with the requisite flexibility to respond to customer price improvement requirements in a decimal environment. The proposal contemplates equality among order-sending firms (and their customers) by mandating that price improvement be provided by CHX odd lot dealers on an issue-by-issue basis; odd lot dealers would not be permitted to distinguish among order-sending firms when designating price improvement levels. Moreover, SuperMAX 2000 remains a strictly voluntary price improvement program; odd lot dealers who do not wish to participate are not obligated to enable SuperMAX 2000 for any or all issues they trade.

#### 2. Statutory Basis

The CHX believes the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>4</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 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 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. While the Commission will not 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, 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 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-01-06 and should be submitted by April 12, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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<sup>3</sup> Securities Exchange Act Release No. 43742 (December 19, 2000), 65 FR 83119 (December 29, 2000).

<sup>4</sup> 15 U.S.C. 78f(b)(5).

<sup>5</sup> 17 CFR 200.30-3(a)(12).