

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not solicit or receive written comments with respects 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 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 the 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 submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all written statement 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 persons, other than those that may be withheld from the public in accordance with the provisions of U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. 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-98-24 and should be submitted by August 17, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Jonathan G. Katz,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40235; File No. SR-CHX-98-09]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by The Chicago Stock Exchange, Incorporated Amending the SuperMax and Enhanced SuperMax Algorithms

July 17, 1998.

I. Background

On April 20, 1998, noticed is hereby given that on April 20, 1998, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ The proposed rule change was published for comment in the **Federal Register**.² The Commission granted accelerated approval to part of the proposal, the new SuperMAX algorithm, on a temporary basis until August 20, 1998. No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change on a permanent basis.

II. Description of the Proposal

The Exchange proposes to amend its SuperMax and Enhanced SuperMAX programs, located in subsections (c) and (e) of Rule 37 of Article XX. Specifically, the Exchange is proposing new algorithms to provide automated price improvement under SuperMax and Enhanced SuperMAX in 1/16th point markets.³

In 1997, virtually every registered national securities exchange and national securities association changed their minimum trading variation to one sixteenth of a point or smaller. Although the CHX made some technical changes to its SuperMax and Enhanced SuperMax programs at that time in light of assumptions as to the smallest minimum variation that were contained in the text of the SuperMax and Enhanced SuperMax rules, the CHX did not change the algorithms to reflect the

additional price improvement opportunities that are available because of trading in sixteenths.⁴ The purpose of the proposed rule change is to amend the existing programs to both simplify the price improvement algorithms and increase the number of orders that are eligible for price improvement due to the smaller minimum trading variation.⁵

Under the new simplified algorithm for SuperMax, small agency market orders⁶ would now be eligible for price improvement if the market for the security is quoted with a spread of 1/8 of a point or greater (rather than the 1/4 point spread that is required under the existing rule). In addition, the double-up/double-down concept has been eliminated. The simplified algorithm will now provide 1/16th of a point price improvement from the Intermarket Trading System ("ITS") best bid or offer ("BBO") if an execution at the ITS BBO would be at least 1/8th point higher than (for a buy order) or lower than (for a sell order) the last primary market sale. Basically price improvement is given under certain circumstances when the security is trading between the spread. All other aspects of the existing algorithm, including operating time, timing of execution, applicability to odd-lots, and out of range situations, remain the same.

With respect to Enhanced SuperMax, the Exchange proposes to make this program an add-on feature for securities for which the SuperMax program has already been activated, rather than a stand-alone program. As stated in the Exchange's Report on the operation of the Enhanced SuperMax program that was provided to the Commission in advance of the Commission's permanent approval of Enhanced SuperMax program, taken as a whole, the existing SuperMax program provides more price improvement than the existing Enhanced SuperMax program. The Exchange believes that interconnecting the two programs will encourage more specialists to enable the SuperMax program, with greater resulting price improvement, since the Enhanced SuperMax program will only be available when SuperMax is enable.

⁴ See Securities Exchange Act Release No. 38816 (July 3, 1997), 62 FR 37325 (July 11, 1997) (File No. SR-CHX-97-18).

⁵ Rather than amending the existing text of the SuperMax and Exchange SuperMax rules, the text of the existing rule has been deleted and replaced with new language. This was done to permit the Exchange to re-write the rule, with non-substantive changes, to clarify some language in the old rule that may have been ambiguous.

⁶ Under the proposal, small agency market orders for SuperMax would be orders from 100 shares to 499 shares (or a greater amount chosen by the specialist).

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 40017 (May 20, 1998), 63 FR 29277 (May 28, 1998).

³ Both the SuperMAX and Enhanced SuperMAX programs have been approved by the Commission on a permanent basis. See Securities Exchange Act Release No. 32631 (July 14, 1993), 58 FR 39069 (July 21, 1993) (File No. SR-MSE-93-10) (Order approving SuperMax on a permanent basis), Securities Exchange Act Release No. 38338 (February 26, 1997), 62 FR 10102 (March 5, 1997) (File No. SR-CHX-97-02) (Order approving Exchange SuperMax on a permanent basis).

¹³ 17 CFR 200.20-3(c)(12).

Currently, some specialists have only turned on the Exchange Super Max program without enabling the SuperMax program.

Under the new simplified algorithm for Enhanced SuperMax, small agency market orders⁷ would be eligible for price improvement if the market for the security is quoted with a spread of $\frac{3}{16}$ of a point (rather than the $\frac{1}{4}$ point spread that is required under the existing rule). In addition, the double-up/double down concept currently in place to determine whether an order is stopped has been eliminated. The simplified algorithm will now "stop" an eligible order at the ITS BBO if an execution at the ITS BBO would be at least $\frac{1}{8}$ point higher than (for a buy order) or lower than (for a sell order) the last primary market sale. (This stopping algorithm is identical to the new algorithm above for SuperMax.) Once stopped, an order would receive $\frac{1}{16}$ price improvement over the stopped price if the next primary market sale occurs before the end of the Time Out Period and the sale is at least $\frac{1}{8}$ of a point lower than (for a buy order) or higher than (for a sell order) the stopped price. As is the case for SuperMax, all other aspects of the existing algorithm, including operating time, timing of execution, applicability to odd-lots, and out of range situations, remain the same.

III. 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. Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act⁸ 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 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.

On May 22, 1995, the Commission approved a proposed rule change of the CHX 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.⁹ 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 available under this new rule.

The Commission believes, in light of the industry's move to trading in finer increments last year, that CHX's modification to price improvement algorithms will provide investors a meaningful opportunity for price improvement when securities trading in $\frac{1}{16}$'s have a spread of $\frac{1}{8}$ point or greater. In addition, the Commission finds that the new SuperMAX and Enhanced SuperMAX rules provide greater price improvement opportunities for investors because the criteria for when such opportunities are available has been simplified.¹⁰ The Commission believes that, because the opportunity for price improvement is automatic and without any specialist intervention, SuperMAX and Enhanced SuperMAX facilitate order interaction and enhance customer orders consistent with Section 6(b)(5) of the Act. The Commission notes that while SuperMAX and Enhanced SuperMAX are voluntary programs that specialists choose to participate in for Dual Trading System issues,¹¹ providing a greater number of investors an opportunity to achieve price improvement is compatible with the views on best execution expressed in the Order Handling release.¹²

⁹ See Securities Exchange Act Release No. 35753 (May 22, 1995), 60 FR 28007 (May 26, 1995) (File No. SR-CHX-95-08).

¹⁰ The Exchange has compared the proposed changes to SuperMax with the existing SuperMax algorithm and believes that the new algorithm will provide price improvement to a greater number of trades. Using data for January 1998, the Exchange determined that the proposed changes to the algorithm would have resulted in over 32,000 trades receiving price improvement (for a total savings of \$329,000 to customers), as opposed to the 5800 trades that received price improvement (for a total savings of \$126,000 to customers) under the existing SuperMax program. This means that the changes to SuperMax would have resulted in customers receiving \$203,000 additional dollars of price improvement over the Exchange's existing SuperMax algorithm.

¹¹ Dual Trading issues are issues 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.

¹² See Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996).

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, SR-CHX-98-09, 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.

It is therefore ordered, pursuant to Section 19(b)(2), of the Act,¹³ that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Jonathan G. Katz,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40230; File No. SR-MSRB-97-14]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of Proposed Rule Change Relating to Rule G-32, on Disclosures in Connection With New Issues

July 17, 1998.

I. Introduction

On March 12, 1998,¹ the Municipal Securities Rulemaking Board ("Board" or "MSRB") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")² and Rule 19b-4 thereunder,³ a proposed rule change to amend Rule G-32, on disclosures in connection with new issues. The proposed rule change strengthens the provisions of the rule relating to dissemination of official statements among dealers and incorporates a long-standing Board interpretation relating to disclosures required to be made to customers in connection with negotiated sales of new issue municipal securities. Notice of the

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 17 CFR 200.30-3(a)(12).

¹ The Board initially filed this proposal on December 22, 1997. However, an amendment was filed to restore rule language that the initial proposal deleted. The Board filed Amendment No. 1 on this date.

² 15 U.S.C. 78s(b)(1).

³ 17 CFR 240.19b-4.

⁷ Under the proposal, small agency market orders for Enhanced SuperMax would be orders from 500 shares to 2099 shares (or a greater amount chosen by the specialist). Notwithstanding the 500 share minimum order size contained in the rule, the smallest size order eligible for Enhanced SuperMax must always be at least one share greater than the largest size order in such security that is eligible for SuperMax. In other words, if a specialist voluntarily increases the maximum order size for SuperMax, the minimum order size for Enhanced SuperMax must be increased accordingly.

⁸ 15 U.S.C. 78f(b)(5).