The Exchange now proposes to alter its long-standing regulatory interpretation so that certain transactions effected between joint accounts with common participants would be permitted, provided that such transactions are effected within Exchange rules. The proposal would enable common participants to trade between related joint accounts that are used as financing vehicles without violating Exchange Rule 8.9. The following activity would be permitted: (1) Trading between different market makers or other broker/dealer accounts that are financed by the same member where there is no common control over the trading activity in those accounts; and (2) trading between independently operated subsidiaries (*i.e.,* separate broker/dealers) of the same parent or holding company.[9]

The Exchange, however, would continue to prohibit the following activity: (1) Market makers trading with their joint account, even though their percentage of ownership is less than 100% (for instance, market maker ABC finances market maker XYZ via a joint account and ABC is a participant in the joint account. Ownership is 50% and XYZ makes his own trading decisions. ABC is still prohibited from trading directly with the joint account of which he is a member); (2) nominees of the same entity trading with each other on behalf of the entity; (3) firm traders employed by the same broker/dealer on different trading desks trading together, regardless of whether they are separate profit centers; and (4) spouses trading together.

III. Discussion

The Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] Specifically, the Commission believes that the proposal is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Section 6(b)(5),[12] in particular, 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. The Commission notes that the proposal responds to concerns of CBOE's membership that its current interpretation of a wash sale does not promote a level playing field for its members *vis-á-vis* other exchanges' members. The Commission also notes that while the proposal would permit certain transactions between joint accounts with common participants, such transactions would be required to be effected within Commission and Exchange rules. Under the proposal, transactions between related joint accounts that are conducted for an improper purpose, such as trades executed to create a false and misleading appearance of activity, would continue to violate Exchange Rule 4.1 (Just and Equitable Principles of Trade). The Commission expects that the CBOE's Department of Market Regulation will continue to monitor vigorously trading between accounts with common beneficial ownership for trading abuses.

IV. Conclusion

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–CBOE–00–13) is approved, as amended.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–9168 Filed 4–12–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44164; File No. SR–CHX–2001–07]

Self-Regulatory Organizations: Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to the Precedence of Customer Limit Orders on the Book

April 6, 2001.

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 April 6, 2001, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule changes 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. As discussed below, the Commission is granting accelerated approval of the proposed rule change for a pilot period until July 9, 2001.

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

The Exchange proposes to amend CHX Article XXX, Rule 2 (Precedence to Orders in Book), which prohibits specialists from trading ahead of customer orders, by adding Interpretation and Policy .06 to the rule. The new interpretation will require a CHX specialist (including market makers who hold customer limit orders) to better the price of a customer limit order in his book which is priced at the national best bid or offer (''NBBO'') by at least one penny if the specialist determines to trade with an incoming market or marketable limit order. This proposal is filed in conjunction with the Exchange's request for exemptive relief pursuant to Rules 11Ac1–1(e),[3] 11Ac1–2(g)[4] and 11Ac1–4(d)[5] under the Act, to allow for trading in Nasdaq/National Market (''Nasdaq/NM'') securities in subpenny increments and to permit subpenny quotes to be rounded down (buy orders) and rounded up (sell orders) to the nearest penny for quote dissemination.[6] The Exchange is requesting approval of the proposed rule change on a pilot basis, through July 9, 2001. The text of the proposed rule change is set forth below. New text is italicized.

Article XXX, Rule 2

(Precedence to Orders in Book)

Rule 2. No change.

Interpretations and Policies:

.01–.05 No change.

.06 Trading in Nasdaq/NM Securities in Subpenny Increments

A specialist (including a market maker who holds customer limit orders) shall be deemed to have violated Article XXX, Rule 2 if, while holding a customer limit order (as rounded to a penny increment) representing the NBBO, the specialist, for his own account, trades with an incoming market or marketable limit order at a

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[9] The Exchange represented that it will issue a regulatory circular informing members of permitted and prohibited trading activity among joint accounts.

[10] In approving this rule, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.11Ac1–1(e).

[4] 17 CFR 240.11Ac1–2(g).

[5] 17 CFR 240.11Ac1–4(d).

[6] *See* letter from Paul B. O'Kelly, CHX, to Robert Colby, Division of Market Regulation, dated April 6, 2001 (''Exemptive Request'').

price which is less than one penny better than such customer limit order in his book.

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. 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

The Exchange proposes to amend CHX Article XXX, Rule 2 (Precedence to Orders in Book), which prohibits specialists from trading ahead of customer orders, by adding a new interpretation to the rule, relating to trading in subpenny increments in Nasdaq/NM securities, which will require a CHX specialist (including market makers who hold customer limit orders) to better the price of a customer limit order in his book which is at the NBBO by at least one penny if the specialist determines to trade with an incoming market or marketable limit order.[7]

The purpose for the new interpretation is to prevent specialists (and market makers who hold customer limit orders) from taking unfair advantage of a customer limit order in their book at the NBBO by trading ahead of such orders with incoming market or marketable limit orders in increments of less than one penny. Notwithstanding the fact that a specialist may give a price superior to that of the customer limit order, a customer at the NBBO has a reasonable expectation to be filled at his limit price, unless other customers place better-priced limit orders or his limit price is meaningfully improved by his agent. However, the prohibition will not apply to specialists when they hold no customer orders at the NBBO, but are required to fill incoming market and marketable limit orders at the NBBO pursuant to the Exchange's BEST Rule (CHX Article XX, Rule 37).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[8] in general and furthers the objectives of Section 6(b)(5)[9] in particular in that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange requests that this rule be approved on a pilot basis, to be co-extensive with its request for exemptive relief to trade (but not quote) Nasdaq/NM securities in subpennies, for a period of 90 days until July 9, 2001, and to give the Exchange the opportunity to evaluate trading patterns in Nasdaq/NM securities during the pilot period.

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

The Exchange believes that the proposed rule changes 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 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 organizations consent, 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 Exchange has requested accelerated approval of the proposed rule change pursuant to Section 19(b)(2) of the Act,[10] submitting that accelerated effectiveness of the proposed rule change would permit the Exchange to accept and execute subpenny orders for Nasdaq/NM securities, avoiding a significant competitive disadvantage to the Exchange on April 9, 2001, when the completion of Nasdaq's decimal transition will enable Nasdaq market makers and electronic communication networks (''ECNs'') to accept and execute subpenny orders in those securities. The Exchange notes that this proposed rule change was submitted in connection with the Exchange's request for exemptive relief to permit the Exchange to accept and execute subpenny orders for Nasdaq/NM securities by displaying the orders at prices rounded to the penny increment. The Exchange believes that this proposed rule change will give customers who send subpenny limit orders that create the NBBO or increase the quantity at the NBBO access to market liquidity ahead of a specialist, unless the specialist materially improves upon the customer's limit order price (rather than the customer's quoted price).

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 the File No. SR–CHX–2001–07 and should be submitted by May 4, 2001.

[7] In the Exemptive Request, the Exchange represents that it will round subpenny sell orders up to the nearest penny increment and will round subpenny buy orders down to the nearest penny increment when quoting subpenny limit orders. The rounded price will determine whether the quote is at the NBBO. The Exchange represents, for example, that customer orders to buy for $10.011, $10.012 and $10.013 will each be reflected as a quote of $10.01. If the NBBO is, or as a result of the quoting of these orders becomes, $10.01, the customer limit order price is at the NBBO and the specialist must buy at a price of $10.023 or better to avoid violating the rule. *See* Exemptive Request, *supra* note 6.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(2).

V. Commission Findings and Order Granting Partial Accelerated Approval of the Proposed Rule Change for a Pilot Period

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,[11] and, in particular, Section 6(b)(5) of the Act.[12] Simultaneous with the filing of this proposal, the Commission received a request for exemptive relief submitted by the Exchange that would allow the Exchange, Exchange members, and vendors that disseminate Exchange quote information, to display and disseminate their quotes for Nasdaq/NM securities in penny increments, while trading in sub-penny increments.[13] By letter dated April 6, 2001, the Division of Market Regulation (''Division''), pursuant to delegated authority under Rules 11Ac1–1(e),[14] 11Ac1–2(g) [15] and 11Ac1–4(d) [16] under the Act, granted a conditional temporary exemption to CHX, CHX members, and vendors that disseminate CHX quote information to permit them to display and disseminate their quotes for Nasdaq/NM securities in rounded, penny increments without a rounding identifier.[17] The exemption expires on July 9, 2001. The Commission notes that the completion of Nasdaq's decimal transition will enable Nasdaq market makers and ECNs to accept and execute subpenny orders on April 9, 2001 and that the Exchange anticipates implementing subpenny trading in Nasdaq/NM securities at that time. The Commission believes that the proposed rule change should provide protection to customer limit orders in a subpenny trading environment by ensuring that such orders will continue to have access to market liquidity ahead of Exchange specialists in appropriate circumstances.

The Commission finds good cause for granting the Exchange's request for approval of the proposed rule change on a pilot basis prior to the thirtieth day after the day of publication of notice of filing thereof in the **Federal Register**. The Commission notes that the Exchange anticipates that it will begin to accept and execute orders in subpenny increments for Nasdaq/NM securities on April 9, 2001, when the Nasdaq Stock Market fully converts to decimals. The Commission believes that granting accelerated approval to the proposed rule change will allow the Exchange to continue to provide protection to customer limit orders in subpenny increments for Nasdaq/NM securities.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change (File No. SR–CHX–2001–07) is approved on a pilot basis until July 9, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–9169 Filed 4–12–01; 8:45 am]

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[11] In granting accelerated approval of the proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

[13] *See* Exemptive Request, *supra* note 6.

[14] 17 CFR 240.11Ac1–1(e).

[15] 17 CFR 240.11Ac1–2(g).

[16] 17 CFR 240.11Ac1–4(d).

[17] *See* letter from Annette L. Nazareth, Director, Division, Commission, to Paul O'Kelly, CHX, dated April 6, 2001. The letter outlines several other conditions to trading in subpenny increments. The Commission will examine data provided by the CHX as specified in this letter, and information provided by all self-regulatory organizations (''SROs'') as required by the Commission's order, dated June 8, 2000, concerning decimals implementation. *See* Securities Exchange Act Release No. 42914 (June 8, 2000). The Commission intends to reconsider the position expressed in its letter dated April 6, 2001 before the expiration of the exemption.

In the June, 2000 order relating to decimals, the Commission directed the SROs to submit (individually or jointly) a study to the Commission regarding the impact of decimal pricing on systems capacity, liquidity, and trading behavior, including an analysis of whether there should be a uniform minimum increment for a security. The order sated that, if an SRO wishes to move to quoting in an increment of less than one cent, the SRO should include a full analysis of the potential impact of such trading on the SRO's market and the markets as a whole.

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–441677; File No. SR–CHX–2001–05]

Self-Regulatory Organizations; Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Stock Exchange, Incorporated, Relating to the Exchange's SuperMAX 2000 Price Improvement Algorithm

April 9, 2001.

I. Introduction

On March 16, 2001, the Chicago Stock Exchange, Incorporated (''CHX'' or filed with the Securities and Exchange Commission (''Commissin'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b-4 thereunder,[2] a proposed rule change that would amend CHX Article XX, Rule 37(h) to reduce the determinative spread from \$.03 to \$.02 as part of the Exchange's SuperMAX 2000 price improvement program. Notice of the proposed rule change was published for comment in the **Federal Register** on March 23, 2001.[3] This order approves the proposed rule change on an accelerated basis.

II. Description of the Proposal

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.

On December 19, 2000, the Commission approved SR–CHX–00–37,[4] implementing SuperMAX 2000, the CHX's new price improvement program, which will govern price improvement of all order 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 at the CHX. SuperMAX 2000 originally provided for price improvement of at least \$.01 on orders of 100 shares where the spread between the national best bid and offer (''NBBO'') was \$.03 or greater.

To remain competitive, the CHX proposes that its specialists be permitted (but not obligated) to offer price improvement of \$.01 or better where the NBBO spread is \$.02 or greater. The current determinative spread is \$.03. The proposal would not impact orders for more than 100 shares, in which case the specialist's price improvement options are not contingent on a determinative NBBO spread.

III. Discussion

The Commission has reviewed carefully the proposed rule change and finds that it is consistent with the Act and the rules and regulations promulgated thereunder applicable to a national securities exchange and, in particular, with the requirements of Section 6(b).[5] Specifically, the

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

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 44085 (March 19, 2001), 66 FR 16304. In the notice, the Commission stated it would consider granting accelerated approval of the proposed rule change after a 15-day comment period.

[4] Securities Exchange Act Release No. 43742 (December 19, 2000), 65 FR 83119 (December 29, 2000).

[5] 15 U.S.C. 78f(b). In approving this proposal, the Commission has considered the proposed rule's

Continued