

should refer to File No. SR-CBOE-97-07 and should be submitted by March 26, 1997.

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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[Release No. 34-38338; File No. SR-CHX-97-02]

**Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Enhanced SuperMAX**

February 26, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on January 30, 1997, 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposal.

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

The Exchange requests permanent approval of its Enhanced SuperMAX pilot program, as amended, located in subsection (e) of Rule 37 of Article XX.

**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 self-regulatory organization 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 self-regulatory organizations 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 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.<sup>2</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 available under this new rule.

On July 27, 1995, the Commission approved a proposed rule change of the CHX that implemented two options available under this new rule.<sup>3</sup> These two new options, Enhanced SuperMAX and Timed Enhanced SuperMAX, we approved on a pilot basis until July 31, 1996. The Commission extended the pilot program until December 31, 1996 and requested that the CHX provide a report to the Commission, by August 31, 1996,<sup>4</sup> describing its experience with the pilot program. On August 30, 1996, the CHX submitted the report. Most recently, the Commission extended the pilot program until March 1, 1997.<sup>5</sup> In connection with the extension, the CHX agreed to provide additional data to the Commission regarding the pilot. On January 31, 1997, the Exchange submitted this data.

The purpose of the proposed rule change is to request permanent approval of the pilot program, as amended by this filing. Specifically, the Exchange is combining the two options currently available under the pilot program into one option, to be called Enhanced SuperMAX. Enhanced SuperMAX was merely a reactivation of the Exchange's Enhanced SuperMAX program, a program originally approved by the Commission on a pilot basis in 1991.<sup>6</sup> The proposed Enhanced SuperMAX program differs from the original pilot program approved in 1991 in that it is available starting at 8:45 a.m. instead of 9:00 a.m. This program also differs from

the Exchange's SuperMAX program in that under this program, certain orders are "stopped" at the consolidated best bid or offer and are executed with reference to the next primary market sale instead of the previous primary market sale.

The Enhanced SuperMAX program, as amended by this filing, also includes all of the features of the pilot version of the Timed Enhanced SuperMAX program. Essentially, the new Enhanced SuperMAX program will execute orders in the same manner as the pilot Enhanced SuperMAX program, except that if there are no executions in the primary market after the order has been stopped for a designated time period, the order is executed at the stopped price at the end of such period. Such period, known as a time out period, is pre-selected by a specialist on a stock-by-stock basis based on the size of the order, may be changed by a specialist no more frequently than once a month, and may be no less than 30 seconds.

**2. Statutory Basis**

The proposed rule change is consistent with Section 6(b)(5) of the Act 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 a burden on competition.

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

No comments were solicited or received.

**III. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change**

The Commission has carefully reviewed the Exchange's proposed rule change and, for the reasons set forth below, finds that the proposed rule change, as amended by this filing, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Exchange, and, in particular, with Section 6(b)(5)<sup>7</sup> of the Act 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

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

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

<sup>2</sup> See Securities Exchange Act Release No. 35753 (May 22, 1995), 60 FR 28007.

<sup>3</sup> See Securities Exchange Act Release No. 36027 (July 27, 1995), 60 FR 39465.

<sup>4</sup> See Securities Exchange Act Release No. 37491 (July 29, 1996), 61 FR 48690.

<sup>5</sup> See Securities Exchange Act Release No. 38098 (December 30, 1996), 62 FR 1008. Commission note: The CHX Form 19b-4 filing indicates incorrectly that the pilot program was extended until March 31, 1997.

<sup>6</sup> See Securities Exchange Act Release No. 30058 (December 10, 1991), 56 FR 65765.

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

open market and a national market system, and, in general, to protect investors and the public interest.

The proposed rule change provides for a modified version of the SuperMAX system. SuperMAX is a system that automatically improves executions of small agency market orders from the consolidated best bid or offer according to certain predefined criteria, including the last sale in the primary market. In 1990, the Commission first approved SuperMAX on a pilot basis.<sup>8</sup> In 1991, the Commission approved Enhanced SuperMAX on a pilot basis to run concurrently with SuperMAX, which was still on a pilot at that time.<sup>9</sup> This program differed from the Exchange's SuperMAX program in that under this program, certain orders are "stopped" at the consolidated best bid or offer and are executed with reference to the next primary market sale instead of the previous primary market sale. The Exchange sought approval of the Enhanced SuperMAX and SuperMAX systems to evaluate both systems and to determine which system it wanted to implement.

In 1993, the Exchange chose to implement SuperMAX rather than Enhanced SuperMAX and sought approval of SuperMAX on a permanent basis. The Commission permanently approved SuperMAX, believing that the automated execution feature of SuperMAX would provide a more efficient means of bettering the execution price on a large volume of electronically delivered market orders than through manual processing.<sup>10</sup> The Enhanced SuperMAX pilot expired in 1993 without the Exchange requesting an extension or permanent approval. In the initial Enhanced SuperMAX pilot approval order, the Commission had described its concerns with the program and requested that the Exchange submit a report detailing the use of the pilot. The Exchange, however, did not submit a report because specialists on the Exchange made little or no use of the pilot program.<sup>11</sup> Since the Exchange revived the Enhanced SuperMAX pilot program in 1995 (and at the same time requested the Commission approve a pilot of Timed Enhanced SuperMAX), according to reports submitted by the Exchange, no orders have been executed in the Enhanced SuperMAX program because no specialist has chosen this

option.<sup>12</sup> According to the Exchange, there are two reasons for the lack of use of this option. First, there has been no interest in this option from customers. Second, competitors (especially third market firms) now give executions with a time-out feature that is akin to Timed Enhanced SuperMAX. As a result, the Exchange states, customers have come to expect, and now desire, an execution after a designated time period.<sup>13</sup>

The Exchange has revised the rule to combine Enhanced SuperMAX and Timed Enhanced SuperMAX into one option, Enhanced SuperMAX, as amended, which preserves the option of the Enhanced SuperMAX in its pilot form while recognizing that customers have almost exclusively chosen the Timed Enhanced SuperMAX option. As a result, if a specialist has selected a time-out period, and there is a sale during the time-out period, the execution price is the same as it would have been under Enhanced SuperMAX. If, however, there is no sale in the primary market during the time-out period, execution will occur at the stopped price at the end of the time-out period.

The Commission finds appropriate the combining of the two options currently available under the pilot program into one option, now called Enhanced SuperMAX, even if no orders have been executed on the Enhanced SuperMAX pilot program. With this approach, the Exchange has streamlined the rule and also preserved the option for customers to use the former Enhanced SuperMAX option. This approach also eliminates the need for the Exchange to apply to the Commission for a re-activation of the Enhanced SuperMAX option.

The Commission finds that the pricing and execution features of Enhanced SuperMAX, as amended, are not inconsistent with the maintenance of fair and orderly auction markets on national securities exchanges and the protection of investors. The execution criteria of Enhanced SuperMAX, as amended, should contribute to an orderly market because they help to reduce the price variations from trade to trade on low volume.

The Commission recognizes that the increased competition that results from permitting regional specialists to attract orders from other markets by providing superior quotations and more efficient order executions generally enhances market making ability and the quality of customer order executions. The Commission believes the automated pricing parameters and execution procedures of the Enhanced SuperMAX system, as amended, may enhance competition by opening an alternative electronic order routing and execution system for smaller size orders.

Although the Commission finds that Enhanced SuperMAX, as amended, would not automatically provide a 1/8 point price improvement, it would provide some opportunity for price improvement. The Exchange indicated in the First Report that 38% of the eligible orders under the Timed Enhanced SuperMAX algorithm received price improvement,<sup>14</sup> and in the Second Report that 44% of the eligible orders under the Timed Enhanced SuperMAX algorithm received price improvement.<sup>15</sup> As part of the Second Report, the Exchange provided a comparison of executions occurring on one day under SuperMAX and Timed Enhanced SuperMAX (Enhanced SuperMAX, as amended) for a single stock, Nike, Inc. Under the SuperMAX algorithm, 12 of 81 eligible trades received 1/8 point price improvement. The Exchange determined that if Nike, Inc. had been on Timed Enhanced SuperMAX, rather than SuperMAX, between two and twelve orders would have received price improvement, depending on the length of the time-out period. If the time-out period had been set at 30 seconds, only two orders would have been price improved. If the time-out period had been set at 30 seconds, only two orders would have been priced improved. If the time-out period had been set at 5 minutes, 12 orders would have been price improved, and one of those orders would have received 1/4 price improvement. The Exchange concluded that Timed Enhanced SuperMAX could provide greater price improvement than the SuperMAX algorithm under certain circumstances.<sup>16</sup>

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication thereof in the Federal Register. The Commission believes that it is appropriate to approve the proposed rule change on an accelerated

<sup>8</sup> See Securities Exchange Act Release No. 28014 (May 14, 1990), 55 FR 20880.

<sup>9</sup> *Supra* note 6.

<sup>10</sup> Securities Exchange Act Release No. 32631 (July 14, 1993), 58 FR 30969 (order approving SuperMAX permanently).

<sup>11</sup> *Id.*

<sup>12</sup> Report of the Chicago Stock Exchange Relating to the Enhanced SuperMAX and Timed Enhanced SuperMAX Pilot Programs (August 30, 1996) at 1 ("First Report") (covering the three month period ending August 27, 1996); Second Report of the Chicago Stock Exchange Relating to the Enhanced SuperMAX and Timed Enhanced SuperMAX Pilot Programs (January 30, 1997) at 1 ("Second Report") (covering the three month period ending January 20, 1997).

<sup>13</sup> First Report, *supra* note 12 at 1; Second Report, *supra* note 12 at 1.

<sup>14</sup> First Report, *supra* note 12 at 2.

<sup>15</sup> Second Report, *supra* note 12 at 2.

<sup>16</sup> *Id.*

basis so that the Exchange can enable public customers to receive the benefits of Enhanced SuperMAX, as amended, without the interruption that would result if the pilot program were allowed to expire on March 1, 1997 without permanent approval of the program in place. Moreover, both the Enhanced SuperMAX and Timed Enhanced SuperMAX have operated without any significant problems as pilot programs since July, 1995. Finally, the Commission received no comments on the Exchange's earlier request for permanent approval of the pilot, which was published for comment on November 20, 1996.<sup>17</sup> The Commission, therefore, believes that granting accelerated approval of the proposed rule change is appropriate and consistent with Section 6(b)(5) of the Act.<sup>18</sup>

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549. Copies of the submissions, 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, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the Exchange. All submissions should refer to File No. SR-CHX-97-02 and should be submitted by March 26, 1997.

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

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>20</sup>

Margaret H. McFarland,  
Deputy Secretary.

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[Release No. 34-38340; File No. SR-DTC-22]

### Self-Regulatory Organization's; The Depository Trust Company; Notice of Filing of a Proposed Rule Change To Amend DTC's Charge Back and Return of Funds Procedures

February 26, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on December 4, 1996, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-DTC-96-22) as described in Items I, II, and III below, which items have been prepared primarily by DTC. 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 proposed rule change amends DTC's charge back and return of funds policies ("Policy")<sup>2</sup> to shorten from ten business days to one business day the period within which a paying agent can request that DTC return principal and income ("P&I") payments that have been allocated to participants.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filings with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.<sup>3</sup>

#### (A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Policy<sup>4</sup> currently authorizes DTC to return P&I payments to paying agents

after the funds have been credited to the accounts of DTC participants, which is commonly referred to as a "clawback," if the paying agent notifies DTC in writing within ten business days of the payable date that: (i) The issuer has failed to provide the paying agent with sufficient funds to cover the payments; or (ii) the issuer has become bankrupt.<sup>5</sup> The proposed rule change will reduce the period within which a paying agent can request DTC to return funds to such paying agent from ten business days to one business day.<sup>6</sup> Furthermore, the Policy provides that if an agent requests the return of a P&I payment more than ten business days after a payable date, DTC will work with the agent and participate to resolve the matter. However, DTC will not return the allocated payments without the participant's consent.

PSA The Bond Market Trade Association ("PSA") has expressed concern with the current policy and the associated risk of loss placed on DTC participants in the event a payment is returned to a paying agent.<sup>7</sup> In response, DTC convened a joint working group of

Act Release Nos. 23219 (May 8, 1986), 51 FR 17845 [SR-DTC-03] (notice of filing and immediate effectiveness on a temporary basis of a proposed rule change); 23686 (October 7, 1986), 51 FR 37104 [SR-DTC-86-4] (order permanently approving proposed rule change); 26070 (September 9, 1988) 53 FR 36142 [SR-DTC-88-17] (notice of filing and immediate effectiveness of proposed rule change clarifying that charge back proceedings apply to DTC's same-day funds settlement system and next-day funds settlement system); and 35452 (March 7, 1995), 60 FR 13743, [SR-DTC-95-03] (notice of filing and immediate effectiveness of proposed rule change excluding money market instrument programs from DTC's charge back and return of funds procedures).

<sup>5</sup> The Policy also allows DTC to return previously credited payments upon written request from a paying agent within ten business days of the payable date due to an error by the paying agent. The proposed rule change does not alter this position of the Policy.

<sup>6</sup> Under the proposed rule change, although the time within which a paying agent can request a reversal of allocated funds will be reduced from ten business days to one business day following payable date, the actual reversal may take up to two or three business days after the payable date. For example, if a paying agent requests a reversal from DTC late in the day of the first business day after the payable ("P+1"), DTC would likely notify its participants' on the morning of the following business day ("P+2"). In the interest of fairness and pursuant to DTC's procedures, DTC must notify all affected participants one business day prior to the date on which DTC enters the reversal into its participant's daily settlement accounts. Accordingly, the actual reversal will not occur until P+3. Telephone conversation between Larry E. Thompson, Deputy General Counsel and Senior Vice President, DTC; Mark Steffensen, Special Counsel, Division of Market Regulation ("Division"), Commission; and Jeffrey Mooney, Attorney, Division, Commission (December 18, 1996).

<sup>7</sup> Letter from Heather L. Ruth, President, PSA to William F. Jaenike, Chairman of the Board and Chief Executive Officer, DTC (August 16, 1996).

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

<sup>2</sup> A copy of the Policy marked to show the specific changes to DTC's procedures is attached as Exhibit C to DTC's proposed rule change which is available for inspection and copying at the Commission's Public Reference Room or through DTC.

<sup>3</sup> The Commission has modified the text of the summaries prepared by DTC.

<sup>4</sup> For a complete description of the procedures relating to the Policy, refer to Securities Exchange

<sup>17</sup> Securities Exchange Act Release No. 37497 (November 13, 1996), 61 FR 59124.

<sup>18</sup> 15 U.S.C. 78f.

<sup>19</sup> 15 U.S.C. 78s(b)(2).

<sup>20</sup> 17 CFR 200.30-3(a)(12)