

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-12557 Filed 5-11-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39956; File No. SR-CHX-98-01]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the Chicago Stock Exchange, Incorporated Relating to the Stopping of Market and Marketable Limit Orders

May 5, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on January 16, 1998, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change relating to the stopping of market and marketable limit orders. On February 12, 1998, the Exchange filed amendment No. 1 with the Commission.² The proposed rule change, as amended, is described in Items I, II, and III 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.

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

The Exchange proposes to amend Article XX, Rule 37(b) relating to the stopping of market orders and marketable limit orders in the Midwest Automated Execution System ("MAX System"). Below is the next of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

Article XX, Rule 37. Guaranteed Execution System and Midwest Automated Execution System (b) Automated Executions. The Exchange's Midwest Automated Execution System (the MAX System) may be used to provide an automated delivery and execution facility for orders that are eligible for execution under the Exchange's Article XX, Rule 37(a)

("BEST Rule") and certain other orders. In the event that an order that is subject to the BEST Rule is sent through MAX, it shall be executed in accordance with the parameters of the BEST Rule and the following. In the event that an order that is not subject to the BEST Rule is sent through MAX, it shall be executed in accordance with the parameters of the following:

(1)-(9) No change in text.

(10) All market orders received through the MAX System that would result in an out of range execution shall be deemed to be received with a request to STOP. *Additionally, specialists may stop limit orders that are marketable when entered into the MAX System. Subject to Interpretations and Policies .03 under [paragraph (a) under] this Rule 37, a specialist may execute a stopped order out of the primary market range, at no worse than the stopped price, provided the specialist receives approval to do so from two floor officials. All agency and professional market orders received through the MAX System that are from 100 shares up to and including 599 shares (or such greater amount designated by a specialist on a stock-by-stock basis) (the stop volume threshold), that are not automatically executed pursuant to subsections (6) and (7) hereof shall be designated as "pending auto-stop" orders. A pending auto-stop order shall be automatically stopped thirty seconds after entry into the MAX System unless the order has been canceled, executed, manually stopped, or put on hold during such thirty second period. The pending auto-stop feature shall operate from 8:45 a.m. until 2:57 p.m. Notwithstanding the foregoing all or none orders, fill or kill orders, immediate or cancel orders and orders that have been stopped under the Enhanced SuperMAX program are not eligible to be "pending auto-stop" orders.*

(11)-(12) No change in text.

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 organization 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.

As described more fully below, the purpose of the proposed rule change is to amend CHX rules relating to "stopped" orders³ in the MAX System⁴ (i) to permit specialists to stop a marketable limit order⁵ if the order is not immediately executed, and (ii) to automate the stopping of certain market orders that are not automatically executed.

Under the Exchange's BEST Rule, Exchange specialists are required to guarantee executions of all agency⁶ market and limit orders for Dual Trading System issues⁷ from 100 shares up to and including 2099 shares. Subject to the requirements of the short sale rule, market orders must be executed at a price equal to or better than the Intermarket Trading System ("ITS") best bid or offer ("BBO"), up to the size associated with the ITS BBO. Limit orders must be executed at their limit price or better when: (1) the ITS BBO at the limit price has been exhausted in the primary market; (2) there has been a price penetration of the limit in the primary market (generally known as a trade-through of a CHX limit order); or (3) the issue is trading at the limit price on the primary market unless

³ See CHX Manual, Art. XX, Rule 28 regarding member liability for stopped orders.

⁴ The MAX System provides an automated delivery and, in certain cases, execution facility for orders that are eligible for execution under Article XX, Rule 37(a), and in certain other orders. See CHX Manual, Art. XX, Rule 37(b).

⁵ For purposes of this filing, a marketable limit order is a limit order that is marketable when entered into the MAX System, i.e., the limit price of the order is at or past (higher for a buy order or lower for a sell order) the relevant side of the ITS BBO at the time the order is received in the MAX System. If the ITS BBO subsequently moves away from the limit price (i.e., if the limit price is lower than the ITS best offer for a buy order or higher than the ITS best bid for a sell order) after receipt of the order but before execution of the order, the order will still be considered a marketable limit order for purposes of pending auto-stop. Conversely, if a limit order is not marketable when received by the MAX System, the order will not be considered a marketable limit order for purposes of pending auto-stop, even if the ITS BBO subsequently becomes equal to or past the limit price of the order.

⁶ The term "agency order" means an order for the account of a customer, but does not include professional orders as defined in CHX, Art. XXX, Rule 2, interpretation and policy.04. That Rule defines a "professional order" as any order for the account of a broker-dealer, or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest.

⁷ Dual Trading System Issues are issues that are 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 American Stock Exchange.

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² See letter from David T. Rusoff, Foley & Lardner, to Gail A. Marshall, Division of Market Regulation, Commission, dated February 12, 1998.

it can be demonstrated that the order would not have been executed if it had been transmitted to the primary market or the broker and specialist agree to a specific volume related to, or other criteria for, requiring an execution.⁸

As stated above, the Exchange's MAX System provides for the automatic execution of orders that are eligible for execution under the Exchange's BEST Rule and certain other orders.⁹

The MAX System has two size parameters which must be designated by the specialist on a stock-by-stock basis. For Dual Trading System issues, the specialist must set the auto-execution threshold at 1099 shares or greater and the auto-acceptance threshold at 2099 shares or greater. In no event may the auto-acceptance threshold be less than the auto-execution threshold. If the order-entry firm sends an order through the MAX System that is greater than the specialist's auto-acceptance threshold, a specialist may cancel the order within one minute of it being entered into the MAX System.¹⁰ If the order is not canceled by the specialist, the order is designated as an open order.¹¹ If the order-entry firm sends an order through the MAX System that is less than the auto-acceptance threshold but greater than the auto-execution threshold, the order is not available for automatic execution but is designated in the open order book. A specialist may manually execute any portion of the order; the difference must remain as an open order. If the order-entry firm sends an order through the MAX System that is less than or equal to the auto-execution

threshold, the order is executed automatically, unless an exception applies. The MAX Rules currently provide several exceptions to automatic execution, even for orders that are less than or equal to the auto-execution threshold. First, unless a professional order is received with a "Z" designator, it is not automatically executed, regardless of size. Second, all market orders for Dual Trading System issues received through the MAX System that would result in an out of range¹² execution are deemed to be received with a request to "stop."¹³ Stopped orders are not automatically executed in the usual course (*i.e.*, pursuant to Rule 37(b)(6)). Instead, they are placed in the open order file.¹⁴ The order sending firm then receives a "UR Stopped" message. The specialist is then required to include the order in its quote by bidding (if it is an order to buy) or offering (if it is an order to sell) the shares at one minimum variation better than the current market, in an effort to obtain price improvement for the order.

Third, the MAX System will not automatically execute a market order or marketable limit order if the size associated with the ITS BBO is less than the size of the market or marketable limit order.¹⁵

Currently, the MAX System has no functionality to automatically "stop" marketable limit orders; only market orders are stopped, and even then, only if they would result in out of range executions or the size of the order is greater than the size associated with ITS BBO.¹⁶ Consequently, if a marketable limit order is not immediately executed (*e.g.*, it is out of range, the order is greater than the size associated with the ITS BBO, etc.), it is merely added to the open order book. No message is sent to the order sending firm until the order is executed. The same is true for market orders that are not automatically stopped and are not automatically executed.

Because no message is sent to the order sending firm, the firm is uncertain as to the current status of its order. As a result, as stated above, the purpose of the proposed rule change is (i) to permit specialists to stop a marketable limit orders, and (ii) to automate the stopping of certain market orders. Once stopped,

the order sending firm will then receive a stopped message, rather than being unsure as to the current status of the order, as is currently the case.

Specifically, the CHX is proposing to amend Article XX, Rule 37(b)(10) to provide that all MAX market orders that are from 100 up to and including 599 shares (or such higher amount determined by a specialist on a stock by stock basis) that are not automatically executed in the normal course pursuant to Rule 37(b)(6) (*i.e.*, because there is insufficient size associated with the ITS BBO, because the order would result in an out of range execution, because the order is a professional order and the specialist has not yet decided whether to accept the order, or because of any other reason permitted under CHX rules) will be identified as a "pending auto stop" order.¹⁷

These orders will retain their "pending auto-stop" status for 30 seconds. At the end of this 30 second period, the MAX System will automatically stop the order and send a "UR Stopped" message to the order sending firm, *unless*, before the end of the 30 second period, the order is executed, canceled, manually stopped by the specialist or "put on hold." If any of these events occur, the "pending auto-stop" status will be removed from the order and the order will not automatically be stopped.¹⁸ If an order is "put on hold," the CHX's existing rules for the order will apply. If the order is stopped, the stop price will be the ITS BBO at the time the order is received in the MAX System. Furthermore, if the order is stopped after the "pending auto-stop" period, the *entire* order will be stopped.

The change to Rule 37(b)(10) to stop the entire order will result in better guarantees for the order than are required by existing CHX Rules. For example, professional orders are currently not guaranteed an execution under the BEST Rule. Under this change, eligible professional market orders will now be guaranteed an

⁸ It is the responsibility of the specialist to be able to demonstrate that the order would not have been executed had it been routed to the other market. This is often accomplished by sending a "marker" order to the primary market.

⁹ A MAX order that fits under the BEST parameters must be executed pursuant to BEST Rules via the MAX System. (See Art. XX, Rule 37(a) for BEST Rules) While the BEST Rules do not apply if the order is outside the BEST parameters, MAX System handling rules are still applicable. (See Art. XX, Rule 37(b) for MAX System handling rules)

¹⁰ While the rule currently permits cancellation within three minutes, the Exchange has proposed a rule change (CHX-97-32 published in the **Federal Register** on February 11, 1998) to reduce the time to one minute. (See Securities Exchange Act Release No. 39615 (February 3, 1998), 63 FR 7020 (February 11, 1998).)

¹¹ If an oversized market or limit order is received by the specialist, he will either reject the order immediately or display it immediately, in accordance with CHX Article XX, Rule 7 and the SEC's recently adopted Order Execution Rules (Securities Exchange Act Release No. 37619A (Sept. 6, 1996), 61 FR 48290 (Sept. 12, 1996)). If the order is displayed, the specialist will check with the order entry broker to determine the validity of the oversized order. During the one minute period, the specialist can cancel the order and return it to the order entry firm, but until it is canceled the displayed order is eligible for execution.

¹² "Out of range" means either higher or lower than the range in which the security has traded on the primary market during a particular trading day.

¹³ See CHX Manual, Art. XX, Rule 37(b)(11).

¹⁴ See CHX Manual, Art. XX, Rule 37(b)(2).

¹⁵ See CHX Manual, Art. XX, Rule 37(b)(12).

¹⁶ CHX Manual, Art. XX, Rule 37(b)(10) and (11). While market orders may also be stopped under the Exchange's Enhanced SuperMAX program, these orders are not subject to this filing.

¹⁷ While both agency and professional orders will be eligible to be "pending auto-stop" orders, all or none orders, odd-lot orders, fill or kill orders, immediate or cancel orders, orders that re or will be stopped under the Enhanced SuperMAX program, and other orders that cannot be entered into the MAX System (*i.e.*, not held orders, sell short exempt orders and special settlement orders) will not be eligible to be "pending auto stop" orders.

¹⁸ As is the case for all features of the MAX System, in unusual trading conditions, this feature of MAX can be de-activated (in its entirety or on an issue by issue basis) with the approval of two members of the Exchange's Committee on Floor Procedure or a designated member of the Exchange staff who would have authority to set execution prices. See CHX Article XX, Rule 37(b)(8).

execution at the stopped price. Additionally, pursuant to Article XX, Rule 28, a stopped order constitutes a guarantee that the order will be executed at the stopped price or better. However, under existing rules, if the size of the order is greater than the size of the ITS BBO in existence when the order is received, there is merely no automatic execution of the order, the order does not have to be "stopped." Moreover, even if the order is "stopped" under Rule 28 only that portion of the order that is less than or equal to the size of the ITS BBO is stopped. The portion of the order that exceeds the ITS BBO is not stopped. As proposed, the entire size of the order (up to 599 shares) would be automatically stopped after the 30 second delay unless an exception applies.

This better guarantee can be illustrated by an example. Suppose the ITS BBO is \$20 bid, \$20 $\frac{1}{4}$ offered, 400 shares \times 10,000 shares. Suppose further that a 500 share agency market order to sell is entered into the MAX System. Under current CHX rules, the order would not be automatically executed. The specialist would be required to manually execute 400 shares at \$20. The remaining 100 shares would have to be executed at the next best prevailing price. If \$20 were out of range, there would also be no automatic execution. If the customer requested a stop, then a specialist would stop 400 shares of the order at \$20, *i.e.*, offer 400 shares at \$20 $\frac{1}{16}$ and guarantee an execution at no worse than \$20. The remaining 100 shares would be guaranteed an execution (pursuant to the BEST Rule), but not necessarily an execution at \$20. Under Rule 37(b)(10), as proposed to be amended, if the specialist did nothing, after 30 seconds, all 500 shares of the order would be stopped. Thus, the customer would be guaranteed an execution of no worse than \$20 for all 500 shares.

The Exchange believes that the 30 second delay between the time the order is entered and the time that the order is stopped is appropriate. The 30 seconds will give the specialist an opportunity to review the order to determine whether a stop is appropriate under the circumstances.

The "pending auto-stop" feature of the MAX System will operate from 8:45 a.m. until 2:57 p.m. Thus, only orders entered into the MAX System after 8:45 a.m. but before 2:57 p.m. will be eligible to be "pending auto-stop" orders.

In addition to adding the new "pending auto stop" order to the MAX System the CHX is proposing changes to the MAX System that would permit a specialist to manually "stop" a

marketable limit order, regardless of size.

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 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 self-regulatory organization 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 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 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 at 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 No. SR-CHX-98-01 and should be submitted by June 2, 1998.

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

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 98-12558 Filed 5-11-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39946; File No. SR-DTC-98-03]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees and Charges

May 4, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on February 20, 1998, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission"), as amended on March 6, 1998, the proposed rule change 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 from interested persons on the proposed rule change.

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

The proposed rule change will adjust the fees charged by DTC for various services provided.

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

In its filing 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),

¹⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).