

("Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on June 29, 1995, 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 self-regulatory organization. On July 21, 1995, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>1</sup> 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 add subsection (e) and subsection (f) to Rule 37 of Article XX relating to the CHX's MAX System. The text of the proposed rule is as follows [new text is italicized]:

#### **Article XX**

##### *Rule 37*

(e) *The Exchange's Enhanced SuperMAX program shall be an automatic execution program within MAX in which a Specialist may voluntarily choose to participate on a stock-by-stock basis. A Specialist shall decide if his or her stock will be eligible for Enhanced SuperMAX treatment. In the event that a stock is eligible for Enhanced SuperMAX treatment (pursuant to paragraph (e) of this Rule) and SuperMAX treatment (pursuant to paragraph (c) of this Rule) at the same time, the size of the order will determine which program will be followed for execution. An order of 599 shares or less will execute according to the SuperMAX program and an order greater than 599 shares will execute according to the Enhanced SuperMAX program. In the event that a Specialist determines that his stock is eligible for Enhanced SuperMAX and voluntarily chooses to participate in Enhanced SuperMAX, agency market orders up to and including 1099 shares (or such greater size specified by a specialist and approved by the Exchange) in that stock may automatically be stopped and executed in MAX, through the Enhanced SuperMAX program, without any specialist intervention based on the following criteria:*

(1) *Stopping. If an agency market order eligible for Enhanced SuperMAX would create either a double up tick (buy order) or double down tick (sell order) if the order was executed at the consolidated best bid or offer ("NBBO") the Enhanced SuperMAX program will "stop" the order. Once stopped, the order will not receive an execution that is worse than the stop price. Notwithstanding anything in the previous sentence to the*

*contrary, agency market orders in markets quoted with a minimum variation (usually 1/8 spread) will not be stopped. Orders not stopped will be immediately executed based upon the NBBO as the case may be.*

(2) *Pricing. Buy Orders stopped under (1) above will be executed as follows:*

(i) *If the next primary market sale is equal to or less than the last sale then the stopped order will be executed at such last sale price (subject, however, to the Exchange's block protection policy as set forth in interpretation and policy .06 of Rule 7 of this Article).*

(ii) *If the next primary market sale is greater than the last sale then the stopped order will be executed at such next primary market sale price. However, if the next primary market sale is greater than the stop price then the stopped order will be filled at the stopped price (i.e. at the offer).*

*Sell orders stopped under (1) above will be executed as follows:*

(iii) *If the next primary market sale is equal to or greater than the last sale then the stopped order will be executed at such last sale price (subject, however, to the Exchange's block protection policy as set forth in interpretation and policy .06 of Rule 7 of this Article).*

(iv) *If the next primary market sale is less than the last sale then the stopped order will be executed at such primary market sale price. However, if the next primary market sale is less than the stop price then the stopped order will be filled at the stopped price (i.e. at the bid).*

(3) *Operating Time. Enhanced SuperMAX will operate each day that the Exchange is open for trading from 8:45 a.m. (C.T.) until the close. In unusual trading situations, individual stocks or all stocks may be removed from Enhanced SuperMAX with the approval of two members of the Committee on Floor Procedure.*

(4) *Timing. Orders entered into Enhanced SuperMAX shall, when due a fill under the Enhanced SuperMAX program, be immediately executed without any delay (i.e. 0 seconds).*

(5) *Applicability to Odd-Lots. 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 Enhanced SuperMAX execution if: (i) the issue is on Enhanced SuperMAX, (ii) it is an order for 200 shares or less, and (iii) it is an OLES passively driven, system-generated market order (and not an actively managed order).*

(6) *Out of Range. Notwithstanding anything in this paragraph (e) to the contrary, Enhanced SuperMAX will not execute an order at the NBBO if such execution would result in an out of range execution.*

(7) *Other. Any eligible order in a stock included in Enhanced SuperMAX which is manually presented at the Specialist post by a floor broker must also be guaranteed an execution by the Specialist pursuant to the criteria set forth in this paragraph (e). In the event that a contra side order which would better an Enhanced SuperMAX execution is presented at the post, the incoming order which is executed pursuant to the Enhanced*

*SuperMAX criteria must be adjusted to the better price.*

(f) *The Exchange's Timed Enhanced SuperMAX program shall be an automatic execution program within MAX in which a Specialist may voluntarily choose to participate on the stock-by-stock basis. A Specialist shall decide if his or her stock will be eligible for Timed Enhanced SuperMAX treatment. In the event that a Specialist determines that his or her stock is eligible for Timed Enhanced SuperMAX and voluntarily chooses to participate in Timed Enhanced SuperMAX, agency market orders up to and including 1099 shares (or such greater size as specified by the Specialist and approved by the Exchange) will automatically be executed in MAX, through the Timed Enhanced SuperMAX program, without any Specialist intervention, in accordance with the Enhanced SuperMAX program and rules (as specified in paragraph (e) of this Rule and subparagraphs (1) through (7) thereunder) with the following modification:*

(1) *Timer. In the event that an order is stopped pursuant to the criteria described in paragraph (e)(1) of this Rule, such order shall be executed at the stopped price if there are no executions in the primary market at the end of the applicable Time Out Period (as defined below). For purposes of this paragraph (f), the Time Out Period shall be the time specified by the specialist on stock-by-stock basis based on the size of the order. Such Time Out Period shall be preselected by a specialist, may be changed by a specialist no more frequently than once a month and may be no less than 30 seconds.*

### **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 III 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*

On May 22, 1995, the Commission approved a proposed rule change of 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

<sup>1</sup> See letter from David Rusoff, Foley & Lardner, to Glen Barrentine, Senior Counsel, SEC, dated July 21, 1995. In Amendment No. 1, the Exchange requests that the proposed rule change be considered under 19(b)(2) on one-year pilot basis rather than under 19(b)(3)(A) and makes certain clarifying changes to the text of Item I.

<sup>2</sup> See Securities Exchange Act Release No. 325753 (May 22, 1995), 60 FR 28007 (May 26, 1995) (File No. SR-CHX-95-08).