

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 purpose of the proposed rule change is to set forth two options available under this new rule. One option is merely a reactivation of the Exchange's Enhanced SuperMAX program, a program originally approved by the Commission on a pilot basis in 1991.³ Unlike the old pilot program, however, the new Enhanced SuperMAX program will be available starting at 8:45 a.m. instead of 9:00 a.m. This program differs from the Exchange's SuperMAX program is that under this program, certain orders are "stopped" at the NBBO⁴ and are executed with reference to the *next* primary market sale instead of the previous primary market sale.

The other option is a slight variation on the Enhanced SuperMAX program. This other option, the Timed Enhanced SuperMAX program, will execute orders in the same manner as the 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 will be executed at the stopped price at the end of such period. Such period, known as a time out period, will be 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.

³ See Securities Exchange Act Release No. 30058 (Dec. 10, 1991), 56 FR 65765 (Dec. 18, 1991) (order approving SR-MSE-91-12). The pilot program was subsequently extended in Securities Exchange Act Release Nos. 30701 (May 14, 1992), 57 FR 21683 (May 21, 1992) (File No. SR-MSE-92-06); 310238 (Aug. 13, 1992), 57 FR 37856 (Aug. 20, 1992) (File No. SR-MSE-92-09); and 31857 (Feb. 12, 1993) 58 FR 9227 (Feb. 19, 1993) (File No. SR-MSE-01).

⁴ The term national best bid or best offer is defined under SEC Rule 11Ac1-2 as the highest bid or lowest offer for a reported security made available by any reporting market center pursuant to Rule 11Ac1-1 or the highest bid or lowest offer for a security other than a reported security disseminated by an over-the-counter market maker in Level 2 or 3 of Nasdaq.

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

The proposed rule change 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. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. 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 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 at 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-CHX-95-15 and should be submitted by August 23, 1995.

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

The Commission has reviewed carefully CHX's proposed rule change and concludes 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, and in particular, with Section 6(b)(5) of the Act.⁵

The proposed rule change provides for modified versions of the SuperMAX system⁶ (Enhanced SuperMAX and

⁵ 15 U.S.C. 78f(b)(5) (1988 & Supp. V. 1993).

⁶ 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. In 1990, the Commission first approved SuperMAX on a pilot basis. See Securities Exchange Act Release No. 28014 (May 14, 1990), 55 FR 20880 (May 21, 1990) (File No. SR-MSE-90-05). In 1993, the Commission approved SuperMAX on a permanent basis. For more detail

Timed Enhanced SuperMAX). These modified versions will operate as separate systems and will be available to CHX specialists as additions or alternatives to SuperMAX.⁷ Participation in Enhanced SuperMAX and Timed Enhanced SuperMAX will be voluntary for specialists and will apply on a stock-by-stock basis for agency market orders of 1,099 shares or fewer in Dual Trading Systems issued.⁸

Under the proposed rule change, Enhanced SuperMAX and Timed Enhanced SuperMAX would automatically stop a market order if its execution at the consolidated best bid or offer ("BBO") would create either a double up tick or double down tick. If the execution at the BBO would not result in a double up tick or double down tick, then Enhanced SuperMAX and Timed Enhanced SuperMAX would execute the order at the BBO. Once a security chosen by a specialist for Enhanced SuperMAX and Timed Enhanced SuperMAX is stopped, a buy (sell) order is guaranteed at least the offer (bid) price prevailing at the time of the stop ("stop price").

The stopped Enhanced SuperMAX and Timed Enhanced SuperMAX eligible order would be executed based upon the next sale in the primary market according to the execution criteria. The Enhanced SuperMAX and Timed Enhanced SuperMAX algorithm compares the previous last sale price to the next sale price, and considers the direction of the market by those sales prices, to determine the price at which the stopped market order will be filled. The procedures under Enhanced SuperMAX and Timed Enhanced SuperMAX are identical except the stopped order in Timed Enhanced SuperMAX will be executed at the expiration of a specified time period as designated by a specialist.

Under the proposal, Enhanced SuperMAX and Timed Enhanced SuperMAX would not execute an order at the BBO if such execution would

regarding SuperMAX, see *infra* note 12 and the accompanying text.

⁷ The Exchange will file an amendment to the proposed rule change in the near future to codify the procedures with respect to a specialist's ability to make a security eligible for Enhanced SuperMAX and Time Enhanced SuperMAX. A specialist will be permitted to engage and disengage Enhanced SuperMAX and Timed Enhanced SuperMAX for a given stock only once a month. See letter from David Rusoff, Foley & Lardner, to Glen Barretine, Senior Counsel, SEC, dated July 21, 1995.

⁸ The Dual Trading System of the Exchange allows the execution of both round-lot and odd-lot orders in certain issues assigned to specialists on the Exchange and listed on either the New York Stock Exchange or the American Stock Exchange.