

The Applicants state that each of the Trust Portfolios into which the Fund Portfolios will be merged has the same investment objectives as the corresponding Fund Portfolios. In addition, the Applicants state that although the investment approaches and names of certain of the Fund Portfolios may change, subject to shareholder approval, based on proposals disclosed in the proxy statement, these changes are distinct from those caused by the Reorganization.

11. Applicants assert that the proposed transaction is consistent with the general purposes of the Act. The transactions must receive the approval of a majority of the outstanding voting shares of the Fund. Contract owners have received a proxy statement containing all material disclosures. Each contract owner will be entitled to instruct how the number of shares related to his or her interest in the separate accounts will be voted. All other shares will be mirrored voted in proportion to the shares voted in accordance with those instructions.

Conclusion

For all the reasons stated above, Applicants assert that the terms of the contemplated transactions meet all of the requirements of Section 17(b) of the Act. Accordingly, Applicants request that the Commission issue an order exempting the proposed transactions from the provisions of Section 17(a) of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43742; File No. SR-CHX-00-37]

Self-Regulatory Organizations; Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 by the Chicago Stock Exchange, Incorporated, Relating to the Exchange's SuperMAX 2000 Price Improvement Program

December 19, 2000.

I. Introduction

On November 6, 2000, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange"), filed with the Securities and Exchange Commission

("Commission" 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 to add a new price improvement algorithm entitled SuperMAX 2000, applicable to all issues trading in decimal price increments. On November 16, 2000, the CHX filed an amendment to the proposal.³ Notice of the proposed rule change, including Amendment No. 1, was published for comment in the **Federal Register** on November 29, 2000.⁴ The Commission received no comments on the proposal. On December 19, after the close of the 15-day comment period, the CHX again amended the proposed rule change.⁵ This order approves the proposed rule change and Amendment Nos. 1 and 2, 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 price improvement, and to afford CHX specialists the opportunity to provide price improvement alternatives equal to or more favorable than existing alternatives.

By way of background, on May 22, 1995, the Commission approved a proposed CHX rule change 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.⁶ That order contemplated that the CHX would file with the Commission specific modifications to the parameters of MAX that are required to implement various options under this new rule.

SuperMAX, Enhanced SuperMAX, SuperMAX Plus and Derivative SuperMAX are four existing CHX programs within the MAX system that use computerized algorithms to provide

automated price improvement. The Commission has approved each of these price improvement programs on a permanent basis.⁷

The Exchange believes that, for it to remain competitive, its specialists must be able to swiftly and meaningfully respond to the price improvement considerations articulated by the Exchange's order sending firms and their customers. To this end, the Exchange proposes to change its existing price improvement program.

At present, Exchange specialists may voluntarily participate, on an issue-by-issue basis, in one of the four price improvement programs referenced above. Each of the existing price improvement programs provides for a fixed amount of price improvement when the national BBO spread meets certain spread parameters (e.g., in SuperMAX plus, \$.01 on a BBO spread of \$.03 on orders from 100 to 199 shares).

Under the proposed SuperMAX 2000 program, customers would be guaranteed the same minimum amount of price improvement they would receive under SuperMAX Plus (i.e., \$.01 on a spread of \$.03 on orders of 100 shares) if a specialist has enabled SuperMAX 2000; in addition, specialists would be permitted to provide further automated price improvement on an issue-by-issue basis. This opportunity for additional price improvement would exist for all orders of 100 shares or greater.

The Exchange believes that SuperMAX 2000 will provide CHX specialists with the flexibility to better respond to customer price improvement requirements in a decimal pricing environment. The proposal contemplates equality among order-sending firms (and their customers) by mandating that CHX specialists provide additional price improvement on an issue-by-issue basis; specialists would not be permitted to distinguish among order-sending firms when designating price improvement levels.

The Exchange also believes that SuperMAX 2000 would simplify the Exchange's existing price improvement framework by eliminating multiple price improvement programs with different names, requirements and

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See November 15, 2000 letter from Kathleen M. Boege, Associate General Counsel, CHX, to Joseph Morra, Special Counsel, Division of Market Regulation, SEC ("Amendment No. 1"). In Amendment No. 1, the CHX made a minor, technical correction to the language of proposed Rule 37(h).

⁴ Securities Exchange Act Release No. 43577 (November 16, 2000), 65 FR 71164.

⁵ See December 18, 2000 letter from Kathleen M. Boege, Associate General Counsel, CHX, to Joseph Morra, Special Counsel, Division, SEC ("Amendment No. 2"). In Amendment No. 2, the CHX made further minor, technical corrections to the language of proposed Rule 37(h). The Commission notes that neither amendment made substantive changes to the proposal.

⁶ See Securities Exchange Act Release No. 35753 (May 22, 1995), 60 FR 28007 (May 26, 1995) (SR-CHX-95-08).

⁷ See Securities Exchange Act Release Nos. 40017 (May 20, 1998), (63 FR 29277 (May 28, 1998) (SR-CHX-98-09) and 40235 (July 17, 1998), 63 FR 40147 (July 27, 1998) (SR-CHX-98-09) (orders approving revised SuperMAX and Enhanced SuperMAX algorithms); 41480 (June 4, 1999), 64 FR 32570 (June 17, 1999) (SR-CHX-99-04) (order approving revised SuperMAX Plus algorithm); and 42565 (March 22, 2000), 65 FR 16442 (March 28, 2000) (SR-CHX-99-24) (order approving Derivative SuperMAX algorithm).

results.⁸ By replacing four existing price improvement programs with one comprehensive program that will incorporate (as a minimum threshold) the level of price improvement currently available, the Exchange can afford its specialists the flexibility to provide a wide variety of price improvement alternatives, all of which will be equal to or more favorable than existing alternatives.

III. Discussion

The Commission has reviewed carefully the proposed rule change, as amended, 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).⁹ Specifically, the Commission finds that approval of the proposed rule change is consistent with section 6(b)(5)¹⁰ 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. The Commission believes that SuperMAX 2000 should provide CHX specialists with greater flexibility to respond to customer price improvement requirements than the four CHX programs within the MAX system currently in use. The Commission also believes that SuperMAX 2000 will simplify the Exchange's existing price improvement framework by eliminating the four existing price improvement programs and replacing them with one comprehensive program that incorporates as a minimum threshold the level of price improvement that was available under the four previous price improvement programs. Finally, the Commission believes that implementation of SuperMAX 2000 should afford CHX specialists greater flexibility to provide a wide variety of price improvement alternatives, all of

which will be equal to or better than the price improvement alternatives currently available.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. In the notice, the Commission indicated that it would consider granting accelerated approval of the proposal after a 15-day comment period. The Commission received no comments on the proposal during the 15-day comment period. Amendment Nos. 1 and 2 made only minor, technical changes to the proposed rule language, and did not alter the substance of the proposal.¹¹ Furthermore, because SuperMAX 2000 is designed to provide price improvement alternatives that incorporate as a minimum threshold the level of price improvement currently available under the price improvement programs previously in use, the Commission believes it is reasonable to implement SuperMAX 2000 on an accelerated basis to allow specialists and investors to reap the anticipated benefits of this program as soon as possible. For these reasons, the Commission finds good cause for accelerating approval of the proposal rule change, as amended.

IV. Conclusion

For the above reasons, the Commission finds that the proposed rule change is consistent with the provisions of the Act, in general, and with section 6(b)(5)¹² in particular.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,¹³ that the proposed rule change (SR-CHX-00-37), as amended, be and hereby is approved.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43763; File No. SR-NYSE-99-24]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1 and 2 Thereto by the New York Stock Exchange, Inc. Establishing XPress Orders and Quotes

December 21, 2000.

I. Introduction

On June 10, 1999, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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 establishing XPress orders and quotes. The proposed rule change was published for comment in the **Federal Register** on August 11, 1993.³ The Exchange filed Amendment Nos. 1⁴ and 2⁵ to the proposal on September 13, 1999 and August 21, 2000, respectively. The Commission received no comments on the proposal. This order approves the proposed rule change, as amended, and solicits comments from interested persons on Amendment Nos. 1 and 2.

II. Description of the Proposal

In order to enhance participation in its auction market, the Exchange proposes to create a new type of order,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 41703 (August 4, 1999), 64 FR 43802.

⁴ See letter from Daniel Parker Odell, Assistant Secretary, NYSE, to Richard Strasser, Assistant Director, Division of Market Regulation ("Division"), Commission (September 10, 1999) ("Amendment No. 1"). Amendment No. 1 specifies that XPress orders and XPress quotes must consist of at least 25,000 shares and XPress quotes must be displayed for at least 30 seconds.

⁵ See letter from Daniel Parker Odell, Assistant Secretary, NYSE, to Nancy Sanow, Assistant Director, Division, Commission (August 17, 2000) ("Amendment No. 2"). Amendment No. 2 changes the original proposal to allow partial executions when an XPress order is entered against a valid XPress quote that is reduced below the minimum size requirement before the XPress order is received at the specialist's post. Amendment No. 2 provides examples of situations where XPress orders would receive partial executions. Amendment No. 2 also provides that is a SuperDOT order is received after an XPress order, but just before a second XPress order, the SuperDOT order will be executed, to the extent possible, with the XPress orders, in time priority. Finally, Amendment No. 2 amends proposed Rule 13 to require XPress orders to be entered before 3:58 p.m. or two minutes prior to any other closing time on the Exchange and clarifies that price improvement does not remove bids and offers from the floor.

⁸ The Exchange anticipates that its existing price improvement programs, which have been amended on a pilot basis to include decimal price increments, would become obsolete once the pilot expires on February 28, 2001. In accordance with an Exchange rule approved by the Commission, the four existing price improvement programs would be deemed deleted from the Exchange's rules upon the completion of the securities industry transition to a decimal pricing environment. See Article XXB, Rule 4, which provides, in pertinent part, that all rule references to fractional price increments shall be deemed deleted.

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

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ Amendment No. 1 was published for comment. See footnote 4, *supra*. Because Amendment No. 2 made only technical, non-substantive changes to the proposal, there is no need to solicit comments on Amendment No. 2.

¹² 15 U.S.C. 78f(b)(5).

¹³ 15 U.S.C. 78f(b)(2).

¹⁴ 17 CFR 200.30-3(a)(12).