

the Commission's Public Reference Room in Washington, DC. 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-2001-19 and should be submitted by October 9, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44778; File No. SR-CHX-2001-11]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by The Chicago Stock Exchange, Incorporated Relating to Automatic Execution of Partial Orders for Dual Trading System Securities and Segmented Price Improvement of Orders

September 7, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice hereby is given that on May 24, 2001, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II, 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 of the proposed rule change.

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

The Exchange proposes to amend the CHX rules relating to: (a) The Exchange's SuperMAX 2000 price improvement algorithm, to permit price improvement of partial orders; and (b) automatic execution sequences and algorithms relating to the trading of Dual Trading System issues on the Exchange, to permit automatic execution of partial orders at the order sending firm's election. Specifically, the

Exchange proposes to amend portions of Article XX, Rule 37(a) and (b) and to add an Interpretation and Policy relating to Article XX, Rule 37(h). The text of the proposed rule change is available from the Office of the Secretary of the CHX or the Commission.

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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange 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

The Exchange proposes to amend the CHX rule provisions relating to: (a) The Exchange's SuperMAX 2000 price improvement algorithm, to permit price improvement of partial orders; and (b) automatic execution sequences and algorithms relating to the trading of Dual Trading System issues on the Exchange, to permit automatic execution of partial orders at the order sending firm's election. Both changes are intended to make the Exchange and its specialists better able to accommodate the rapidly changing demands of the marketplace relating to price improvement and automatic execution of orders.

a. *Price Improvement of Partial Orders.* The proposed change to Article XX, Rule 37(h), which governs the Exchange's SuperMAX 2000 price improvement algorithm, would permit a specialist who enables SuperMAX 2000 for an issue to price improve an entire order, or to provide differing levels of price improvement for different portions of the order. For example, in the case of a 1500 share order for issue XYZ, the proposed change to the price improvement algorithm would enable the specialist to provide price improvement of \$.02 per share for the first 500 shares, \$.01 per share for the next 500 shares, and no price improvement (*i.e.*, execution at the BBO) for the last 500 shares. The differing levels of price improvement would be designated by the specialist

and would be effected by a systems change, which the Exchange expects to implement October 1, 2001.

The purpose of the proposed rule change relating to the Exchange's SuperMAX 2000 price improvement algorithm is to increase the number of opportunities for customers to receive price improvement by permitting specialists to participate in SuperMAX 2000 without requiring them to price improve an entire order. Currently, the Exchange believes that there are specialists who might not desire to offer price improvement to large orders but may be willing to offer price improvement to portions of such orders; the amended rule would allow the specialist to provide the opportunity for more orders to receive price improvement (although in some cases to less than the entire order), while providing customers with more certainty that orders would receive price improvement up to the designated level(s).

b. *Automatic Execution of Partial Orders for Dual Trading System Issues.* The other proposed changes to Article XX, Rule 37 are designed to achieve consistency between Dual Trading System issues and Nasdaq/NM securities with respect to the automatic execution of orders.³ The Exchange anticipates that these changes will provide customers with greater certainty and speed of execution, and will eliminate any current confusion caused by differing automatic execution parameters.

Specifically, the Exchange proposes to amend Article XX, Rule 37(b)(6), which governs the automatic execution rules relating to Dual Trading System issues. Under the current rule, if an order's size exceeds the automatic execution threshold, the entire order is placed in the specialist's book for manual execution. However, under the proposed amendment, customers could elect automatic execution of partial orders in instances where the size of the order is greater than the automatic execution threshold designated by the specialist. If the customer elects partial automatic execution, the order would be automatically executed up to the size of the automatic execution threshold, with the balance of the order placed in the specialist's book for manual execution.

³ On October 13, 2000, the Commission approved the Exchange's proposed rule change relating to automatic execution of orders for Nasdaq/NM securities. See Securities Exchange Act Release No. 43443 (October 13, 2000), 65 FR 63660 (October 24, 2000). The approved rule change included provisions relating to automatic execution of partial orders for Nasdaq/NM securities and the automatic execution threshold established by the CHX specialist.

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

This feature has been available for Nasdaq/NM securities for several months and has been utilized by a number of customers; those customers who do not view partial executions as an advantage remain free to proceed under the current framework.

The Exchange also proposes to amend Article XX, Rule 37(a) and (b)(1) to make the automatic execution and auto acceptance thresholds designated by specialists for both Dual Trading System issues and Nasdaq/NM securities the same. Under the amended rule, the minimum automatic execution threshold for listed securities would be decreased to the current Nasdaq/NM level of 300 shares. Orders at or below the automatic execution threshold would be automatically executed regardless of the NBBO size. Specialists may also choose to automatically execute orders of a size greater than their automatic execution thresholds if the order size is less than or equal to the NBBO size. The automatic acceptance threshold for Nasdaq/NM securities would be increased to the current listed level of 5099 shares.

2. Statutory Basis

The CHX believes that the proposed rule change is consistent with section 6(b) ⁴ of the Act in general and in particular with section 6(b)(5) ⁵ in that it is designed to promote just and equitable principles of trade, to remove impediments to and 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 of 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 Regarding the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received.

III. 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, NW., Washington DC 20549-0609. 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 Room in Washington, DC. 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-2001-11 and should be submitted by October 9, 2001.

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

The Commission has reviewed carefully the Exchange's proposed rule change and believes for the reasons set forth below, that the proposal is consistent with the requirements of section 6(b) of the Act,⁶ and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act ⁷ in that it will facilitate transactions in securities, promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of a free and open market. The Commission believes that the proposed rule change will enable specialists to provide price improvement to customer orders using the CHX's automated system.

Further, the Commission notes that it approved a proposed rule change on October 13, 2000 implementing the same changes with respect to trading in Nasdaq/NM securities.⁸ That proposed rule change was published for comment, and the Commission received no comments. Therefore, the Commission finds good cause to approve the proposed rule change before the thirtieth day after the date of publication of notice of the filing as it will enable customers to receive price improvement sooner, and because the substance of the proposed rule change, as it applies to Nasdaq/NM securities,

has already been subject to public comment.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁹ that the proposed rule change is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,
Deputy Secretary.

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Finance Docket No. 34003]

Burlington Northern and Santa Fe Railway Company—Construction and Operation Between Kamey and Seadrift, Texas

AGENCY: Surface Transportation Board.

ACTION: Notice of availability of draft environmental assessment and request for comments.

SUMMARY: The Burlington Northern and Santa Fe Railway Company (BNSF) has petitioned the Surface Transportation Board (Board) for authority to construct and operate a rail line approximately 7.8 miles in length in Calhoun County, Texas, to serve the Union Carbide Corporation's Seadrift industrial complex. The Board's Section of Environmental Analysis (SEA) has prepared a Draft Environmental Assessment (EA) for this project. Based on the information provided and the environmental analysis conducted to date, the EA preliminarily concludes that this proposal should not significantly affect the quality of the human environment if the recommended mitigation measures set forth in the EA are implemented. Accordingly, SEA recommends, that if the Board approves this project, BNSF be required to implement the mitigation set forth in the EA. Copies of the EA have been served on all interested parties and will be made available to additional parties upon request. SEA will consider all comments received when making its final environmental recommendation to the Board. The Board will consider SEA's final recommendations and the complete environmental record in making its final decision in this proceeding.

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

⁸ See note 3, *supra*.

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).