III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act, and subparagraph (e) of Rule 19b–4 thereunder, in that it is designated by the Exchange as establishing a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. 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, NW., Washington, DC 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 in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to the file number in the captain above and should be submitted by April 28, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–8923 Filed 4–3–98; 8:45 am]

BILLING CODE 8010–01–M

[4] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39803; File No. SR–CHX–97–32]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to the Acceptance of Oversized Orders in the MAX System

March 25, 1998.

I. Introduction

On December 9, 1997, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Act of 1934 (''Act''),[1] a proposed rule change which was subsequently amended on January 9, 1998. The proposed rule change to amend the Exchange's rules relating to the entry and acceptance of oversized orders received through the MAX System was published for comment in the **Federal Register** on February 11, 1998.[2] No comments were received on the proposal. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposal

Under the Exchange's BEST Rule, Exchange specialists are required to guarantee executions of all agency[3] market and limit orders for Dual Trading System issues[4] from 100 shares up to and including 2099 shares. Subject to the requirements of the short sale rule, market orders must be executed on the basis of the Intermarket Trading System's (''ITS'') best bid or offer (''BBO''). Limit order 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 it can be demonstrated that the order would not have been executed if it had been transmitted to the primary market[5] or the broker and specialist agree to a specific volume related to, or other criteria for, requiring an execution.

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.[6] 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 MAX that is less than or equal to the auto-execution threshold, the order is executed automatically, unless an exception applies. If the order-entry firm sends an order through MAX 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.

Under the current MAX rules, 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 three minutes of it being entered into MAX. If not canceled by the specialist, the order is designated as an open order.[7] The Exchange proposed to change the way that these oversized orders are handled.

First, the Exchange proposed to amend Rule 37(b)(1) of Article XX to

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 39615 (February 3, 1998).

[3] 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.

[4] 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.

[5] The CHX specialist has the burden to demonstrate that the order would not have been executed had it been routed to the primary market. The Commission notes that this is often accomplished by sending a ''marker'' order to the primary market. *See also* CHX Article XX, Rule 37(b)(12).

[6] A MAX order that fits under the BEST parameters must be executed pursuant to BEST Rules via the MAX system. If the order is outside the BEST parameters, the BEST Rules do not apply, but MAX system handling rules do apply.

[7] Under current rules, if an oversized market or limit order is received by the specialist, he must either reject the order immediately or immediately display it in accordance with CHX rules and the Commission's 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 must check with the order entry broker to determine the validity of the oversized order. During the three 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.

change the amount of time in which the specialist can cancel the oversized order. Rather than the current three minute window, the Exchange proposed to reduce this time period to one minute. If the specialist has not canceled the order in the one minute period, the order will be designated as an open order.

Second, the Exchange proposed to add interpretation and policy .06 to Rule 37 to specifically describe how oversized orders are to be handled during the one minute period in which the specialist can cancel the order. The interpretation will provide that if the oversized order is an agency limit order, the order must immediately be reflected in the specialist's quote in accordance with CHX rules.[8] Additionally, during the one minute window, the order must receive ''post protection.'' This means that while the BEST Rule will not apply during this period, the specialist must allow the order to interact with other orders received by the specialist at the post, using the same priority and precedence rules that apply to other orders received at the post.

Finally, during the one minute window, the specialist must notify the order sending firm's MAX floor broker representative if the specialist determines to cancel the order.

III. Discussion

The Commission believes that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5) which requires that the rules of an exchange be 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.[9]

The Exchange's proposal reduces the amount of time that a CHX specialist has to reject an order that is larger than the auto-acceptance threshold thereby reducing an impediment to a free and open market. The Commission believes that this will benefit investors because the firm sending the order to the CHX specialist will be more certain of the ultimate status of the order and will no longer have to wait three minutes to determine if the order was being accepted or rejected by the specialist.

The Commission believes that it is necessary to impose specific duties on the CHX specialist during the one minute window to ensure that orders are handled consistent with best execution principles. The Commission believes that the Exchange's proposed interpretation and policy .06 to Rule 37 will benefit investors because it clarifies the obligations of the CHX specialist during the one minute period in which the specialist can cancel the order. For example, customer limit orders that are received by the CHX specialist must be displayed immediately, in accordance with the Commission's Limit Order Display Rule[10] and the Exchange's limit order rule,[11] even when the size of the limit order is in excess of the auto-acceptance threshold. In addition, under the proposed interpretation and policy .06 to Rule 37, CHX specialists are obligated to give orders in excess of the auto-acceptance threshold post protection during the one minute window, allowing them to interact with other orders received by the specialist at the post.

The Commission also believes that reducing the time frame from three minutes to one minute is an appropriate first step given the many improvements in technology since the three minute window was established. The Commission expects the Exchange to continue to evaluate further reductions as technology advances and causes the one minute window to be too long a period of time.

IV. Conclusion

For the foregoing reasons, the Commission believes that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5).[12]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–CHX–97–32) be, and hereby is, approved.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–8925 Filed 4–3–98; 8:45 am]

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[8] Article XX, Rule 7 of the CHX rules requires every limit order that is priced at or better than the specialist's quote to be included in the specialist's quote, subject to certain exceptions.

[9] 15 U.S.C. 78f(b)(5).

[10] 17 CFR 240.11Ac1–4.

[11] CHX Article XX, Rule 7.

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39819; Filed No. SR–NASD–98–26]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Partial Approval to Proposed Rule Change by the National Association of Securities Dealers, Inc. To Implement, on a Pilot Basis, New Primary Nasdaq Market Maker Standards for all Nasdaq National Market Securities and To Extend the Short Sale Rule Pilot

March 30, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 19, 1998, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly-owned subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule changes as described in Items I and II below, which Items have been prepared by Nasdaq. On March 25, 1998, Nasdaq submitted to the Commission Amendment No. 1 to the proposed rule changes.[3] On March 26, 1998, Nasdaq submitted to the Commission Amendment No. 2 to the proposed rule changes.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. As discussed below, the Commission is also granting accelerated approval to a portion of the proposal.

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

The NASD and Nasdaq propose to amend the Primary Nasdaq Market Maker (''PMM'') standards for all Nasdaq National Market (''NNM'') securities, which are found in NASD Rule 4612, and to implement the proposed revised PMM standards on a pilot basis beginning on May 1, 1998, and extending until November 1, 1998. Additionally, the NASD and Nasdaq are proposing to: 1) continue the current

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Robert E. Aber, Senior Vice President and General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated March 25, 1998.

[4] *See* Letter from Robert E. Aber, Senior Vice President and General Counsel, Nasdaq, to Richard Strasser, Assistant Director, Division of Market Regulation, Commission, dated March 26, 1998.