

rules the Commission may promulgate with respect thereto.

8. The Trusts will notify all Participants that separate account prospectus disclosure or Plan prospectus or other Plan document disclosure regarding potential risks of mixed and shared funding may be appropriate. Each trust will disclose in its prospectus that (a) Shares of such Trust may be offered to insurance company separate accounts of both variable annuity and variable life insurance contracts and, if applicable, to Qualified Plans, (b) due to differences in tax treatment and other considerations, the interests of various contract owners participating in such Trust and the interests of Qualified Plans investing in such Trust, if applicable, may conflict, and (c) the Trust's Board will monitor events in order to identify the existence of any material irreconcilable conflicts and to determine what actions, if any, should be taken in response to any such conflict.

9. If and to the extent that Rule 6e-2 and Rule 6e-3(T) under the 1940 Act are amended, or proposed Rule 6e-3 under the 1940 Act is adopted, to provide exemptive relief from any provision of the 1940 Act, or the rules promulgated thereunder, with respect to mixed or shared funding, on terms and conditions materially different from any exemptions granted in the order requested in the application, then the Trusts and/or Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rules 6e-2 and 6e-3(T), or Rule 6e-3, as such rules are applicable.

10. The Participants, at least annually, will submit to the Board such reports, materials, or data as a Board reasonably may request so that the trustees of the Board may fully carry out the obligations imposed upon a Board by the conditions contained in the application, and said reports, materials, and data will be submitted more frequently if deemed appropriate by a Board. The obligations of the Participants to provide these reports, materials, and data to a Board, when it so reasonably requests, will be a contractual obligation of all Participants under this agreements governing participation in the Funds.

11. All reports of potential or existing conflicts received by a Board, and all Board action with regard to determining the existence of a conflict, notifying Participants of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and such minutes or other

records shall be made available to the Commission upon request.

12. The Trusts will not accept a purchase order from a Qualified Plan if such purchase would make the Plan shareholder an owner of 10 percent or more of the assets of such Fund unless such Plan executes an agreement with the relevant Trust governing participation in such Fund that includes the conditions set forth herein to the extent applicable. A Plan or Plan Participant will execute an application containing an acknowledgment of this condition at the time of its initial purchase of shares of any Fund.

#### Conclusion

For the reasons summarized above, Applicants believe that the requested exemptions, in accordance with the standards of Section 6(c), are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00-10255 Filed 4-25-00; 8:45 am]

**BILLING CODE 8010-01-M**

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42706; File No. SR-CHX-00-09]

#### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by The Chicago Stock Exchange, Inc. Relating to Operating Times of Price Improvement Programs

April 19, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice hereby is given that on April 10, 2000, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the CHX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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

The Exchange proposes to amend Article XX, rule 37 of the Exchange's rules to change the starting time of each of the Exchange's automatic price improvement programs from 8:45 a.m., Central Time to the beginning of the Exchange's primary trading session, which occurs at 8:30 a.m., Central Time. The text of the proposed rule change is as follows:

Additions are *italicized*; deletions [bracketed]

#### ARTICLE XX

##### *Regular Trading Sessions*

\* \* \* \* \*

##### *Guaranteed Execution System and Midwest Automated Execution System*

##### Rule 37.

\* \* \* \* \*

(b) Automated Executions. The Exchange's Midwest Automated Execution System (the MAX System) may be used to provide an automated delivery and execution facility for orders that are eligible for execution under the Exchange's BEST Rule (Article XX, Rule 37(a)) and certain other orders. In the event that an order that is subject to the BEST Rule is sent through MAX, it shall be executed in accordance with the parameters of the BEST Rule and the following. In the event that an order that is not subject to the BEST Rule is sent through MAX, it shall be executed in accordance with the parameters of the following:

\* \* \* \* \*

(d) Super MAX Plus. Super MAX Plus shall be a voluntary automatic execution program within the MAX System. SuperMax Plus shall be available for Dual Trading System securities and Nasdaq/NM Securities. \* \* \*

\* \* \* \* \*

(3) Operating Time. SuperMax Plus will operate each day that the Exchange is open for trading from [8:45 a.m. (C.T.)] *the commencement of the Primary Trading Session* until the close of the Primary Trading Session; *provided, however, that preopening orders shall not be eligible for SuperMax Plus price improvement.* \* \* \*

\* \* \* \* \*

(e) SuperMAX. Except as provided below where SuperMAX is required to be enabled, SuperMAX shall be a voluntary automatic execution program within the MAX system. SuperMAX shall be available for Dual Trading System securities for which SuperMAX plus has been enabled. In the event that SuperMAX Plus has been enabled for a particular Dual Trading System security and the maximum order size has been set at an amount that is less than 499 shares, SuperMAX shall be automatically enabled. \* \* \*

\* \* \* \* \*

(2) Operating Time. SuperMAX will operate each day that the Exchange is open

for trading from [8:45 a.m. (C.T.)] *the commencement of the Primary Trading Session* until the close of the Primary Trading Session; *provided, however, that preopening orders shall not be eligible for SuperMAX price improvement.* \* \* \*

(f) Enhanced SuperMAX. Enhanced SuperMAX shall be a voluntary automatic execution program within the MAX System. Enhanced SuperMAX shall be available for (i) any Dual Trading System security in which SuperMAX Plus and SuperMAX have both been enabled, or (ii) any Dual Trading System security in which SuperMAX Plus has been enabled for 499 shares or greater. \* \* \*

(3) Operating Time. Enhanced SuperMAX will operate each day that the Exchange is open for trading from [8:45 a.m. (C.T.)] *the commencement of the Primary Trading Session* until the close of the Primary Trading Session; *provided, however, the preopening orders shall not be eligible for Enhanced SuperMAX price improvement.* \* \* \*

(g) Derivative SuperMAX. Derivative SuperMAX shall be a voluntary automatic execution program within the MAX System. Derivative SuperMAX shall be available for securities that trade on the Exchange in minimum price variations of  $\frac{1}{64}$  of \$1.00. A specialist may choose to enable this voluntary program within the MAX system on a security-by-security basis. If Derivative SuperMAX has been enabled for a particular security and the maximum order has been set at an amount that is less than or equal to 599 shares (or such greater amount designated by the specialist and approved by the Exchange), Derivative SuperMAX shall be automatically enabled. If the security is eligible for Derivative SuperMAX and the specialist in such security has chosen to engage Derivative SuperMAX for such security, all small agency market orders in that security will automatically be executed in accordance with the Derivative SuperMAX algorithm set forth below. For purposes of this subsection (g), the term "small agency market order" shall mean an agency order from 100 shares up to and including 599 shares (or such greater amount designated by the specialist and approved by the Exchange). \* \* \*

(2) Operating Time. Derivative SuperMAX will operate each day that the Exchange is open for trading from [8:45 a.m. (Central Time)] *the commencement of the Primary Trading Session* until the close of the Primary Trading Session; *provided, however, that preopening orders shall not be eligible for Derivative SuperMAX price improvement.* A specialist may enable or remove Derivative SuperMAX for a particular security only on one given day each month, as determined by the Exchange from time to time. Notwithstanding the previous sentence, during unusual market conditions, individual securities or all securities may be removed from Derivative SuperMAX with the approval of two members of the Committee on Floor Procedure.

## 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 CHX 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 IV below. The CHX 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 Article XX, Rule 37 of the Exchange's rules to allow the Exchange's automatic price improvement programs to begin operating when CHX trading begins.<sup>3</sup> The Exchange proposes that this change take effect on May 10, 2000.<sup>4</sup>

Under the Exchange's current rules, each of the Exchange's automatic price improvement programs, SuperMAX, SuperMAX Plus, Enhanced SuperMAX and Derivative SuperMAX, become available to specialists at 8:45 a.m., Central Time, fifteen minutes after the Exchange begins trading. The Exchange believes that the proposed rule change, which would permit automated price improvement during the first fifteen minutes of trading, will enhance CHX specialists' efficiency by automating a previously-manual process. This change will permit the CHX to better compete with other market centers at a critical juncture in the trading day by giving its specialists the opportunity to provide price improvement to a greater number of investors. Further, the Exchange represents that the 8:45 a.m., Central Time was originally chosen as the starting time for the price improvement programs to allow the Exchange to gain experience with the operation of such programs before extending their application to the first fifteen minutes of Exchange trading, which are ordinarily quite busy. Now that the Exchange has gained experience, and seen the benefits of the continuing evolution of technology, the Exchange is confident that the automatic price improvement programs can successfully operate during the opening of Exchange trading.

#### 2. Statutory Basis

The proposed rule is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of section 6(b).<sup>5</sup> In particular, the proposed rule is consistent with section 6(b)(5) of the Act<sup>6</sup> in that it is designed to promote just and

equitable principles of trade, to remove impediments to 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.

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

Because the foregoing proposed rule change should increase the CHX's ability to provide customers with price improvement, and to compete with other market centers, and: (1) Does not significantly affected the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from April 10, 2000, the date on which it was filed, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>7</sup> and Rule 19b-4(f)(6)<sup>8</sup> thereunder. 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 Committee that such action is necessary or appropriate in the public interest, for the protection of investor, or otherwise in the furtherance of the purposes of the Act.<sup>9</sup>

## IV. 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 maybe 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 in Washington, DC. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

<sup>9</sup> In reviewing this proposal, the Commission has considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>3</sup> Preopening orders, however, would not be entitled to participate in these automated price improvement programs.

<sup>4</sup> Telephone conversation between Ellen J. Neely, Vice President and General Counsel, CHX, and Katherine England, Assistant Director, Division of Market Regulation, Commission, on April 17, 2000.

<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

refer to File No. SR-CHX-00-09 and should be submitted by May 17, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

[FR Doc. 00-10368 Filed 4-25-00; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42698; File No. SR-NASD-00-13]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Valuation of Illiquid Direct Participation Program and Real Estate Investment Trust Securities on Customer Account Statements

April 18, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 28, 2000, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary, NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD Regulation. 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

NASD Regulation proposes to amend NASD Conduct Rules 2340, "Customer Account Statements," 2710, "Corporate Financing Rule—Underwriting Terms and Arrangements," and 2810, "Direct Participation Programs."<sup>3</sup> The text of the proposed rule change appears below. Proposed new language is in

italics; proposed deletions are in brackets.

#### Rule 2340 Customer Account Statements

##### (a) General

Each general securities member shall, with a frequency of not less than once every calendar quarter, send a statement of account ("account statement") containing a description of any securities positions, money balances, or account activity to each customer whose account had a security position, money balance or account activity during the period since the last such statement was sent to the customer.

##### (b) DPP/REIT Securities

###### (1)(A) Voluntary Estimate Value

*A general securities member may provide a per share estimated value for a direct participation program ("DPP") or real estate investment trust ("REIT") security on an account statement, provided the member meets the conditions of paragraphs (b)(2) and (3) below.*

###### (B) Mandatory Estimated Value

*If the annual report of a DPP or REIT includes a per share estimated value for a DPP or REIT security that is held in the customer's account or included on the customer's account statement, a general securities member must include an estimated value from the annual report, an independent valuation service, or any other source, in the first account statement issued by the member thereafter, provided that the member meets the conditions of paragraphs (b)(2) and (3) below.*

*(2) A member may only provide a per share estimated value for a DPP or REIT security on an account statement if:*

*(A) after considering any relevant information about the market and the particular investment in its possession, the member has no reason to believe that the estimated value is inaccurate; and*

*(B) the estimated value has been developed from data that is as of a date no more than 18 months prior to the date that the statement is issued.*

*(3) If an account statement provides an estimated value for a DPP or REIT security, it must include:*

*(A) a brief description of the estimated value, its source, and the method by which it was developed; and*  
*(B) disclosure that DPP or REIT securities are generally illiquid, and that the estimated value may not be realized when the investor seeks to liquidate the security.*

*(4) If an account statement does not provide an estimated value for a DPP or*

*REIT security, it must include disclosure that:*

*(A) DPP or REIT securities are generally illiquid;*

*(B) the value of the security will be different than its purchase price; and*

*(C) if applicable, that accurate valuation information is not available.*

##### (c)[(b)] Definitions

For purposes of this Rule, *the following terms will have the stated meanings:*

*(1) [the term] "account activity" [shall] includes, but is not [be] limited to, purchases, sales, interest credits or debits, charges or credits, divided payments, transfer activity, securities receipt or delivers, and/or journal entries relating to securities or funds in the possession or control of the member.*

*(2) [(c) For purposes of this Rule,] [the term] a "general securities member" [shall] refers to any member which conducts a general securities business and is required to calculate its net capital pursuant to the provisions of SEC Rule 15c3-1(a), except for paragraph (a)(2) and (a)(3). Notwithstanding the foregoing definition, a member which does not carry customer accounts and does not hold customer funds and securities is exempt from the provisions of this section.*

*(3) "direct participation program" or "direct participation program security" refers to the publicly issued equity securities of a direct participation program as defined in Rule 2810 (including limited liability companies), but does not include securities on deposit in a registered securities depository and settled regular way, securities listed on a national securities exchange or The Nasdaq Stock Market, or any program registered as a commodity pool with the Commodity Futures Trading Commission.*

*(4) "real estate investment trust" or "real estate investment trust security" refers to the publicly issued equity securities of a real estate investment trust as defined in Section 856 of the Internal Revenue Code, but does not include securities on deposit in a registered securities depository and settled regular way or securities listed on a national securities exchange or The Nasdaq Stock Market.*

*(5) "annual report" means the most recent annual report of the DPP or REIT distributed to investors pursuant Section 13(a) of the Act.*

##### (d) Exemptions

Pursuant to the Rule 9600 Series, the Association may exempt any member

<sup>10</sup> See 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> As discussed more fully below, the current proposal replaces File No. SR-NASD-97-12 ("1997 Proposal"). The 1997 Proposal was published for comment in the **Federal Register** on April 3, 1997. NASD Regulation subsequently withdrew the 1997 Proposal. See Letter from Suzanne E. Rothwell, Chief Counsel, Corporate Financing, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 27, 2000 ("March 27 Letter").