

the auto-execution threshold shall be designated as an open order. If the size of the incoming order is greater than the auto-acceptance threshold, the order shall be designated as an open order; provided, however, that the specialist may cancel the order within one minute of its being entered into MAX.

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 Interpretations and Policies:
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.11 The partial automatic execution algorithms referenced in Rule 37(b) constitute voluntary MAX enhancements that may be enabled by a CHX specialist on an issue-by-issue basis. The CHX specialist may elect to enable or disable these enhancements during any portion of the Primary Trading Session.

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 on the proposed rule change. The text of these statements may be examined at the places specified in Item IV 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 proposed rule change would amend certain provisions of CHX Article XX, Rule 37, which governs, among other things, automatic execution of partial market and marketable limit orders. Specifically, the CHX seeks to add an Interpretation and Policy providing that a CHX specialist may elect to activate the auto-partials functionality on a voluntary basis, at any point during the regular trading session. Proposed Interpretation and Policy .11 constitutes the Exchange's stated existing policy, practice and interpretation with respect to the auto-partial provisions of CHX Article XX, Rule 37(b).

The Exchange's Midwest Automatic Execution System ("MAX") provides for automatic execution of eligible market and marketable limit orders, in accordance with the provisions of CHX Article XX, Rule 37(b), which governs automatic execution of such orders. The Commission previously has approved

changes to CHX Article XX, Rule 37(b) that permit automatic execution of partial orders, if an order-sending firm has affirmatively elected to permit such partial executions.⁴ The technological enhancement to the Exchange's MAX system, that effects automatic execution of partial orders, is referred to as the "auto-partials" functionality.

According to the Exchange, throughout the development and implementation of the auto-partials functionality, the Exchange's staff and members have consistently treated the auto-partials functionality as a voluntary systems enhancement that could be enabled at the discretion of the CHX specialist.⁵ The proposed rule change clarifies the consistent interpretation of those provisions of CHX Article XX, Rule 37(b) that contemplate the auto-partials enhancement.

In the case of stocks with low trading volume, for example, a CHX specialist who received a large order for that issue might not be able to secure sufficient liquidity in another market to fill the order for his customer. In such case, if the CHX specialist has offered auto-partial execution, a portion of the order would be executed automatically but the remaining portion would be subject to manual execution at the best price the CHX specialist could obtain as agent for the balance of the order. If the CHX specialist had not offered auto-partials, the customer would quickly discern that it had not received an automatic execution and would then have the option to cancel the order and seek execution of the entire order in another market center.

The CHX believes that another instance in which a CHX specialist might elect to disengage the auto-partials algorithm is immediately prior to the close of the regular trading session. In the case of a large order received immediately prior to the close that received an auto-partial execution, most customers would request (and for business reasons most CHX specialists would give) execution of the balance of the order at the auto-partial execution

price. The CHX specialist, perhaps lacking the liquidity to fill the entire order out of his inventory, would be without recourse to obtain liquidity in another market center, and would be left with a significant position overnight, potentially subjecting the CHX specialist to extreme and unwarranted exposure at the open the following morning.

The CHX believes that the proposed rule change, which reflects existing pattern and practice with respect to the auto-partials functionality, represents a reasonable balance between the various business models of CHX specialists, and permits specialists to offer a customer enhancement without prejudicing other specialists whose circumstances dictate that they forego engagement of the auto-partials functionality.

2. Statutory Basis

The CHX believes the proposal 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) of the Act.⁶ The CHX believes the proposal is consistent with Section 6(b)(5) of the Act⁷ 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.

B. Self-Regulatory Organization's Statement on 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 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. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or

⁴ See Securities Exchange Act Release No. 44778 (September 7, 2001), 66 FR 48074 (September 17, 2001) (SR-CHX-2001-11), Securities Exchange Act Release No. 46321 (August 7, 2002), 67 FR 53369 (August 15, 2002) (CHX 2001-32).

⁵ Even if a CHX specialist elects to enable the auto-partials functionality, partial orders will not be executed unless an order-sending firm has affirmatively indicated its election to have orders executed on a partial basis. Thus, despite the CHX specialist's discretion to enable the auto-partials functionality, CHX order-sending firms still maintain the discretion to forego partial executions if their preferences and/or business model dictate that they receive fills of entire orders.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).