

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-62642; File No. SR-CHX-2010-19)

August 4, 2010

Self-Regulatory Organizations; The Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Its Order Cancellation Fee

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 July 30, 2010, 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 and II below, which Items have been prepared by the Exchange. CHX has filed the proposal pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. 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 the Substance of the Proposed Rule Change

The CHX proposes to amend its Schedule of Participant Fees and Assessments (the “Fee Schedule”), effective August 1, 2010, to amend its order cancellation fee for Participants entering and subsequently cancelling orders under certain circumstances. The text of this proposed rule change is available on the Exchange’s website at [http://www.chx.com/rules/proposed\\_rules.htm](http://www.chx.com/rules/proposed_rules.htm) and in the Commission’s Public Reference Room, 100 F Street, N.E., Washington, DC 20549.

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

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

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

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

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 changes and discussed any comments it received regarding the proposal. 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

Through this proposal, the Exchange is seeking to amend its Fee Schedule to exempt from its existing Order Cancellation Fee all orders, transactions and cancellation activity in Exchange Traded Funds (“ETFs”), Exchange Traded Notes (“ETNs”) or Exchange Traded Vehicles (“ETVs”), collectively referred to as Exchange Traded Products (“ETPs”). The Order Cancellation Fee would continue in its current form and effect with respect to all other securities.

Beginning in January 2010, the Exchange’s published Fee Schedule imposed a charge for order cancellations submitted by Participants whose orders rarely are at or near the National Best Bid or Offering (“NBBO”).<sup>5</sup> The application of the order cancellation fee depends on a calculation (done on a Participant-by-Participant basis) involving the number of wide orders (defined as display-eligible orders in the Matching System which are 2 or more cents away from the NBBO), quotable orders (all other display-eligible orders), the number of trades executed and

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<sup>5</sup> See Securities Exchange Act Release No. 61392 (Jan. 21, 2010), 75 FR 4436 (Jan. 27, 2010) (SR-CHX-2010-02).

number of cancellations submitted by a Participant in a month.<sup>6</sup> The purpose of the order cancellation fee was to incent Participants to submit orders which are close to the NBBO (and are therefore more likely to be executed) or compensate the Exchange for the systems and operational costs and burdens associated with handling and recording orders which rarely execute.

Since the imposition of the order cancellation fee, however, the Exchange has observed that the number of unexecuted and displayed orders has actually increased for certain Participants. In order to avoid application of the cancellation fee, certain Participants are submitting Quotable orders (i.e., those within 2 cents of the NBBO) to the CHX's Matching System, but for an extremely short duration (e.g., 20 milliseconds). Due to the short duration of the order, the amount of trade activity generated by such orders is negligible. This quotation activity also tends to exacerbate the operational costs which the Exchange was seeking to avoid in creating the order cancellation fee.

In order to better target the wide quotations which originally were causing the problems which led to the creation of the order cancellation fee, we are proposing to exempt ETP activity from the cancellation fee. The Exchange has observed that those firms entering the limited durational orders described above conduct much of their business on our trading facilities in ETP securities. By exempting ETP securities from the order cancellation fee, we would remove much of their incentive to submit quotable orders with a very limited lifespan. The fee would continue to apply to activity in all other securities where it appears to have the intended impact. The Exchange considered other alternatives, such as imposing a minimum duration on orders to

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<sup>6</sup> The activity also must have occurred in our Regular Trading Session and be in securities priced \$1 per share or more. Cancellations arising from Immediate or Cancel or Fill or Kill order types are excluded from the calculation. Executions of cross orders are also excluded.

qualify as “quotable” for purposes of the fee computation. The Exchange believes, however, that such a requirement would introduce an excessive amount of complexity to the determination of whether the order cancellation fee applies and could have the effect of discouraging Participants from sending any orders to the Exchange for display and execution. The proposed changes to the Cancellation Fee would go into effect on August 1, 2010.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>7</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>8</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members. Among other things, the Exchange believes that the exclusion of ETP securities from the existing order cancellation fee should help the Exchange to better address the operational costs and burdens associated with the processing and storage of orders well outside the NBBO.

### B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### 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.

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<sup>7</sup> 15 U.S.C. 78f.

<sup>8</sup> 15 U.S.C. 78f(b)(4)

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

The foregoing rule change has become effective pursuant to Section 19(B)(3)(A)(ii) of the Act<sup>9</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder<sup>10</sup> because it establishes or changes a due, fee, or other charge applicable only to a member imposed by the self-regulatory organization. Accordingly, the proposal is effective upon Commission receipt of the filing. At any time within 60-days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CHX-2010-19 on the subject line.

#### Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CHX-2010-19. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should

submit only information that you wish to make publicly available. All submissions should refer to File Number SR-CHX-2010-19 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).