

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-65792; File No. SR-CHX-2011-31)

November 18, 2011

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Trade Processing 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 November 9, 2011, the Chicago Stock Exchange, Inc. (“CHX” or “Exchange”) filed with the Securities and Exchange Commission (“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 Substance of the Proposed Rule Change

CHX proposes to amend its Fee Schedule to amend the Trade Processing Fee. The text of this proposed rule change is available on the Exchange’s website at [www.chx.com](http://www.chx.com) and in the Commission’s Public Reference Room.

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

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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).

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 seeks to modify the definition of its Trade Processing Fee to conform to recent rule changes. Trade Processing Fees are charged by the Exchange for certain non-CHX trades to the Clearing Participants to the transaction. These non-CHX transactions are entered into the Exchange's systems by an Institutional Broker and submitted by the Exchange to a Qualified Clearing Agency for clearance and settlement.<sup>5</sup>

Earlier this year, the Exchange restricted the imposition of Trade Processing Fees on transactions executed directly in the over-the-counter ("OTC") marketplace by an Institutional Broker. As part of this change, Trade Processing Fees could only be imposed on cross trades which originated with an Institutional Broker and were transmitted to and executed by another broker-dealer (which was not an Institutional Broker) in the OTC marketplace and which were submitted to clearing by the Exchange's systems.<sup>6</sup> This amendment reflected discussions between the Exchange and the staff of the Commission regarding limitations on the ability of Institutional Brokers to directly execute trades in the OTC marketplace. Since that time, the Exchange has reclassified Institutional Brokers as not operating on the Exchange, which permits

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<sup>5</sup> See Securities Exchange Act Rel. No. 65615 (Oct. 24, 2011), 76 FR 67239 (Oct. 31, 2011) (SR-CHX-2011-17) which added Article 21, Rule 6 describing the process by which Institutional Brokers can submit non-CHX trades for clearance and settlement via the Exchange's systems.

<sup>6</sup> See Securities Exchange Act Rel. No. 64953 (July 25, 2011), 76 FR 45626 (July 29, 2011) (SR-CHX-2011-19).

such firms to directly execute trades in the OTC marketplace.<sup>7</sup> The Exchange therefore proposes to modify the definition of Trade Processing Fee in its Fee Schedule to remove that restriction. Moreover, the Exchange has added Article 21, Rule 6 governing the submission by the Exchange of non-CHX trades entered through an Institutional Broker to a Qualified Clearing Agency for clearance and settlement. In recognition of these two new provisions of the CHX rules, the Exchange proposes to define Trade Processing Fees as fees are charged for transactions entered by an Institutional Broker into the Exchange's systems and submitted to a Qualified Clearing Agency pursuant to Article 21, Rule 6(a).

Pursuant to the proposed definition, Trade Processing Fees would be charged for transactions executed otherwise than on the Exchange (in most cases, in the OTC marketplace) that originated with an Institutional Broker and were executed by that Institutional Broker, or transmitted to and executed by another broker-dealer, and reported to a Qualified Clearing Agency by the Exchange after entry of the relevant clearing information by the Institutional Broker into the Exchange's systems. The fees are also charged for transactions which were executed in another trading center by a third party broker-dealer, which then utilizes an Institutional Broker as its agent to enter them into the Exchange's systems for submission to a Qualified Clearing Agency for clearance and settlement. These third-party transactions may include both cross transactions executed in the OTC marketplace by the third-party broker-dealer, as well as purchases or sales of securities by the third party broker-dealer on another exchange or other trading center. The Exchange does not propose to charge a Trade Processing Fee for single-sided purchases and sales of securities on another exchange or in the OTC

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<sup>7</sup> See Securities Exchange Act Rel. No. 65633 (Oct. 26, 2011), 76 FR 67509 (Nov. 1, 2011) (SR-CHX-2011-29).

marketplace by Institutional Brokers and submitted to clearing as a riskless principal transaction pursuant to Article 21, Rule 6(b).<sup>8</sup>

The Exchange does not propose to alter the rate imposed for Trade Processing Fees as part of this proposal. The proposed changes would become effective on November 29, 2011.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>9</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>10</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. Pursuant to this proposal, Trade Processing Fees are charged to the Clearing Participants involved in certain transactions which were not executed on the CHX's trading facilities, but submitted for clearance and settlement by the Exchange's systems. The Exchange believes that it is fair and reasonable for it to charge a fee for the services it provides to its Participants which elect to submit non-CHX trades to clearing via the Exchange's systems. This proposal conforms the definition of Trade Processing Fees to recent changes in its rules, including both changes in the status of Institutional Brokers which permits them to directly execute trades in the OTC marketplace and the addition of new Rule 6 under Article 21, which permits Institutional Brokers to submit those trades (and others) to a Qualified Clearing Agency

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<sup>8</sup> The execution of the first leg of a riskless principal transaction may well have entailed the payment of a transactional fee to the trading center on which it was executed. The Exchange believes that an imposition of a Trade Processing Fee on riskless principal transactions could result in higher transactional costs for the parties to the transaction, which could render the Exchange's provision of clearing submission services non-competitive.

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(4).

through the Exchange's systems. Pursuant to the proposed new definition, a Trade Processing Fee would be charged for transactions submitted to a Qualified Clearing Agency pursuant to Article 21, Rule 6(a). These fees would be imposed based upon the nature of the activity handled through the Exchange's systems and are fair and non-discriminatory in nature, and the Exchange therefore believes that the imposition of a Trade Processing Fee as defined in this proposal is appropriate. Permitting the Exchange to charge a Trade Processing Fee for its services associated with the clearing submissions would allow it to compete with other exchanges, such as Nasdaq, which provide similar services to its members for a fee.

B. Self-Regulatory Organization's Statement of 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.

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

The proposed rule change is to take effect pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>11</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder<sup>12</sup> because it establishes or changes a due, fee or other charge applicable to the Exchange's members and non-members, which renders the proposed rule change effective upon 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

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(ii)

<sup>12</sup> 17 CFR 240.19b-4(f)(2)

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-2011-31 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-2011-31. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<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 website 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 the 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 available publicly. All submissions should refer to File Number SR-CHX-2011-31 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>13</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).