

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61304; File No. SR-CHX-2009-18)

January 6, 2010

Self-Regulatory Organizations; The Chicago Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change to Amend its Co-Location Fees

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on December 22, 2009, 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 Exchange. 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

The CHX proposes to amend its Schedule of Participant Fees and Assessments (the “Fee Schedule”), effective the first month after the proposal is approved, relating to charges for co-location services.

The text of the proposed rule change is available on the Exchange’s Web site at http://www.chx.com/rules/proposed_rules.htm, at the Exchange’s principal office, and at the Commission’s Public Reference Room.

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 those 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 parts 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 makes space available to Participants at its data center for the storage of their computer hardware and maintaining connections equipment to the CHX network. This hardware and connections equipment are used by Participants to increase the processing speed of information transferred from their systems to those of the Exchange and to reduce the latencies associated with order and information messaging. The practice of Participants to store physical computer hardware and network connections equipment on an exchange’s premises is known as “co-location.”⁴

Since 2004, the Exchange has charged fees to its Participants for its co-location services.⁵ Initially, fees on co-located equipment were limited to computer hardware which was not used to direct orders to the Exchange, but that restriction was removed in 2006 with the

⁴ The Exchange also allows non-Participants to co-locate computer hardware and connections equipment, provided that they enter into an agreement providing for, inter alia, the payment of fees for such co-location.

⁵ See SR-CHX-2004-15 (May 19, 2004) (establishing fees for co-located computer hardware and network equipment); See also SR-CHX-2006-29 (October 26, 2006) (broadening the scope of such fees).

transition to the Exchange's New Trading Model. The CHX charges Participants for the physical space associated with co-locating computer hardware and network equipment on its premises. This equipment is generally used for the transmission of order and execution messages, market data information and other information services between Participants and the Exchange's trading facilities, or other destinations. Charges for space are based upon the number of "U" (a commonly accepted unit of measurement of data center space) of shelf space used to store the equipment. Additionally, the CHX charges a co-location fee for the network connections equipment used to connect Participants to the CHX network.⁶ These charges are intended to offset, at least in part, the costs borne by the Exchange for rent, utilities and maintenance of the space occupied by the co-located equipment.⁷ In this filing, the Exchange seeks to increase the periodic charge for co-location of network connections equipment from \$50/month to \$100/month.

The CHX offers co-location to all of its Participants on an equal and non-discriminatory basis. As far as possible, the Exchange has architected its systems to eliminate or reduce

⁶ This fee is separate from the Port fees charged pursuant to Section D of the CHX Fee Schedule for connections to the CHX Matching System. Port fees are not based upon the equipment stored on our premises, but rather upon the number of logical connections between the Exchange's Matching System and those of the Participant. The co-location fee for network connections equipment is a charge for various forms of cabling (POTS, ISDN, T1 lines, etc.) from the telecom provider's point of presence in our data center to our network. It is not necessary for Participants to co-locate network connection equipment at the CHX's data center in order to connect to our trading facilities, since they have the option to connect via an extranet service. Such extranet services connect to the Exchange in the same manner as orders routed through co-located equipment.

⁷ The CHX does not separately charge for the electricity used to power the Participant's equipment or rent and other utilities associated with the space.

differences amongst and between co-located and non-co-located access.⁸ Participants which enter orders through co-located equipment access our network via the same common connections or gateway as Participants which do not co-locate.⁹ Currently, the Exchange has sufficient space at its data center to accommodate all requests to co-locate computer equipment. We believe that we will continue to have adequate capacity to co-locate Participant computer hardware and network connections equipment for the foreseeable future. If for some reason that our capacity was exceeded, we would file a rule proposal with the Commission seeking to adopt a fair and neutral policy to accommodate requests to co-locate.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act¹⁰ in general, and furthers the objectives of Section 6(b)(4) of the Act¹¹ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members. The Exchange believes that the co-location charges are fair and reasonable inasmuch as they offset the Exchange's expenses involved in providing co-location services. The Exchange also believes that proposed rule change furthers the objectives of Section 6(b)(5) in particular,¹² in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transaction in securities, to remove impediments and perfect the mechanisms of a free and open market, and, in general, to

⁸ Of course, Participants which co-locate would normally expect lower latencies and faster message turnaround times because of the physical proximity of their equipment to our systems.

⁹ This description applies equally to both inbound messages (e.g., new orders) and outbound messages (e.g., execution reports).

¹⁰ 15 U.S.C. 78f.

¹¹ 15 U.S.C. 78f(b)(4).

protect investors and the public interest. By providing co-location services in a fair and evenhanded manner to interested Participants, the Exchange believes that it is contributing to the rapid transmission of order and trade-related messages which are vital to the effective functioning of the national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in 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 on 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

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 (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

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:

¹² 15 U.S.C. 78f(b)(5).

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. Please include File Number SR-CHX-2009-18 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-2009-18. 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 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 inspection and copying 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-2009-18 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.¹³

Florence E. Harmon
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).