

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61680; File No. SR-CHX-2009-18)

March 10, 2010

Self-Regulatory Organizations; The Chicago Stock Exchange, Inc.; Order Approving a Proposed Rule Change to Amend its Co-Location Fees

I. Introduction

On December 22, 2009, the Chicago Stock Exchange, Inc. (“CHX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change relating to charges for co-location services. The proposed rule change was published for comment in the Federal Register on January 14, 2010.³ The Commission received no comment letters on the proposal. This order approves the proposed rule change.

II. Description

As described more fully in the Notice, CHX states that it makes space available at its data center for the storage of Participants’ and non-Participants’ computer hardware and the maintenance of connections equipment to the CHX network, services generally referred to as “co-location.”⁴ Since 2004, the Exchange has charged fees for its co-location services.⁵ These

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 61304 (January 6, 2010), 75 FR 2175 (“Notice”).

⁴ A “Participant” means any Participant Firm that holds a valid Trading Permit and any person associated with a Participant Firm who is registered with the Exchange under Article VI as a floor broker, co-specialist or market maker. See CHX Article 1, Rule 1(s).

⁵ See Securities Exchange Act Release No. 49728 (May 19, 2004), 69 FR 29988 (May 26, 2004) (SR-CHX-2004-15) (establishing fees for co-located computer hardware and network equipment); see also Securities Exchange Act Release No. 54657 (October 26,

fees cover the physical space associated with co-locating computer hardware and network equipment on the Exchange's premises, equipment that generally is used for the transmission of order and execution messages and market data information between co-locaters 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, CHX charges a co-location fee for the network connections equipment used to connect to the CHX network. According to CHX, 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.⁶ In its filing, CHX proposes to increase the periodic charge for co-location of network connections equipment from \$50 per month to \$100 per month.

According to CHX, co-location services are offered on an equal and non-discriminatory basis. Although the Exchange acknowledges that those who co-locate would normally expect lower latencies and faster message turnaround times because of the physical proximity of their equipment to CHX systems, the Exchange represents that, as far as possible, it has architected its systems to eliminate or reduce differences between co-located users and other co-located users, and between co-located users and non co-located users. Further, CHX notes that Participants that enter orders through co-located equipment access its network via the same common connections or gateway as Participants that do not co-locate.⁷ Finally, the Exchange represents

2006), 71 FR 64590 (November 4, 2006) (SR-CHX-2006-29) (broadening the scope of such fees).

⁶ 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.

⁷ This description applies equally to both inbound messages (e.g., new orders) and outbound messages (e.g., execution reports).

that it has sufficient space at its data center to accommodate all requests to co-locate computer equipment and that it will continue to do so for the foreseeable future. If for some reason the Exchange's capacity were exceeded, CHX represents that it would file a rule proposal with the Commission seeking to adopt a fair and neutral policy to accommodate requests to co-locate.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁸ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act⁹, which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities, and with Section 6(b)(5) of the Act,¹⁰ which requires, among other things, that that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission believes that the proposed co-location fees are reasonable and equitably allocated insofar as they are designed to offset the Exchange's expenses involved in providing co-location services and are applied on the same terms to similarly-situated market participants. In addition, the Commission believes that the co-location services described in the proposed rule

⁸ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁹ 15 U.S.C. 78f(b)(4).

¹⁰ 15 U.S.C. 78f(b)(5).

change are not unfairly discriminatory because: 1) co-location services are offered to all interested market participants who request them and pay the appropriate fees; 2) as represented by CHX, the Exchange has architected its systems so as to, as much as possible, reduce or eliminate differences among users of its systems, whether co-located or not; and 3) the Exchange has stated that it has sufficient space to accommodate new co-locaters and would file a proposed rule change to adopt a fair and neutral policy to allocate space should it become limited in the future.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹¹ that the proposed rule change (SR-CHX-2009-18) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Florence E. Harmon
Deputy Secretary

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200.30-3(a)(12).