

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-49728; File No. SR-CHX-2004-15)

May 19, 2004

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Chicago Stock Exchange, Inc. to Set Fees for Member Firms for Computer Hardware Stored on the Exchange Premises and for the Connection of that Hardware to the CHX System

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 30, 2004, 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, II and III below, which Items have been prepared by the Exchange. The CHX has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the CHX under Section 19(b)(3)(A)(ii) of the Act,³ 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

The Exchange proposes to amend its membership dues and fees schedule (the “Fee Schedule”) to charge member firms a fee for computer hardware stored on Exchange premises, and for the connection of that hardware to CHX systems, where that hardware is associated with systems that are used solely for any purpose other than transmitting orders to the Exchange for execution. The text of the proposed rule change is available at the Commission and the CHX.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

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

Many of the Exchange's member firms use automated systems that interact either with their own posts on the floor or with the posts of other trading floor members. These systems might be used to help members manage their positions, to automate the execution of orders that would otherwise be handled manually, to act as a layoff vendor by coordinating the routing of orders to another market or for a variety of other purposes. These systems are linked to the Exchange's own systems through various data connections. In some cases, member firms also store hardware associated with these systems in the Exchange's computer facilities.

The Exchange believes that it is appropriate to share, with member firms, the costs of providing both this equipment storage and the various data connections to the Exchange's systems. This fee proposal would establish a series of fees applicable to the storage of hardware, and the maintenance of connections to CHX systems, for member-owned systems that are solely

used for any purpose other than transmitting orders to the Exchange for execution.⁴ These fees include a one-time fee associated with the initial installation of the hardware or connection, as well as a monthly cost for the period that the hardware or connection remains in place. These fee changes are designed to take effect May 1, 2004.

2. Statutory Basis

The Exchange believes the proposal is consistent with Section 6(b) of the Act,⁵ in general and Section 6(b)(4) of the Act,⁶ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

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

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

⁴ The Exchange's members request from time to time, that the Exchange allow other market centers to establish direct linkages to the Exchange's floor so that members can transmit orders to other markets. These linkage systems are available to all CHX specialists and floor brokers that contract with each market center. The Exchange believes that these direct connections provide cost-effective and efficient mechanisms that link the Exchange's members with other markets. However, since only one of these market centers is a member of the CHX, the Exchange believes that it would be inappropriate to impose these fees on one market center, while other market centers are exempt based on their non-member status. Therefore, these fees do not apply to hardware owned and stored in CHX facilities by members that are market centers, or to the data connections associated with that hardware. Telephone conversation between Ellen Neely, Senior Vice President and General Counsel, CHX and Ian Patel, Special Counsel, and Marisol Rubecindo, Law Clerk, Division of Market Regulation, Commission, dated May 17, 2004.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4).

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 with respect to the proposed rule change.

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

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,⁷ and Rule 19b-4(f)(2)⁸ thereunder, because it establishes or changes a due, fee or other charge imposed by the Exchange. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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. Please include File Number SR-CHX-2004-15 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

⁸ 17 CFR 240.19b-4(f)(2).

All submissions should refer to File Number SR-CHX-2004-15. 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 Section, 450 Fifth Street, NW, Washington, DC 20549-0609. Copies of such filing also will be available for inspection and copying at the principal office of the CHX. 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-2004-15 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland
Deputy Secretary

⁹ 17 CFR.200.30-3(a)(12).