

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51430; File No. SR-CHX-2005-03)

March 24, 2005

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Stock Exchange, Inc. Relating to Participant Fees and Credits

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4² thereunder, notice is hereby given that on March 1, 2005, 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 CHX. On March 18, 2005, the Exchange filed Amendment No. 1 to the proposal to clarify three issues in the original filing.³ The proposed rule change has been filed by the CHX as establishing or changing a due, fee, or other charge, pursuant to Section 19(b)(3)(A)(ii) of the Act,⁴ and Rule 19b-4(f)(2)⁵ thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Form 19b-4, dated March 18, 2005 (“Amendment No. 1”), which replaced the original filing in its entirety. The Exchange filed Amendment No. 1 to: (a) remove the inadvertent underlining of the term “Tape B” in the proposed rule text; (b) clarify the language in footnote 8 by using the term “NBBO” instead of using both the terms “NBBO” and “ITS BBO” when confirming how CHXpress orders will be handled when they would improperly lock or cross the best bid or offer in the market; and (c) clarify that the Exchange proposes to classify as “Designated CHX Securities” all securities in which the CHXpress functionality is enabled.

For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on March 18, 2005, the date the Exchange filed Amendment No. 1.

⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

⁵ 17 CFR 240.19b-4(f)(2).

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to amend its Participant Fee Schedule to exempt, from the fixed fees paid by specialist firms, securities in which CHXpress™ orders are processed by the Exchange. Below is the text of the proposed rule change. Proposed new language is in italics.

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PARTICIPANT FEES AND CREDITS

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E. Specialist Fixed Fees

Except in the case of Tape B Exemption Eligible Securities (as defined above in Section D), and Designated CHXpress Securities (as defined below), which shall be exempt from assessment of fixed fees, specialists will be assigned a fixed fee per assigned stock on a monthly basis, to be calculated as follows:

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“Designated CHXpress Securities” are those issues which have been designated by the Exchange on a monthly basis as fixed-fee exempt.

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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 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 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

The Exchange stated that it is rolling out a new, automated functionality for the handling of particular orders, called CHXpress.TM According to the Exchange, the CHXpress functionality is designed to provide additional opportunities for the Exchange's participants to seek and receive liquidity through automated executions of orders at the Exchange.⁶ With a few exceptions, CHXpress orders will be executed immediately and automatically against same or better-priced orders in the specialist's book, or against the specialist's quote (when that functionality is available).⁷ If a CHXpress order cannot be immediately executed, it will be placed in the specialist's book for instantaneous display or later execution.⁸ A CHX specialist may not cancel or place a CHXpress order on hold or otherwise prevent the order-sending firm from canceling the order.

The Exchange stated that this new functionality currently is available in select issues, and the Exchange plans to extend the use of this functionality to additional issues in upcoming weeks. The Exchange also stated that the implementation of the CHXpress functionality has

⁶ See Securities Exchange Act Release No. 50481 (Sept. 30, 2004); 69 FR 60197 (Oct. 7, 2004) (SR-CHX-2004-12).

⁷ CHXpress orders will not be executed if those executions would improperly trade-through another ITS market or if trading in the issue had been halted. CHXpress orders that would improperly trade through an ITS market or that are received during a trading halt will be cancelled. If trading in an issue has been halted, CHXpress orders in the book will be cancelled.

⁸ A CHXpress order will be instantaneously and automatically displayed when it constitutes the best bid or offer in the CHX book. See Article XX, Rule 37(b)11(D). CHXpress orders, like all other orders at the Exchange, will not be eligible for automated display if that display would improperly lock or cross the NBBO. A CHXpress order that would improperly lock or cross the NBBO will be cancelled. CHXpress orders cannot be excluded from the CHX's quote.

been somewhat slower than it anticipated because of the need for the Exchange to focus on other trading system improvements. According to the Exchange, two CHXpress-related projects – to automate the execution of inbound ITS commitments and to provide for the automatic execution of a specialist’s quote – are among the projects that have not yet been completed.⁹

The Exchange believes that the CHXpress functionality has provided the speed and certainty sought by some of the Exchange’s participants and plans to extend the functionality to new securities over the next several weeks. According to the Exchange, CHX specialist firms, on the other hand, have noted that they will be best able to handle issues associated with the automatic execution of CHXpress orders when inbound ITS commitments are automatically executed and when they can display (and have automatically executed) their manual proprietary quotes – issues that will be addressed with upcoming systems work.¹⁰ In the interim, the

⁹ The Exchange stated that it is also working to enhance its systems’ ability to process the many order messages that will be sent when the CHXpress functionality is rolled out to all securities. The Exchange stated that it has seen that the firms currently using this functionality typically will send an order and, if the order is not immediately executed, will send an immediate cancellation message. In general terms, these messages greatly increase the number of slots (one slot for each message) that must be available within the Exchange’s systems.

¹⁰ According to the Exchange, it is currently possible for a specialist to receive an ITS commitment seeking execution at a displayed quote, and to be in the process of manually executing that commitment, when a CHXpress order seeking execution against the same interest automatically executes at that price. In these situations, a specialist is obligated to fill the earlier-received ITS commitment, even though the displayed bid or offer has already been satisfied. The Exchange believes that the automatic execution of inbound ITS commitments would resolve this double liability by taking down (or decrementing, when appropriate) the bid or offer immediately upon the automatic execution of the ITS commitment. Any later-received CHXpress order would then be executed, if possible, against the CHX’s updated quote.

The Exchange also stated that, when a CHX specialist displays a manual, proprietary bid or offer, the Exchange’s systems are not currently able to allow incoming orders, including CHXpress order, to automatically execute against that quote. As a result, in securities where the CHXpress functionality is enabled (and where automated executions are required against displayed quotes), a CHX specialist does not display manual bids and offers.

Exchange is proposing to exempt, from the specialist fixed fees, all securities in which CHXpress orders are processed by the Exchange.¹¹ The Exchange intends to identify these securities, on a monthly basis, at the beginning of each month, based on business factors including the interest demonstrated by order-sending firms in trading a particular security. The Exchange stated that the CHXpress functionality would be enabled for these Designated CHXpress Securities throughout the month.

2. Statutory Basis

The CHX believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Section 6(b)(4) of the Act,¹³ 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 on Burden on Competition

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

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.

¹¹ The Exchange stated that the proposed elimination of the fixed fee is designed to compensate specialists for the potential double liability associated with the handling of ITS commitments when CHXpress orders are automatically executing against displayed bids and offers and for their inability to manually post bids and offers in CHXpress-eligible securities.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(4).

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

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,¹⁴ and Rule 19b-4(f)(2)¹⁵ 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, as amended, 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-2005-03 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.

All submissions should refer to File Number SR-CHX-2005-03. 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

¹⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁵ 17 CFR 240.19b-4(f)(2).

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. 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-2005-03 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.¹⁶

J. Lynn Taylor
Assistant Secretary

¹⁶ 17 CFR 200.30-3(a)(12).