

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

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61680; File No. SR-CHX-2009-18]

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

March 10, 2010.

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 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 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 Act,⁹ 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 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 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.

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).

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200.30-3(a)(12).

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, 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).

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61681; File No. SR-NASDAQ-2010-033]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rule 3121 To Reflect Changes To Corresponding FINRA Rule and a Clerical Change to NASDAQ's Rules

March 10, 2010.

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 March 5, 2010, The NASDAQ Stock Market LLC (the "Exchange" or "NASDAQ") 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. The Exchange has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b-4(f)(6) under 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 is filing this proposed rule change to amend NASDAQ Rule 3121 to reflect recent changes to a corresponding rule of the Financial Industry Regulatory Authority ("FINRA"), and to make clerical corrections to the NASDAQ rulebook. The text of the proposed rule change is available at <http://nasdaqomxbx.cchwallstreet.com>, at the Exchange's principal office, and at 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 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 NASDAQ's rules are based on rules of FINRA (formerly the National Association of Securities Dealers ("NASD")). During 2008, FINRA embarked on an extended process of moving rules formerly designated as "NASD Rules" into a consolidated FINRA rulebook. In most cases, FINRA has renumbered these rules, and in some cases has substantively amended them. Accordingly, NASDAQ also proposes to initiate a process of modifying its rulebook to ensure that NASDAQ rules corresponding to FINRA rules continue to mirror them as closely as practicable. In some cases, it will not be possible for the rule numbers of NASDAQ rules to mirror corresponding FINRA rule numbers, because existing or planned NASDAQ rules make use of those numbers. However, wherever possible, NASDAQ plans to update its rules to reflect changes to corresponding FINRA rules.

This filing addresses NASDAQ Rule 3121, which formerly corresponded to NASD Rule 3121. In SR-FINRA-2009-080,⁴ FINRA redesignated NASD Rule 3121 as FINRA Rule 4570 with minor technical changes. FINRA Rule 4570 requires a member to designate, as the custodian of its required books and records on Form BDW, a person who is associated with the firm at the time Form BDW is filed. The rule is intended to enhance the SRO's ability to obtain required books and record [sic] from firms that are no longer conducting business and to ensure that the custodian of the books and records has been subject to certain background checks. The FINRA Rule 4570 text

makes minor technical changes by adopting terminology consistent with that used in Form BDW.

NASDAQ is adopting the new FINRA rule in full, and redesignating NASDAQ Rule 3121 to be NASDAQ Rule 4570, so as to correspond to the new FINRA rule number.

NASDAQ is also proposing to make a clerical correction to the NASDAQ rulebook. Specifically, NASDAQ proposes to renumber NASDAQ Rule 2310 to NASDAQ Rule 2310A. This change will correct an error in a prior rule filing,⁵ which inadvertently did not include the intended "A" in the rule number and text, resulting in two rules labeled as Rule 2310 in NASDAQ's rulebook.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁶ in general, and with Sections 6(b)(5) of the Act,⁷ in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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. The proposed changes will conform NASDAQ Rule 3121 to recent changes made to a corresponding FINRA rule, to promote application of consistent regulatory standards. The proposed change to NASDAQ Rule 2310 will correct a clerical error in the NASDAQ rulebook.

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, as amended.

C. Self-Regulatory Organization's Statement on Comments Received From Members, Participants, or Others

Written comments were neither solicited nor received.

⁵ Securities Exchange Act Release No. 61321 (January 8, 2010), 75 FR 14 [sic] (January 22, 2010)(SR-NASDAQ-2010-002).

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(5).

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

⁴ Securities Exchange Act Release No. 61332 (January 12, 2010), 75 FR 12 [sic] (January 20, 2010) (SR-FINRA-2009-080).