

general, to protect investors and the public interest.

The Exchange's proposal to expand the scope of potential Users of its co-location services to include any market participant that requests to receive co-location services directly from the Exchange would increase access to the Exchange's co-location facilities by allowing additional types of Users to use those facilities. In this regard, co-location services would be offered by the Exchange to these additional types of Users, as is the case today for existing Users, in a manner that would not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

Additionally, the proposed hosting fee would be applied uniformly for comparable services provided by the Exchange and would not unfairly discriminate between similarly situated Users of co-location services. In this regard, the proposed hosting capability and related fee would be applicable to all interested Users that provide hosting services. In addition, the Exchange believes that the proposed hosting fee is reasonable in that it is designed to defray applicable expenses incurred or resources expended by the Exchange related to such services, including, but not limited to, configuration of Users' connections to their Hosted User customers and subsequent monitoring thereof by Exchange staff.

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

The Exchange does not believe that the proposed rule change will impose 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 solicited or received with respect to the proposed rule change.

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

Within 45 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 or disapprove such 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:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEAMEX-2011-82 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-NYSEAMEX-2011-82. This file number should be included on the subject line if email 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 Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NYSE. 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-NYSEAMEX-2011-82, and

should be submitted on or before November 22, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Kevin M. O'Neill,**  
*Deputy Secretary.*

[FR Doc. 2011-28203 Filed 10-31-11; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-65629; File No. SR-NYSE-2011-53]

### **Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Expanding the Scope of Potential "Users" of Its Co-Location Services To Include Any Market Participant That Requests To Receive Co-Location Services Directly From the Exchange and Amending Its Price List To Establish a Fee for Users That Host Their Customers at the Exchange's Data Center**

October 26, 2011.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on October 14, 2011, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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 the Substance of the Proposed Rule Change**

The Exchange proposes to expand the scope of potential "Users" of its co-location services to include any market participant that requests to receive co-location services directly from the Exchange. In addition, the Exchange proposes to amend its Price List to establish a fee for Users that host their customers at the Exchange's data center. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.nyse.com>.

<sup>11</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 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 self-regulatory organization 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 operates a data center in Mahwah, New Jersey from which it provides co-location services to Users.<sup>4</sup> For purposes of its co-location services, the term "User" currently includes member organizations, as that term is defined in NYSE Rule 2(b), and Sponsored Participants, as that term is defined in NYSE Rule 123B.30(a)(ii)(B).<sup>5</sup> The Exchange proposes to expand the scope of potential Users of its co-location services to include any market participant that requests to receive co-location services directly from the Exchange.<sup>6</sup> Under the proposed rule change, Users could therefore include member organizations, Sponsored Participants, non-member broker-dealers and vendors. The Exchange anticipates that the potential additional Users would provide, for example, hosting, service bureau, technical support, risk management, order routing and market data delivery services to their customers while the User is co-located in the Exchange's data center.<sup>7</sup> As is the case with all Exchange co-location arrangements, neither a User, nor any of its customers, would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization or a Sponsored Participant. All existing co-location terms, conditions, facilities,

<sup>4</sup> See Securities Exchange Act Release No. 62960 (September 21, 2010), 75 FR 59310 (September 27, 2010) (SR-NYSE-2010-56).

<sup>5</sup> *Id.* at note 7.

<sup>6</sup> As is the case today, prospective Users must agree to, and be capable of satisfying, any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

<sup>7</sup> The Exchange anticipates that a User's customer(s) could include, under certain circumstances, other Users of the Exchange's co-location services.

services, and applicable fees would apply to these potential new Users.

The Exchange also proposes to amend its Price List to establish a fee applicable to Users that provide hosting services to their customers ("Hosted Users") at the Exchange's data center. "Hosting" would be a service offered by a User to a Hosted User and could include, for example, a User supporting its Hosted User's technology, whether hardware or software, through the User's co-location space. Specifically, the Exchange proposes to charge each User a fee of \$500.00 per month for each Hosted User that the User hosts in the Exchange's data center. Users would independently set fees for their Hosted Users and the Exchange would not receive a share of any such fees.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),<sup>8</sup> in general, and furthers the objectives of Section 6(b)(4)<sup>9</sup> and 6(b)(5) of the Act,<sup>10</sup> in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and is designed to prevent fraudulent and manipulative acts and practices, 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.

The Exchange's proposal to expand the scope of potential Users of its co-location services to include any market participant that requests to receive co-location services directly from the Exchange would increase access to the Exchange's co-location facilities by allowing additional types of Users to use those facilities. In this regard, co-location services would be offered by the Exchange to these additional types of Users, as is the case today for existing Users, in a manner that would not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

Additionally, the proposed hosting fee would be applied uniformly for comparable services provided by the Exchange and would not unfairly discriminate between similarly situated

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(4).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

Users of co-location services. In this regard, the proposed hosting capability and related fee would be applicable to all interested Users that provide hosting services. In addition, the Exchange believes that the proposed hosting fee is reasonable in that it is designed to defray applicable expenses incurred or resources expended by the Exchange related to such services, including, but not limited to, configuration of Users' connections to their Hosted User customers and subsequent monitoring thereof by Exchange staff.

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

The Exchange does not believe that the proposed rule change will impose 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 solicited or received with respect to the proposed rule change.

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

Within 45 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 or disapprove such 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:

### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2011-53 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-NYSE-2011-53. This file number should be included on the subject line if email 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 Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NYSE. 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-NYSE-2011-53, and should be submitted on or before November 22, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Kevin M. O'Neill,**  
*Deputy Secretary.*

[FR Doc. 2011-28205 Filed 10-31-11; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-65633; File No. SR-CHX-2011-29]

**Self-Regulatory Organizations;  
Chicago Stock Exchange, Inc.; Order  
Approving a Proposed Rule Change To  
Change the Status of Exchange-  
Registered Institutional Broker Firms**

October 26, 2011.

**I. Introduction**

On September 14, 2011, the Chicago Stock Exchange, Inc. ("CHX" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to change the status of Exchange-registered Institutional Broker firms ("Institutional Brokers"). The proposed rule change was published for comment in the **Federal Register** on September 26, 2011.<sup>3</sup> The Commission received no comment letters on the proposal. This order approves the proposed rule change.

**II. Description of the Proposal**

Institutional Brokers are an elective sub-category of Exchange Participants who are subject to the obligations of Article 17 of the CHX rules. Typically, Institutional Brokers provide manual order handling and execution services for other broker-dealers or institutional clients. Institutional Brokers are the successors to the floor brokers that operated within the Exchange's previous floor-based, auction trading model. That model was eliminated as part of the Exchange's transition to its New Trading Model, which features an electronic limit order matching system as its core trading facility.<sup>4</sup> In approving the Exchange's New Trading Model, the Commission stated:

Institutional brokers would be deemed to be participants operating on the Exchange, although they would not effect transactions from a physical trading floor (since the Exchange will no longer have a physical trading floor) and could trade from any location. A customer order would be deemed to be on the Exchange when received by an institutional broker, but would not have

priority in the Matching System until it is entered into the system.<sup>5</sup>

Due to certain changes in the function of Institutional Brokers,<sup>6</sup> CHX proposes to treat Institutional Brokers as no longer always operating on the Exchange. Pursuant to CHX's proposal, an order that is sent to an Institutional Broker shall not be deemed to be "on the Exchange" unless and until the Institutional Broker enters it into the Exchange's Matching System.<sup>7</sup> Correspondingly, the Exchange proposes to delete certain references to Institutional Brokers and/or their activity as being "on the Exchange" in Article 11, Rule 3(e) and in Article 17, Rule 3(a) and in Interpretation and Policy .01 thereto.

The Exchange also proposes to delete Article 20, Rule 7 (Clearing the Matching System), which requires Institutional Brokers to attempt to execute trades on the Exchange before routing the order to another destination, except if the Institutional Broker is trading for its own account or its customer specifically requests otherwise. Currently, Institutional Brokers are not permitted to execute transactions directly in the over-the-counter ("OTC") marketplace because, as discussed above, orders directed to them are deemed on the Exchange.<sup>8</sup> In light of the proposed elimination of the on-Exchange designation of all Institutional Broker orders, CHX also proposes to modify Article 17, Rule 1 to permit Institutional Brokers to effect transactions both on the Exchange and

<sup>5</sup> *Id.* 71 FR at 59567.

<sup>6</sup> Until fairly recently, CHX permitted Institutional Brokers to execute trades outside the Exchange's core trading facility, the Matching System, and those trades were still considered to be on the Exchange. Utilizing a functionality known as the Validated Cross, Institutional Brokers executed cross transactions based upon the state of the national market and orders residing in the Matching System at the time the parties agreed to the execution, rather than as of the entry of all essential terms into the electronic systems used by Institutional Brokers to handle and execute such transactions. *See, e.g.*, CHX Market Regulation Department Information Memorandum MR-07-9 (December 6, 2007). In December 2010, the Exchange eliminated the Validated Cross functionality and ability of Institutional Brokers to execute transactions on the CHX otherwise than through the Matching System. *See* Securities Exchange Act Release No. 63564 (December 16, 2010), 75 FR 80870 (December 23, 2010) (SR-CHX-2010-25). Given this change, the Exchange states there is no longer any meaningful reason to treat Institutional Brokers as operating on the Exchange and the proposed Interpretation and Policy .04 reflects that determination. *See* Notice, 76 FR at 59477.

<sup>7</sup> *See* New Interpretation and Policy .04 to Rule 3 of Article 17.

<sup>8</sup> *See* CHX Market Regulation Department Information Memorandum MR-11-09 (July 14, 2011), available on the Exchange's public Web site, <http://www.chx.com>.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Securities Exchange Act Release No. 65354 (September 19, 2011), 76 FR 59476 ("Notice").

<sup>4</sup> The Exchange replaced its traditional auction marketplace with its New Trading Model beginning in 2006. *See* Securities Exchange Act Release No. 54550 (September 29, 2006), 71 FR 59563 (October 10, 2006) (SR-CHX-2006-05).

<sup>11</sup> 17 CFR 200.30-3(a)(12).