

Servicing Agreement, and for a period not less than six years thereafter, the first two years in an easily accessible place.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55103; File No. SR-CHX-2006-39]

### Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Participant Fees and Credits

January 12, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 21, 2006, 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 substantially prepared by the CHX. The CHX has designated this proposal as one establishing or changing a member due, fee, or other charge imposed by the CHX pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> 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 CHX proposes to amend its Schedule of Participant Fees and Credits ("Fee Schedule") to include changes in the fees charged for orders routed through the NMS Linkage Plan<sup>5</sup> to The

NASDAQ Stock Market ("Nasdaq"), the National Stock Exchange ("NSX"), the Boston Equities Exchange ("BeX") and the Philadelphia Stock Exchange ("PHLX"). The text of this proposed rule change is available at the CHX, on the CHX's Web site at [http://www.chx.com/rules/proposed\\_rules.htm](http://www.chx.com/rules/proposed_rules.htm), and in 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 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's Fee Schedule, among other things, identifies the fees that are charged to participants on account of outbound NMS Linkage Plan orders. Section E.6 of the Fee Schedule applies to orders that are Matching System-eligible<sup>6</sup> and therefore are routed from the Matching System to other market centers. Section E.8 of the Fee Schedule applies to orders that have not yet migrated to the Matching System and therefore are routed from the Exchange's pre-new NTM facilities.

When an outbound NMS Linkage Plan order is executed on another NMS Linkage participant market, that market will directly invoice the CHX for a transaction fee, in an amount that may not exceed the transaction fee that it would charge its own member for such an execution. The CHX is then responsible for payment of such invoice. Sections E.6 and E.8 of the Fee Schedule permit the CHX to collect a corresponding fee from the CHX participant that generated the outbound NMS Linkage Plan order. The CHX believes that it is appropriate to establish outbound NMS Linkage fee rates that reasonably correspond to the respective transaction fee rates being

charged by the executing markets. Accordingly, it is submitting changes to Sections E.6 and E.8 of the Fee Schedule, to reflect recent developments regarding applicable transaction fees assessed by Nasdaq, NSX, PHLX, and BeX on account of NMS Linkage Plan executions.<sup>7</sup> Specifically, the proposal would change the outbound fee for NMS Linkage orders routed to Nasdaq (in issues other than exchange-traded funds ("ETFs")) from \$.0015/share to \$.0030/share, effective January 1, 2007. The proposal would also change the outbound fee for NMS Linkage orders routed to NSX and PHLX to \$.0030/share for orders in all securities (ETFs and all other securities). Finally, the proposal would change the outbound fee for NMS Linkage orders routed to BeX to \$.0028/share for orders in all securities (ETFs and all other securities).<sup>8</sup>

###### 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(4) of the Act<sup>9</sup> in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and is consistent with the allocation of dues, fees and other charges utilized by other self-regulatory organizations that have implemented trading platforms similar to the CHX new trading model.

##### 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.

##### 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.

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

Because the foregoing proposed rule change establishes or changes a due, fee

<sup>7</sup> See Nasdaq Head Trader Alert #2006-199 (November 30, 2006); Securities Exchange Act Release No. 55041 (January 4, 2007), 72 FR 1356 (January 11, 2007) (SR-NSX-2006-17); Securities Exchange Act Release No. 54941 (December 14, 2006), 71 FR 77079 (December 22, 2006) (SR-PHLX-2006-70); and Securities Exchange Act Release No. 54795 (November 20, 2006), 71 FR 68850 (November 28, 2006) (SR-BSE-2006-44).

<sup>8</sup> BeX has implemented a fee that charges \$.0028/share for taking liquidity, subject to a maximum of .3% of the quotation price per share, for securities with a share price less than \$1.00. The CHX's systems cannot currently calculate that type of fee cap and, for that reason, the CHX is not currently proposing that cap as part of its fees for routing orders to BeX.

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

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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

<sup>5</sup> See Securities Exchange Act Release No. 54548 (September 29, 2006), 71 FR 59159 (October 6, 2006) (SR-CHX-2006-28) (approving exchange-to-exchange billing procedures under the Plan for the Purpose of Creating and Operating an Intermarket Communications Linkage Pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934 ("Linkage Plan")); Securities Exchange Act Release No. 54551 (September 29, 2006), 71 FR 59148 (October 6, 2006) (approving Linkage Plan).

<sup>6</sup> See Securities Exchange Act Release No. 54550 (September 29, 2006), 71 FR 59563 (October 10, 2006) (SR-CHX-2006-05) (approving rules to implement a new trading model ("NTM") that allows Exchange participants to interact in a fully-automated Matching System).

or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder.<sup>11</sup> At any time within 60 days of the filing of such 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](mailto:rule-comments@sec.gov). Please include File No. SR-CHX-2006-39 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-CHX-2006-39. 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 Room. 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-2006-39 and should be submitted on or before February 13, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55108; File No. SR-NASD-2006-101]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto To Provide for the Payment of a \$200 Honorarium Per Case for Each Arbitrator Who Considers Contested Motions for the Issuance of Subpoenas

January 16, 2007.

#### I. Introduction

On August 23, 2006, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend IM-10104 of the NASD Code of Arbitration Procedure ("Code") to provide for the payment of a \$200 honorarium per case for each arbitrator who considers contested motions for the issuance of subpoenas. On November 13, 2006, NASD filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change, as amended, was published for comment in the **Federal Register** on December 8, 2006.<sup>4</sup> The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

#### II. Description

The purpose of the proposed rule change is to provide for the payment of

a \$200 honorarium per case for each arbitrator who considers contested motions for the issuance of subpoenas. NASD previously amended IM-10104, to provide arbitrators with an honorarium of \$200 to decide discovery-related motions without a hearing session.<sup>5</sup> The revised rule, however, does not address whether a contested motion concerning a subpoena constitutes a discovery-related motion. As a result, NASD has received questions regarding the appropriate payment, if any, for arbitrators who decide subpoena issues. These questions have focused on whether, under the rule, arbitrators should be paid to decide contested motions requesting the issuance of a subpoena.

The issue of whether arbitrators should receive an honorarium for deciding contested subpoena motions has become even more significant with the Commission's recent approval of amendments to NASD Rule 10322 which, among other changes, permit only arbitrators to issue subpoenas in NASD arbitrations.<sup>6</sup>

In proposing the current rule change, NASD recognized that arbitrators may spend a considerable amount of time and effort deciding contested subpoena motions<sup>7</sup> and stated it believes that arbitrators should be compensated for this work. NASD anticipated that if its proposed changes to Rule 10322 were approved, under most circumstances, the chairperson would be the only arbitrator considering subpoena requests based on the documents supplied by the parties. If the entire panel decided a contested motion, each arbitrator who participates in the subpoena ruling would receive an honorarium of \$200. The \$200 honorarium paid to an arbitrator would provide payment for all contested subpoena motions in a case (*i.e.*, the honorarium would be paid on a per case basis, regardless of the number of contested subpoena motions considered by an arbitrator or panel during the case).<sup>8</sup> Furthermore, the

<sup>5</sup> See Exchange Act Release No. 51931 (June 28, 2005) (File No. SR-NASD-2005-052), 70 FR 38989 (July 6, 2005).

<sup>6</sup> See Exchange Act Release No. 55038 (Jan. 3, 2007) (File No. SR-NASD-2005-079). Previously, Rule 10322 allowed arbitrators and any counsel of record to the proceedings to issue subpoenas as provided by law.

<sup>7</sup> For purposes of this rule, a contested motion is defined as a motion to issue a subpoena, the draft subpoena, a written objection from the party opposing the issuance of the subpoena, and any other documents supporting a party's position. Arbitrators will not be entitled to receive the honorarium if a motion for a subpoena is uncontested.

<sup>8</sup> This differs from other discovery-related motions, for which an arbitrator receives an honorarium for each motion considered. See IM-

<sup>10</sup> 15 U.S.C. 78f(b)(4).

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

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

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

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

<sup>3</sup> In Amendment No. 1, NASD clarified provisions of the proposed rule change.

<sup>4</sup> See Exchange Act Release No. 54857 (Dec. 1, 2006), 71 FR 71213 (Dec. 8, 2006).