

display of customer limit orders. FINRA believes that the proposed restrictions on sub-penny quoting will promote greater price transparency and consistency, reduce the potential harms associated with sub-penny quoting in OTC equity securities and improve the depth and liquidity of this market.

FINRA believes that locked and crossed markets can cause confusion among investors concerning trading interest in a stock and that restricting the practice of submitting locking or crossing quotations will enhance the usefulness of quotation information in the over-the-counter market, facilitate more fair and orderly markets and support market efficiency.

Where wide disparities in access fees are permitted, the prices of quotations are less useful and accurate. Therefore, FINRA believes that a cap on access fees would improve the usefulness and accuracy of quotations and address the potential distortions caused by substantial, disparate fees. Finally, FINRA believes that applying limit order display requirements to OTC Equity Securities would improve transparency in the OTC equity market and advance the goal of the public availability of quotation information, as well as fair competition, market efficiency, best execution and disintermediation.

FINRA believes that the proposed extension of the specified Regulation NMS protections to quoting and trading in OTC Equity Securities will prevent fraudulent and manipulative acts and practices in this market, promote just and equitable principles of trade, and protect investors and the public interest.

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

FINRA 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.

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

Written comments on the proposed rule change were solicited by the Commission in response to the publication of SR-FINRA-2009-054, which proposed new rules to: (1) Restrict sub-penny quoting; (2) restrict locked and crossed markets; (3) implement a cap on access fees; and (4) require the display of customer limit orders.³⁵ The Commission received

twelve comment letters.³⁶ The comments are summarized above.

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

Within 35 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 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 e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2009-054 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-FINRA-2009-054. 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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, 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 FINRA. 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 publicly available. All submissions should refer to File Number SR-FINRA-2009-054 and should be submitted on or before April 6, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁷

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010-5648 Filed 3-15-10; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61674; File No. SR-CBOE-2010-025]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Permanent Approval of the Dividend, Merger and Short Stock Interest Strategies Fee Cap Pilot Program

March 9, 2010.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on March 1, 2010, Chicago Board Options Exchange, Incorporated ("CBOE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III 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 Substance of the Proposed Rule Change

Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange")

³⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

³⁵ See Proposing Release.

³⁶ See *supra* note 4.

proposes to amend its Fees Schedule to make permanent its dividend, merger and short stock interest strategies fee cap program. The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.org/legal>), at the Exchange's Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE 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. CBOE 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

(a) Purpose

The Exchange proposes to make permanent the pilot program for caps on market-maker, firm, and broker-dealer transaction fees associated with dividend, merger and short stock interest strategies, as described in Footnote 13 of the CBOE Fees Schedule ("Strategy Fee Cap"). Under this program, market-maker, firm and broker-dealer transaction fees are capped at \$1,000 for all (i) dividend strategies,⁴ (ii) merger strategies⁵ and (iii) short stock interest strategies⁶ executed on the same trading day in the same options class. In addition, such transaction fees for these strategies are further capped at \$25,000 per month per initiating member or firm. The Strategy Fee Cap pilot program is due to expire on March 1, 2010.

Other than requesting permanent approval of the pilot program, no other

changes to the Strategy Fee Cap are being proposed at this time.⁷

(b) Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 ("Act"),⁸ in general, and furthers the objectives of Section 6(b)(4)⁹ of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes permanent approval of the Strategy Fee Cap pilot program would benefit market participants who trade these strategies by lowering their fees and allow the Exchange to remain competitive with other exchanges that offer similar fee cap programs.

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

CBOE 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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁰ and subparagraph (f)(2) of Rule 19b-4¹¹ thereunder. 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-CBOE-2010-025 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-CBOE-2010-025. 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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, 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 the Exchange. 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 publicly available. All submissions should refer to File Number SR-CBOE-2010-025 and should be submitted on or before April 6, 2010.

⁴ A dividend strategy is defined as transactions done to achieve a dividend arbitrage involving the purchase, sale and exercise of in-the-money options of the same class, executed prior to the date on which the underlying stock goes ex-dividend.

⁵ A merger strategy is defined as transactions done to achieve a merger arbitrage involving the purchase, sale and exercise of options of the same class and expiration date, each executed prior to the date on which shareholders of record are required to elect their respective form of consideration, i.e., cash or stock.

⁶ A short stock interest strategy is defined as transactions done to achieve a short stock interest arbitrage involving the purchase, sale and exercise of in-the-money options of the same class.

⁷ The Strategy Fee Cap pilot program is similar to fee cap pilot programs at other exchanges that were recently made permanent. See Securities Exchange Act Release No. 59566 (March 12, 2009), 74 FR 11793 (March 19, 2009) (SR-PHLX-2009-18); and Securities Exchange Act Release No. 59478 (February 27, 2009), 74 FR 9857 (March 6, 2009) (SR-NYSEALTR-2009-19).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4).

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(2).

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

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010-5658 Filed 3-15-10; 8:45 am]

BILLING CODE 8011-01-P

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).