

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

**Florence E. Harmon,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58362; File No. SR-CHX-2008-13]

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

August 14, 2008.

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 August 13, 2008, the Chicago Stock Exchange, Inc. (the "CHX" or the "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. 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 Assessments (the "Fee Schedule") to provide for trade processing fee credits to CHX-registered Institutional Brokers. The text of this proposed rule change is available on the Exchange'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, 100 F Street, NE., Washington, DC 20549.

#### 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 changes and discussed any comments it received regarding the proposal. 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

Through this filing, the Exchange would amend its Fee Schedule to provide for a credit to institutional brokers relating to trade processing fees charged by the Exchange to its participants. Trade processing fees are fees charged by the Exchange for transactions that are executed and reported to the tape (but not reported to clearing) by an institutional broker in an away market (*i.e.*, not the Exchange), but which are reported to clearing by the Exchange's systems. The use of the Exchange's systems to report trades to clearing, instead of the facility on which the trade was executed, is done at the request of the institutional broker's customer to simplify the customer's ability to access clearing data from a unified source. All clearing transactions reported in this manner appear in the Exchange's Regional Trade Interface Operations ("RIO") file along with the customer's trades executed on the CHX.

The Exchange proposes to provide to the originating broker a trade processing fee credit equal to 3% per side of the trade processing fees received by the Exchange. The Exchange further proposes to provide to the broker of credit a trade processing fee credit equal to 6% of the trade processing fees received by the Exchange for the portion(s) of the transaction handled by the broker of credit. An "originating broker" is defined as the institutional broker that executes a trade on an away market. A "broker of credit" is defined as the institutional broker that acts as the broker for the ultimate Exchange clearing participant. Prior to this filing, trade processing fee credits were not paid by the Exchange. This proposed fee schedule change would take effect upon filing.

##### 2. Statutory Basis

The Exchange believes that the rule changes proposed in this submission are consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b). The proposed rule change is consistent with Section 6(b)(4) of the Act in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members. Moreover, the proposed trade

processing fee credits will allow the Exchange to share trade processing fees with institutional brokers, similar to the way it currently shares transaction fees for CHX executions with institutional brokers. Prior to this filing, trade processing fees were not shared with institutional brokers.

#### 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

The foregoing rule change establishes or changes a due, fee or other charge imposed by the Exchange and therefore has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder.<sup>4</sup> At any time within 60 days of the filing of such 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 purpose 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 Number SR-CHX-2008-13 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CHX-2008-13. This file

<sup>11</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> 15 U.S.C. 78s(b)(3)(A).

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

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, 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-CHX-2008-13 and should be submitted on or before September 11, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>5</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58357; File No. SR-NASDAQ-2008-068]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change as Modified by Amendment No. 1 To Modify Rule 4770 To Enhance Trading in the NASDAQ Crossing Network

August 13, 2008.

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> notice is hereby given that on August 11, 2008, The NASDAQ Stock Market

LLC ("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 Nasdaq. Nasdaq has designated this proposal as non-controversial and provided the Commission with the notice required by Exchange Act Rule 19b-4(f)(6)(iii). This rule proposal, which is effective upon filing with the Commission, shall become operative on September 1, 2008. On August 13, 2008, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> 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

Nasdaq is filing a rule proposal to modify Rule 4770 to enhance trading in the NASDAQ Crossing Network. Nasdaq proposes to implement the proposed rule change on September 1, 2008.

The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.<sup>4</sup>

\* \* \* \* \*

#### 4770. Nasdaq Crossing Network

(a) Definitions. For the purposes of this rule the term:

(1) "Nasdaq Reference Price Cross" shall mean the process for executing orders at a predetermined reference price at a randomly selected point in time during a *five-second* [one minute] trading window beginning at 10:45 a.m., 12:45 p.m. and 2:45 p.m. Eastern Time during the regular hours session and at 4:30 p.m. during the after hours session.

(2) No Change.

(3) No Change.

(b) No Change.

\* \* \* \* \*

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

In its filing with the Commission, Nasdaq 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. Nasdaq has prepared

<sup>3</sup> The Commission considers the 60-day abrogation period to have commenced on August 13, 2008, the date the Exchange filed Amendment No. 1.

<sup>4</sup> Changes are marked to the rule text that appears in the electronic Nasdaq Manual found at <http://nasdaqomx.cchwallstreet.com>.

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

Nasdaq is filing a rule proposal to modify Rule 4770 to enhance trading in the NASDAQ Crossing Network. The Commission approved the Nasdaq Crossing Network on July 5, 2006.<sup>5</sup> The Nasdaq Crossing Network provides an execution option to market participants trading in Nasdaq and other exchange-listed securities that facilitates the execution of trades quickly and anonymously.

In order to minimize the opportunity for manipulation, Nasdaq executes the cross through an automated and random matching mechanism at a randomly selected time during the predetermined one-minute cross-trading window. Nasdaq introduced the randomization period in order to prevent market participants from entering or cancelling orders in the Nasdaq Crossing Network in an attempt to improperly influence the execution price of a cross. The randomization period was thought to protect both market participants and public investors from potential manipulation.

In response to input from our members and other market participants, Nasdaq proposes to modify the 60-second "randomization period" of [sic] that precedes the execution of all crosses within the Nasdaq Crossing Network. Based upon changing market conditions, Nasdaq has now determined that the full benefits of the randomization period can be realized through a shorter randomization period of five seconds rather than 60 seconds.

The speed of order routing and execution in the marketplace has increased substantially since the launch of the Nasdaq Crossing Network. As a result, a random period of five seconds is sufficient to create significant risk of a delayed execution outside the control of a market participant. In other words, there is little incremental benefit of a random period longer than five seconds.

<sup>5</sup> See Securities Exchange Act Release No. 54248 (July 31, 2006) (SR-NASDAQ-2006-019). Prior to the effective date of Nasdaq's operation as an exchange for Nasdaq-listed securities, the rule governing the Nasdaq Crossing Network had been approved as an NASD rule (NASD Rule 4716). Securities Exchange Act Release No. 54101 (July 5, 2006), 71 FR 39382 (July 12, 2006) (SR-NASD-2005-140).

<sup>5</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.