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 the 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 available publicly. All submissions should refer to File Number SR–CBOE–2010–097 and should be submitted on or before November 23, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–27586 Filed 11–1–10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63196; File No. SR–FINRA–2010–046]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Remove the Exemption From the Trading Activity Fee for Transactions in Exchange Listed Options Effected by a Member When FINRA Is Not the Designated Options Examining Authority for That Member

October 27, 2010.

I. Introduction

On September 7, 2010, Financial Industry Regulatory Authority, Inc. ("FINRA") 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 to amend its By-Laws to remove the exemption from the trading activity fee ("TAF") for transactions in exchange listed options effected by a member when FINRA is not the designated options examining authority ("DOEA") for that member. The proposed rule change was published for comment in the **Federal Register** on September 23, 2010.[3] The Commission received no comment letters on the proposal. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

In its proposal, FINRA sought to amend Section 1(b) of Schedule A to the FINRA By-Laws to remove the exemption from the TAF for transactions in exchange listed options effected by a member for whom FINRA is not the DOEA. The TAF is one of three member regulatory fees FINRA uses to fund its member regulation activities.[4] Because the TAF funds FINRA's member regulation functions, it is intended to apply to transactions in a way that corresponds to FINRA's regulatory responsibilities.[5] In general, the TAF is assessed for the sale of all exchange registered securities wherever executed (except debt securities that are not TRACE-eligible), over-the-counter equity securities, security futures, TRACE–Eligible Securities (provided that the transaction is a Reportable TRACE Transaction), and all municipal securities subject to the reporting requirements of the Municipal Securities Rulemaking Board.[6] The TAF rules also include numerous exemptions for certain types of transactions.[7]

In 2003, FINRA exempted from the TAF "[t]ransactions in exchange listed options effected by a member when FINRA is not the designated options examining authority for that member."[8] FINRA represented that the exemption was added to reflect the fact that FINRA's regulatory responsibilities with respect to such activities were somewhat alleviated by its participation in a plan filed with the Commission under Rule 17d–2 of the Act[9] ("17d–2 Agreement") in which regulatory responsibilities for certain FINRA members that conducted a public options business were assumed by other self regulatory organizations ("SROs") that would act as the members' DOEA.[10] In view of the fact that another SRO performed certain regulatory responsibilities with respect to the options activities of some of its members, FINRA decided to exempt transactions in exchange listed options by such members from the TAF.[11] The exemption was also based on the fact that certain other SROs were assessing or preparing to assess specific regulatory fees for acting as DOEA,[12] which FINRA believed made its TAF on options transactions appear redundant. However, subsequent amendments to the 17d–2 Agreement have consolidated within FINRA sole regulatory responsibility for the public options activities of all of its members[13] and FINRA assumed all regulatory responsibility for FINRA members under the 17d–2 Agreement.[14] As a result of this increase in regulatory responsibility, FINRA filed the instant proposed rule change to delete the exemption from the TAF.[15]

FINRA represented that deleting this exemption would also remove any ambiguities over whether FINRA should collect the TAF from sole-FINRA members or from FINRA members that conduct only a proprietary options business. FINRA stated its belief that the existing language exempting a member's transactions in exchange listed options from the TAF when FINRA is not the DOEA for the member does not properly align with those situations where FINRA has regulatory responsibility over the member firm. First, the DOEA designation is established only under the 17d–2 Agreement, which by its own terms applies only with respect to firms that are members of more than one SRO. Thus, according to FINRA, while it has regulatory responsibilities for the

[13] 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. 62927 (September 17, 2010), 75 FR 58004.

[4] *See* FINRA By-Laws, Schedule A, § 1(b). In addition to the TAF, the other member regulatory fees are the Gross Income Assessment and the Personnel Assessment. *See id.* §§ 1(c), (d).

[5] *See* Securities Exchange Act Release No. 50485 (October 1, 2004), 69 FR 60445 (October 8, 2004) (SR–NASD–2003–201).

[6] *See* FINRA By-Laws, Schedule A, § 1(b)(1).

[7] *See* FINRA By-Laws, Schedule A, § 1(b)(2).

[8] FINRA By-Laws, Schedule A, § 1(b)(2)(K). *See* Securities Exchange Act Release No. 47946 (May 30, 2003), 68 FR 34021 (June 6, 2003) (SR–NASD–2002–148).

[9] 17 CFR 240.17d–2.

[10] *See* Securities Exchange Act Release No. 46800 (November 8, 2002), 67 FR 69774 (November 19, 2002).

[11] Transactions in over-the-counter ("conventional") options are exempted from the TAF with respect to all FINRA members. *See* FINRA By-Laws, Schedule A, § 1(b)(2)(H).

[12] *See, e.g.,* Securities Exchange Act Release No. 47577 (March 26, 2003), 68 FR 16109 (April 2, 2003) (SR–PCX–2003–03) (PCX rule filing establishing a DOEA fee).

[13] *See* Securities Exchange Act Release No. 57987 (June 18, 2008), 73 FR 36156 (June 25, 2008).

[14] Following the consolidation of National Association of Securities Dealers ("NASD") and NYSE member regulation operations in 2007, FINRA announced that it serves as the DOEA for all FINRA member firms. *See Regulatory Notice* 08–37 (July 2008).

[15] At the time FINRA (then NASD) proposed the exemption in Amendment No. 4 to SR–NASD–2002–148, it noted that "NASD does not believe it is precluded from seeking further amendments to the TAF with respect to the reduction or elimination of the proposed exemption * * * in the event of a change of factors surrounding its sales practice and other regulatory responsibilities." Letter from Barbara Z. Sweeney, SVP and Corporate Secretary, NASD, to Katherine A. England, Assistant Director, Division of Trading and Markets, Commission, dated May 19, 2003.

options business of its sole members, it is not technically the DOEA for such firms. Second, the 17d–2 Agreement addresses only a firm's public options business. As such, a firm that conducts only a proprietary options business, irrespective of whether such firm is a member of FINRA and another SRO, would not be covered by the 17d–2 Agreement, and FINRA would not technically be the DOEA. FINRA stated that although its regulatory responsibilities are more limited for a firm that does not conduct a public options business, it still retains regulatory responsibilities over the firm's options activities.

III. Discussion and Commission Findings

After carefully reviewing the proposed rule change, the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[16] In particular, the Commission finds that the proposal is consistent with Section 15A(b)(5) of the Act,[17] which requires that a national securities association have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. Further, the Commission finds that the proposal is consistent with Section 15A(b)(6) of the Act,[18] which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The Commission believes that removal of the TAF exemption for transactions in exchange listed options effected by members for whom FINRA is not the DOEA is consistent with the Act because it more properly aligns the imposition of the TAF with those situations where FINRA has regulatory responsibility over the member firm.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (SR–FINRA–2010–046) be, and hereby is, approved.[20]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–27671 Filed 11–1–10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63190; File No. SR–BX–2010–069]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Pricing for Co-Location Services

October 27, 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 October 25, 2010, NASDAQ OMX BX, Inc. ("BX" 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 prepared by BX. Pursuant to Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] BX has designated this proposal as establishing or changing a due, fee, or other charge, which renders the proposed rule change effective upon filing. 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

BX proposes to codify [sic] pricing for co-location services. BX will implement the proposed change immediately. The text of the proposed rule change is available at *http://nasdaqomxbx.cchwallstreet.com,* at BX's principal office, on the Commission's Web site at *http://www.sec.gov,* 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, BX 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. BX 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 is proposing to modify its fee schedule[5] for co-location services.[6] These modifications are summarized below:

First, as a result of the entry of the Direct Edge and BATS Y exchanges into the public market and the availability of other data feeds, the Exchange is implementing and modifying its telecommunications installation and connectivity fees to accommodate these data linkages for co-located customers. The new fees are: (1) $125 per-month fee for connectivity to the Arca Best Bid and Offer feed; (2) a $1,500 per-month fee for connectivity to the new BATS Y exchange; and (3) a one-time fee of $1000 for the installation of telecommunications connectivity for the Direct Edge exchange, along with a per-month fee of $2500 for each of its two markets, EDGA and EDGX. In connection with foregoing, the Exchange notes that its installation fee for Direct Edge is equal to that currently charged for installation of SIAC, CME,[7] and BATS connectivity, and that the monthly rates proposed are based on the anticipated bandwidth needed to accommodate a particular fee and are similar to connectivity fees imposed by other vendors.[8]

Next, to provide additional flexibility for customers to select only the equipment they need, the Exchange proposes to separate its current combined $1750 installation fee for cooling fans and perforated tiles into separate fees of $1,500 for the fans and $250 for the tiles.

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[16] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78*o*–3(b)(5).

[18] 15 U.S.C. 78*o*–3(b)(6).

[19] 15 U.S.C. 78s(b)(2).

[20] FINRA states it will implement the proposed rule change on the first day of the month following Commission approval. FINRA will announce the implementation of the proposed rule change in a Regulatory Notice to be published no later than 30 days following Commission approval.

[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] This schedule includes modifications made by SR–BX–2010–068, filed with the Commission on October 14, 2010.

[6] Co-location services are a suite of hardware, power, telecommunication and other ancillary products and services that allow users to place their trading and communications equipment in close physical proximity to the quoting and execution facilities of the Exchange.

[7] The Exchange is also removing from the fee schedule an incorrect duplicate $1000 installation fee for CME market data connectivity.

[8] Separate fees for market data are charged independently by individual markets.