

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-62286; File No. SR-CBOE-2010-051)

June 11, 2010

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to PULSe Fees

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 26, 2010, the Chicago Board Options Exchange, Incorporated (“CBOE” 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 CBOE. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by CBOE under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder.⁴ 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

CBOE is proposing to amend its Fees Schedule to adopt fees for the use of a new front-end order entry workstation, referred to as PULSe, that will be a facility of the Exchange.

The text of the proposed rule change is available on the Exchange’s website

<http://www.cboe.org/legal>), at the Exchange’s Office of the Secretary, on the

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).

Commission's Web site at 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, 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 these 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, Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to establish fees relating to the use of the PULSe order entry workstation.

The PULSe workstation is a front-end order entry system designed for use with respect to orders that may be sent to the trading systems of CBOE and CBOE Stock Exchange ("CBSX").⁵ In addition to providing the capability to send orders to the markets of CBOE and CBSX, the PULSe workstation will also provide a user with the capability to send options orders to other U.S. options exchanges and stock orders to

⁵ The Exchange represents that the PULSe workstation is merely a new front-end system interface to existing CBOE and CBSX trading systems (i.e., it is a new means of connecting to these existing trading systems), and does not require any changes to the Exchange's surveillance or communications rules. Further, there is no change to, or impact on, the Exchange's market structure as a result of the PULSe workstations. The Exchange notes that the C2 Options Exchange ("C2") has not yet begun trading. Use of the PULSe workstation as a front-end system interface to C2 will be addressed in a separate rule filing prior to the initiation of trading on C2.

other U.S. stock exchanges through a “PULSe Routing Intermediary” as further described below (“away-market routing”).⁶ Additionally, the PULSe workstation functionality will include access to consolidated real-time options and stock market data.⁷

The PULSe workstation will be made available by Signal Trading Systems, LLC (“STS”). STS is an affiliate of CBOE that is jointly owned by CBOE and FlexTrade Systems, Inc. (“FlexTrade”), a technology services provider. STS will grant licenses to use the workstation directly to CBOE and CBSX members and trading permit holders (sometimes collectively referred to herein as “members”). Members may also make the workstation available to their customers, including sponsored users. However, any order routed to CBOE or CBSX through a PULSe workstation must be routed through a member or sponsored user (whose orders are sponsored by a member).

The Exchange proposes a monthly PULSe workstation fee to members of \$350 per workstation per month for the first 10 PULSe workstations and \$100 per workstation per month for each additional PULSe workstation. The Exchange also proposes an away-market routing fee to the entering member of \$0.10 per executed options contract (or

⁶ The Exchange notes that, at least initially, orders that are sent from the PULSe workstation to CBOE and CBSX will be routed through connectivity provided by a PULSe Routing Intermediary. The Exchange envisions that the PULSe workstation functionality will be modified so that orders sent from the workstation to CBOE and CBSX may be sent directly instead of through the connectivity provided by a PULSe Routing Intermediary.

⁷ The workstation will also have the capability to enable a user to send orders for commodity futures and commodity options to designated contract markets and other venues of the user’s choice at which the user has trading privileges and to futures commission merchants (each, an “FCM”) and introducing brokers (each, an “IB”) of the user’s choice. The workstation may also have the capability to enable a user to send orders in other non-security products to one or more destinations of the user’s choice.

equivalent share amount in the case of stock) for away-market routing of orders through the PULSe workstation. The Exchange is proposing that the workstation and away-market routing fees be waived through July 30, 2010, thus these fees will be assessed beginning August 2, 2010.

These new PULSe fees will allow for the recoupment of the costs of developing, maintaining, and supporting the PULSe workstation and for income from the value-added services being provided through use of the PULSe workstation as well as the related away-market routing technology. The Exchange believes the fee structure represents an equitable allocation of reasonable fees in that the same fees are applicable to all users. The Exchange also believes the workstation and routing intermediary fees are competitive with fees applicable to similar workstations that offer away-market routing services provided by other exchanges. In addition, the Exchange believes that the \$0.10 away-market routing fee is reasonable and appropriate in light of the fact that it is small in relation to the value to the user of the PULSe workstation and its extensive functionality, including its ability to facilitate the routing of orders to any securities exchange and in relation to the total costs typically incurred in routing and executing orders. The Exchange also notes that use of the PULSe workstation and the away-market routing functionality available through the PULSe workstation are not compulsory. The services are to be offered as a convenience to members and would not be the exclusive means available to a member to send orders to CBOE or CBSX or intermarket.

The PULSe workstation will cause CBOE (CBSX) to be the default destination exchange for individually executed marketable option (stock) orders if CBOE (CBSX) is at the national best bid or offer ("NBBO"), regardless of size or time, but will allow any

user to manually override CBOE (CBSX) as the default destination on an order-by-order basis.⁸ The workstation also incorporates a function allowing option (stock) orders at a specified price to be sent to multiple exchanges with a single click (“sweep function”), and the sweep function will be configured to cause an option (stock) order to be sent to CBOE (CBSX) for up to the full size quoted by CBOE (CBSX) if CBOE (CBSX) is at the NBBO.⁹ Again, the away-market routing functionality is to be offered as a convenience to members and would not be an exclusive means available to a member to send orders intermarket.¹⁰

To use the PULSe workstation, a member must either be a PULSe Routing Intermediary or establish a relationship with a PULSe Routing Intermediary. A “PULSe

⁸ Nothing about the PULSe order routing functionality would relieve any member that is using the PULSe workstation from complying with its best execution obligations. Specifically, just as with any customer order and any other routing functionality, a member would have an obligation to consider the availability of price improvement at various markets and whether routing a customer order through the PULSe functionality would allow for access to opportunities for price improvement if readily available. Moreover, a member would need to conduct best execution evaluations on a regular basis, at a minimum quarterly, that would include its use of the PULSe workstation.

⁹ For example, if a member were to enter an option order to buy 250 contracts using the sweep function at a time when CBOE is at the NBBO for 100 contracts, the sweep function will be configured to send an order for 100 contracts to CBOE, with the balance of the order routed as specified by the member entering the order from the configurations offered by the PULSe workstation. Nothing will require a person using the PULSe workstation to use the sweep function, and, in this same example, if the member wished to route the entire order for 250 contracts to an exchange other than CBOE using the PULSe workstation, the member will be free to manually override CBOE as the default destination for the entire order.

¹⁰ With respect to options (stocks), the Exchange also notes that the away-market functionality in the PULSe workstation will not displace the provisions of the Options Order Protection and Locked/Crossed Market Plan (Regulation NMS), which will continue to apply in the circumstances described in the Plan (Regulation NMS).

Routing Intermediary” is a CBOE or CBSX member or trading permit holder that has connectivity to, and is a member of, other options and/or stock exchanges. If a member sends an order from the PULSe workstation, the PULSe Routing Intermediary will route that order to the designated market on behalf of the entering member. For member convenience, CBOE will make available a list of PULSe Routing Intermediaries that provide third-party routing services. The Exchange proposes that each PULSe Routing Intermediary be charged a fee of \$20 per PULSe workstation per month for each PULSe workstation that is enabled to send orders through that Routing Intermediary if another member requests routing functionality through that Routing Intermediary. The Exchange is proposing that the PULSe Routing Intermediary fee be waived through November 30, 2010, thus this fee will be assessed beginning December 1, 2010.

The Exchange believes that the PULSe workstation will constitute a “facility” of CBOE¹¹ to the extent that it is used with respect to orders for options and other securities.¹² A portion of the fees collected by CBOE for the use of the workstation will be remitted to STS.¹³

¹¹ The Exchange believes that the PULSe workstation will, in the language of Section 3(a)(2) of the Act, 15 U.S.C. 78c(a)(2), constitute a property or service “for the purpose of effecting or reporting a transaction on an exchange”

¹² The capability of the workstation to initiate orders for commodity futures and commodity options and other non-security products to be sent to a designated contract market, FCM, IB or other destination that does not constitute an “exchange” (as that term is defined in Section 3(a)(1), 15 U.S.C. 78c(a)(1), and used in Section 3(a)(2), 15 U.S.C. 78c(a)(2), of the Act) will not constitute part of the “facility” of CBOE.

¹³ FlexTrade is not, and, at least initially, will not be registered as a broker-dealer under Section 15(a) of the Act, 15 U.S.C. 78o. STS also will not, at least initially, be registered as a broker-dealer under Section 15(a) of the Act. In this regard, we note the following: (i) CBOE will be primarily responsible for the marketing of

The Exchange notes that FlexTrade engages and will engage in business activities in addition to its provision of services to STS and that these activities include providing other technology services to broker-dealers.¹⁴ The Exchange also notes that STS may in the future engage in business activities in addition to making the PULSe workstation facility available, and that these activities may also include the provision of other technology services to broker-dealers. In this regard: (i) There will be procedures and internal controls in place that are reasonably designed so that FlexTrade does not unfairly take advantage of confidential information relating to PULSe in its other business activities and so that STS will not unfairly take advantage of confidential information relating to PULSe to the extent that STS engages in any other business activities other

the PULSe workstation. In no event will FlexTrade have any role in marketing the PULSe workstation. FlexTrade will not be a party to any agreements with members for the PULSe workstation. (ii) In contributing services to STS, FlexTrade will be limited to providing software and systems technology and maintaining proper technical functioning. CBOE will be responsible for ensuring that STS's provision of the PULSe workstation, as a facility of CBOE, meets CBOE's obligations as a self-regulatory organization. (iii) Unless it becomes registered as a broker-dealer under Section 15(a) of the Act, neither STS nor FlexTrade will hold itself out as a broker-dealer, provide advice related to securities transactions, match orders, make decisions about routing orders, facilitate the clearance and settlement of executed trades, prepare or send transaction confirmations, screen counterparties for creditworthiness, hold funds or securities, open, maintain, administer or close brokerage accounts, or provide assistance in resolving problems, discrepancies or disputes related to brokerage accounts. Should STS or FlexTrade seek to register as a broker-dealer in the future, the Exchange represents that the broker-dealer would not perform any operations without first discussing with the Commission staff whether any of the broker-dealer's operations should be subject to an Exchange rule filing required under the Act, 15 U.S.C. 78s(b)(1).

¹⁴ The Exchange notes that FlexTrade is the sole member of a single member limited liability company named FlexTrade LLC, that FlexTrade LLC is a registered broker-dealer, and that FlexTrade and FlexTrade LLC each currently makes a front-end order entry workstation named "FlexTrader" available. FlexTrade LLC is not a member of CBOE or CBSX.

than providing the PULSe workstation. (ii) The books, records, premises, officers, directors, agents, and employees of STS, with respect to the PULSe workstation, as a facility of CBOE, will be deemed to be those of CBOE for purposes of and subject to oversight pursuant to the Act. (iii) Use of the PULSe workstation will be optional. Members will not be required to use the PULSe workstation to initiate their orders, and a member use any available order entry system that it selects, including one that it develops itself, for use to initiate its orders.

2 Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act¹⁵, in general, and furthers the objectives of Section 6(b)(4)¹⁶ of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE and CBSX members and trading permit holders in that the same fees are applicable to all users of the PULSe workstation.

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 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.

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(4).

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 Act¹⁷ and subparagraph (f)(2) of Rule 19b-4¹⁸ 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-2010-051 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-2010-051. This file number should be included on the subject line if e-mail is used. To help the Commission process

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 C.F.R. 240.19b-4(f)(2).

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 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CBOE. 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-2010-051 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Florence E. Harmon
Deputy Secretary

¹⁹ 17 CFR 200.30-3(a)(12).