

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-63631; File No. SR-CBOE-2010-117)

January 3, 2011

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 21, 2010, 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 and II below, which Items have been prepared by CBOE. 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") proposes to extend an existing program, under which it currently makes subsidy payments to CBOE Trading Permit Holders that provide certain order routing functionalities to other Trading Permit Holders and/or use such functionalities themselves, to broker-dealers that are not CBOE Trading Permit Holders. The text of the [sic] proposed rule change is available on the Exchange's website (<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 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to permit CBOE to extend its program under which it enters into subsidy arrangements with persons that provide certain order routing functionalities to other persons and/or use such functionalities themselves. Under the program as currently in effect, CBOE establishes such arrangements only with Trading Permit Holders (each, a "Participating TPH"), and makes payments to subsidize their costs associated with providing order routing functionalities only to other CBOE TPHs, as well as with using such functionalities themselves.<sup>1</sup>

CBOE proposes to extend the program in two related respects. First, CBOE proposes to extend the program to enable CBOE to establish such subsidy arrangements with broker-dealers that are not CBOE TPHs (each, a "Participating Non-CBOE TPH"). (The term "Participant" as used in this filing refers to either a Participating Non-CBOE TPH or a Participating CBOE TPH.) Second, CBOE proposes to extend the program to permit a Participant to receive subsidy payments for providing an order routing functionality to broker-dealers that are not CBOE TPHs.

SR-CBOE-2007-34 includes a description of the features that an order routing functionality of a Participating CBOE TPH must have, and the performance requirements that the order routing functionality must satisfy, in order to qualify for the program.<sup>2</sup> The order

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<sup>1</sup> The current CBOE order router subsidy program is described in SR-CBOE-2007-34. See Securities Exchange Act Release No. 55629 (April 13, 2007), 72 FR 19992 (April 20, 2007) (SR-CBOE-2007-34). Additionally, the description of the current program was clarified in SR-CBOE-2008-27. See Securities Exchange Act Release No. 57498 (March 14, 2008), 73 FR 55 [sic] (March 20, 2008) (SR-CBOE-2008-27).

<sup>2</sup> SR-CBOE-2007-34, pp. 3-4 [sic]. Two of the features that an order routing functionality must have in order to qualify for the program and that are relevant to the best execution obligations of users of the functionality are described below in footnote 6.

routing functionality of a Participating Non-CBOE TPH would be required to have the same features and satisfy the same requirements.

CBOE's subsidy program provides that a Participating CBOE TPH may elect to have CBOE perform certain marketing services and/or billing services on behalf of the Participating CBOE TPH.<sup>3</sup> These elections would also be available to a Participating Non-CBOE TPH. As with a Participating CBOE TPH, if a Participating Non-CBOE TPH elects to have CBOE perform marketing services on its behalf, the amount that CBOE would pay the Participant for orders routed through the Participant's system and executed on CBOE would be reduced from \$0.04 per contract to \$0.03 per contract.<sup>4</sup> Also as with a Participating CBOE TPH, if a Participating Non-CBOE TPH elects to have CBOE perform the service of billing CBOE TPHs with respect to the use of the Participant's router, the Participant would pay CBOE a service fee of one percent of the fees collected by CBOE for that TPH.

CBOE currently assigns an identification code to each Participating CBOE TPH for use on orders that are subject to the subsidy program. CBOE would assign such a code to each Participating Non-CBOE TPH. A Participating Non-CBOE TPH, or a party using a Participant's order routing functionality that is not a CBOE TPH, would need to route its orders to CBOE through a CBOE TPH – that is, would need to “give up the name” of a CBOE TPH. The use of these identification codes would provide CBOE with the information that it would need to account for the subsidy payments due to Participating Non-CBOE TPHs as it does for the payments due to Participating CBOE TPHs.

CBOE stated in SR-CBOE-2007-34, and affirmed in SR-CBOE-2008-27, that nothing

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<sup>3</sup> SR-CBOE-2007-34, p. 5 [sic].

<sup>4</sup> See Securities Exchange Act Release No. 62432 (July 1, 2010), 75 FR 131 [sic] (July 9, 2010) (SR-CBOE-2010-66).

about the subsidy program would relieve any CBOE TPH that is using an order routing functionality whose provider is participating in the program from complying with its best execution obligations.<sup>5</sup> This would continue to be true with respect to all users both CBOE TPH broker-dealers and non-CBOE TPH broker-dealers of order routing functionalities whose providers participate in the program. Specifically, just as with any customer order and any other routing functionality, any user whether or not a CBOE TPH of an order routing functionality whose provider is participating in the program would have an obligation to consider the opportunities for price improvement at various markets and whether routing a customer order through an order router having the features specified by CBOE would allow for access to such opportunities if readily available.<sup>6</sup> Moreover, any user whether or not a CBOE TPH of an order router functionality whose provider is participating in the program would need to conduct best execution evaluations on a regular basis, at a minimum quarterly, that include its use of any router whose provider is participating in the program.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 ("Act")<sup>7</sup>, in general, and furthers the objectives of Section 6(b)(4)<sup>8</sup> of the Act in particular, in that it is designed to provide for the equitable allocation of

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<sup>5</sup> SR-CBOE-2007-34, pp. 5-6 [sic]; SR-CBOE-2008-27, p 4.

<sup>6</sup> CBOE's functional requirements state that, in order to be eligible for the subsidy program, an order router must (1) cause the default destination for an order to be the U.S. options exchange with the best bid or offer, except CBOE must be the default destination exchange for the individually executed marketable orders if CBOE is at the national best bid or offer, but (2) give the user the ability to override the default destination for any order on a manual, order-by order, basis. CBOE believe that these requirements enable any user of a participating order router to comply with its best execution obligations.

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(4).

reasonable dues, fees, and other charges among its members and other persons using its facilities.

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.

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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>9</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>10</sup> thereunder, because it establishes a due, fee, or other charge imposed by CBOE on any person in that the subsidy arrangement relates to fees charged by certain order routing system providers for use of their routing systems.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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:

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

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-CBOE-2010-117 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-2010-117. 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 website (<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 website 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 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-2010-117 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.<sup>11</sup>

Elizabeth M. Murphy  
Secretary

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