

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-65481; File No. SR-CBOE-2011-092)

October 4, 2011

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 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 3, 2011, the Chicago Board Options Exchange, Incorporated (“CBOE” 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 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

The Exchange is proposing to amend its Fees Schedule as it relates to the PULSe workstation. 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 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

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).

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 adopt a PULSe routing fee for executions of orders on CBOE and CBOE Stock Exchange, LLC ("CBSX," CBOE's stock execution facility) that originate from non-Trading Permit Holder ("TPH") PULSe workstations. The Exchange is also proposing some non-substantive changes to the fees schedule text to clarify the existing operation of the Routing Intermediary fee. These changes, which are described in more detail below, will be effective October 3, 2011.⁵

By way of background, 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 CBSX. In addition, the PULSe workstation provides a user with the capability to send options orders to other U.S. options exchanges and stock orders to other U.S. stock exchanges and trading centers ("away-market routing").⁶ To use the away-market routing functionality, a CBOE or CBSX TPH must either be a PULSe Routing Intermediary or establish a relationship with a third party PULSe Routing Intermediary. A "PULSe Routing Intermediary" is a CBOE or

⁵ See e-mail from Jennifer M. Lamie, Assistant Secretary, CBOE, to Steve L. Kuan, Attorney, Division of Trading and Markets, Commission, on October 3, 2011.

⁶ For a more detailed description of the PULSe workstation and its other functionalities, see, e.g., Securities Exchange Act Release Nos. 62286 (June 11, 2010), 75 FR 34799 (June 18, 2010)(SR-CBOE-2010-051); 63244 (November 4, 2010), 75 FR 69148 (November 10, 2010)(SR-CBOE-2010-100); 63721 (January 14, 2011), 76 FR 3929 (January 21, 2011)(SR-CBOE-2011-001); and 65280 (September 7, 2011), 76 FR 56838 (September 14, 2011)(SR-CBOE-2011-083).

CBSX TPH that has connectivity to, and is a member of, other options exchanges and/or stock exchanges and trading centers. If a TPH sends an order from the PULSe workstation, the PULSe Routing Intermediary will route that order to the designated market on behalf of the entering TPH.⁷

The first purpose of this proposed rule change is to adopt a CBOE/CBSX Routing fee. This fee would be payable by a TPH that makes the PULSe workstation available to non-TPHs and would only be applicable for routing to CBOE/CBSX from such non-TPH PULSe workstations. The fee would be \$0.02 per contract or share equivalent for the first 1 million contracts or share equivalent executed in a month on CBOE/CBSX that originate from the non-TPH PULSe workstations made available by the TPH, and \$0.03 per contract or share equivalent for each additional contract or share equivalent executed on CBOE/CBSX in the same month from the non-TPH PULSe workstations made available by the TPH.⁸

⁷ The PULSe workstation offers the ability to route orders to any market including, among others, CBOE/CBSX affiliate C2 Options Exchange, Incorporated (“C2”). To the extent a CBOE/CBSX TPH that is also a C2 TPH obtains a PULSe workstation through CBOE, it is not necessary for that TPH to obtain a separate PULSe workstation through C2 to route orders to C2. See, e.g., SR-CBOE-2010-100 and SR-CBOE-2011-083, note 5, supra. It is also not necessary for that TPH to utilize the services of a Routing Intermediary to route orders to C2. As such, to the extent a CBOE/CBSX TPH is also a C2 TPH, the “Away-Market Routing” and “Routing Intermediary” fees detailed in the Exchange Fees Schedule are not be applicable because the fees are only applicable for away-market routing. The TPH would not be away-market routing, but instead would be submitting orders directly to CBOE as a CBOE TPH, CBSX as a CBSX TPH or C2 as a C2 TPH, as applicable, where the TPH’s activity would be subject to the transaction fee schedule of CBOE, CBSX or C2, respectively. To the extent a CBOE/CBSX TPH is not a C2 TPH, the Away-Market Routing and Routing Intermediary fees would apply for the CBOE/CBSX TPH’s executions on C2.

⁸ The Exchange notes that C2 is submitting a similar rule change to introduce a “C2 Routing” fee that will be applicable to C2 TPHs. See SR-C2-2011-028. To the extent that a CBOE TPH making the non-TPH PULSe workstations available is not also a CBSX TPH or a C2 TPH, routing from the non-TPH workstations to CBSX or C2 would not be considered “CBOE/CBSX Routing” or “C2 Routing,” respectively, and, therefore, would not be subject to those fees (it would instead be considered “away-market routing”

The CBOE/CBSX Routing fee 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. The Exchange believes the fee structure represents an equitable allocation of reasonable fees in that the same fees will be applicable to all TPHs that make PULSe workstations available to non-TPHs. The Exchange also believes that the establishment of the fee, which is payable by TPHs only for transactions originating from non-TPH workstations, is equitable and not unfairly discriminatory because non-TPHs are able to obtain the benefits of utilizing the PULSe workstation - including the ability to route orders to the Exchange - without becoming a TPH (and incurring the associated costs of TPH membership). In addition, the Exchange believes that the \$0.02/\$0.03 CBOE/CBSX Routing fee is reasonable and appropriate in light of the facts that it is small in relation to the total costs typically incurred in routing and executing orders and that the amount is comparable to the

and subject to the Away-Market Routing and Routing Intermediary fees described above). To the extent that a CBOE TPH making the non-TPH PULSe workstations available is also a CBSX TPH or C2 TPH, routing from the non-TPH workstations to CBSX or C2 would be considered “CBOE/CBSX Routing” or “C2 Routing,” respectively, and therefore would be subject to the respective fee.

Example 1: Assume a CBOE TPH that is not a C2 TPH makes a PULSe workstation available to Non-TPH User A. To the extent that orders originating from Non-TPH User A’s PULSe workstation are routed to CBOE, any resulting executions would be subject to the CBOE/CBSX Routing fee. To the extent that orders originating from Non-TPH User A’s PULSe workstation are routed to C2, any resulting executions would be considered away-market routing and subject to the Away-Market Routing and Routing Intermediary fees (and not subject to the C2 Routing fee).

Example 2: Assume a CBOE TPH that is also a C2 TPH makes a PULSe workstation available to Non-TPH User A. To the extent that orders originating from Non-TPH User A’s PULSe workstation are routed to CBOE, any resulting executions would be subject to the CBOE/CBSX Routing fee. To the extent that orders originating from Non-TPH User A’s PULSe workstation are routed to C2, any resulting executions would be subject to the C2 Routing fee. (Given the CBOE TPH’s status as a C2 TPH, such orders are not considered away-market routing and therefore are not subject to the Away-Market Routing and Routing Intermediary fees.)

Exchange's existing Routing Intermediary fee for away-market routing. The Exchange notes that the lower \$0.02 rate for the first 1 million contracts or share equivalent (as compared to the \$0.03 rate for each additional contract or share equivalent) is reasonable in that it is designed to help attract and encourage use of the PULSe workstation. The Exchange also notes that use of the PULSe workstation, and the routing technology available through the PULSe workstation, are not compulsory. The service is offered as a convenience and is not the exclusive means available to send or route orders to CBOE or CBSX (or another market).

The second purpose of this proposed rule change is to revise and expand on the description in the Fees Schedule text of the "Routing Intermediary" fee.⁹ In particular, the Exchange is renaming the fee from "Routing Intermediary" fee to "Away-Market Routing Intermediary" fee. Because this fee is only applicable when a Routing Intermediary is routing to away markets, the Exchange believes this change in title will be more descriptive and helpful to persons reading the Fees Schedule. Likewise, the Exchange is expanding on the description in the text to make clear that the "Away-Market Routing Intermediary" fee is payable by a Routing Intermediary and is only applicable for away-market routing from any PULSe workstation. The expanded description also makes clear that the fee rates are determined based on the aggregate level of transactions across all away-markets and across all PULSe workstations for which firm serves as the Routing Intermediary. This level of detail on the meaning and application of the fee was previously included in the discussion section of prior rule filings and is consistent with

⁹ This fee is currently \$0.02 per contract or share equivalent for the first 1 million contracts or share equivalent executed in a month and \$0.03 per contract or share equivalent for each additional contract or share equivalent executed in the same month.

the Exchange's original intent and understanding the fee structure.¹⁰ The Exchange is simply proposing to include the clarifying information within the text of the Fees Schedule.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Section 6(b)(4) of the Act,¹² in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among TPHs in that the same fees are applicable to all TPHs that utilize the PULSe workstation or make it available to non-TPHs.

With respect to the CBOE/CBSX Routing fee in particular, the Exchange believes that the establishment of the CBOE/CBSX Routing fee, which is payable by TPHs only for transactions originating from non-TPH workstations, is equitable and not unfairly discriminatory because, from the TPH perspective, as indicated above, the same fees are applicable to all TPHs that make the PULSe workstation available to non-TPHs. In addition, because non-TPHs are able to obtain the benefits of utilizing the PULSe workstation – including the ability to route orders to the Exchange - without becoming a TPH (and incurring the associated costs of TPH membership), the Exchange believes it is equitable and not unfairly discriminatory for the Exchange to assess the CBOE/CBSX Routing fee to TPHs for executions of orders originating from non-TPH PULSe workstations. The Exchange believes that the \$0.02/\$0.03 CBOE/CBSX Routing fee rate itself - which will allow for the recoument 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 – is reasonable and appropriate in

¹⁰ See, e.g., SR-CBOE-2011-083, note 5, supra.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4).

light of the facts that it is small in relation to the total costs typically incurred in routing and executing orders and that the amount is comparable to the Exchange's existing Routing Intermediary fee for away-market routing. The Exchange also believes that the lower \$0.02 rate for the first 1 million contracts or share equivalent (as compared to the \$0.03 rate for each additional contract or share equivalent) is reasonable in that it is designed to help attract and encourage use of the PULSe workstation. Finally, in our consideration that the fee is equitable and not unfairly discriminatory, the Exchange notes that use of the PULSe workstation, and the routing technology available through the PULSe workstation, are not compulsory. The service is offered as a convenience and is not the exclusive means available to send or route orders to CBOE or CBSX (or another market).

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 proposed rule change is designated by the Exchange as establishing or changing a due, fee, or other charge, thereby qualifying for effectiveness on filing pursuant to Section 19(b)(3)(A)(ii) of the Act¹³ and subparagraph (f)(2) of Rule 19b-4¹⁴ thereunder.

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

¹³ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁴ 17 CFR 240.19b-4(f)(2).

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-2011-092 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-2011-092. 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 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 available publicly. All submissions should refer to File Number SR-CBOE-2011-092 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.¹⁵

Elizabeth M. Murphy
Secretary

¹⁵ 17 CFR 200.30-3(a)(12).