

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63244; File No. SR-CBOE-2010-100]

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

November 4, 2010.

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 October 28, 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 Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder.<sup>4</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

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 Web site (<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 Statutory Basis for, Proposed Rule Change

##### 1. Purpose

The purpose of this proposed rule change is to address the use of the PULSe workstation for C2 Options Exchange, Incorporated ("C2"), to expand on the description of the PULSe workstation licensing process, to revise the monthly PULSe workstation fee schedule to introduce a reduction for certain non-Trading Permit Holder ("TPH") workstations, to introduce a new fee for non-standard services, to extend the Routing Intermediary fee waiver, and to delete outdated text from the CBOE fees schedule.

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 CBOE Stock Exchange ("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 through a "PULSe Routing Intermediary" ("away-market routing"). In anticipation of the launch of the PULSe workstation, the Exchange previously filed a rule change, SR-CBOE-2010-051, that established a monthly PULSe workstation fee, an away-market routing fee, and a Routing Intermediary fee (which fee has been waived through November 30, 2010) for CBOE and CBSX TPHs.<sup>5</sup>

The first purpose of this proposed rule change is to address the use of the PULSe workstation for CBOE/CBSX affiliate, C2, which is anticipated to initiate trading on October 29, 2010. In rule filing SR-CBOE-2010-051, the Exchange noted that C2 had not yet begun trading and that use of the PULSe workstation as a front-end system interface to C2 would be addressed in a separate rule filing prior to the initiation of trading on C2. In that regard, C2 intends to submit a separate rule change proposing that Signal Trading Systems, LLC ("STS"), an affiliate of CBOE, make the PULSe workstation available to C2 TPHs and to incorporate the PULSe workstation, away-market routing and Routing Intermediary fees into the C2 fees schedule.

The Exchange notes that the PULSe workstation offers the ability to route orders to any market, including C2. Therefore, to the extent a CBOE 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. When the PULSe workstation is made available through CBOE to a CBOE TPH that is also a C2 TPH, the PULSe workstation, away-market routing and Routing Intermediary fees would be assessed by CBOE only (e.g., the monthly fee for a CBOE TPH for one PULSe workstation is \$350 and the monthly fee for a C2 TPH for one PULSe workstation is \$350; if a PULSe workstation is made available through CBOE to a CBOE TPH that is also a C2 TPH, the monthly fee would be \$350, not \$700). To the extent a CBOE TPH is also a C2 TPH, the away-market routing fee would not apply for the TPH's executions on CBOE or C2 because the fee is only applicable for away-market routing. The TPH would not be routing away, but instead would be submitting orders directly to CBOE as a CBOE TPH or C2 as a C2 TPH, as applicable, where the TPH's activity would be subject to the transaction fee schedule of CBOE or C2, respectively. However, to the extent a CBOE TPH is not a C2 TPH, the away-market routing fee would apply to the CBOE TPH's executions on C2.

As described in rule filing SR-CBOE-2010-051, the PULSe workstation is currently configured by the Exchange to 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 allow any user to manually override CBOE (CBSX) as the default destination on an order-by-order basis. 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 is configured by the Exchange 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. Given the initiation of trading on C2, the Exchange is herein proposing to revise the default parameters with respect to options to provide that the PULSe workstation may be configured by the Exchange to cause CBOE and/or C2 to be the default destination exchange(s). Consistent with rule filing SR-CBOE-2010-051, any user may manually override CBOE and/or C2 as the default option exchange

<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)(ii).

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

<sup>5</sup> See Securities Exchange Act Release No. 62286 (June 11, 2010), 75 FR 34799 (June 18, 2010) (SR-CBOE-2010-051). TPHs were previously referred to as "members" in the Exchange Rules, however, references to "members" have been replaced with the term Trading Permit Holders or TPH. See, e.g., Securities Exchange Act Release No. 62382 (June 25, 2010), 75 FR 38164 (July 1, 2010) (SR-CBOE-2010-058).

destination(s) on an order-by-order basis. The Exchange notes that the away-market routing functionality is offered as a convenience to TPHs and is not an exclusive means available to a TPH to send orders intermarket.<sup>6</sup>

The second purpose of this proposed rule change is to refine the PULSe workstation licensing process. In rule filing SR-CBOE-2010-051, the Exchange indicated that the PULSe workstation will be made available by STS. The filing indicated that STS will grant licenses to use the workstation directly to CBOE and CBSX TPHs. In addition, the filing indicated that TPHs may also make the workstation available to their customers, including sponsored users.<sup>7</sup> CBOE is herein proposing to expand on the description of the licensing process to provide that STS has the ability to grant licenses to use the workstation directly to TPHs or TPHs' customers. STS would also have the ability, if it determines to do so, to permit TPHs to make the workstation available to their customers, including sponsored users, through the use of a sublicense. Whether the workstation technology is made available to TPHs' customers through a direct license or sublicense, any order routed to CBOE or CBSX through a PULSe workstation must continue to be routed through a TPH or by a sponsored user (whose orders are sponsored by a TPH). The TPH will also remain responsible for any applicable PULSe fees.

The third purpose of this proposed rule change is to revise the monthly PULSe workstation fee schedule. As indicated above, TPHs may make the workstation available to their customers, which may include non-broker dealer public customers and non-TPH broker dealers (referred to herein as "non-TPHs"). For such non-TPH workstations, the Exchange is proposing to introduce a flat fee of \$350/month per workstation. In instances where two or more TPHs wish to make a PULSe workstation available to the same non-TPH customer, the Exchange is

<sup>6</sup> 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).

<sup>7</sup> The PULSe workstation may be made available by a TPH to its customers on a pass-through basis (where orders pass through the TPH's systems prior to reaching the Exchange) or a sponsored access basis. To the extent that a TPH makes the workstation available to a customer on a sponsored access basis, the customer would be considered a "sponsored user" and the TPH-customer relationship would be considered a Sponsoring Participant/Sponsored User relationship subject to the requirements of Rule 6.20A, *Sponsored Users*.

proposing to introduce a fee reduction. Under the reduction, if two or more TPHs make the PULSe workstation available to the same non-TPH customer, then the monthly fee will be \$250 per workstation per TPH. The Exchange believes it is reasonable and appropriate to reduce the monthly fee in these instances because, while we would still establish and maintain PULSe workstation technology arrangements with each TPH, we also anticipate that the non-TPH's use of the workstation would be distributed among the TPHs.

The fourth purpose of this proposed rule change is to introduce a fee for non-standard services provided by STS. Non-standard services may include time and materials for non-standard installations of or modifications to PULSe to accommodate a TPH's use of PULSe with other technologies. The Exchange is proposing a fee of \$350 per hour plus costs.

The fifth purpose of this proposed rule change is to extend the waiver of the Routing Intermediary fee. Currently the Exchange has waived the Routing Intermediary through November 30, 2010. The Exchange is proposing to extend this waiver through December 31, 2010. Thus this fee will be assessed beginning January 1, 2011.

Finally, the sixth purpose of this proposed rule change is to delete outdated text from the CBOE fees schedule. Specifically, the Exchange had waived the PULSe workstation and away-market routing fees through September 15, 2010 and September 30, 2010, respectively. As those dates have passed and the Exchange does not intend to extend the fee waivers, the Exchange is proposing to remove references to the waiver dates from the fees schedule.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>9</sup> 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 and fee waivers 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.

### 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 Act<sup>10</sup> and subparagraph (f)(2) of Rule 19b-4<sup>11</sup> 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 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](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2010-100 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-2010-100. 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 Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the

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

<sup>9</sup> 15 U.S.C. 78f(b)(4).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

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 a.m. and 3 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-2010-100 and should be submitted on or before December 1, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63245; File No. SR-DTC-2010-12]

### Self-Regulatory Organizations; The Depository Trust Company; Order Approving Proposed Rule Change To Automate the Approval Process in Providing Trustee Access to the Security Position Report Service

November 4, 2010.

#### I. Introduction

On September 14, 2010, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-DTC-2010-12 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> Notice of the proposal was published in the **Federal Register** on September 29, 2010.<sup>2</sup> The Commission received no comment letters in response to the

proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

#### II. Description

DTC's Security Position Report ("SPR") service provides valuable information on the record date holdings of an issuer's security in DTC Participant accounts. An SPR provides information needed to contact shareholders about corporate-related events such as annual meetings. DTC currently provides SPRs to issuers, trustees, and authorized third parties.

DTC's Proxy area receives requests for SPR services access and reviews such requests to ensure that only appropriate parties receive access. The current review process to approve a trustee's access to the SPR service for a security is done manually, and the process is therefore subject to error. Currently, the SPR system sends an e-mail to the DTC Proxy mailbox notifying the Proxy staff that a trustee has added a CUSIP to its eligible issues list. Any trustee can add a CUSIP to its eligible issues list. The CUSIP will show "unauthorized" until reviewed and approved by the DTC Proxy staff. DTC Proxy staff requires that the trustee provide to it one of the following: Trust agreement, Annual Report, 10K, 10Q, SEC filing, or any other document deemed necessary and appropriate to prove that the trustee is in fact the trustee for the CUSIP and therefore is entitled to access to SPRs for the CUSIP. Generally, it takes two or more days for a decision on access requests because of the manual process associated with the review of trustee information.

To increase the efficiency by which DTC provides trustees with access to the SPR service, DTC is seeking to collect trustee data at the point of eligibility of the issue. This will allow DTC to store and maintain trustee data on the Entity Master File and the Security Master File ("Master Files"). DTC will then have the ability to automate the validation using the information stored on the Master Files in response to a trustee's request for SPR access.

Initially, DTC will populate and update the trustee field on the Master Files through DTC's Participant Terminal System. Ultimately and as set forth below this information will be supplied by underwriters at the time of issue eligibility through DTC's UW (underwriting) Source System. This change requires DTC to update the UW Source System to designate trustee data as a mandatory field at the time of eligibility. In order to provide the time it may take for underwriters to update their systems to supply the information

required by this new mandatory field, DTC plans to implement the change to the UW Source System in the fourth quarter of 2011. In the event of a change in trustee, DTC will require that the new and the prior trustees both update the trustee information using Form 17Ad-16, which is used today to update transfer agent changes. By automating the trustee authorization process, DTC will increase the efficiency of the SPR system and will reduce the risk of error associated with the manual processing of trustee data.

#### III. Discussion

Section 19(b) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to protect investors and the public interest.<sup>3</sup> The Commission believes that DTC's rule change is consistent with this requirement because by replacing the current manual process for approving a trustee's access to DTC's SPR service for an issue with an automated approval process, DTC will be able to reduce the number of errors associated with manual processing and thereby better protect investors' confidential information.

#### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder. In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-DTC-2010-12) be and hereby is approved.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>4</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

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<sup>3</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>4</sup> 17 CFR 200.30-3(a)(12).

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

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> Securities Exchange Act Release No. 62990 (September 24, 2010), 75 FR 60158.