

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>27</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79808; File No. SR-CBOE-2017-004]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

January 17, 2017.

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 January 3, 2017, Chicago Board Options Exchange, Incorporated (the “Exchange” or “CBOE”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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 text of the proposed rule change is available on the Exchange’s Web site (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange’s Office of the Secretary, 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, the Exchange 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. The Exchange 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 proposes to amend its Fees Schedule. The Exchange is adding fees for functionality related to its PULSe workstation. The fees herein will be effective on January 3, 2017.

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 the Exchange. Exchange Trading Permit Holders (“TPHs”) may also make workstations available to their customers, which may include TPHs, non-broker dealer public customers and non-TPH broker dealers.

##### Drop Copies

Financial Information eXchange (“FIX”) language-based connectivity, upon request, provides customers (both TPH and non-TPH) of TPHs that are brokers and PULSe users (“PULSe brokers”) with the ability to receive “drop-copy” order fill messages from their PULSe brokers. These fill messages allow customers to update positions, risk calculations and streamline back-office functions.

The Exchange is proposing a monthly fee to be assessed on TPHs who are either receiving or sending drop copies via a PULSe workstation. This fee will allow for the recoupment of costs of maintaining and supporting drop copy functionality. Whether the drop copy sender or receiver is assessed the fee is dependent upon whether the customer receiving the drop copies is a TPH or non-TPH.

If a customer receiving drop copies is a TPH, that TPH customer (the receiving TPH) will be charged a fee of \$1000 per month, per PULSe broker from whom it receives drop copies via PULSe. For example, if TPH customer A receives drop copies from each of PULSe broker A, PULSe broker B, and PULSe broker C (all of which are TPHs), TPH A (the receiving TPH) will be charged a fee of \$3000 per month for receiving drop copies via PULSe from PULSe brokers A, B and C (the sending TPHs).

If a customer receiving drop copies is a non-TPH, the PULSe broker (the sending TPH) who sends drop copies via PULSe to that customer will be charged a fee of \$500 per month. If that PULSe broker sends drop copies via PULSe to multiple non-TPH customers, the PULSe broker will be charged the fee for each customer. For example, if PULSe broker A sends drop copies via its PULSe workstation to each of non-

TPH customer A, non-TPH customer B and non-TPH customer C, PULSe broker A (the sending TPH) will be charged a fee of \$1500 per month for drop copies it sends via PULSe to non-TPH customers A, B and C (the receiving non-TPHs).

##### Non-PULSe-to-PULSe Routing

Upon request, the Exchange provides customers, both TPH and non-TPH, of PULSe brokers with the ability to transmit orders electronically to PULSe brokers’ PULSe workstations using order management systems other than PULSe (*i.e.*, non-PULSe-to-PULSe).<sup>3</sup> These customers utilize the existing infrastructure of such systems to send orders to their PULSe brokers electronically.

The Exchange is proposing a monthly fee payable by TPH customers who request non-PULSe-to-PULSe functionality. This fee will allow for the recoupment of costs of maintaining and supporting non-PULSe-to-PULSe routing functionality. A TPH customer sending orders electronically to PULSe brokers through these non-PULSe systems will be charged a fee of \$500 a month per PULSe broker to which the customer sends orders. For example, if TPH customer A transmits orders electronically through a non-PULSe order management terminal to PULSe workstations of each of PULSe broker A, PULSe broker B, and PULSe broker C, TPH customer A (the sending TPH) will be charged a fee of \$1500 per month for the ability to send orders electronically to the PULSe workstations of PULSe brokers A, B and C.<sup>4</sup> The Exchange does not assess any fee, to the PULSe broker or otherwise, for a non-TPH customer electing to use non-PULSe-to-PULSe routing functionality.

##### FIX Integration Drop Copy Start-Up/ Cancellation Fees

The Exchange is proposing fees for both the start-up and cancellation of the FIX integration needed to send and receive drop copies from PULSe workstations. The Exchange is proposing a one-time fee of \$500 to recoup the costs required to connect a new drop copy customer to workstations of its PULSe broker(s) and add the drop copy functionality for that customer. Additionally, the Exchange is

<sup>3</sup> Non-PULSe-to-PULSe routing is an “add-on” feature to drop copy connectivity. If a TPH or non-TPH customer of a PULSe brokers elects to send orders through its third-party order management system to its broker’s PULSe workstations, it must also elect to have the drop copy connectivity.

<sup>4</sup> In Addition, the TPH customer would be charged \$3,000/month for receiving drop copies from the three PULSe brokers, as discussed above.

<sup>27</sup> 17 CFR 200.30-3(a)(12).

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

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

proposing a one-time fee of \$500 for cancellation of the drop copy functionality to recoup the costs required to disconnect the cancelling drop copy customer from workstations of its PULSe broker(s) and remove the drop copy functionality for that customer. In the case of both start-up and cancellation, the fees are charged to the TPH who is charged for the drop copy connectivity (in the case of a TPH customer, the TPH customer that receives drop copies from PULSe broker; in the case of a non-TPH customer, the PULSe broker that sends drop copies to the non-TPH customer). If the TPH customer is charged these fees, each fee is \$500 for each PULSe broker to which the TPH customer requests to start or cancel drop copy functionality, as applicable. If the PULSe broker is charged these fees, each fee is \$500 for each non-TPH customer that requests to start or cancel drop copy functionality from that PULSe broker.

#### Routing Intermediary Certification and Inactivity Fees

Routing intermediaries route orders entered into PULSe to away markets and to route orders from non-TPH PULSe workstations to TPHs for entry and execution on the Exchange. Routing intermediaries are currently charged routing intermediary transactional fees for away market routing from any PULSe workstation for which it serves as the routing intermediary. The Exchange is proposing a \$5000 one-time fee for certification of a new PULSe routing intermediary. This fee will allow for the recoupment of costs of adding connectivity for the new routing intermediary, including connectivity to away-market routing technology, and testing necessary to support the new order routing features.

The Exchange is also proposing a routing intermediary inactivity fee of up to \$5000. The fees currently charged to routing intermediaries allow for the recoupment of costs of developing, maintaining, and supporting routing intermediary functionality, including away-market routing technology. If the Exchange is unable to collect sufficient fees in a year from a routing intermediary to cover these costs, the inactivity fee allows for sufficient recoupment of these costs for that year. The fee will be charged to a routing intermediary each calendar year in which the routing intermediary has been charged Away-Market Routing Intermediary and Exchange Routing fees in the aggregate of less than \$5000. The inactivity fee will be reduced by the amount of any of these fees charged to the routing intermediary during a

calendar year. For example, if a routing intermediary was charged an aggregate of \$4500 in Away-Market Routing Intermediary and Exchange Routing fees in the calendar year 2017, that routing intermediary would be assessed a \$500 routing intermediary inactivity fee. The routing intermediary inactivity fee may first be charged in the calendar year following the year in which the routing intermediary was charged the routing intermediary certification fee. A TPH that withdraws as a routing intermediary will not be charged an inactivity fee for the calendar year in which they withdrew.

#### OATS Reporting Fees

The Exchange is proposing a \$250 per month Order Audit Trail System (“OATS”) reporting fee. The fee will be charged to any PULSe customer (TPH or non-TPH) who elects to receive daily transmission of OATS reports for its orders submitted through PULSe. This fee will allow for the recoupment of costs of developing, maintaining and supporting OATS reporting functionality.

#### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>5</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>6</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>7</sup> which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

The Exchange believes that assessing a \$1000 per month fee on a TPH receiving drop copies from PULSe is

reasonable because the Exchange incurs costs to monitor, develop and implement upgrade, maintain and customize PULSe to ensure the TPH customer receives timely and accurate drop copies. The Exchange believes the fee is equitable and not unfairly discriminatory because the monthly fee is assessed to any TPH electing to receive drop copies from a PULSe broker. Use of the drop copy functionality by a TPH customer is voluntary.

The Exchange believes that assessing a \$500 per month fee on a TPH sending drop copies from PULSe to a non-TPH customer is reasonable because the Exchange incurs costs to monitor, develop and implement upgrades, maintain and customize PULSe to ensure a non-TPH customer receives timely and accurate drop copies. The Exchange believes the fee is equitable and not unfairly discriminatory because the monthly fee is assessed equally to any TPH sending drop copies to its non-TPH customers. The Exchange believes that assessing a TPH sending drop copies to a non-TPH a monthly fee of \$500, as opposed to the \$1000 per month rate assessed to TPH customers receiving drop copies from PULSe, is reasonable, equitable, and not unfairly discriminatory. Specially, the lower rates are designed to encourage non-TPH market participants to interact with the Exchange, which will accordingly attract more volume and liquidity to the Exchange and benefit all Exchange participants through increased opportunities to trade. Use of the drop copy functionality by a non-TPH customer is voluntary.

The Exchange believes that assessing a \$500 per month fee for a TPH customer electing to use non-PULSe-to-PULSe routing functionality (in addition to receiving drop copies) is reasonable because the Exchange incurs costs to monitor, develop and implement upgrades, maintain and customize PULSe to ensure a reliable connection between a TPH customer and its PULSe broker through which the customer's orders reach the PULSe broker in a timely and accurate manner. The Exchange believes the fee is equitable and not unfairly discriminatory because the monthly fee is assessed equally to any TPH electing to use the non-PULSe-to-PULSe routing functionality. The Exchange does not assess any fee, to the PULSe broker or otherwise, for a non-TPH customer electing to use non-PULSe-to-PULSe routing functionality. The Exchange believes not assessing a fee for a non-TPH customer electing to use non-PULSe-to-PULSe routing functionality is reasonable, equitable,

<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 15 U.S.C. 78f(b)(4).

and not unfairly discriminatory in that it is designed to encourage non-TPH market participants to interact with the Exchange, which will accordingly attract more volume and liquidity to the Exchange and benefit all Exchange participants through increased opportunities to trade. Use of non-PULSe-to-PULSe routing functionality is voluntary.

The Exchange believes that assessing a TPH sending drop copies to a non-TPH a monthly \$500, as opposed to the \$1000 per month rate assessed to TPH customers receiving drop copies from PULSe, is reasonable, equitable, and not unfairly discriminatory. The lower rates are designed to encourage non-TPH market participants to interact with the Exchange, which will accordingly attract more volume and liquidity to the Exchange and benefit all Exchange participants through increased opportunities to trade.

The Exchange believes that assessing a \$500 one-time fee for FIX integration necessary to receive or send drop copies from PULSe is reasonable because the Exchange incurs costs in the setup of a new FIX connection to allow the receiving and sending of drop copies via PULSe. The Exchange believes the fee is equitable and not unfairly discriminatory as it is assessed equally to any TPH electing to receive drop copies from PULSe brokers or to any TPH electing to send drop copies to a non-TPH customer.

The Exchange believes that assessing a \$500 one-time fee for the cancellation of a FIX connection necessary to receive or send drop copies from PULSe is reasonable because the Exchange incurs costs in the shutting down of a FIX connection. The Exchange believes the fee is equitable and not unfairly discriminatory as it is assessed equally to any TPH electing to cancel a FIX connection to a PULSe broker or to a PULSe broker electing to cancel a connection to a non-TPH customer.

The Exchange believes that assessing a \$5000 one-time fee for the certification of a new PULSe routing intermediary is reasonable because the Exchange incurs costs to develop connectivity for the routing intermediary and test the routing functionality to Exchange and away marketplaces. The Exchange believes the fee is equitable and not unfairly discriminatory as it is assessed to every TPH who elects to become a routing intermediary on PULSe. Becoming a routing intermediary is voluntary.

The Exchange believes that assessing a routing intermediary inactivity fee of up to \$5000 in years in which a routing intermediary pays less than that amount

in fees is reasonable because the Exchange incurs costs to maintain, monitor, upgrade and test routing intermediary connections. The fees are assessed to cover those Exchange costs in the event the costs are not recovered via routing intermediary transaction fees. The Exchange believes the fee is equitable and not unfairly discriminatory as it will be assessed to any routing intermediary and only to the extent the TPH's routing intermediary transaction fees are less than \$5000 in a calendar year.

The Exchange believes that assessing a \$250 a month fee for the daily transmission of OATS reports from PULSe is reasonable because the Exchange incurs costs to monitor, develop and implement upgrades, maintain and customize PULSe to allow sending and receiving of OATS reports. The Exchange believes the fee is equitable and not unfairly discriminatory as it is assessed to all customers electing to receive daily OATS reports.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule changes will impose any burdens on competition that are not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed PULSe-related fees relate to optional reports and/or functionality and are assessed equally on PULSe users or TPH electing to use the functionality and/or receive the reports. The Exchange does not believe that the proposed change will cause any unnecessary burden on intermarket competition because the proposed relate to use of an Exchange-provided order entry system. To the extent that any proposed change makes the Exchange a more attractive marketplace for market participants at other exchanges, such market participants are welcome to become Exchange market participants.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

### **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 Act<sup>8</sup> and paragraph (f) of Rule 19b-4<sup>9</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. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

### **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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2017-004 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2017-004. This file number should be included on the subject line if email 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 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

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f).

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-2017-004 and should be submitted on or before February 14, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Eduardo A. Aleman,**  
*Assistant Secretary.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### Notice To Rescind Notice of Intent To Prepare an Environmental Impact Statement: Lone Star Regional Rail Project, Williamson, Travis, Bastrop, Hays, Caldwell, Comal Guadalupe and Bexar Counties, State of Texas

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Rescind Notice of Intent to prepare an Environmental Impact Statement (EIS) for the Lone Star Rail Project in Central Texas.

**SUMMARY:** The FHWA is issuing this notice to advise the public that the Notice of Intent to prepare an EIS for the proposed Lone Star Rail transportation project to construct and operate a regional passenger rail service system along the IH-35 corridor connecting the greater Austin and San Antonio metropolitan areas is rescinded. The Texas Department of Transportation (TxDOT) will no longer prepare an EIS for the Lone Star Rail Project.

**FOR FURTHER INFORMATION CONTACT:** Michael T. Leary, Director of Planning and Program Development, Federal Highway Administration, 300 E. 8th Street, Room 826, Austin, Texas 78701, by telephone (512)536-5940.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the TxDOT and the Lone Star Rail District (LSRD), published a Notice of Intent in the **Federal Register** on October 6, 2014 (Document Number 2014-23711, Pages

60232 to 60323) to prepare an EIS for the proposed project to construct and operate the Lone Star Rail Project, a regional passenger rail service system along the IH-35 corridor connecting the greater Austin and San Antonio metropolitan areas anticipated to be operated by the LSRD. The proposed EIS was to evaluate the reasonable corridor alternatives.

The LSRD conducted numerous studies and held public meetings to gather input from the public and other stakeholders to consider in the development of the DEIS. A Notice of Availability (NOA) for a DEIS was never published in the **Federal Register**. In October 2016, TxDOT requested preparation of the EIS be stopped and the Notice of Intent be rescinded. In January 2017 TxDOT provided information supporting their request to rescind the NOI.

The request is based on a number of issues first being the decision by Union Pacific Railroad Company to cancel the UP/LSRD agreement for the possible use MOPAC corridor (the locally preferred alternative) which renders the alternate using of UP right of way nonviable. This action caused a cascade of additional actions by other entities. One of which was the removal the proposed project from the Capital Area Metropolitan Planning Organization (CAMPO—Austin MPO) metropolitan transportation plan (MTP) and an ongoing effort to remove the project in the Alamo Area Metropolitan Planning Organization (AAMPO—San Antonio MPO) MTP. As per current transportation planning regulations 23 CFR450 the project could not advance to a NEPA decision without being in both MPO's metropolitan transportation plans. Further, TxDOT analyzed the other remaining initially reasonable alternatives and determined that:

- the use of I 35 corridor would not be financial feasible due to ROW constraints and ongoing I-35 improvements .
- the use of the State Highway 130 corridor as per LSRD 2008 fatal flaw analysis concluded the corridor would not support a commuter rail line and ridership and connectivity would make the corridor nonviable.
- other alternative combinations such as I 35 and UP rail line and a hybrid option lack viability.

Further with an estimated cost of between \$2 to \$3 billion, funding anticipated by LSRD such as the State's Rail Relocation and Improvement Fund, Federal Railroad Administration grants and private investment have not been

capitalized or funded at levels necessary needed to complete the project.

Due to the request made by the lead State sponsor (TxDOT) and based on the above information with the UP rail line alternative no longer feasible, lack of viability of other reasonable alternatives, removal of the project from the CAMPO transportation plan and a lack of a capitalized financial plan to move the project forward, the further development of the DEIS is not warranted at this time. As a result, the above mentioned original Notice of Intent is rescinded.

The FHWA concurs with the TxDOT that the information gathered during the LSRD EIS project can be used in future efforts to determine viable transportation options for the Austin San Antonio corridor.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

**Authority:** 23 U.S.C. 315; 49 CFR 1.48.

Issued on January 13, 2017.

**Michael T. Leary,**  
*Director Planning and Program Development,*  
*FHWA, Texas Division.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

[Docket Number FRA-2016-0110]

#### Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated November 8, 2016, Nevada Northern Railway Foundation d.b.a. Nevada Northern Railway Museum (NN) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 215. FRA assigned the petition Docket Number FRA-2016-0110.

Specifically, NN requests waiver from the requirements of 49 CFR 215.303, *Stenciling of restricted cars*, and § 224.101, *Reflectorization of Rolling Stock*, for five freight cars. These five freight cars are one caboose (car number NN 3) and four box cars (car numbers NN 2021, NN 1023, NN 1024, and NN 1025).

<sup>10</sup> 17 CFR 200.30-3(a)(12).