

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55062; File No. SR-CBOE-2006-88)

January 8, 2007

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval to Proposed Rule Change to Codify a Fee Schedule for the Sale of Open and Close Volume Data on CBOE Listed Options by Market Data Express, LLC

On November 3, 2006, the Chicago Board Options Exchange, Incorporated (“CBOE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to codify a fee schedule for the sale of open and close volume data on CBOE listed options by Market Data Express, LLC (“MDX”), a wholly-owned subsidiary of CBOE. The proposed rule change was published for comment in the Federal Register on November 27, 2006.³ The Commission received no comments regarding the proposal. This order approves the proposed rule change.

In the Notice, the Exchange represented that it creates volume data for each CBOE listed option that consists of opening buys and opening sells and closing buys and closing sells (“Open/Close Data”). CBOE further represented that MDX offers this Open/Close Data for sale to CBOE members and non-members and that the fees assessed by MDX for the Open/Close Data are set forth in the Price List on MDX’s Web site. CBOE members and non-members are charged the same fees for the Open/Close Data.

Under the proposal, customers may purchase Open/Close Data on a subscription basis or

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 54771 (November 16, 2006), 71 FR 68657 (the “Notice”).

by ad hoc request. Daily Open/Close Data covering all CBOE listed options⁴ would be available for purchase by subscribing to the Daily Update service at a cost of \$600 per month. Subscribers to the Daily Update service would receive a daily data file via download from MDX's Web site. Historical Open/Close Data covering all CBOE listed options may be purchased on an ad hoc request basis and is delivered via DVD. The charge for Historical Open/Close Data covering all CBOE listed options would be \$7,200 per year for requests for one to four years of data. Requests for five or more years of Historical Open/Close Data would receive a 50% discount beginning with the fifth year of data (i.e., MDX charges \$7,200 for each of the first four years of data and \$3,600 for year five and for each subsequent year of data). Alternatively, a customer may purchase Historical Open/Close Data on an individual CBOE listed option at a cost of \$4.50 per listed option per month. This data would be available via download from MDX's Web site. A 50% discount would be applied for requests for ten or more years of data, beginning with the tenth year of data.

The Commission has reviewed carefully the proposed rule change and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b)(4) of the Act,⁵ which requires, among other things, CBOE's rules be designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE

⁴ Although the proposed rule change refers to Open/Close Data covering all CBOE listed securities, the CBOE confirmed that the Open/Close Data is available solely for all CBOE listed options. Telephone conversation between Jaime Galvan, Assistant Secretary, CBOE and David Michehl, Special Counsel, Division of Market Regulation, Commission on January 8, 2007.

⁵ 15 U.S.C. 78f(b)(4).

members and issuers and other persons using its facilities.⁶

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁷ that the proposed rule change (SR-CBOE-2006-88) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Florence E. Harmon
Deputy Secretary

⁶ In approving this proposed rule change the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78s(b)(2).

⁸ 17 CFR 200.30-3(a)(12).