

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-67928; File No. SR-CBOE-2012-090)

September 26, 2012

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Codification of a Fee Schedule for the Sale by Market Data Express, LLC, an Affiliate of CBOE, of a Data Product That Includes Option Valuations

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 September 14, 2012, the 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 the Substance of the Proposed Rule Change

This proposal submitted by Chicago Board Options Exchange, Incorporated (“CBOE” or “Exchange”) is to codify a fee schedule for the sale by Market Data Express, LLC (“MDX”), an affiliate of CBOE, of a data product that includes option valuations. 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.

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

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

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 purpose of the proposed rule change is to establish fees that MDX will charge for a new market data product, referred to as the CBOE Customized Option Valuation Service (the “Service”). The Service would provide subscribers with an “end-of-day” file<sup>3</sup> of valuations for Flexible Exchange (“FLEX”)<sup>4</sup> options and certain over-the-counter (“OTC”) options (the “Data”). The Data would be available for internal use and distribution by subscribers. MDX would offer the Data for sale to CBOE Trading Permit Holders (“TPHs”) and non-TPHs.

The Data would consist of indicative<sup>5</sup> values for three categories of “customized” options. The first category of options is all open series of FLEX options listed on any exchange

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<sup>3</sup> An end of day file refers to data that is distributed prior to the opening of the next trading day.

<sup>4</sup> FLEX options are exchange traded options that provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices.

<sup>5</sup> “Indicative” values are indications of potential market prices only and as such are neither firm nor the basis for a transaction.

that offers FLEX options for trading.<sup>6</sup> The second category is OTC options that have the same degree of customization as FLEX options. The third category includes options with strike prices expressed in percentage terms. Values for such options would be expressed in percentage terms and would be theoretical values.<sup>7</sup>

A small number of market data vendors produce option value data that is similar to the Data.<sup>8</sup> The Options Clearing Corporation (“OCC”) also produces FLEX option value data that is similar to the FLEX option value data that would be included in the Service.<sup>9</sup> These vendors and the OCC use model-driven processes to produce their data. Instead of using a model-driven process, CBOE would use values produced by CBOE registered market-makers to produce the Data. Participating CBOE market-makers would submit values to MDX on options series specified by MDX on a daily basis. These values would be generated by the market-maker’s internal pricing models. The valuations that MDX would ultimately publish would be an average of multiple contributions of values from participating CBOE market-makers.<sup>10</sup> For each

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<sup>6</sup> Current FLEX options open interest spans over 2,000 series on over 300 different underlying securities.

<sup>7</sup> These values would be theoretical in that they would be indications of potential market prices for options that have not traded (i.e. do not yet exist). Market participants sometimes express option values in percentage terms rather than in dollar terms because they find it is easier to assess the change, or lack of change, in the marketplace from one day to the next when values are expressed in percentage terms.

<sup>8</sup> These vendors include SuperDerivatives, Markit, Prism, and Bloomberg’s BVAL service.

<sup>9</sup> The OCC makes this data available on its website at <http://www.theocc.com/webapps/flex-reports>.

<sup>10</sup> The Exchange has filed a proposed rule change describing in detail the Service, the qualification criteria that a CBOE market-maker must meet in order to be allowed to contribute values to MDX for purposes of producing Data for the Service, and the compensation MDX will pay to participating market-makers. See Securities Exchange Act Release No. 67813 (September 10, 2012) [77 FR 56903(September 14, 2012)] (SR-CBOE-2012-083).

value provided by MDX through the Service, MDX would include a corresponding indication of the number of market-maker contributors that factored into that value.<sup>11</sup>

The fees that MDX would assess for the Data are set forth in the following table which would be included on the Price List on the MDX website ([www.marketdataexpress.com](http://www.marketdataexpress.com)).

# of options	per option / per day
0-50	\$1.25
51-100	\$1.00
101-500	\$0.75
500+	\$0.50

MDX would charge a fee per option per day for the Data. The amount of the fee would be reduced based on the number of options purchased. A subscriber would pay \$1.25 per option per day for each option purchased up to 50 options, \$1.00 per option per day for each option purchased from 51 to 100 options, \$0.75 per option per day for each option purchased from 101 to 500 options, and \$.050 [sic] per option per day for each option purchased over 500 options. For example, a subscriber that purchases values for 150 options per day would pay \$1.25 per option per day for the first 50 options (\$62.50), \$1.00 per option per day for the next 50 options (\$50.00) and \$0.75 per option per day for the remaining 50 options (\$37.50) for a total of \$150 per day.

Subscribers would be able to purchase options daily, weekly, monthly or quarterly through the MDX website. TPHs and non-TPHs would be charged the same fees for the Data.

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<sup>11</sup> MDX would publish on its website a description of the methodology used for averaging the values submitted by market-makers to produce a single publishable value.

The Data would be delivered to subscribers via File Transfer Protocol (FTP) or secure copy shortly after the close of trading each day. MDX expects to launch the Service during the fourth quarter of 2012.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (the “Act”)<sup>12</sup> in general and with Sections 6(b)(4) and 6(b)(5) of the Act<sup>13</sup> in particular in that it provides for an equitable allocation of reasonable dues, fees and other charges among users and recipients of the Data and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes the proposed fees are equitable and not unfairly discriminatory in that the fees charged would be the same for all market participants. In addition, the Exchange believes the fees are equitable because the Service would be purely optional. Only those subscribers that deem the product to be of sufficient overall value and usefulness would purchase it. The Exchange believes the proposed fees are reasonable because potential customers of the Service have indicated to the Exchange that the proposed fees compare favorably to fees that competing market data vendors charge for similar data.

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 the purposes of the Act. To the contrary, the Exchange believes the proposed rule change is pro-competitive in that it would allow the Exchange, through MDX, to disseminate a new data service on a voluntary basis. The

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<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(4) and (5).

Service is voluntary on the part of the Exchange, which is not required to offer such services, and voluntary on the part of prospective subscribers that are not required to use it. The Exchange believes that the Service would help attract new users and new order flow to the Exchange, thereby improving the Exchange's ability to compete in the market for options order flow and executions.

The Exchange also believes that the proposed fees for the Data are consistent with the requirements of the Act because competition provides an effective constraint on the market data fees that the Exchange, through MDX, has the ability and the incentive to charge. CBOE has a compelling need to attract order flow from market participants in order to maintain its share of trading volume. This compelling need to attract order flow imposes significant pressure on CBOE to act reasonably in setting its fees for market data, particularly given that the market participants that will pay such fees often will be the same market participants from whom CBOE must attract order flow. These market participants include broker-dealers that control the handling of a large volume of customer and proprietary order flow. Given the portability of order flow from one exchange to another, any exchange that sought to charge unreasonably high data fees would risk alienating many of the same customers on whose orders it depends for competitive survival. CBOE currently competes with eight options exchanges (this number does not include CBOE's affiliate, C2 Options Exchange) for order flow.<sup>14</sup>

CBOE is constrained in pricing the Data by the availability to market participants of alternatives to purchasing the Data. CBOE must consider the extent to which market participants would choose one or more alternatives instead of purchasing the exchange's data. As noted

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<sup>14</sup> The Commission has previously made a finding that the options industry is subject to significant competitive forces. See e.g., Securities Exchange Act Release No. 59949 (May 20, 2009), 74 FR 25593 (May 28, 2009) (SR-ISE-2009-97) (order approving ISE's proposal to establish fees for a real-time depth of market data offering).

above, SuperDerivatives, Markit, Prism, and Bloomberg are some of the market data vendors that offer market data products that would compete with the Service. Also, OCC makes similar data available at no cost, thus constraining CBOE's ability to price the Data. The vendor proprietary data and the OCC data are significant alternatives to the MDX Data. Further, other self-regulatory organizations as well as broker-dealers and alternative trading systems can potentially produce their own option valuation products and thus are sources of potential competition for MDX.

The number of market data vendors that sell valuations is relatively limited. The Exchange believes that MDX can be a low cost provider of valuations in this competitive environment.

For the reasons cited above, the Exchange believes the CBOE Customized Option Valuation Service offering, including the proposed fees, is equitable, reasonable and not unfairly discriminatory. In addition, the Exchange believes that no substantial countervailing basis exists to support a finding that the proposed terms and fees for the Service fails to meet the requirements of the Act.

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)<sup>15</sup> of the Act and paragraph (f) of Rule 19b-4<sup>16</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

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

<sup>16</sup> 17 C.F.R. 240.19b-4(f).

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-2012-090 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.

All submissions should refer to File Number SR-CBOE-2012-090. 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-2012-090 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>17</sup>

Kevin M. O'Neill  
Deputy Secretary

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