

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-63997; File No. SR-CBOE-2011-014)

March 1, 2011

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Codify a Fee Schedule for the Sale by Market Data Express, LLC, of a BBO Data Feed for CBOE Listed Options

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 17, 2011, 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 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 CBOE best bid and offer and trade data and certain related market data. 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'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, 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.

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, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to establish fees that MDX will charge for the sale of certain market data with respect to the trading of options on CBOE's market.

CBOE currently collects and processes market data with respect to options quotes and orders and the prices of trades that are executed on the Exchange. This market data includes the "best bid and offer," or "BBO", consisting of all outstanding quotes and standing orders at the best available price level on each side of the market, with aggregate size ("BBO data," sometimes referred to as "top of book data"). Data with respect to executed trades is referred to as "last sale" data. CBOE formats its BBO data and last sale data according to Options Price Reporting Authority ("OPRA") specifications and sends the data to OPRA for redistribution to the public.

MDX provides to "Customers"³ a real-time, low latency data feed that includes the CBOE BBO data and last sale data. (This data feed is sometimes referred to in this filing as the "BBO Data Feed"). The BBO and last sale data contained in the BBO Data Feed is identical to the data that CBOE sends to OPRA.⁴ In addition, the BBO Data Feed includes certain data that

³ A "Customer" is any entity that receives the BBO Data Feed directly from MDX's system and then distributes it either internally or externally to Subscribers. A "Subscriber" is a person (other than an employee of a Customer) that receives the BBO Data Feed from a Customer for its own internal use.

⁴ The Exchange notes that MDX makes available to Customers the BBO data and last sale data that is included in the BBO Data Feed no earlier than the time at which the

is not included in the data sent to OPRA, namely, totals of customer versus non-customer contracts at the BBO, All-or-None contingency orders priced better than or equal to the BBO, and BBO data and last sale data for complex strategies (e.g., spreads, straddles, buy-writes, etc.). The purpose of this proposed rule change is to establish the fees MDX will charge for the sale of the BBO Data Feed.

MDX would charge Customers a “direct connect fee” of \$3,500 per connection per month. MDX would also charge Customers a “per user fee” of \$25 per month per “Authorized User” or “Device” for receipt of the BBO Data Feed by Subscribers. An “Authorized User” is defined as an individual user (an individual human being) who is uniquely identified (by user ID and confidential password or other unambiguous method reasonably acceptable to MDX) and authorized by a Customer to access the BBO Data Feed supplied by the Customer. A “Device” is defined as any computer, workstation or other item of equipment, fixed or portable, that receives, accesses and/or displays data in visual, audible or other form. Either a CBOE Trading Permit Holder or a non-CBOE Trading Permit Holder may be a Customer. All Customers would be assessed the same fees.

The proposed fees would be implemented on March 1, 2011.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b) of the Securities Exchange Act of 1934 ("Act")⁵ in general, and, in particular, with

Exchange sends that data to OPRA. The Exchange also notes that it also makes the BBO data and last sale data that is included in the BBO Data Feed available directly to its Trading Permit Holders, and permits them to redistribute the data to their customers.

⁵ 15 U.S.C. 78f(b).

Section 6(b)(4) of the Act⁶ in that it provides for the equitable allocation of reasonable dues, fees and other charges among CBOE Trading Permit Holders and other persons using its facilities, and with Section 6(b)(5)⁷ of the Act in that there will be no unfair discrimination between customers, issuers, brokers, or dealers in the distribution of the data. In addition, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(8)⁸ of the Act in that it does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The fees charged would be the same for all market participants, and therefore do not unreasonably discriminate among market participants.

The Exchange believes that the proposed market data fees are consistent with the requirements of the Act for several reasons. First, they compare favorably to fees that other markets charge for similar products. The proposed direct connect fee of \$3,500 per connection per month and per user fee of \$25 per month compares favorably to the fees NASDAQ OMX PHLX and ISE charge for similar market data products. NASDAQ OMX PHLX charges Internal Distributors a monthly fee of \$4,000 per organization, External Distributors a monthly fee of \$5,000 per organization and monthly subscriber fees of \$20 per Professional Subscriber and \$1 per Non-Professional Subscriber for its “TOPO Plus Orders” data feed, which like the BBO Data Feed includes top-of-book data (including orders, quotes and trades) and other market data.⁹ ISE charges distributors of its ISE Depth of Market Feed a monthly fee of \$5,000 plus

⁶ 15 U.S.C. 78f(b)(4).

⁷ 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78f(b)(8).

⁹ See, NASDAQ OMX PHLX LLC Fee Schedule, Section X, Proprietary Data Feed Fees.

\$50 per month per controlled device for Professionals and \$5 per month per controlled device for Non-Professionals.¹⁰

The Exchange also believes that the proposed fees for the BBO Data Feed 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 (including CBOE's affiliate, C2 Options Exchange) for order flow.¹¹

CBOE is constrained in pricing the BBO Data Feed by the availability to market participants of alternatives to purchasing the BBO Data Feed. CBOE must consider the extent to which market participants would choose one or more alternatives instead of purchasing the exchange's data. For example, the BBO data and last sale data available in the BBO Data Feed is

¹⁰ See, ISE Schedule of Fees, Market Data Fees. The Exchange believes that ISE does not market a separate data product that includes only its top of book prices, but top of book prices are an important element of the ISE Depth of Market Feed.

¹¹ 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).

included in the OPRA data feed. The OPRA data is widely distributed and relatively inexpensive, thus constraining CBOE's ability to price the BBO Data Feed. In this respect, the OPRA data feed, which includes the exchange's transaction information, is a significant alternative to the BBO Data Feed product.

Further, other options exchanges can and have produced their own top-of-book products, and thus are sources of potential competition for MDX. As noted above, NASDAQ OMX PHLX and ISE offer market data products that compete with the BBO Data Feed. In addition, the Exchange believes other options exchanges may currently offer top-of-book market data products for a fee or for free.

For the reasons cited above, the Exchange believes that the BBO Data Feed offering, including the proposed fees, is equitable, fair, reasonable and not unreasonably discriminatory. In addition, the Exchange believes that no substantial countervailing basis exists to support a finding that the proposed terms and fees for the BBO Data Feed fails to meet the requirements of the Act.

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. The Exchange believes that the BBO Data Feed offered by MDX will 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.

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 foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and subparagraph (f)(2) of Rule 19b-4¹³ 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. Please include File Number SR-CBOE-2011-014 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-2011-014. This file number should be included on the subject line if e-mail is used.

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 C.F.R. 240.19b-4(f)(2). [sic]

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 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 offices 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-2011-014, 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.¹⁴

Cathy H. Ahn
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).