

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-66486; File No. SR-CBOE-2012-016)

February 28, 2012

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Fees Schedule of Market Data Express, LLC

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 15, 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 substantially 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 Exchange proposes to amend the Fee Schedule of Market Data Express, LLC (“MDX”), an affiliate of CBOE. The text of the proposed rule change is available on the Exchange’s website (<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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to establish a monthly fee of \$500 per data port that MDX will charge for access to certain market data with respect to the trading of options on CBOE’s market.³

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”⁴ 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

³ The Commission notes that the MDX Fee Schedule is available at <https://www.cboe.org/MDX/CSM/OBOOKMain.aspx>.

⁴ 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.

the data that CBOE sends to OPRA.⁵ In addition, the BBO Data Feed includes certain data that 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.).

MDX currently charges Customers a “direct connect fee” of \$3,500 per connection per month as well as 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 are assessed the same fees.

MDX provides ports that allow Customers to direct connect to MDX to receive the data feed. Currently, such ports are provided to Customers free of charge. However, MDX recently made an investment to upgrade the equipment involved in the ports, and maintenance and upkeep of such ports has gotten costly, as well. As such, MDX proposes to assess a monthly fee of \$500 per data port in order to recoup such costs and maintain such equipment in the future, as

⁵ 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 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.

well as cover other administrative costs. This amount is similar to the amount of fees assessed by other exchanges for access to similar data feed ports.⁶

The proposed fees would be implemented on March 1, 2012.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁷ Specifically, the Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act⁸, which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities. The proposed adoption of the monthly \$500 per port fee is reasonable because the fee is within the same range as those assessed on other exchanges, and because MDX must recoup the costs of upgrading and maintaining the equipment involved in the ports, as well as cover other administrative costs.⁹ The proposed adoption of the port fee is equitable and not unfairly discriminatory because it will be assessed to all market participants equally.

⁶ See Securities Exchange Act Release No. 64964 (July 26, 2011) (SR-EDGA-2011-22) and Securities Exchange Act Release No. 64963 (July 26, 2011) (SR-EDGX-2011-21) (in which EDGA Exchange, Inc. (“EDGA”) and EDGX Exchange, Inc. (“EDGX”) each assess a monthly fee of \$500 per port for access to logical ports used to receive market data) and also Rule 7015(g) of the NASDAQ Stock Market LLC (“NASDAQ”) (in which NASDAQ assesses a monthly fee of \$600 per Internet port that is used to deliver market data).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4).

⁹ See footnote 6.

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.

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)¹⁰ of the Act and paragraph (f) of Rule 19b-4¹¹ 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-2012-016 on the subject line.

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 C.F.R. 240.19b-4(f).

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-2012-016. 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 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-2012-016 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.¹²

Kevin M. O'Neill
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).