

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-70683; File No. SR-CBOE-2013-087)

October 15, 2013

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Fees for the Complex Order Book 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 September 30, 2013, 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

Chicago Board Options Exchange, Incorporated (the “Exchange” or “CBOE”) proposes to amend the fee schedule of Market Data Express, LLC (“MDX”), an affiliate of CBOE, to establish fees for the Complex Order Book (“COB”) Data Feed for CBOE listed options (“COB Data Feed” or “Data”). 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 COB Data Feed is a real-time feed that consists of data regarding the Exchange's Complex Order Book and related complex order information. The COB Data Feed includes "best bid and offer" or "BBO" quotes and identifying information for all CBOE-traded complex order strategies, as well as all executed CBOE complex order trades (and identifies whether the trade was a customer trade or whether a complex order in the COB is a customer order). The COB Data Feed is currently made available by MDX to all market participants free of charge.³

The Exchange proposes to establish fees for the COB Data Feed. MDX would charge Customers of the COB Data Feed \$3,000 per month ("Data Fee"). A COB Data Feed "Customer" is any entity that receives the COB Data Feed, either directly from MDX's system or through a connection to MDX provided by an approved redistributor (i.e., a market data vendor or an extranet service provider), and distributes it externally or uses it internally, except that an entity or person that receives the COB Data Feed from a Customer and only uses it internally is not a "Customer" if it receives the COB Data Feed from a Customer subject to a form of "Subscriber Agreement" that has been approved by MDX. The Data Fee for the COB Data Feed would be waived for Customers of the COB Data Feed who are also Customers of the BBO Data

³ See Securities Exchange Act Release No. 70118 (August 5, 2013) (SR-CBOE-2013-070).

Feed.⁴ Customers of the BBO Data Feed are currently charged \$5,000 per month by MDX.⁵ The proposed waiver of the Data Fee for the COB Data Feed would allow a Customer of the COB Data Feed who is also a Customer of the BBO Data Feed to redistribute the COB Data Feed for no additional charge.⁶

In addition, MDX would charge a Customer “User Fees” of \$25 per month per Device⁷ or user ID for receipt of the data by “Professional Users”⁸ and \$1 per month for receipt of the data by “Non-Professional Users”.⁹ User Fees would be subject to a cap of \$2,000 per month, i.e., a Customer would pay no more than \$2,000 in User Fees in a month.

⁴ The BBO Data Feed is a real-time, low latency data feed that includes CBOE BBO data, consisting of all outstanding quotes and standing orders at the best available price level on each side of the market, with aggregate size and last sale data. The BBO Data Feed includes the data included in the COB Data Feed, among other data. See Securities Exchange Act Release No. 69438 (April 23, 2013), 78 FR 25334 (April 30, 2013).

⁵ Id.

⁶ Such Customers would still be subject to User Fees as described below.

⁷ A “Device” means any computer, workstation or other item of equipment, fixed or portable, that receives, accesses and/or displays data in visual, audible or other form.

⁸ A “Professional User” is any natural person recipient of the COB Data Feed who is not a Non-Professional User. User Fees for Professional Users are payable for both “internal” Professional Users (Devices or user IDs of employees of a Customer) and “external” Professional Users (Devices or user IDs of Professional Users who receive the Data from a Customer and are not employed by the Customer). (Non-Professional Users must be external since a person who uses the COB Data Feed for a commercial purpose cannot be a Non-Professional User.)

⁹ A “Non-Professional User” is a natural person who uses the COB Data Feed only for personal purposes and not for any commercial purpose and who, if he or she works in the United States, is not: (i) registered or qualified in any capacity with the Securities and Exchange Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an “investment adviser” as that term is defined in Section 201(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt; or, if he or she works outside of the United States, does not

The Exchange also proposes to make several formatting and clean up changes to the MDX fee schedule. The Exchange proposes to create three separate sections on the MDX fee schedule for the BBO Data Feed, COB Data Feed and FLEX Options Data Feed¹⁰ and include the definitions applicable to each data feed within its respective section. The Exchange proposes to renumber the section on Systems Fees and move the definition of Port Fee within that section. Finally, the Exchange proposes to delete the Definitions section of the MDX fee schedule, including the provisions on invoicing and late payments which are included within MDX's written agreement for the data.

The proposed fees would be effective on October 1, 2013.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Securities Exchange Act of 1934 ("Act")¹¹ in general, and, in particular, with Section 6(b)(4) of the Act¹² in that it provides for the equitable allocation of reasonable dues, fees and other charges among users and recipients of the Data, and with Section 6(b)(5)¹³ of the Act in that it is not designed to permit unfair discrimination between them. The Exchange believes the proposed Data Fee and User Fees are equitable and not unfairly discriminatory because they would apply equally to all Customers of the COB Data Feed except the Data Fee would be waived for Customers of the COB Data Feed who are also Customers of the BBO Data Feed.

perform the same functions as someone who would qualify as a Non-Professional User if he or she worked in the United States.

¹⁰ The FLEX Options Data Feed is currently made available to all market participants free of charge. See Securities Exchange Act Release No. 68696 (January 18, 2013), 78 FR 5527 (January 25, 2013).

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4).

¹³ 15 U.S.C. 78f(b)(5).

The Exchange notes that the fee structure of differentiated professional and nonprofessional fees has long been used by other exchanges for their products and by the Options Price Reporting Authority (“OPRA”) Plan in order to reduce the price of data to retail investors and make it more broadly available.¹⁴

The Exchange believes the proposed waiver of the Data Fee is equitable and not unfairly discriminatory because it would apply equally to all Customers of the COB Data Feed who are also Customers of the BBO Data Feed. Customers of the BBO Data Feed already pay MDX \$5,000 for the right to use and redistribute the data in the BBO Data Feed. The BBO Data Feed includes the data in the COB Data Feed. The proposed waiver of the Data Fee would allow a Customer of the COB Data Feed who is also a Customer of the BBO Data Feed to redistribute the COB Data Feed for no additional charge, thereby incentivizing further redistribution of the data in the COB Data Feed. The Exchange notes other exchanges offer similar fee waivers.¹⁵

The Exchange also believes the proposed fees are equitable because the COB Data Feed is purely optional. Only those Customers that deem the product to be of sufficient overall value and usefulness would purchase it.

The Exchange believes the proposed fees are reasonable because they compare favorably to fees that other markets charge for similar products. For example, the Exchange believes The International Securities Exchange (“ISE”) offers a “Spread Feed”, which like the COB Data Feed includes order and quote data for complex strategies. The Exchange believes ISE charges

¹⁴ See, e.g., Securities Exchange Act Release No. 67589 (August 2, 2012), 77 FR 47459 (August 8, 2012) (revising OPRA’s definition of the term “Nonprofessional”).

¹⁵ The Exchange believes the NASDAQ Options Market charges only one distributor fee to allow a subscriber access to its “NASDAQ ITCH-to-Trade Options” (ITTO) and “Best of NASDAQ Options” (BONO) products. The Exchange believes NASDAQ OMX BX charges only one distributor fee to allow a subscriber access to its “BX Options Depth of Market” (BX Depth) and “BX Options Top of Market” (BX Top) products.

distributors of its Spread Feed \$3,000 per month and a monthly controlled device fee of \$25 per controlled device for Professionals.

The Exchange notes that the COB Data Feed also competes with products offered by NASDAQ OMX PHLX and NYSE. NASDAQ OMX PHLX offers a market data product entitled “TOPO Plus Orders”, which like the COB Data Feed includes order and last sale information for complex strategies and other market data. NYSE offers market data products entitled “NYSE ArcaBook for Amex Options” and “NYSE ArcaBook for Arca Options” that include top-of-book and last sale data for complex strategies similar to the data in the COB Data Feed.

The Exchange believes that the proposed cap on User Fees is reasonable because it may encourage more vendors to choose to offer the COB Data Feed, thereby expanding the distribution of this market data for the benefit of investors.

The proposed formatting and clean-up changes to the MDX fee schedule will benefit Customers and users by making the fee schedule clearer and easier to understand.

For the reasons cited above, the Exchange believes the proposed fees for the COB Data Feed are equitable, reasonable and not unfairly discriminatory. In addition, the Exchange believes that no substantial countervailing basis exists to support a finding that the proposed fees for the COB Data Feed fails to meet the requirements of the Act.

B. Self-Regulatory Organization’s Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,¹⁶ 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. An exchange’s ability to price its proprietary data feed

¹⁶ 15 U.S.C. 78f(b)(8).

products is constrained by (1) the existence of actual competition for the sale of such data, (2) the joint product nature of exchange platforms, and (3) the existence of alternatives to proprietary data.

The Existence of Actual Competition. The Exchange believes 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 eleven options exchanges (including CBOE's affiliate, C2 Options Exchange) for order flow.¹⁷

In addition, in the case of products that are distributed through market data vendors, the market data vendors themselves provide additional price discipline for proprietary data products because they control the primary means of access to certain end users. These vendors impose price discipline based upon their business models. For example, vendors that assess a surcharge on data they sell are able to refuse to offer proprietary products that their end users do not or will not purchase in sufficient numbers. Internet portals, such as Google, impose price discipline by

¹⁷ 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).

providing only data that they believe will enable them to attract “eyeballs” that contribute to their advertising revenue. Similarly, Customers will not offer the COB Data Feed unless this product will help them maintain current users or attract new ones. For example, a broker-dealer will not choose to offer the COB Data Feed to its retail customers unless the broker-dealer believes that the retail customers will use and value the data and the provision of such data will help the broker-dealer maintain the customer relationship, which allows the broker-dealer to generate profits for itself. Professional Users will not request the COB Data Feed from Customers unless they can use the data for profit-generating purposes in their businesses. All of these operate as constraints on pricing proprietary data products.

Joint Product Nature of Exchange Platform. Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade executions are a paradigmatic example of joint products with joint costs. The decision whether and on which platform to post an order will depend on the attributes of the platforms where the order can be posted, including the execution fees, data quality, and price and distribution of their data products. The more trade executions a platform does, the more valuable its market data products become. The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange’s transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs. Moreover, an exchange’s broker-dealer customers view the costs of transaction executions and market data as a unified cost of doing business with the exchange.

Analyzing the cost of market data product production and distribution in isolation from the cost of all of the inputs supporting the creation of market data and market data products will inevitably underestimate the cost of the data and data products. Thus, because it is impossible to obtain the data inputs to create market data products without a fast, technologically robust, and well-regulated execution system, system costs and regulatory costs affect the price of both obtaining the market data itself and creating and distributing market data products. It would be equally misleading, however, to attribute all of an exchange's costs to the market data portion of an exchange's joint products. Rather, all of an exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

The level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including 12 options self-regulatory organization ("SRO") markets, as well as internalizing broker-dealers ("BDs") and various forms of alternative trading systems ("ATs"), including dark pools and electronic communication networks ("ECNs"). Competition among trading platforms can be expected to constrain the aggregate return that each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. For example, some platforms may choose to pay rebates to attract orders, charge relatively low prices for market data products (or provide market data products free of charge), and charge relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower rebates (or no rebates) to attract orders, setting relatively high prices for market data products, and setting relatively low prices for accessing

posted liquidity. In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering.

The Existence of Alternatives. CBOE is constrained in pricing the COB Data Feed by the availability to market participants of alternatives to purchasing the COB Data Feed. CBOE must consider the extent to which market participants would choose one or more alternatives instead of purchasing the exchange's data. Other options exchanges can and have produced their own complex strategies market data products, and thus are sources of potential competition for MDX. As noted above, ISE, NASDAQ OMX PHLX and NYSE offer market data products that compete with the COB Data Feed. The large number of SROs, BDs, and ATSS that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, ATS, and BD is currently permitted to produce proprietary data products, and many currently do.

Further, data products are valuable to professional users only if they can be used for profit-generating purposes in their businesses and valuable to non-professional users only insofar as they provide information that such users expect will assist them in tracking prices and market trends and making trading decisions. The Exchange believes that the proposed waiver of the Data Fee and the cap on User Fees, which may permit wider distribution of the COB Data Feed at a lower cost to Customers with a large number of Professional and Non-professional Users, may encourage more users to demand and more Customers to choose to offer the COB Data Feed, thereby benefitting Professional and Non-professional Users, including public investors.

The existence of numerous alternatives to the Exchange's products, including proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are

unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if its cost to purchase is not justified by the returns any particular vendor or subscriber would achieve through the purchase.

The COB Data Feed is voluntary on the part of the Exchange, which is not required to offer such services, and voluntary on the part of prospective Customers that are not required to use it. The Exchange believes the COB 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

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 Act¹⁸ and paragraph (f) of Rule 19b-4¹⁹ 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

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 17 CFR 240.19b-4(f).

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-2013-087 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-2013-087. 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, D.C. 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-2013-087 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.²⁰

Kevin M. O'Neill
Deputy Secretary

²⁰ 17 CFR 200.30-3(a)(12).