

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-70845; File No. SR-CBOE-2013-104)

November 12, 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 Customized Option Pricing Service**

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 October 29, 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 for the Customized Option Pricing Service (“COPS”) to add a fee for historical COPS 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 amend the fee schedule for the COPS data product.³

Background

COPS provides subscribers with an “end-of-day” file⁴ of valuations for Flexible Exchange (“FLEX”)⁵ options and certain over-the-counter (“OTC”) options (“COPS Data”). COPS Data consists of indicative⁶ values for three categories of “customized” options. The first category of options is all open series of FLEX options listed on any exchange that offers FLEX options for trading.⁷ 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 are

³ The Exchange submitted proposed rule changes in 2012 to establish COPS and COPS fees. See Securities Exchange Act Release No. 67813 (September 10, 2012), 77 FR 56903 (September 14, 2012) and Securities Exchange Act Release No. 67928 (September 26, 2012), 77 FR 60161 (October 2, 2012). The service was originally entitled “Customized Option Valuation Service” but is now referred to as the “Customized Option Pricing Service”.

⁴ An end of day file refers to data that is distributed prior to the opening of the next trading day.

⁵ 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.

⁶ “Indicative” values are indications of potential market prices only and as such are neither firm nor the basis for a transaction.

⁷ Current FLEX options open interest spans over 2,000 series on over 300 different underlying securities.

expressed in percentage terms and are theoretical values.⁸ Market Data Express, LLC (“MDX”), an affiliate of CBOE, offers COPS Data for sale to all market participants.

The fees that MDX charges for COPS Data are set forth on the Price List on the MDX website (www.marketdataexpress.com). MDX currently charges a fee per option per day for COPS Data. The amount of the fee is reduced based on the number of options purchased. A subscriber pays \$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 \$0.50 per option per day for each option purchased over 500 options.

The Exchange has submitted a separate proposed rule change to make historical COPS data (“Historical COPS Data”) available through MDX.⁹ Historical COPS Data consists of COPS Data that is over one month old (i.e., copies of the “end-of-day” COPS file that are over one month old). Pursuant to that proposed rule change, the Exchange will make COPS Data and COPS Historical Data (collectively, the “Data”) available to “Subscribers” for internal use and internal distribution¹⁰ and to “Customers” who, pursuant to a written vendor agreement between MDX and the Customer, may distribute the data externally (i.e., act as a vendor) and/or use and distribute the Data internally. Customers will not be charged any fees initially for external distribution of the Data.

⁸ These values are theoretical in that they are 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.

⁹ See Securities Exchange Act Release No. 70705 (October 17, 2013), 78 FR 63265 (October 23, 2013) (SR-CBOE-2013-097).

¹⁰ Pursuant to a written agreement between MDX and a Subscriber, a Subscriber may not act as a vendor and distribute the Data externally.

Fee for Historical COPS Data

The Exchange proposes to establish a fee of \$75 per day for Historical COPS Data. For example, a Subscriber would pay a total of \$750 for 10 days of Historical COPS Data. Market participants would be able to purchase Historical COPS Data through the MDX website. The proposed fee would apply equally to all market participants and be effective on November 4, 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 fee for Historical COPS Data is equitable and not unfairly discriminatory because it would apply equally to all market participants. In addition, the Exchange believes the proposed fee is equitable because COPS 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 fee is reasonable because potential COPS customers have indicated to the Exchange that the proposed fee compares favorably to fees that competing market data vendors charge for similar data. A small number of market data vendors produce option

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4).

¹³ 15 U.S.C. 78f(b)(5).

value data that is similar to the Data.¹⁴ The Options Clearing Corporation (“OCC”) also produces FLEX option value data that is similar to the FLEX option value data that is included in COPS.¹⁵

For the reasons cited above, the Exchange believes the proposed rule change 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 fee 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 Act¹⁶, 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 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

¹⁴ These vendors include SuperDerivatives, Markit, Prism, and Bloomberg’s BVAL service.

¹⁵ The OCC makes this data available on its website at <http://www.theocc.com/webapps/flex-reports>.

¹⁶ 15 U.S.C. 78f(b)(8).

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 providing only data that they believe will enable them to attract "eyeballs" that contribute to their advertising revenue. Similarly, Customers will not offer COPS data unless this product will help them maintain current users or attract new ones. For example, a broker-dealer will not choose to offer COPS data 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 COPS data from Customers unless

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).

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 COPS data by the availability to market participants of alternatives to purchasing COPS data. CBOE must consider the extent to which market participants would choose one or more alternatives instead of purchasing the exchange's data. Other market data vendors can and have produced their own option valuation products, and thus are sources of potential competition for MDX. As noted above, SuperDerivatives, Markit, Prism, and Bloomberg are some of the market data vendors that offer market data products that compete with COPS. 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 COPS data. 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.

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.

COPS 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 COPS data 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 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

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 17 CFR 240.19b-4(f).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2013-104 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-2013-104. 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-2013-104 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).