

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54771; File No. SR-CBOE-2006-88)

November 16, 2006

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 3, 2006, the Chicago Board Options Exchange, Incorporated (“CBOE” or “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 CBOE. 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 CBOE proposes to codify a fee schedule for the sale of open and close volume data on CBOE listed options by Market Data Express, LLC (“MDX”), a wholly-owned subsidiary of CBOE. The text of the proposed rule change is available on the CBOE’s Web site (<http://www.cboe.com>), the Office of the Secretary, CBOE, 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 rule change. The text of these statements may be examined at the places specified in Item IV

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

below. The Amex 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

CBOE creates volume data for each CBOE listed option that consists of opening buys and opening sells and closing buys and closing sells.³ This opening and closing position data is subdivided by origin code (i.e., customer or firm) and the customer data is further subdivided by order size. The volume data is summarized by day and series (symbol, expiration date, strike price, call or put). This volume data is referred to herein as the "Open/Close Data".

MDX offers the Open/Close Data for sale to CBOE members and non-members. The fees that MDX assesses for the Open/Close Data are set forth in the Price List on MDX's Web site. Members and non-members are charged the same fees for the Open/Close Data.

Under the proposal, customers may purchase Open/Close Data on a subscription basis or by ad hoc request. Daily Open/Close Data covering all CBOE securities would be available for purchase by subscribing to the Daily Update service at a cost of \$600 per month. Subscribers to the Daily Update service would receive a daily data file via download from MDX's website. Historical Open/Close Data covering all CBOE securities may be purchased on an ad hoc request basis and is delivered via DVD. The charge for Historical Open/Close Data covering all CBOE securities would be \$7,200 per year for requests for one to four years of data. Requests for five or more years of Historical Open/Close Data would receive a 50% discount beginning with the

³ An opening buy is a transaction that creates or increases a long position and an opening sell is a transaction that creates or increases a short position. A closing buy is a transaction made to close out a position. A closing sell is a transaction to reduce or eliminate a long position.

fifth year of data (i.e., MDX charges \$7,200 for each of the first four years of data and \$3,600 for year five and each subsequent year of data).

Alternatively, a customer may purchase Historical Open/Close Data on an individual CBOE security at a cost of \$4.50 per security per month. This data would be available via download from MDX's website. A 50% discount would be applied for requests for ten or more years of data, beginning with the tenth year of data.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁴ in general, and furthers the objectives of Section 6(b)(4) of the Act,⁵ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members and issuers and other persons using its facilities. The Open/Close Data is summarized and formatted by MDX in such a way that it increases its usability and value. In order to develop the Open/Close Data, MDX had to develop at significant expense a separate and more detailed system than the system MDX uses to generate its options summary data. The Exchange took these development costs into account when setting the proposed fees for the Open/Close Data. The Exchange is not aware of any data product offered by another exchange that is similar to the Open/Close Data product.⁶ While there is no direct comparison to another exchange's product, the Exchange believes the proposed Open/Close Data fees are fair and reasonable in that the fees are less than the fees charged by another exchange for

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4).

⁶ The Exchange believes the Options Clearing Corporation provides free of charge gross contract volume by class and by origin code only.

data that is not summarized and formatted in the way the Open/Close Data is.⁷ The Exchange also believes the proposed MDX fees are consistent with Rule 603 under the Act (Distribution, Consolidation, and Display of Information with Respect to Quotations for and Transaction in NMS Stocks)⁸ in that the fees are fair and reasonable and not unreasonably discriminatory.

Members and non-members pay the same fees for the Open/Close Data.

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

The Exchange 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

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- A. by order approve such proposed rule change; or
- B. institute proceedings to determine whether the proposed rule change should be disapproved.

⁷ See Securities Exchange Act Release No. 53212 (February 2, 2006), 71 FR 6803 (February 9, 2006) (SR-ISE-2006-07) and Securities Exchange Act Release No. 53390 (February 28, 2006), 71 FR 11457 (March 7, 2006) (SR-ISE-2006-08).

⁸ 17 CFR 242.603.

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-2006-88 on the subject line.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2006-88. 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 Web site (<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 inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. 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-2006-88 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Nancy M. Morris
Secretary

⁹ 17 CFR 200.30-3(a)(12).