

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-63998; File No. SR-CBOE-2011-018)

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 Securities Traded on CBSX

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 Stock Exchange ("CBSX") 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 securities on CBSX. CBSX is CBOE's stock trading facility.

CBOE currently collects and processes market data with respect to quotes and orders and the prices of trades for all securities that are traded on CBSX. 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 reports CBSX BBO data under the Consolidated Quotation Plan ("CQ Plan") and CBSX last sale data under the Consolidated Tape Association Plan ("CTA Plan") with respect to NYSE-listed securities and securities listed on exchanges other than NYSE and Nasdaq for inclusion in those Plans' consolidated data streams. CBOE reports CBSX BBO data and CBSX last sale data under the Nasdaq Unlisted Trading Privileges Plan ("Nasdaq/UTP Plan") with respect to Nasdaq-listed securities for inclusion in that Plan's consolidated data stream.

MDX provides to “Customers”³ a real-time, low latency data feed that includes the CBSX 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 the processors under the CQ, CTA and Nasdaq/UTP Plans.⁴ In addition, the BBO Data Feed includes certain data that is not included in the data sent to the processors under the CQ, CTA and Nasdaq/UTP Plans, namely, totals of customer versus non-customer shares at the BBO and All-or-None contingency orders priced better than or equal to the BBO. 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 \$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 CBSX Trading

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 Exchange sends that data to the processors under the CQ, CTA and Nasdaq/UTP Plans. 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 CBSX Trading Permit Holders, and permits them to redistribute the data to their customers.

Permit Holder or a non-CBSX 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 Section 6(b)(4) of the Act⁶ in that it provides for the equitable allocation of reasonable dues, fees and other charges among CBSX 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. For example, the proposed direct connect fee of \$500 per connection per month and per user fee of \$25 per month compares favorably to the fees Nasdaq and NYSE charge for similar market data products. Nasdaq charges distributors of its "Nasdaq Basic" data feed a monthly fee of \$1,500 per firm and charges each professional subscriber a per

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4).

⁷ 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78f(b)(8).

subscriber monthly charge of \$10 for Nasdaq-listed stocks, \$5 for NYSE-listed stocks, and \$5 for Amex-listed stocks.⁹ Like the BBO Data Feed, the Nasdaq Basic data feed includes best bid and offer data and last sale data as well as other market data. NYSE charges a monthly fee of \$1,500 for the receipt of access to the “NYSE BBO” data feed plus \$15 per month per professional subscriber and \$5 per month per non-professional subscriber. The NYSE BBO data feed provides best bid and offer information for NYSE-traded securities¹⁰

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. CBSX 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 CBSX 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. CBSX competes for order flow with the other national securities

⁹ See, Securities Exchange Act Release No. 59933 (May 15, 2009), 74 FR 24889 (May 26, 2009) and <http://www.nasdaqtrader.com>. Nasdaq charges each non-professional subscriber to Nasdaq Basic a per subscriber monthly charge of \$0.50 for Nasdaq-listed stocks, \$0.25 for NYSE-listed stocks, and \$0.25 for Amex-listed stocks.

¹⁰ See, Securities Exchange Act Release No. 62181 (May 26, 2010), 75 FR 31488 (June 3, 2010) and <http://www.nyxdata.com>.

exchanges that currently trade equities, with electronic communication networks (“ECNs”) and with other trading platforms.

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 included in the CQ, CTA and Nasdaq/UTP data feeds. The CQ, CTA and Nasdaq/UTP data feeds are widely distributed and relatively inexpensive, thus constraining CBOE’s ability to price the BBO Data Feed. In this respect, the CQ, CTA and Nasdaq/UTP data feeds, which include CBSX’s transaction information, are significant alternatives to the BBO Data Feed product.

Further, the various self-regulatory organizations, ECNs and the several Trade Reporting Facilities of FINRA that produce proprietary data are sources of competition for MDX. As noted above, Nasdaq and NYSE offer market data products that compete with the BBO Data Feed. In addition, the Exchange believes other 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 CBSX, thereby improving CBSX's ability to compete in the market for 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 Act¹¹ and subparagraph (f)(2) of Rule 19b-4¹² 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.

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 C.F.R. 240.19b-4(f)(2). [sic]

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-2011-018 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-2011-018. 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 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-2011-018, 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.¹³

Cathy H. Ahn
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).