

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69399; File No. SR- CBOE-2013-039)

April 18, 2013

Self-Regulatory Organizations; NYSE Arca, Inc.; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Fees for the BBO Data Feed for Securities Traded on the CBOE Stock Exchange

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 April 5, 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, for the BBO Data Feed (“CBSX BBO Data Feed” or “Data”) for securities traded on the CBOE Stock Exchange (“CBSX”). 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 purpose of the proposed rule change is to amend the fees charged by MDX for the CBSX BBO Data Feed and to make a few clarifying changes to the MDX fee schedule.³ CBSX is CBOE’s stock trading facility.

The CBSX BBO Data Feed is a real-time, low latency data feed that includes CBSX “BBO data” and last sale data.⁴ 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. The BBO and last sale data contained in the CBSX BBO Data Feed is

³ The CBSX BBO Data Feed and the fees charged by MDX for the CBSX BBO Data Feed were established in March 2011. See Securities Exchange Act Release No. 63998 (March 1, 2011), 76 FR 12384 (March 7, 2011).

⁴ The CBSX BBO Data Feed 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.

identical to the data that CBOE sends to the processors under the CQ, CTA and Nasdaq/UTP Plans for redistribution to the public.⁵

The CBSX BBO Data Feed also 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 contracts at the BBO, and All-or-None contingency orders priced better than or equal to the BBO.

MDX currently charges Customers a “direct connect fee” of \$500 per connection per month and a “per user fee” of \$25 per month per “Authorized User” or “Device” for receipt of the CBSX BBO Data Feed by Subscribers.⁶ Either a CBSX Trading Permit Holder or a non-CBSX Trading Permit Holder may be a Customer. All Customers are assessed the same fees.

The Exchange proposes to eliminate both the direct connect fee and the per user fee and replace them with a “data fee”, payable by a Customer, of \$500 per month for internal use and external redistribution of the CBSX BBO Data Feed. A “Customer” is any entity that receives the CBSX BBO Data Feed 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 then distributes it internally and/or externally. The data fee would entitle a Customer to

⁵ The Exchange notes that MDX makes available to Customers the BBO data and last sale data that is included in the CBSX 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. A “Customer” is any entity that receives the CBSX 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 CBSX BBO Data Feed from a Customer for its own internal use.

⁶ 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 CBSX 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.

provide the CBSX BBO Data Feed to an unlimited number of internal users and Devices within the Customer. The data fee would also entitle a Customer to distribute externally the CBSX BBO Data Feed to other Customers. A Customer receiving the CBSX BBO Data Feed from another Customer would be assessed the data fee by MDX and would be entitled to distribute the Data internally and/or externally.⁷ All Customers would have the same rights to utilize the Data (i.e., distribute the Data internally and/or externally) as long as the Customer has entered into an agreement with MDX for the Data and pays the data fee. Either a CBSX Trading Permit Holder or a non-CBSX Trading Permit Holder may be a Customer.

The Exchange also proposes to make a few clarifying changes to the MDX fee schedule. The Exchange proposes to create a separate Definitions section on the fee schedule. The Exchange proposes to clarify that MDX will not charge the data fee for any calendar month in which a Customer commences receipt of Data after the 15th day of the month or discontinues receipt of the Data before the 15th day of the month. The Exchange also proposes to include in the MDX fee schedule provisions relating to invoicing and late payments. Lastly, the Exchange proposes to remove the definition of per user fee from the MDX fee schedule consistent with the elimination of that fee.

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")⁸ in general, and, in particular, with

⁷ A Customer may choose to receive the Data from another Customer rather than directly from MDX's system because it does not want to or is not equipped to manage the technology necessary to establish a direct connection to MDX.

⁸ 15 U.S.C. 78f(b).

Section 6(b)(4) of the Act⁹ 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)¹⁰ of the Act in that it is not designed to permit unfair discrimination between them. The Exchange believes the proposed fee is equitable and not unfairly discriminatory because it would apply equally to all Customers. All Customers would have the same rights to utilize the Data (i.e., distribute the Data internally and/or externally) as long as the Customer has entered into an agreement with MDX for the Data and pays the data fee.

The Exchange believes the proposed fee is reasonable because it compares favorably to fees that other markets charge for similar products. For example, the Exchange believes Nasdaq charges distributors of its “Nasdaq Basic” data feed a monthly fee of \$1,500 per firm for either internal or external distribution or both and charges each professional subscriber a per subscriber monthly charge of \$10 for Nasdaq-listed stocks, \$5 for NYSE-listed stocks, and \$5 for Amex-listed stocks.¹¹ Like the CBSX BBO Data Feed, the Nasdaq Basic data feed includes best bid and offer data and last sale data as well as other market data. The Exchange believes the 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 securities.¹² The Exchange notes that the CBSX BBO Data Feed also competes with products offered by the

⁹ 15 U.S.C. 78f(b)(4).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ See Nasdaq Rule 7047 and <http://www.nasdaqtrader.com>. The Exchange believes 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.

¹² See <http://www.nyxdata.com>.

NYSE entitled NYSE Arca BBO and NYSE MKT BBO that include top-of-book data and NYSE Arca Trades and NYSE MKT Trades that include last sale data similar to the data in the CBSX BBO Data Feed.¹³ As noted above, the CBSX BBO Data Feed also includes totals of customer versus non-customer contracts at the BBO, and All-or-None contingency orders priced better than or equal to the BBO.

For the reasons cited above, the Exchange believes the proposed fee for the CBSX BBO Data Feed 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 terms and fee for the CBSX 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 the purposes of the Act. To the contrary, the market for orders and executions is already highly competitive and the Exchange's proposal is itself pro-competitive as described below.

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. 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

¹³ Id.

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

CBOE is constrained in pricing the CBSX BBO Data Feed by the availability to market participants of alternatives to purchasing the CBSX BBO Data Feed. CBOE must consider the extent to which market participants would choose one or more alternatives instead of purchasing CBSX’s data. For example, the BBO data and last sale data available in the CBSX 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 CBSX 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 CBSX BBO Data Feed.

Further, the various self-regulatory organizations, ECNs and the several Trade Reporting Facilities of FINRA that produce proprietary data are sources of potential competition for MDX. As noted above, Nasdaq and NYSE offer market data products that compete with the CBSX 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.

The Exchange believes that the CBSX 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

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)(ii) of the Act.¹⁴ 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 shall institute proceedings to determine whether the proposed rule 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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR- CBOE-2013-039 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-2013-039. 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

¹⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

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 such 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 publicly available. All submissions should refer to File Number SR-CBOE-2013-039 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.¹⁵

Kevin M. O'Neill
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).