

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69438; File No. SR- CBOE-2013-037)

April 23, 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 BBO 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 April 16, 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 for CBOE listed options (“BBO 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 purpose of the proposed rule change is to amend the fees charged by MDX for the BBO Data Feed and to make several clarifying changes to the MDX fee schedule.³ The BBO Data Feed is a real-time, low latency data feed that includes CBOE “BBO data” and last sale data.⁴ The BBO and last sale data contained in the BBO Data Feed is identical to the data that CBOE sends to the Options Price Reporting Authority (“OPRA”) for redistribution to the public.⁵

The BBO Data Feed also includes certain data that is not included in the data sent to OPRA, namely, (i) totals of customer versus non-customer contracts at the BBO, (ii) All-or-None contingency orders priced better than or equal to the BBO, (iii) BBO data and last sale data for complex strategies (e.g., spreads, straddles, buy-writes, etc.) (“Spread Data”), (iv) BBO data and last sale data for Flexible Exchange (“FLEX”) options traded on the CBOE FLEX Hybrid

³ The BBO Data Feed and the fees charged by MDX for the BBO Data Feed were established in March 2011. See Securities Exchange Act Release No. 63997 (March 1, 2011), 76 FR 12388 (March 7, 2011).

⁴ The 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.

⁵ 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 OPRA. 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.

Trading System, including BBO data and last sale data for FLEX complex strategies (collectively, “FLEX BBO data”), and (v) expected opening price (“EOP”) and expected opening size (“EOS”) information that is disseminated prior to the opening of the market and during trading rotations (collectively, “EOP/EOS data”).⁶

MDX currently charges Customers a “direct connect fee” of \$3,500 per connection per month and a “per user fee” of \$25 per month per “Authorized User” or “Device” for receipt of the BBO Data Feed by Subscribers.⁷ Either a CBOE Trading Permit Holder or a non-CBOE 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 \$5,000 per month for internal use and external redistribution of the BBO Data Feed. A “Customer” is any entity that receives the 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 provide the 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 BBO Data Feed to other Customers. A Customer receiving the BBO Data Feed from another Customer would be

⁶ The Exchange identified the inclusion of FLEX BBO data and EOP/EOS data in the BBO Data Feed in a proposed rule change filed in January 2013. See Securities Exchange Act Release No. 68696 (January 18, 2013), 78 FR 5527 (January 25, 2013). MDX also makes the FLEX BBO data available as a separate data feed at no charge to any Customer that wishes to subscribe to only that data. EOP/EOS data is not offered separate from the BBO Data Feed.

⁷ 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.

assessed the data fee by MDX and would be entitled to distribute the Data internally and/or externally.⁸ 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 CBOE Trading Permit Holder or a non-CBOE Trading Permit Holder may be a Customer.

The Exchange also proposes to make several clarifying changes to the MDX fee schedule. MDX charges Customers a monthly fee of \$500 for each port connection to MDX to receive the BBO Data Feed (“Port Fee”).⁹ The Exchange proposes to move the Port Fee into a new section of the MDX fee schedule called Systems Fees. The Exchange proposes to add a description of the Port Fee to the Definitions section of the MDX fee schedule. The Exchange proposes to reflect on the MDX fee schedule that there are no data fees for the FLEX BBO data feed. The Exchange proposes to clarify that MDX will not charge the data fee or the Port 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.

The proposed fee change is to take effect on May 1, 2013.

⁸ 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. In addition, a Customer is not subject to the MDX Port Fee if it does not establish a port connection to an MDX server.

⁹ See Securities Exchange Act Release No. 66486 (February 28, 2012), 77 FR 13166 (March 5, 2012).

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")¹⁰ in general, and, in particular, with Section 6(b)(4) of the Act¹¹ 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)¹² of the Act in that it is not designed to permit unfair discrimination between them. The Exchange believes the proposed data 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 OMX PHLX charges Internal Distributors a monthly fee of \$4,000 per organization and External Distributors a monthly fee of \$5,000 per organization for its "TOPO Plus Orders" data feed, which like the BBO Data Feed includes top-of-book data (including orders, quotes and trades) and other market data. The International Securities Exchange offers a "Top Quote Feed", which includes top-of-book data, and a separate "Spread Feed", which like the BBO Data Feed includes order and quote data for complex strategies. The Exchange believes ISE charges distributors of its Top Quote Feed a base monthly fee of \$3,000 and distributors of its Spread Feed a base monthly fee of \$3,000. The Exchange notes that the BBO Data Feed also competes with products offered by the NYSE entitled NYSE ArcaBook for Amex Options and NYSE ArcaBook for Arca Options that include top-of-book and last sale data similar to the data in the

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4).

¹² 15 U.S.C. 78f(b)(5).

BBO Data Feed. As noted above, the BBO Data Feed also includes FLEX BBO and EOP/EOS data as well as other data.

For the reasons cited above, the Exchange believes the proposed fee for the 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 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 options 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. 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 ten options exchanges (including CBOE's

affiliate, C2 Options Exchange) for order flow.¹³

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 OPRA data feed. The OPRA data is widely distributed and relatively inexpensive, thus constraining CBOE's ability to price the BBO Data Feed. In this respect, the OPRA data feed, which includes the exchange's transaction information, is a significant alternative to the BBO Data Feed product.

Further, other options exchanges can and have produced their own top-of-book products, and thus are sources of potential competition for MDX. As noted above, NASDAQ OMX PHLX, ISE and NYSE offer market data products that compete with the BBO Data Feed. In addition, the Exchange believes other options exchanges may currently offer top-of-book market data products for a fee or for free.

The Exchange believes that the BBO 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.

¹³ 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).

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-2013-037 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-2013-037. 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-2013-037 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

Elizabeth M. Murphy
Secretary

¹⁵ 17 CFR 200.30-3(a)(12).