

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-80286; File No. SR-CBOE-2017-022)

March 21, 2017

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the MDX Fees Schedule

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 March 14, 2017, 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 user fees for the Complex Order Book (“COB”) Data Feed. 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 proposed rule change. The text of these statements may be examined at the places specified in

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to make a number of changes to the Fees Schedule of the Exchange’s affiliate Market Data Express, LLC (“MDX”).³ The purpose of the proposed rule change is to amend user fees for the Best Bid and Offer (“BBO”) data feed. This data feed is made available by MDX.

BBO Data Feed

The BBO Data Feed is a real-time data feed that includes the following information: i) outstanding quotes and standing orders at the best available price level on each side of the market; ii) executed trades time, size, and price; iii) totals of customer versus non-customer contracts at the BBO; iv) all-or-none contingency orders priced better than or equal to the BBO; v) expected opening price and expected opening size; vi) end-of-day summaries by product, including open, high, low, and closing price during the trading session; vi) recap messages any time there is a change in the open, high, low or last sale price of a listed option, vii) Complex Order Book (“COB”) information; and viii) product IDs and codes for all listed options contracts. The quote and last sale data contained in the BBO data feed is identical to the data sent to the Options Price Reporting Authority for redistribution to the public.

Background

³ The Exchange initially filed the proposed fee changes on March 1, 2017 (SR-CBOE-2017-020). On March 14, 2017, the Exchange withdrew that filing and submitted this filing.

The Floor Broker Workstation (“FBW”) is an order management tool used by CBOE Floor Brokers to handle orders on the trading floor of the Exchange. Through February 28, 2017, FBW was a third-party facility of the Exchange. CBOE made the BBO data feed available to Floor Brokers that used FBW at no cost, apart from the applicable FBW login fees (\$450 per login ID). Floor Brokers used the BBO Data Feed via FBW primarily to comply with customer priority obligations, such as those outlined in CBOE Rule 6.45 (as mentioned above, the BBO data includes customer contracts at the BBO). Floor Brokers who receive the BBO data feed via FBW (as a facility of CBOE) are not considered “Customers” of MDX to whom the BBO Data Fee applies (unless the Floor Broker has a separate market data agreement in place with MDX) and accordingly are not charged the BBO Data Fee.⁴

Fees

Prior to the beginning of trading on March 1, 2017, the Exchange will no longer offer FBWs to its Trading Permit Holders (“TPHs”) and will deactivate FBW logins on the trading floor.⁵ As of March 1, 2017, Floor Brokers will need another mechanism through which they may access the BBO Data Feed. The Exchange proposes to provide a reduced cost version of the BBO Data Feed if [sic] to Floor Brokers that elect to receive the feed through a third-party provided device so that they can meet their customer priority obligations.

⁴ A Customer is any person, company or other entity that, pursuant to a market data agreement with MDX, is entitled to receive data, either directly from MDX or through an authorized redistributor (i.e., a Customer or an extranet service provider), whether that data is distributed externally or used internally. Floor Brokers receiving the BBO Data Feed from CBOE via FBW do not receive the feed via an approved redistributor. The MDX fee schedule for CBOE data is located at <https://www.cboe.org/MDX/CSM/OBOOKMain.aspx>.

⁵ See CBOE Regulatory Circular RG16-195.

The Exchange is proposing a fee of \$100 per month, per Approved Third-Party Device, for Floor Broker Users accessing the BBO data feed on the Exchange floor. Floor Broker User fees are payable only for CBOE Floor Brokers accessing the BBO data feed via Approved Third-Party Devices for managing and executing orders on the CBOE trading floor. An “Approved Third-Party Device” means any computer, workstation or other item of equipment, fixed or portable, that receives, accesses and/or displays data in visual, audible or other form that has been provided by a third-party and that has been approved, by CBOE, for use on the CBOE trading floor. A “Floor Broker User” is a person or entity registered with CBOE as a floor broker pursuant to CBOE Rules. Floor Broker Users may directly interact with the CBOE Hybrid Order Handling System and view and manipulate data using their Approved Third-Party Devices, but not save, copy, export or transfer the data or any results of a manipulation to any other computer hardware, software or media, except for printing it to paper or other non-magnetic media.

In addition, the Exchange proposes to clarify the definition of Customer in the BBO section of the MDX Fee Schedule does not include a third-party vendor of an Approved Third-Party Device, as defined below, unless it has a market data agreement in place with MDX.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁶ Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,⁷ which

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4).

requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities. The Exchange also believes the proposed rule change is consistent with the Section 6(b)(5)⁸ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the proposed Floor Broker User Fee is equitable and not unfairly discriminatory because it would apply equally to all Floor Brokers using Approved Third-Party Devices on the Exchange trading floor. Furthermore, the Exchange believes it is reasonable, equitable and not unfairly discriminatory to charge Floor Brokers more than “external” Display Only Service users, because, unlike those users, Floor Brokers use the BBO Data on the Exchange trading floor to manage and execute orders and directly interact with the Order Handling System. The Exchange believes it is reasonable, equitable and not unfairly discriminatory to charge Floor Brokers accessing the BBO data feed via Approved Third-Party Devices a fee of \$100 per month as opposed to the \$7000 per month fee for BBO Data Feed Customers because: 1) unlike BBO Data Feed Customers, Floor Broker Users may not save, copy, export or transfer the BBO data and; 2) unlike BBO Data Feed Customers, Floor Broker Users generally use the data for the limited purpose of meeting their order priority obligations (as opposed to using the data for proprietary trading activity). The Exchange believes the Floor Broker User Fees are reasonable because it will no longer collect a \$450 monthly fee for FBW, based on conversations with vendors of currently Approved Third-Party Devices, the Exchange believes the \$100 Floor Broker user fee plus the amount a Floor Broker pays the third party for

⁸ 15 U.S.C. 78f(b)(5).

use of an Approved Third-Party Device will be comparable to the previously assessed monthly FBW fees.

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. The proposed rule change will not have an impact on intramarket competition as the fee for BBO Data Feed via an Approved Third-Party Device will apply to all Floor Brokers equally who use Approved Third-Party Devices. Further, the proposed rule will not have an impact on intramarket competition because the amount a Floor Broker previously paid for FBW, which included the BBO Data Feed, is comparable to the amount it will pay for access to the BBO Data Feed through an Approved Third-Party Device plus the separate payment to the third-party vendor for use of the device.

The Exchange does not believe that the proposed change will cause any unnecessary burden on intermarket competition because the proposed change only affects trading on the Exchange's trading floor. To the extent that the proposed changes make the Exchange a more attractive marketplace for market participants at other exchanges, such market participants are welcome to become CBOE market participants.

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 Act⁹ and paragraph (f) of Rule 19b-4¹⁰ 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
- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-CBOE-2017-022 on the subject line.

Paper Comments:

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

All submissions should refer to File No. SR-CBOE-2017-022. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f).

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, DC 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 No. SR-CBOE-2017-022, 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.¹¹

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Assistant Secretary

¹¹ 17 CFR 200.30-3(a)(12).