

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-80470; File No. SR-CBOE-2017-030)

April 17, 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”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 3, 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 its MDX fees schedule. 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 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.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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”). The purpose of the proposed rule change is to amend 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

Fees for the BBO data feed are payable by all “Customers.” 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.<sup>3</sup> In addition to the BBO Data Fee assessed to Customers, the Exchange assesses reduced “user fees” for entities who access BBO data through a Display Only Service or as a Floor Broker User.

In March 2017, the Exchange adopted a fee of \$100 per month, per Approved Third-Party Device, for Floor Broker Users accessing the BBO data feed on the Exchange floor.<sup>4</sup> 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 Brokers use the BBO Data Feed 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 Approved Third Party Device 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. Additionally, a third-party vendor of an Approved Third-Party Device is not a Customer unless it has a market data agreement in place with MDX.

In addition to Floor Broker User Fees, the Exchange assesses User fees payable for external Display Only Service users (Devices or user IDs of Display Only Service users who

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<sup>3</sup> The MDX fee schedule for CBOE data is located at <https://www.cboe.org/MDX/CSM/OBOOKMain.aspx>.

<sup>4</sup> See Securities Exchange Act Release No. 80286 (March 21, 2017), 82 FR 15247 (March 27, 2015) (SR-CBOE-2017-022).

receive data from a Customer and are not employees or natural person independent contractors of the Customer, the Customer's affiliates or an authorized service facilitator). For the purpose of Display Only Service users, a "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.

#### Fee Cap

The Exchange is proposing Floor Broker User fees be subject to a monthly cap of \$1000 per Trading Permit Holder ("TPH") firm. The cap will limit the amount of Floor Broker User fees a TPH firm will pay in a calendar month to \$1000 in the event said TPH firm accesses the BBO data feed through more than 10 Approved Third-Party Devices. As Floor Broker Users are using the BBO data primarily to meet their priority obligations (and not for proprietary trading purposes), the Exchange believes it is appropriate to limit the amount of Floor Broker User fees to be assessed to a TPH firm.

By way of example, if a TPH firm accesses the BBO data feed through 14 Approved Third-Party Devices, said TPH firm would currently be assessed Floor Broker User fees of \$1400 per month (14 Approved Third-Party Devices x \$100 per Approved Third-Party Device=\$1400). Under the proposed cap, the same TPH firm accessing the BBO data feed through 14 Approved Third-Party Devices would be assessed Floor Broker User fees of \$1000 per month (14 Approved Third-Party Devices x \$100 per Approved Third-Party Device (subject to a monthly cap of \$1000 per TPH firm)=\$1000).

#### Additional MDX Fee Schedule Updates

The Exchange is proposing a number of additional updates to the MDX fee schedule to clarify certain items as they relate to Floor Broker User fees or User fees for Display Only Users.

First, the Exchange is specifying that a Floor Broker User, as defined below, is not a Customer unless it has a market data agreement in place with MDX. In addition, the Exchange is changing the name of “User fees” payable for external Display Only Service Users to “Display Only User fees” in order to reduce confusion with the BBO Data fee or Floor Broker User fees. Finally, the Exchange is deleting language on the MDX schedule stating that “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”. The Exchange believes that, as outlined above, “Floor Broker Users” and “Approved Third-Party Devices” are adequately defined elsewhere in the MDX fee schedule. The Exchange does not believe the deleted language is necessary to further clarify or limit what a Floor Broker User may or may not do with the BBO data it receives via Approved Third-Party Device.

#### Display Only User and Floor Broker User Fee Reporting

In addition to the clarifications above, the Exchange is adding language to the MDX schedule to explain the reporting process used to determine applicable Display Only User fees and Floor Broker User fees. With regard to the Display Only User fees, the proposed language states, “Customers who distribute BBO Data to external users via a Display Only service must report to MDX the number of authorized external devices that receive BBO data from the Customer during a calendar month within 15 days after such month in the manner and format specified by MDX from time to time to determine applicable fees.” With regard to the Floor Broker User fees, the proposed language states, “Third-party vendors who distribute BBO Data to Floor Broker Users via Approved Third-Party Devices must report to MDX the number of

Approved Third-Party Devices that receive BBO data from such third party vendor during a calendar month within 15 days after such month in the manner and format specified by MDX from time to time to determine applicable fees.” Including the reporting processes used to determine applicable Display Only User fees and Floor Broker User fees on the MDX fee schedule will provide greater clarity to both Customers who provide Display Only Services to users and third-party vendors of Approved Third-Party Devices. Furthermore, including the reporting processes will ensure the Exchange accurately charges fees for these services.

## 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.<sup>5</sup> Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>6</sup> which 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)<sup>7</sup> 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 cap is equitable and not unfairly discriminatory because it would apply equally to all TPH firms using Approved Third-Party Devices on the Exchange trading floor. Furthermore, the Exchange believes it is reasonable, equitable and not unfairly discriminatory to cap Floor Broker User Fees because

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<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(4).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

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 additional updates to the MDX fee schedule related to further defining Floor Broker users and the reporting obligations of Customers and third-party vendors of Approved Third Party Devices are designed to add clarity and reduce confusion related to the BBO Data Feed and will therefore lead to the equitable allocation of reasonable dues, fees, and other charges among its TPHs and other persons using its facilities.

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 fee cap on Floor Broker User Fees will not have an impact on intramarket competition as it will apply to all TPH firms equally who use more than 10 Approved Third-Party Devices. The other clarifications made to the fee schedule related to further defining Floor Broker users and the reporting obligations of Customers and third-party vendors of Approved Third Party Devices will not have an impact on intramarket competition as they are non-substantive and only designed to add clarity to the fee schedule and reduce confusion among TPHs and other persons accessing the BBO data feed.

Furthermore, the Exchange does not believe that the proposed fee cap 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 Act<sup>8</sup> and paragraph (f) of Rule 19b-4<sup>9</sup> 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](mailto:rule-comments@sec.gov). Please include File No. SR-CBOE-2017-030 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.

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f).



All submissions should refer to File No. SR-CBOE-2017-030. 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, 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-2017-030, 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.<sup>10</sup>

Brent J. Fields  
Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).