

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-82650; File No. SR-CBOE-2018-013)

February 7, 2018

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Market Data Fees

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 January 30, 2018, Cboe Exchange, Inc. (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

The Exchange proposes to amend the Cboe Data Services (“CDS”) fee schedule to increase the fees for the BBO, Book Depth, and Complex Order Book (“COB”) data feeds.

The text of the proposed rule change is also 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the CDS fee schedule to increase the fees for the BBO, Book Depth, and COB data feeds.

BBO and Book Depth 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 best bid and offer (“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) 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 (“OPRA”) for redistribution to the public.

The Book Depth Data Feed is a real-time, low latency data feed that includes all data contained in the BBO Data Feed described above plus outstanding quotes and standing orders up to the first four price levels on each side of the market, with aggregate size (“Book Depth”).

CDS currently charges a Data Fee, payable by a Customer, of \$7,000 per month for internal use and external redistribution of the BBO and/or Book Depth data feeds.³ The Data Fee

³ A BBO Data Feed “Customer” is any person, company or other entity that, pursuant to a

entitles a Customer to provide the BBO and/or the Book Depth data feed to an unlimited number of internal users and Devices⁴ within the Customer. A Customer receiving the BBO and/or Book Depth data feeds from another Customer is assessed the Data Fee by CDS pursuant to its own market data agreement with CDS, and is entitled to use the Data internally and/or distribute it externally⁵. All Customers have the same rights to utilize the data internally and/or distribute it externally as long as the Customer has entered into a written agreement with CDS for the data and pays the Data Fee.

The Exchange proposes to increase the Data Fee for both the BBO and Book Depth data feeds from \$7,000 per month to \$9,000 per month.⁶ The Exchange is not proposing to amend the User Fee for either the BBO or Book Depth data feeds. The Data Fee for the Book Depth data feed will continue to be waived for Customers who also purchase the companion BBO data feed.⁷

market data agreement with CDS, is entitled to receive data, either directly from CDS or through an authorized redistributor (i.e., a Customer or an extranet service provider), whether that data is distributed externally or used internally. The CDS fee schedule for Exchange data is located at https://www.cboe.org/general-info/pdf/framed?content=/publish/mdxfees/cboe-cds-fees-schedule-for-cboe-datafeeds.pdf§ion=SEC_MD_X_CSM&title=Cboe%20CDS%20Fees%20Schedule.

⁴ 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.

⁵ A Customer may choose to receive the data from another Customer rather than directly from CDS’s system because it does not want to or is not equipped to manage the technology necessary to establish a direct connection to CDS.

⁶ The Exchange also proposes to amend the first column of the BBO Data Feed fees to identify Cboe as “Cboe Options” to be consistent with the Depth Book and COB data feed fee descriptions.

⁷ Such COB Data Feed Customers are still subject to User Fees.

COB Data Feed

The COB Data Feed is a real-time data feed that includes data regarding the Exchange's Complex Order Book and related complex order information. The COB Data Feed contains the following information for all Exchange-traded complex order strategies (multi-leg strategies such as spreads, straddles and buy-writes): (i) outstanding quotes and standing orders on each side of the market with aggregate size, (ii) data with respect to executed trades ("last sale data"), and (iii) totals of customer versus non-customer contracts.

CDS currently charges Customers⁸ of the COB Data Feed a Data Fee of \$100 per month plus applicable User Fees. The Exchange now proposes to increase the Data Fee for the COB data feed from \$100 to \$3,000 per month. The Exchange notes that it had previously charged a Data Fee of \$3,000 per month for the COB Feed⁹ and later reduced that fee to its current rate to incentive further redistribution of the data feed.¹⁰ The Exchange now proposes to return the fee for the COB data feed to its original rate to bring the cost of the data feed in line with that of similar data feeds offered by other exchanges. The Exchange is not proposing to amend the User Fee for either the COB data feed. The Data Fee for the COB Data Feed would continue to be waived for Customers of the BBO and/or Book Depth data feeds.¹¹

⁸ A Customer is any person, company or other entity that, pursuant to a market data agreement with CDS, is entitled to receive data, either directly from CDS or through an authorized redistributor (i.e., a Customer or an extranet service provider), whether that data is distributed externally or used internally. The CDS fee schedule for Exchange data is located at https://www.cboe.org/general-info/pdf/framed?content=/publish/mdxfees/cboe-cds-fees-schedule-for-cboe-datafeeds.pdf§ion=SEC_MDX_CSM&title=Cboe%20CDS%20Fees%20Schedule.

⁹ See Securities Exchange Act Release No. 70683 (October 15, 2013), 78 FR 62798 (October 22, 2013) (SR-CBOE-2013-087).

¹⁰ See Securities Exchange Act Release No. 73955 (December 30, 2014), 80 FR 598 (January 6, 2015) (SR-CBOE-2014-094).

¹¹ Such COB Data Feed Customers are still subject to User Fees.

Implementation Date

The Exchange intends to implement the proposed fees on February 1, 2018.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,¹² in general, and furthers the objectives of Section 6(b)(4),¹³ in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other recipients of Exchange data. The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all recipients of Exchange data. The Exchange believes the proposed fees are competitive with those charged by other venues and, therefore, reasonable and equitably allocated to recipients.

The Exchange believes that the proposed rule change is consistent with Section 11(A) of the Act¹⁴ in that it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Furthermore, the proposed rule change is consistent with Rule 603 of Regulation NMS,¹⁵ which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the

¹² 15 U.S.C. 78f.

¹³ 15 U.S.C. 78f(b)(4).

¹⁴ 15 U.S.C. 78k-1.

¹⁵ 17 CFR 242.603.

amount of data available to consumers, and also spur innovation and competition for the provision of market data.

In addition, the proposed fees would not permit unfair discrimination because all of the Exchange's customers and market data vendors who subscribe to the above data feeds will be subject to the proposed fees. The above data feeds are distributed and purchased on a voluntary basis, in that neither the Exchange nor market data distributors are required by any rule or regulation purchase this data or to make this data available. Accordingly, distributors and users can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. Firms have a wide variety of alternative market data products from which to choose, such as similar proprietary data products offered by other exchanges and consolidated data. Moreover, the Exchange is not required to make any proprietary data products available or to offer any specific pricing alternatives to any customers.

In addition, the fees that are the subject of this rule filing are constrained by competition. As explained below in the Exchange's Statement on Burden on Competition, the existence of alternatives to the above data feeds further ensure that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect such alternatives. That is, the Exchange competes with other exchanges (and their affiliates) that provide similar market data products. For example, the above data feeds provide investors with alternative market data and competes with similar market data product currently offered by other exchanges. If another exchange (or its affiliate) were to charge less to distribute its similar product than the Exchange charges for the above data feeds, prospective users likely would not subscribe to, or would cease subscribing to either market data product.

The Exchange notes that the Commission is not required to undertake a cost-of-service or

rate-making approach. The Exchange believes that, even if it were possible as a matter of economic theory, cost-based pricing for non-core market data would be so complicated that it could not be done practically.¹⁶

BBO Data Feed

The Exchange believes the proposed increase in the Data Fee for BBO data is equitable and not unfairly discriminatory because it would apply equally to all Customers. The Exchange believes the proposed Data Fee is reasonable because it compares favorably to fees that other markets charge for similar products. For example, Nasdaq PHLX LLC (“PHLX”) charges Internal Distributors a monthly fee of \$4,500 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

¹⁶ The Exchange believes that cost-based pricing would be impractical because it would create enormous administrative burdens for all parties, including the Commission, to cost-regulate a large number of participants and standardize and analyze extraordinary amounts of information, accounts, and reports. In addition, it is impossible to regulate market data prices in isolation from prices charged by markets for other services that are joint products. Cost-based rate regulation would also lead to litigation and may distort incentives, including those to minimize costs and to innovate, leading to further waste. Under cost-based pricing, the Commission would be burdened with determining a fair rate of return, and the industry could experience frequent rate increases based on escalating expense levels. Even in industries historically subject to utility regulation, cost-based ratemaking has been discredited. As such, the Exchange believes that cost-based ratemaking would be inappropriate for proprietary market data and inconsistent with Congress’s direction that the Commission use its authority to foster the development of the national market system, and that market forces will continue to provide appropriate pricing discipline. See Appendix C to NYSE’s comments to the Commission’s 2000 Concept Release on the Regulation of Market Information Fees and Revenues, which can be found on the Commission’s website at <http://www.sec.gov/rules/concept/s72899/buck1.htm>. See also Securities Exchange Act Release No. 73816 (December 11, 2014), 79 FR 75200 (December 17, 2014) (SR-NYSE-2014-64) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish an Access Fee for the NYSE Best Quote and Trades Data Feed, Operative December 1, 2014).

data.¹⁷ Nasdaq ISE, LLC (“ISE”) 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. 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 \$3,000¹⁸ (totally \$6,000 in the aggregate to receive the same data as offered by the BBO feed). The Exchange believes the proposed rate is reasonable based on the value of the market data included in the BBO feed and the market share that the data represents. The Exchange also notes that Customers who receive the BBO feed may also receive the Book Depth and COB data feeds at no extra charge.

Book Depth Data Feed

The Exchange believes the proposed Data Fee for the Book Depth Data Feed is equitable and not unfairly discriminatory because it would apply equally to all Customers. The Exchange believes the proposed Data Fee is reasonable because it compares favorably to fees that other markets charge for similar products. For example, PHLX charges Internal Distributors a monthly fee of \$4,000 and External Distributors a monthly fee of a \$4,500 for its Depth data feed that includes full depth of quotes and orders and last sale data for options listed on PHLX.¹⁹ In addition, ISE charges a \$5,000 per month distributor fee for its Real-time Depth of Market data feed.²⁰ The Exchange also notes that Customers who receive the Book Depth feed may also receive the BBO and COB data feeds at no extra charge. The Exchange believes the proposed rate is reasonable based on the value of the market data included in the BBO feed and the market share that the data represents.

¹⁷ See Section IX of the PHLX Pricing Schedule (setting forth the fees for proprietary market data).

¹⁸ See Sections VIII(h) and (I) of the Nasdaq ISE Schedule of Fees.

¹⁹ See *supra* note 17.

²⁰ See Section VIII(f) of the Nasdaq ISE Schedule of Fees.

COB Data Feed

The Exchange believes the proposed Data Fee for the COB Data Feed is equitable, reasonable, and not unfairly discriminatory because they would apply equally to all Customers of the COB Data Feed. The Exchange notes that it had previously charged a Data Fee of \$3,000 per month for the COB Feed²¹ and later reduced that fee to its current rate to incentive further redistribution of the data feed.²² The Exchange now proposes to return the fee for the COB data feed to its original rate to bring the cost of the data feed in line with that of similar data feeds offered by other exchanges. For example, ISE charges distributors of its Spread Feed a base monthly fee of \$3,000,²³ equal to what the Exchange proposes to charge for the COB data feed. The Exchange also notes that Customers who receive the BBO and Book Depth feeds may also receive the COB data feed at no extra charge. The Exchange believes the proposed rate is reasonable based on the value of the market data included in the COB feed and the market share that the data represents.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The Exchange's ability to price the BBO, Book Depth, and COB data feeds is constrained by: (i) competition among exchanges that compete with each other in a variety of dimensions; (ii) the existence of inexpensive real-time consolidated data and market-specific data and free delayed data; and (iii) the inherent contestability of the market for proprietary data.

²¹ See Securities Exchange Act Release No. 70683 (October 15, 2013), 78 FR 62798 (October 22, 2013) (SR-CBOE-2013-087).

²² See Securities Exchange Act Release No. 73955 (December 30, 2014), 80 FR 598 (January 6, 2015) (SR-CBOE-2014-094).

²³ See Sections VIII(I) of the Nasdaq ISE Schedule of Fees.

An exchange's ability to price its proprietary data feed products is constrained by (1) the existence of actual competition for the sale of such data, (2) the joint product nature of exchange platforms, and (3) the existence of alternatives to proprietary data.

The Existence of Actual Competition. The Exchange believes competition provides an effective constraint on the market data fees that the Exchange, through CDS, has the ability and the incentive to charge. The Exchange 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 the Exchange 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 the Exchange 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. The Exchange currently competes with fourteen options exchanges (including its affiliate, C2) for order flow.²⁴

In addition, in the case of products that are distributed through market data vendors, the market data vendors themselves provide additional price discipline for proprietary data products because they control the primary means of access to certain end users. These vendors impose price discipline based upon their business models. For example, vendors that assess a surcharge on data they sell are able to refuse to offer proprietary products that their end users do not or will not purchase in sufficient numbers. Internet portals, such as Google, impose price discipline by

²⁴ 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).

providing only data that they believe will enable them to attract “eyeballs” that contribute to their advertising revenue. Similarly, Customers will not offer the BBO, Book Depth or COB Data Feeds unless these products will help them maintain current users or attract new ones. For example, a broker-dealer will not choose to offer the BBO, Book Depth or COB Data Feeds to its retail customers unless the broker-dealer believes that the retail customers will use and value the data and the provision of such data will help the broker-dealer maintain the customer relationship, which allows the broker-dealer to generate profits for itself. Professional users will not request any of these feeds from Customers unless they can use the data for profit-generating purposes in their businesses. All of these operate as constraints on pricing proprietary data products.

Joint Product Nature of Exchange Platform. Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade executions are a paradigmatic example of joint products with joint costs. The decision whether and on which platform to post an order will depend on the attributes of the platforms where the order can be posted, including the execution fees, data quality, and price and distribution of their data products. The more trade executions a platform does, the more valuable its market data products become. The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange’s transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs. Moreover, an exchange’s broker-dealer customers view the costs of transaction executions and market data as a unified cost of doing business with the exchange.

Analyzing the cost of market data product production and distribution in isolation from the cost of all of the inputs supporting the creation of market data and market data products will inevitably underestimate the cost of the data and data products. Thus, because it is impossible to obtain the data inputs to create market data products without a fast, technologically robust, and well-regulated execution system, system costs and regulatory costs affect the price of both obtaining the market data itself and creating and distributing market data products. It would be equally misleading, however, to attribute all of an exchange's costs to the market data portion of an exchange's joint products. Rather, all of an exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

The level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including 15 options self-regulatory organization ("SRO") markets, as well as internalizing broker-dealers ("BDs") and various forms of alternative trading systems ("ATs"), including dark pools and electronic communication networks ("ECNs"). Competition among trading platforms can be expected to constrain the aggregate return that each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. For example, some platforms may choose to pay rebates to attract orders, charge relatively low prices for market data products (or provide market data products free of charge), and charge relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower rebates (or no rebates) to attract orders, setting relatively high prices for market data products, and setting relatively low prices for accessing

posted liquidity. In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering.

The Existence of Alternatives. The Exchange is constrained in pricing the BBO, Book Depth and COB Data Feeds by the availability to market participants of alternatives to purchasing these products. The Exchange must consider the extent to which market participants would choose one or more alternatives instead of purchasing the exchange's data. Other options exchanges can and have produced their own top-of-book, book depth and complex strategies market data products, and thus are sources of potential competition for CDS. For example, as noted above, ISE and PHLX offer market data products that compete with the BBO, Book Depth and COB Data Feeds. The large number of SROs, BDs, and ATSS that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, ATS, and BD is currently permitted to produce proprietary data products, and many currently do. In addition, the OPRA data feed is a significant competitive alternative to the BBO and last sale data included in the BBO and Book Depth Data Feeds.

The existence of numerous alternatives to the Exchange's products, including proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if its cost to purchase is not justified by the returns any particular vendor or subscriber would achieve through the purchase.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written 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 Act²⁵ and paragraph (f) of Rule 19b-4²⁶ 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 Number SR-CBOE-2018-013 on the subject line.

²⁵ 15 U.S.C. 78s(b)(3)(A).

²⁶ 17 CFR 240.19b-4(f).

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 Number SR-CBOE-2018-013. 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to

make available publicly. All submissions should refer to File Number SR-CBOE-2018-013 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.²⁷

Eduardo A. Aleman
Assistant Secretary

²⁷ 17 CFR 200.30-3(a)(12).