

Required fields are shown with yellow backgrounds and asterisks.

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No.* SR - 2016 - * 092

Amendment No. (req. for Amendments *)

Filing by Chicago Board Options Exchange

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *



Amendment *



Withdrawal



Section 19(b)(2) *



Section 19(b)(3)(A) *



Section 19(b)(3)(B) *



Rule

Pilot

Extension of Time Period
for Commission Action *

Date Expires *

☐ 19b-4(f)(1)☐ 19b-4(f)(4)☒ 19b-4(f)(2)☐ 19b-4(f)(5)☐ 19b-4(f)(3)☐ 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Security-Based Swap Submission pursuant
to the Securities Exchange Act of 1934

Section 806(e)(1) *



Section 806(e)(2) *



Section 3C(b)(2) *



Exhibit 2 Sent As Paper Document



Exhibit 3 Sent As Paper Document

**Description**

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Proposal to amend user fees for the Complex Order Book Data Feed.

Contact InformationProvide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization
prepared to respond to questions and comments on the action.

First Name * Jaime

Last Name * Galvan

Title * Lead Counsel

E-mail * galvanj@cboe.com

Telephone * (312) 786-7058

Fax

(312) 786-7919

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title *)

Date 12/19/2016

By Jaime Galvan

(Name *)

Lead Counsel

NOTE: Clicking the button at right will digitally sign and lock
this form. A digital signature is as legally binding as a physical
signature, and once signed, this form cannot be changed.

Persona Not Validated - 1455738708545,

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

Form 19b-4 Information *

Add Remove View

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

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Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

Add Remove View

Exhibit Sent As Paper Document

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

Add Remove View

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

Item 1. Text of the Proposed Rule Change

(a) 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 provided in Exhibit 5.

(b) Not applicable.

(c) Not applicable.

Item 2. Procedures of the Self-Regulatory Organization

(a) The Exchange’s President (or designee) pursuant to delegated authority approved the proposed rule change on December 19, 2016.

(b) Please refer questions and comments on the proposed rule change to Jaime Galvan, Lead Counsel, (312) 786-7058, Chicago Board Options Exchange, Incorporated, 400 South LaSalle, Chicago, Illinois 60605.

Item 3. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The purpose of the proposed rule change is to amend user fees for the COB Data Feed. This data feed is made available by CBOE’s affiliate Market Data Express, LLC (“MDX”). The Exchange proposes to make the following fee changes effective January 1, 2017.

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 CBOE-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.¹

Fees

MDX currently charges Customers² of the COB Data Feed a Data Fee of \$100 per month plus applicable User Fees (as described below). The Data Fee for the COB Data Feed is waived for Customers of the CBOE BBO and Book Depth Data Feeds.³

MDX charges a Customer User Fees of \$25 per month per Device⁴ or user ID for receipt of the data by “Professional Users”⁵. There is no charge for receipt of the data by “Non-Professional Users”⁶. User Fees are subject to a cap of \$2,000 per month (i.e., a Customer pays no more than \$2,000 in User Fees for a given month). The Exchange proposes to delete this fee cap from the MDX fee schedule for CBOE data.

¹ The data is made available during “Regular Trading Hours” as defined in CBOE Rule 1.1(qqq) and “Extended Trading Hours” as defined in CBOE Rule 1.1(rrr).

² 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. The MDX fee schedule for CBOE data is located at <https://www.cboe.org/MDX/CSM/OBOOKMain.aspx>.

³ Such COB Data Feed Customers are still subject to User Fees.

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 “Professional User” is any natural person recipient of Data who is not a Non-Professional User (as defined below). User Fees for Professional Users are payable for both “internal” Professional Users (Devices or user IDs of employees of a Customer) and “external” Professional Users (Devices or user IDs of Professional Users who receive the Data from a Customer and are not employed by the Customer). (Non-Professional Users must be external since a person who uses the COB Data Feed for a commercial purpose cannot be a Non-Professional User.)

⁶ A “Non-Professional User” is a natural person or qualifying trust that uses Data only for personal purposes and not for any commercial purpose and, for a natural person who works in the United States, is not: (i) registered or qualified in any capacity with the Securities and Exchange Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an “investment adviser” as that term is defined in Section 201(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt; or, for a natural person who works outside of the United States, does not perform the same functions as would disqualify such person as a Non-Professional User if he or she worked in the United States.

The Exchange also proposes to make a few clean-up changes to the MDX fee schedule for CBOE data, including removing a couple references to a January 1, 2016 effective date for prior fee changes and removing the \$1 per month User Fee for COB Data Feed Non-Professional Users, which was eliminated effective January 1, 2015.

(b) 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.⁷ Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,⁸ 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)⁹ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the proposal to delete the monthly cap on User Fees for receipt of the COB Data Feed is equitable and not unfairly discriminatory because it would apply equally to all Customers. The Exchange believes the User Fees, without a fee cap, are reasonable because they are similar to fees that other markets charge for similar products. For example, NYSE Arca charges \$20 per month to each Professional User and \$1 per month to each Non-Professional User for receipt of the Arcabook for Arca Options – Complex data feed. The Exchange believes NYSE Arca does not cap its

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4).

⁹ 15 U.S.C. 78f(b)(5).

user fees.¹⁰ Similarly, NYSE MKT charges \$20 per month to each Professional User and \$1 per month to each Non-Professional User for receipt of the Arcabook for Amex Options Options – Complex data feed. The Exchange believes NYSE MKT does not cap its user fees. The Exchange also believes removing the fee cap is reasonable in that it is not anticipated to materially affect the amount of User Fees any Customer pays.

The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition v. SEC*, 615 F.3d 525 (D.C. Cir. 2010), upheld reliance by the Securities and Exchange Commission (“Commission”) upon the existence of competitive market mechanisms to set reasonable and equitably allocated fees for proprietary market data:

In fact, the legislative history indicates that the Congress intended that the market system ‘evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed’ and that the SEC wield its regulatory power ‘in those situations where competition may not be sufficient,’ such as in the creation of a ‘consolidated transactional reporting system.’

Id. At 535 (quoting H.R. Rep. No. 94-229 at 92 (1975), as reprinted in 1975 U.S.C.C.A.N. 323). The court agreed with the Commission's conclusion that “Congress intended that ‘competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.’”¹¹

As explained below in the Exchange's Statement on Burden on Competition, the Exchange believes that the need to attract order flow from market participants provides an effective constraint on the market data fees that the Exchange, through MDX, has the ability and the incentive to charge. In addition, the existence of alternatives to this data product, such as proprietary data from other sources, as described below, further ensures

¹⁰ See NYSE Market Data Pricing Guide available at www.nyxdata.com/doc/241907.

¹¹ *NetCoalition*, 615 F.3d at 535 (Quoting Securities Exchange Act Release No. 59039 (December 9, 2008), 73 FR 74770 (December 9, 2008) at 74771).

that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can select such alternatives.

For the reasons cited above, the Exchange believes the proposed User Fees for receipt of the COB Data Feed are equitable, reasonable and not unfairly discriminatory. In addition, the Exchange believes that no substantial countervailing basis exists to support a finding that the proposed fees for the COB Data Feed fail to meet the requirements of the Act.

Item 4. 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.

An exchange's ability to price its proprietary market 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 the Exchange's proprietary data.

The Existence of Actual Competition. 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 thirteen options exchanges (including CBOE's affiliate, C2 Options Exchange) for order flow.¹²

In addition, in the case of products that are distributed through market data vendors, the 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. Similarly, Customers will not offer the COB Data Feed unless this product will help them maintain current users or attract new ones. For example, a broker-dealer will not choose to offer the COB Data Feed 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 increase its revenues. Professional users will not request this feed from Customers unless they can use the data for profit-generating purposes in their businesses. All of these factors 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

¹² 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).

byproduct of the execution service. In fact, proprietary 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 data products. Without a platform to post quotations, receive orders and execute trades, exchange data products would not exist.

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 platform for posting quotes, receiving orders and executing trades, 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. A broker-dealer will only choose to direct orders to an exchange if the revenue from the transaction exceeds its cost, including the cost of any market data that the broker-dealer chooses to buy in support of its order routing and trading decisions. If the costs of the transaction are not offset by its value, then the broker-dealer may choose instead not to purchase the product and trade away from that 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 because it is impossible to obtain the data inputs to create market data products without a fast,

technologically robust, and well-regulated execution system, and system 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 14 options self-regulatory organization ("SRO") markets, as well as various forms of alternative trading systems ("ATs"), including dark pools and electronic communication networks ("ECNs") and internalizing broker-dealers. 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. CBOE is constrained in pricing the COB Data Feed by the availability to market participants of alternatives to purchasing this product. CBOE 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 complex order book market data products, and thus are sources of potential competition for MDX. For example, as noted above, NYSE Arca and NYSE MKT offer market data products that compete with the COB Data Feed.

The large number of SROs, ATSS and internalizing broker-dealers that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, ATS, and broker-dealer is currently permitted to produce and sell proprietary data products, and many currently do.

Further, data products are valuable to professional users only if they can be used for profit-generating purposes in their businesses and valuable to non-professional users only insofar as they provide information that such users expect will assist them in tracking prices and market trends and making trading decisions.

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.

Item 5. 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.

Item 6. Extension of Time Period for Commission Action

Not applicable.

Item 7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)

(a) The proposed rule change is filed for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act¹³ and Rule 19b-4(f)(2)¹⁴ thereunder.

(b) The Exchange designates that the proposed rule change establishes or changes a due, fee, or other charge imposed by the Exchange, which renders the proposed rule change effective upon filing with the Securities and Exchange Commission (the "Commission"). At any time within 60 days of the filing of this 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.

(c) Not applicable.

(d) Not applicable.

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(2).

Item 8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is not based on a rule either of another self-regulatory organization or of the Commission.

Item 9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

Item 10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

Item 11. Exhibits

Exhibit 1. Completed Notice of Proposed Rule Change for publication in the Federal Register.

Exhibit 5. Proposed rule text.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34- ; File No. SR-CBOE-2016-092]

[Insert date]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Fees for the Complex Order Book Data Feed.

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 [insert date], 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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.

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 user fees for the COB Data Feed. This data feed is made available by CBOE’s affiliate Market Data Express, LLC (“MDX”). The Exchange proposes to make the following fee changes effective January 1, 2017.

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 CBOE-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.³

Fees

MDX currently charges Customers⁴ of the COB Data Feed a Data Fee of \$100 per month plus applicable User Fees (as described below). The Data Fee for the COB Data Feed is waived for Customers of the CBOE BBO and Book Depth Data Feeds.⁵

³ The data is made available during “Regular Trading Hours” as defined in CBOE Rule 1.1(qqq) and “Extended Trading Hours” as defined in CBOE Rule 1.1(rrr).

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

MDX charges a Customer User Fees of \$25 per month per Device⁶ or user ID for receipt of the data by “Professional Users”⁷. There is no charge for receipt of the data by “Non-Professional Users”⁸. User Fees are subject to a cap of \$2,000 per month (i.e., a Customer pays no more than \$2,000 in User Fees for a given month). The Exchange proposes to delete this fee cap from the MDX fee schedule for CBOE data.

The Exchange also proposes to make a few clean-up changes to the MDX fee schedule for CBOE data, including removing a couple references to a January 1, 2016 effective date for prior fee changes and removing the \$1 per month User Fee for COB Data Feed Non-Professional Users, which was eliminated effective January 1, 2015.

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.⁹ Specifically, the Exchange believes the proposed rule change is consistent with Section

⁵ Such COB Data Feed Customers are still subject to User Fees.

⁶ 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.

⁷ A “Professional User” is any natural person recipient of Data who is not a Non-Professional User (as defined below). User Fees for Professional Users are payable for both “internal” Professional Users (Devices or user IDs of employees of a Customer) and “external” Professional Users (Devices or user IDs of Professional Users who receive the Data from a Customer and are not employed by the Customer). (Non-Professional Users must be external since a person who uses the COB Data Feed for a commercial purpose cannot be a Non-Professional User.)

⁸ A “Non-Professional User” is a natural person or qualifying trust that uses Data only for personal purposes and not for any commercial purpose and, for a natural person who works in the United States, is not: (i) registered or qualified in any capacity with the Securities and Exchange Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an “investment adviser” as that term is defined in Section 201(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt; or, for a natural person who works outside of the United States, does not perform the same functions as would disqualify such person as a Non-Professional User if he or she worked in the United States.

⁹ 15 U.S.C. 78f(b).

6(b)(4) of the Act,¹⁰ 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)¹¹ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the proposal to delete the monthly cap on User Fees for receipt of the COB Data Feed is equitable and not unfairly discriminatory because it would apply equally to all Customers. The Exchange believes the User Fees, without a fee cap, are reasonable because they are similar to fees that other markets charge for similar products. For example, NYSE Arca charges \$20 per month to each Professional User and \$1 per month to each Non-Professional User for receipt of the Arcabook for Arca Options – Complex data feed. The Exchange believes NYSE Arca does not cap its user fees.¹² Similarly, NYSE MKT charges \$20 per month to each Professional User and \$1 per month to each Non-Professional User for receipt of the Arcabook for Amex Options Options – Complex data feed. The Exchange believes NYSE MKT does not cap its user fees. The Exchange also believes removing the fee cap is reasonable in that it is not anticipated to materially affect the amount of User Fees any Customer pays.

The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition v. SEC*, 615 F.3d 525 (D.C. Cir. 2010), upheld reliance by the Securities and Exchange Commission (“Commission”) upon the existence of competitive

¹⁰ 15 U.S.C. 78f(b)(4).

¹¹ 15 U.S.C. 78f(b)(5).

¹² See NYSE Market Data Pricing Guide available at www.nyxdata.com/doc/241907.

market mechanisms to set reasonable and equitably allocated fees for proprietary market data:

In fact, the legislative history indicates that the Congress intended that the market system ‘evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed’ and that the SEC wield its regulatory power ‘in those situations where competition may not be sufficient,’ such as in the creation of a ‘consolidated transactional reporting system.’

Id. At 535 (quoting H.R. Rep. No. 94-229 at 92 (1975), as reprinted in 1975 U.S.C.C.A.N. 323). The court agreed with the Commission's conclusion that “Congress intended that ‘competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.’”¹³

As explained below in the Exchange's Statement on Burden on Competition, the Exchange believes that the need to attract order flow from market participants provides an effective constraint on the market data fees that the Exchange, through MDX, has the ability and the incentive to charge. In addition, the existence of alternatives to this data product, such as proprietary data from other sources, as described below, further ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can select such alternatives.

For the reasons cited above, the Exchange believes the proposed User Fees for receipt of the COB Data Feed are equitable, reasonable and not unfairly discriminatory. In addition, the Exchange believes that no substantial countervailing basis exists to support a finding that the proposed fees for the COB Data Feed fail to meet the requirements of the Act.

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

¹³ NetCoalition, 615 F.3d at 535 (Quoting Securities Exchange Act Release No. 59039 (December 9, 2008), 73 FR 74770 (December 9, 2008) at 74771).

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.

An exchange's ability to price its proprietary market 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 the Exchange's proprietary data.

The Existence of Actual Competition. 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 thirteen options exchanges (including CBOE's affiliate, C2 Options Exchange) for order flow.¹⁴

¹⁴ 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).

In addition, in the case of products that are distributed through market data vendors, the 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. Similarly, Customers will not offer the COB Data Feed unless this product will help them maintain current users or attract new ones. For example, a broker-dealer will not choose to offer the COB Data Feed 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 increase its revenues. Professional users will not request this feed from Customers unless they can use the data for profit-generating purposes in their businesses. All of these factors 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, proprietary 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 data products. Without a platform to post quotations, receive orders and execute trades, exchange data products would not exist.

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 platform for posting quotes, receiving orders and executing trades, 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. A broker-dealer will only choose to direct orders to an exchange if the revenue from the transaction exceeds its cost, including the cost of any market data that the broker-dealer chooses to buy in support of its order routing and trading decisions. If the costs of the transaction are not offset by its value, then the broker-dealer may choose instead not to purchase the product and trade away from that 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 because it is impossible to obtain the data inputs to create market data products without a fast, technologically robust, and well-regulated execution system, and system 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 14 options self-regulatory organization (“SRO”) markets, as well as various forms of alternative trading systems (“ATs”), including dark pools and electronic communication networks (“ECNs”) and internalizing broker-dealers. 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. CBOE is constrained in pricing the COB Data Feed by the availability to market participants of alternatives to purchasing this product. CBOE 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 complex order book market data products, and thus are sources

of potential competition for MDX. For example, as noted above, NYSE Arca and NYSE MKT offer market data products that compete with the COB Data Feed.

The large number of SROs, ATSS and internalizing broker-dealers that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, ATS, and broker-dealer is currently permitted to produce and sell proprietary data products, and many currently do.

Further, data products are valuable to professional users only if they can be used for profit-generating purposes in their businesses and valuable to non-professional users only insofar as they provide information that such users expect will assist them in tracking prices and market trends and making trading decisions.

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 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 Act¹⁵ and paragraph (f) of Rule 19b-4¹⁶ 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-2016-092 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.

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f).

All submissions should refer to File Number SR-CBOE-2016-092. 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, D.C. 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 Number SR-CBOE-2016-092 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.¹⁷

Secretary

¹⁷

17 CFR 200.30-3(a)(12).

EXHIBIT 5 TO SR-CBOE-2016-092(additions are underlined; deletions are [bracketed])

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MARKET DATA EXPRESS, LLC (MDX)
CBOE STREAMING MARKETS
FEE SCHEDULE
[DECEMBER 22, 2015] DECEMBER 19, 2016

I. The fees for the BBO Data Feed are as follows:**BBO DATA FEED:**

	Data Fee (per month)	User Fees (per month)
CBOE	<p>[\$6,000]</p> <p>\$7,000 [(effective January 1, 2016)]</p>	\$50 per Device or user ID for Display Only Service Users (External users)

The 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.

An entity or person that receives BBO data from a Customer through a Display Only Service is not a “Customer” unless it has a market data agreement in place with MDX. A “Display Only Service” allows a natural person end-user to view and manipulate data using the Customer’s computerized service, but not to save, copy, export or transfer the data or any results of the manipulation to any other computer hardware, software or media, except for printing it to paper or other non-magnetic media.

User Fees. User fees are payable only for “external” Display Only Service users (Devices or user IDs of Display Only Service users who 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). 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.

II. The fees for the Book Depth Data Feed are as follows:**BOOK DEPTH DATA FEED:**

	Data Fee (per month)	User Fees (per month)
CBOE	[\$6,000] \$7,000 [(effective January 1, 2016)] Book Depth Data Feed Data Fee is waived for BBO Data Feed Customers	\$50 per Device or user ID for Display Only Service users (External users)

The fees for the Book Depth Data Feed are payable by all Customers, as defined in Section 1 above.

An entity or person that receives Book Depth data from a Customer through a Display Only Service (as defined in Section 1 above) is not a “Customer” unless it has a market data agreement in place with MDX.

User Fees. User fees are payable only for “external” Display Only Service users, as defined in Section 1 above.

III. The fees for the Complex Order Book Data Feed are as follows:**COMPLEX ORDER BOOK (“COB”) DATA FEED:**

	Data Fee (per month)	User Fees (per month)
CBOE	\$100 COB Data Feed Data Fee is waived for BBO and Book Depth Data Feed Customers	\$25 per Device or user ID for Professional Users (Internal and External Users) [\$1 – Non-Professional User] \$0 – Non-Professional User [User Fees are subject to a cap of \$2000 per month]

The fees for the COB Data Feed are payable by all “Customers”, as defined in Section 1 above.

An entity or person that receives the COB Data Feed from a Customer and only uses it internally is not a “Customer” unless it has a market data agreement in place with MDX.

Non-Professional User. A “Non-Professional User” is a natural person or qualifying trust that uses Data only for personal purposes and not for any commercial purpose and, for a natural person who works in the United States, is not: (i) registered or qualified in any capacity with the Securities and Exchange Commission, the Commodities Futures Trading Commission, any state securities agency, any securities

exchange or association, or any commodities or futures contract market or association; (ii) engaged as an “investment adviser” as that term is defined in Section 201(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt; or, for a natural person who works outside of the United States, does not perform the same functions as would disqualify such person as a Non-Professional User if he or she worked in the United States.

Professional User. A “Professional User” is any natural person recipient of Data who is not a Non-Professional User.

User Fees. User fees for Professional Users are payable for both “internal” Professional Users (Devices or user IDs of employees of a Customer) and “external” Professional Users (Devices or user IDs of Professional Users who receive the Data from a Customer and are not employed by the Customer). (Non-Professional Users must be external since a person who uses the Data for a commercial purpose cannot be a Non-Professional User.)

IV. The fees for the FLEX Options Data Feed are as follows:

FLEX OPTIONS DATA FEED:

	Data Fee (per month)	User Fees (per month)
CBOE FLEX	\$0	\$0

The fees for the FLEX Data Feed are payable by all “Customers”, as defined in Section 1 above.

V. Systems Fees:

Port Fee: \$500/per data port/month

Port Fee. The port fee is payable by any Customer that receives data through a direct connection to MDX or through a connection to MDX provided by an extranet service provider. The port fee applies to receipt of any CBOE data feed but is only assessed once per data port.