

messaging will be bundled only for outbound updates.

The Exchange believes this proposal is an optimal trade-off between costs and benefits and that it is fully compliant with its firm quote obligations. BOX has indicated that its target reduction in outbound peak traffic is 15% to 20% of what the traffic would have been had no mitigation been applied. Box has also represented that the reduction in overall traffic, as opposed to peaks, will be lower, but still significant, with a target of 8% to 10%.

### III. Discussion

After careful review of the proposal and consideration of the comment letter, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>5</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>6</sup> which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the Exchange's proposal to "bundle" quotes should reduce the volume of options quote traffic disseminated to OPRA and help to address capacity concerns on the Exchange. Because the contemplated delays in data transmission are very brief, the Commission does not believe that "bundling" quotes will adversely affect market transparency or negatively affect market participants or investors. Furthermore, the Commission believes that BOX's quote mitigation proposal is designed to provide the Exchange with a mechanism, that should reduce overall peak market data traffic with a relatively small impact on the quality of information available to options market users.

### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>7</sup> that the proposed rule change (SR-BSE-2006-48), be, and hereby is approved.

<sup>5</sup> In approving this proposed rule change the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55062; File No. SR-CBOE-2006-88]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval to Proposed Rule Change To Codify a Fee Schedule for the Sale of Open and Close Volume Data on CBOE Listed Options by Market Data Express, LLC

January 8, 2007.

On November 3, 2006, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to codify a fee schedule for the sale of open and close volume data on CBOE listed options by Market Data Express, LLC ("MDX"), a wholly-owned subsidiary of CBOE. The proposed rule change was published for comment in the **Federal Register** on November 27, 2006.<sup>3</sup> The Commission received no comments regarding the proposal. This order approves the proposed rule change.

In the Notice, the Exchange represented that it creates volume data for each CBOE listed option that consists of opening buys and opening sells and closing buys and closing sells ("Open/Close Data"). CBOE further represented that MDX offers this Open/Close Data for sale to CBOE members and non-members and that the fees assessed by MDX for the Open/Close Data are set forth in the Price List on MDX's Web site. CBOE members and non-members are charged the same fees for the Open/Close Data.

Under the proposal, customers may purchase Open/Close Data on a subscription basis or by ad hoc request. Daily Open/Close Data covering all CBOE listed options<sup>4</sup> would be

<sup>8</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 54771 (November 16, 2006), 71 FR 68657 (the "Notice").

<sup>4</sup> Although the proposed rule change refers to Open/Close Data covering all CBOE listed securities, the CBOE confirmed that the Open/Close

available for purchase by subscribing to the Daily Update service at a cost of \$600 per month. Subscribers to the Daily Update service would receive a daily data file via download from MDX's Web site. Historical Open/Close Data covering all CBOE listed options may be purchased on an ad hoc request basis and is delivered via DVD. The charge for Historical Open/Close Data covering all CBOE listed options would be \$7,200 per year for requests for one to four years of data. Requests for five or more years of Historical Open/Close Data would receive a 50% discount beginning with the fifth year of data (*i.e.*, MDX charges \$7,200 for each of the first four years of data and \$3,600 for year five and for each subsequent year of data). Alternatively, a customer may purchase Historical Open/Close Data on an individual CBOE listed option at a cost of \$4.50 per listed option per month. This data would be available via download from MDX's Web site. A 50% discount would be applied for requests for ten or more years of data, beginning with the tenth year of data.

The Commission has reviewed carefully the proposed rule change and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b)(4) of the Act,<sup>5</sup> which requires, among other things, CBOE's rules be designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members and issuers and other persons using its facilities.<sup>6</sup>

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>7</sup> that the proposed rule change (SR-CBOE-2006-88) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7-540 Filed 1-16-07; 8:45 am]

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Data is available solely for all CBOE listed options. Telephone conversation between Jaime Galvan, Assistant Secretary, CBOE and David Michehl, Special Counsel, Division of Market Regulation, Commission on January 8, 2007.

<sup>5</sup> 15 U.S.C. 78f(b)(4).

<sup>6</sup> In approving this proposed rule change the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</sup> 17 CFR 200.30-3(a)(12).