

### 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-Phlx-2014-48. This file number should be included on the subject line if email 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 Web site (<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 Web site 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 Number SR-Phlx-2014-48 and should be submitted on or before August 12, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Kevin M O'Neill,**

*Deputy Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-72621; File No. SR-CBOE-2014-057]

#### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Customized Option Pricing Service

July 16, 2014.

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 July 3, 2014, 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 various changes to the Customized Option Pricing Service ("COPS"). The text of the proposed rule change is available on the Exchange's Web site (<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.

#### 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 describe various changes to COPS<sup>3</sup>. The Exchange is not proposing to change the fees for COPS data.

##### Background

COPS provides market participants with an "end-of-day"<sup>4</sup> file and "historical"<sup>5</sup> files of valuations for Flexible Exchange ("FLEX")<sup>6</sup> options and certain over-the-counter ("OTC") options (collectively, "COPS Data"). Market Data Express, LLC ("MDX"), an affiliate of CBOE, offers COPS Data for sale to all market participants. COPS Data is available to "Subscribers" for internal use and internal distribution only, and to "Customers" who, pursuant to a written vendor agreement between MDX and a Customer, may distribute the Data externally (i.e., act as a vendor) and/or use and distribute the Data internally.

COPS Data consists of indicative<sup>7</sup> values for three categories of "customized" options. The first category of options is all open series of FLEX options listed on any exchange that offers FLEX options for trading.<sup>8</sup> The second category is OTC options that have the same degree of customization as FLEX options. The third category includes options with strike prices expressed in percentage terms. Values for such options are expressed in percentage terms and are theoretical values.<sup>9</sup>

<sup>3</sup> See Securities Exchange Act Release No. 67813 (September 10, 2012), 77 FR 56903 (September 14, 2012) (SR-CBOE-2012-083), Securities Exchange Act Release No. 67928 (September 26, 2012), 77 FR 60161 (October 2, 2012) (SR-CBOE-2012-090), Securities Exchange Act Release No. 70705 (October 17, 2013), 78 FR 63265 (October 23, 2013) (SR-CBOE-2013-097), and Securities Exchange Act Release No. 70845 (November 12, 2013), 78 FR 69168 (November 18, 2013) (SR-CBOE-2013-104).

<sup>4</sup> "End of day" refers to data that is distributed prior to the opening of the next trading day.

<sup>5</sup> "Historical" COPS data consists of COPS data that is over one month old (i.e., copies of the "end-of-day" COPS file that are over one month old).

<sup>6</sup> FLEX options are exchange traded options that provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices.

<sup>7</sup> "Indicative" values are indications of potential market prices only and as such are neither firm nor the basis for a transaction.

<sup>8</sup> Current FLEX options open interest spans over 2,000 series on over 300 different underlying securities.

<sup>9</sup> These values are theoretical in that they are indications of potential market prices for options that have not traded (i.e. do not yet exist). Market participants sometimes express option values in percentage terms rather than in dollar terms.

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

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

<sup>16</sup> 17 CFR 200.30-3(a)(12).

The Exchange uses values produced by CBOE registered market-makers to produce COPS Data. Participating CBOE market-makers submit values to MDX on options series specified by MDX on a daily basis. These values are generated by the market-maker's internal pricing models. The valuations that MDX ultimately publishes are an average of multiple contributions of values from participating CBOE market-makers. For each value provided by MDX through COPS, MDX includes a corresponding indication of the number of market-maker contributors that factored into that value.

CBOE market-makers that meet the following objective qualification criteria are allowed to contribute values to MDX for purposes of producing COPS Data. Interested CBOE market-makers must be

approved by the Exchange, have the ability to provide valuations to MDX in a timely manner each day after the close of trading, and sign a services agreement with CBOE. Interested CBOE market-makers must also have the ability to provide valuations on several different types of options, including (i) options on all open FLEX series traded on any exchange that offers FLEX options for trading, (ii) options on any potential new FLEX options series, (iii) OTC options that have the same degree of customization as FLEX options, and (iv) customized options where the strike price is expressed in percentage terms (the valuations provided to MDX must also be expressed in percentage terms). In addition, interested CBOE market-makers must participate in a testing phase with MDX. The values submitted

by a market-maker during the testing phase and in live production must meet MDX's quality control standards designed to ensure the integrity and accuracy of COPS Data. MDX has implemented procedures including monthly performance reviews to help ensure the integrity and accuracy of COPS Data.

To help ensure that MDX receives numerous values from multiple market-makers on a consistent basis, MDX shares revenue from the sale of COPS Data with participating CBOE market-makers. The amount of revenue that MDX shares with participating market-makers does not exceed thirty percent (30%) of the total revenue received by MDX from the sale of COPS Data. The revenue sharing is based on the following table:

Number of participating market-makers	Total revenue share (percent)	Rev. share per market-maker
3 .....	21	7%
4 .....	24	6%
5 or more .....	30	30% divided by the number of participating market-makers

If only three market-makers participate, MDX shares 21% of total revenue with each market-maker receiving a 7% share. If four market-makers participate, MDX shares 24% of total revenue with each market-maker receiving a 6% share. If five or more market-makers participate, MDX shares 30% of total revenue divided equally among the market-makers. There are currently three participating market-makers.<sup>10</sup>

The fees that MDX charges for COPS Data are set forth on the Price List on the MDX Web site ([www.marketdataexpress.com](http://www.marketdataexpress.com)) ("MDX Web site"). MDX currently charges a fee per option per day for "end-of-day" COPS data. The amount of the fee is reduced based on the number of options purchased. MDX charges Customers and Subscribers \$1.25 per option per day for each option purchased up to 50 options, \$1.00 per option per day for each option purchased from 51 to 100 options, \$0.75 per option per day for each option purchased from 101 to 500 options, and

\$0.50 per option per day for each option purchased over 500 options. MDX charges Customers and Subscribers \$75 per day for "historical" COPS data. Customers are not currently charged any fees for their external distribution of COPS Data.

#### Proposal

The Exchange proposes a number of changes to COPS for the purpose of improving COPS to potentially make it more appealing to a wider group of users. First, the Exchange proposes to provide additional data through COPS. Specifically, COPS would also provide indicative values for "exotic" options. Exotic options are options which are generally traded OTC and are more complex than standard options, usually relating to determination of payoff.<sup>11</sup> An exotic option may also include a non-standard underlying instrument, developed for a particular client or for a particular market. In addition to exotic option values, the Exchange also proposes to provide an implied

volatility value with each option value provided by COPS.

Second, the Exchange proposes to allow any CBOE Trading Permit Holder ("TPH") that meets the COPS qualification criteria to contribute values to MDX for purposes of producing COPS Data. Third, the Exchange proposes to amend the COPS qualification criteria to add new criteria. Specifically, interested CBOE TPHs must also have the ability to provide valuations on exotic options and an implied volatility value with each option value provided.

Fourth, the Exchange proposes to specify a daily deadline for COPS customers to submit requests for new options series to be priced by COPS that day. Currently, COPS customers may request pricing for options that are not already priced by COPS by submitting an email request to MDX. The request must be submitted by a specified time each day in order for the requested option to be priced by COPS that day (currently, this deadline is 11:00 a.m.

because they find it is easier to assess the change, or lack of change, in the marketplace from one day to the next when values are expressed in percentage terms.

<sup>10</sup> In order to help ensure that participating market-makers submit values to MDX on 100% of the series to be valued, a market-maker's revenue share is reduced as follows:

There is one "grace day" per month, i.e., if a market-maker does not submit values for 100% of the series on just one day within a given month, that market-maker will not lose any portion of its revenue share for that month.

If a market-maker submits values for less than 100% of the series on any two days within a month, that market-maker will forfeit 10% of its revenue share for that month.

If a market-maker submits values for less than 100% of the series on any three days within a month, that market-maker will forfeit 25% of its revenue share for that month.

If a market-maker submits values for less than 100% of the series on any four days within a month, that market-maker will forfeit 50% of its revenue share for that month.

If a market-maker submits values for less than 100% of the series on any five days within a month, that market-maker will forfeit 75% of its revenue share for that month.

If a market-maker submits values for less than 100% of the series on any six or more days within a month, that market-maker will forfeit 100% of its revenue share for that month.

<sup>11</sup> For example, the payoff at expiration of an exotic option may depend not just on the value of the underlying instrument at expiration, but at its value at several times during the contract's life.

CT). The Exchange proposes that MDX may change this deadline from time to time by publishing the deadline and notice of changes to the deadline on the MDX Web site.

Finally, in order to attract new TPH contributors to COPS, and in light of significantly increased responsibilities such as pricing exotic options, the Exchange proposes to amend the compensation paid to COPS contributors. The Exchange proposes to temporarily change COPS contributor compensation from the revenue sharing plan described above to a fixed payment structure.<sup>12</sup> MDX would pay a maximum of five contributing TPHs a monthly fixed amount for the first six months of the enhanced COPS program, or until annual COPS revenue exceeds \$1,000,000, whichever comes first. MDX would pay each of the three current COPS contributors \$12,000 per month and each of two new contributors \$7,000 per month. The purpose of the fixed monthly fee would be to help contributors offset the cost of development work they would likely need to complete in order to price exotic options. The three current contributors would receive a higher monthly payment than the new contributors because the current contributors have been a part of the COPS program since its inception and have been working with MDX to build the program. The Exchange proposes to limit the number of COPS contributors to five during this initial period because the Exchange believes five contributors is an ideal number to provide significant price discovery yet not too dilutive as to diminish interest among TPHs in participating in COPS.

The three current contributors would be “grandfathered” into the enhanced COPS program and the new compensation structure. The two new contributor positions would be open to all TPHs (announced via regulatory circular) and filled during a trial period. Of all the TPHs that try out for the two new positions, the top two TPHs that have the highest weighted average<sup>13</sup> contributions over the course of the trial period would be added to the program,

assuming continued adherence to COPS quality control standards.

MDX would transition back to the original revenue share plan described above after this initial six month period (or until annual COPS revenue exceeds \$1,000,000, whichever comes first), unless annual COPS revenue exceeds \$2,000,000, in which case the percentage of total COPS revenue shared with contributors would increase from 30% to 32% if a new contributor is added to COPS.<sup>14</sup> In subsequent years, if the previous year’s COPS revenue increases by \$1,000,000 or more, the percentage of total COPS revenue shared with contributors would increase by 2% if an additional contributor is added to COPS. The total number of COPS contributors would ultimately be limited to fifteen. The Exchange believes limiting the number of contributors to fifteen would help keep the revenue share of each TPH at a level sufficient to maintain TPH interest in participating in COPS and incent them to produce high quality valuations. The Exchange further believes that the value of additional contributor prices beyond fifteen would be very limited.

## 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>15</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>16</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>17</sup> requirement that the rules of an exchange not be designed

to permit unfair discrimination between customers, issuers, brokers, or dealers.

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 amount of data available to consumers, and also spur innovation and competition for the provision of market data. The Exchange believes the proposal to provide exotic option and implied volatility values through COPS is in keeping with those principles by promoting increased transparency through the dissemination of useful data and also by clarifying its availability to market participants.

The Exchange believes the proposed rule change is not designed to permit unfair discrimination between CBOE TPHs because it would allow any CBOE TPH that meets the COPS qualification criteria to participate in COPS (assuming continued adherence to COPS quality control standards). Expanding eligibility for COPS to all CBOE TPHs may result in more contributors, which should help improve the quality of COPS Data.

The Exchange believes the proposal to add new COPS qualification criteria is consistent with the protection of investors and the public interest in that it would help ensure that only TPHs who are able to produce quality valuations for all categories of COPS Data are allowed to participate in the program.

The Exchange believes the proposal to specify a daily deadline for customers to submit requests for new options series to be priced by COPS is consistent with just and equitable principles of trade because it would provide MDX and contributors with enough time to price the new options series the same day.

The Exchange believes the proposal to grandfather the three current contributors into the enhanced COPS program and pay them a higher fixed monthly fee than new contributors for a limited period of time is not unfairly discriminatory because the current contributors have been a part of COPS since its inception and have helped MDX build the program. For example, in advance of the COPS launch in January 2013, the current contributors participated in trial runs with MDX to help ensure their values were in line with MDX’s expectations. The current contributors also helped MDX work out the flow of the daily file transfer process (MDX delivers to contributors a file of options series to be priced, the contributors return the file including their option values). In addition,

<sup>12</sup> The Exchange is not proposing to eliminate the revenue share plan, only to suspend it temporarily as described herein.

<sup>13</sup> MDX would publish on its Web site a description of the methodology used for averaging the values submitted by TPHs to produce a single publishable value (which methodology may change from time to time). MDX intends to use a weighted average methodology. A weighted average is an average in which each quantity to be averaged (in this case each value submitted by a contributor) is assigned a weight. These weightings determine the relative importance of each quantity on the average.

<sup>14</sup> The addition of new contributors would be accomplished through the same try out mechanism described above. This try out mechanism would also be used if a contributor is removed from COPS, or voluntarily leaves the program.

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

<sup>16</sup> 15 U.S.C. 78f(b)(5).

<sup>17</sup> *Id.*

contributors have assisted MDX with promotion of COPS. Through these efforts, the current contributors have helped MDX lay the ground work for new contributors to join COPS. The Exchange believes limiting the number of COPS contributors to five initially, and ultimately to fifteen, is not unfairly discriminatory because all TPHs would be eligible to try out for the limited COPS contributor positions and to be selected if they perform best during a trial period.

#### *B. 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. The proposed rule change would allow the Exchange, through MDX, to disseminate COPS Data on a voluntary basis. COPS is voluntary on the part of the Exchange, which is not required to offer such services, and voluntary on the part of prospective customers who are not required to use it. The Exchange notes there are at least a small number of market data vendors that produce option value data that is similar to COPS Data and market data users may elect to buy these other products if they choose.<sup>18</sup> The Options Clearing Corporation ("OCC") also produces FLEX option value data that is similar to the FLEX option value data that is included in COPS.<sup>19</sup> The Exchange believes the proposed COPS enhancements may help attract new customers to COPS and new order flow to the Exchange, thereby improving the Exchange's ability to compete in the market for options order flow and executions.

#### *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**

Because the foregoing rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it

was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission,<sup>20</sup> the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>21</sup> and Rule 19b-4(f)(6) thereunder.<sup>22</sup> 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2014-057 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-CBOE-2014-057. This file number should be included on the subject line if email 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 Web site (<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 Web site 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 Number SR-CBOE-2014-057 and should be submitted on or before August 12, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>23</sup>

**Kevin M. O'Neill,**  
*Deputy Secretary.*

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**BILLING CODE 8011-01-P**

### **SECURITIES AND EXCHANGE COMMISSION**

**[File No. 500-1]**

#### **mBeach Software, Inc.; Order of Suspension of Trading**

July 18, 2014.

mBeach Software, Inc. (CIK No. 1465856) is a Florida corporation located in Tel Aviv, Israel with a class of securities registered with the Securities and Exchange Commission ("Commission") pursuant to Section 12(g) of the Securities Exchange Act of 1934 ("Exchange Act"). mBeach Software, Inc. is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2010, which reported a net loss of \$118,018 for the prior nine months. As of June 30, 2014, the company's stock (symbol "MBHS") was quoted on OTC Link (previously, "Pink Sheets") operated by OTC Markets Group, Inc., had seven market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

It appears to the Commission that there is a lack of current and accurate information concerning the securities of

<sup>18</sup> These vendors include SuperDerivatives, Markit, Prism, and Bloomberg's BVAL service.

<sup>19</sup> The OCC makes this data available on its Web site at <http://www.theocc.com/webapps/flex-reports>.

<sup>20</sup> The Exchange has fulfilled this requirement.

<sup>21</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>22</sup> 17 CFR 240.19b-4(f)(6).

<sup>23</sup> 17 CFR 200.30-3(a)(12).