

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-99350; File No. SR-CboeEDGX-2024-006)

January 16, 2024

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend its Fee Schedule

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 2, 2024, Cboe EDGX Exchange, Inc. (the “Exchange” or “EDGX”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II, 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

Cboe EDGX Exchange, Inc. (the “Exchange” or “EDGX Options”) proposes to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange’s website (http://markets.cboe.com/us/options/regulation/rule_filings/edgx/), 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 its fee schedule for its equity options platform (“EDGX Options”) relating to logical connectivity fees.

By way of background, the Exchange offers a variety of logical ports, which provide users with the ability within the Exchange’s System to accomplish a specific function through a connection, such as order entry, data receipt or access to information. The Exchange currently assesses, among other things, the following logical port connectivity fees on a monthly basis: \$500 per port for Logical Ports³; \$500 per port for Multicast PITCH Spin Server Ports (“Spin Ports”) and GRP Ports⁴; and \$600 per port for Ports with Bulk Quoting Capabilities⁵ (“Bulk Ports”). The Exchange proposes to increase the monthly fees for the forgoing ports to the following rates: \$750 per port for Logical Ports, Spin Ports and GRP Ports and \$1,000 per port for Bulk Ports. The Exchange notes the proposed fee change better enables it to continue to maintain and improve its market technology and services and also notes that the proposed fee

³ Logical Ports include FIX and BOE ports (used for order entry), drop logical port (which grants users the ability to receive and/or send drop copies) and ports that are used for receipt of certain market data feeds.

⁴ Spin Ports and GRP Ports are used to request and receive a retransmission of data from the Exchange’s Multicast PITCH data feeds.

⁵ Bulk Quoting Capabilities Ports provide users with the ability to submit and update multiple bids and offers in one message through logical ports enabled for bulk-quoting.

amount, even as amended, continues to be in line with, or even lower than, amounts assessed by other exchanges for similar connections, including the Exchange's affiliated options exchanges.⁶

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.⁷ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁸ 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)⁹ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4)¹⁰ of the Act, which requires

⁶ See, e.g., Cboe C2 Options Exchange Fee Schedule, Options Logical Port Fees, Cboe BZX Options Exchange Fee Schedule, Options Logical Port Fees and Cboe Exchange Fees Schedule, Logical Connectivity Fees; see also The Nasdaq Stock Market Options Pricing Schedule, Section 3 Nasdaq Options Market – Ports and Other Services.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ Id.

¹⁰ 15 U.S.C. 78f(b)(4).

that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities.

The Exchange believes the proposed fee is reasonable as it is still in line with, or even lower than, amounts assessed by other exchanges for similar connections.¹¹ Indeed, the Exchange believes assessing fees that are a lower rate than fees assessed by other exchanges for analogous connectivity (which were similarly adopted via the rule filing process and filed with the Commission) is reasonable. Additionally, the Exchange believes the proposed fee increase is reasonable in light of anticipated upgrades to the Exchange's matching engines, which is expected to be completed in the first quarter of 2024.

The Exchange also notes market participants may continue to choose the method of connectivity based on their specific needs, and no broker-dealer is required to become a Member of, let alone connect directly to, the Exchange. There is also no regulatory requirement that any market participant connect to any one particular exchange. Moreover, direct connectivity is not a requirement to participate on the Exchange. The Exchange also believes substitutable products and services are available to market participants, including, among other things, other options exchanges to which a market participant may connect in lieu of the Exchange, indirect connectivity to the Exchange via a third-party reseller of connectivity, and/or trading of any options product, such as within the Over-the-Counter (OTC) markets, which do not require connectivity to the Exchange. Indeed, there are currently 17 registered options exchanges that trade options (13 of which are not affiliated with Cboe), some of which have similar or lower

¹¹ See, e.g., Cboe C2 Options Exchange Fee Schedule, Options Logical Port Fees, Cboe BZX Options Exchange Fee Schedule, Options Logical Port Fees and Cboe Exchange Fees Schedule, Logical Connectivity Fees see also The Nasdaq Stock Market Options Pricing Schedule, Section 3 Nasdaq Options Market – Ports and Other Services.

connectivity fees.¹² Based on publicly available information, no single options exchange has more than approximately 17% of the market share.¹³ Further, low barriers to entry mean that new exchanges may rapidly enter the market and offer additional substitute platforms to further compete with the Exchange and the products it offers. For example, there are 4 exchanges that have been added in the U.S. options markets in the last 5 years (i.e., Nasdaq MRX, LLC, MIAX Pearl, LLC, MIAX Emerald LLC, and most recently MEMX LLC), with a fifth options exchange anticipated to added in 2024 (MIAX Sapphire, LLC).

As for market participants that determine to continue to maintain membership or to join the Exchange for business purposes, those business reasons presumably result in revenue capable of covering the proposed fee. Further, for such market participants that choose to connect to the Exchange, the Exchange believes the proposed fees continue to provide flexibility with respect to how to connect to the Exchange based on each market participants' respective business needs. For example, the amount and type of logical ports are determined by factors relevant and specific to each market participant, including its business model, costs of connectivity, how its business is segmented and allocated and volume of messages sent to the Exchange. Moreover, the Exchange notes that it does not have unlimited system capacity and the proposed fees are also designed to encourage market participants to be efficient with their respective logical port usage. There is also no requirement that any market participant maintain a specific number of logical ports and a market participant may choose to maintain as many or as few of such ports as each deems appropriate.

¹² Id.

¹³ See Cboe Global Markets U.S. Options Market Volume Summary (December 20, 2023), available at https://markets.cboe.com/us/options/market_statistics/.

As noted above, there is no regulatory requirement that any market participant connect to any one options exchange, nor that any market participant connect at a particular connection speed or act in a particular capacity on the Exchange, or trade any particular product offered on an exchange. Moreover, membership is not a requirement to participate on the Exchange. Indeed, the Exchange is unaware of any one options exchange whose membership includes every registered broker-dealer. By way of example, while the Exchange has 51 members that trade options, Cboe BZX has 61 members that trade options, and Cboe C2 has 52 Trading Permit Holders (“TPHs”) (i.e., members). There is also no firm that is a Member of EDGX Options only. Further, based on previously publicly available information regarding a sample of the Exchange’s competitors, NYSE American Options has 71 members¹⁴, and NYSE Arca Options has 69 members¹⁵, MIAX Options has 46 members¹⁶ and MIAX Pearl Options has 40 members.¹⁷ Accordingly, excessive fees would simply serve to reduce demand for these products, which market participants are under no regulatory obligation to utilize.

The Exchange also believes that the proposed fee change is not unfairly discriminatory because it would be assessed uniformly across all market participants that purchase the respective logical ports. All Members have the option to select any connectivity option, and there is no differentiation among Members with regard to the fees charged for the services offered by the Exchange.

¹⁴ See <https://www.nyse.com/markets/american-options/membership#directory>.

¹⁵ See <https://www.nyse.com/markets/arca-options/membership#directory>.

¹⁶ See https://www.miaxglobal.com/sites/default/files/page-files/MIAX_Options_Exchange_Members_April_2023_04282023.pdf.

¹⁷ See https://www.miaxglobal.com/sites/default/files/page-files/MIAX_Pearl_Exchange_Members_01172023_0.pdf.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed fee change will not impact intramarket competition because it will apply to all similarly situated market participants equally (i.e., all market participants that choose to purchase the relevant logical ports).

The Exchange believes the proposed fees will not impact intermarket competition because they are also in line with, or even lower than some fees for similar connectivity on other exchanges, and therefore may stimulate intermarket competition by attracting additional firms to connect to the Exchange or at least should not deter interested participants from connecting directly to the Exchange. Further, if the changes proposed herein are unattractive to market participants, the Exchange can, and likely will, see a decline in usage of these ports as a result. The Exchange operates in a highly competitive market in which market participants can determine whether or not to connect directly to the Exchange based on the value received compared to the cost of doing so. Indeed, market participants have numerous alternative venues that they may participate on and direct their order flow, including 13 (soon to be 14) non-Cboe affiliated options markets, as well as off-exchange venues, where competitive products are available for trading. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market

competition in its broader forms that are most important to investors and listed companies.”¹⁸

The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”¹⁹ Accordingly, the Exchange does not believe its proposed change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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 proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act²⁰ and paragraph (f) of Rule 19b-4²¹ 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: (i) necessary or

¹⁸ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

¹⁹ *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

²⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

²¹ 17 CFR 240.19b-4(f).

appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeEDGX-2024-006 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-CboeEDGX-2024-006. 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 website (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CboeEDGX-2024-006 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Sherry R. Haywood,

Assistant Secretary.

²² 17 CFR 200.30-3(a)(12).