

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-86743; File No. SR-CboeEDGX-2019-052)

August 23, 2019

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Amend the Fee Schedule Applicable to Members and Non-Members of the Exchange Pursuant to EDGX Rules 15.1(a) and (c)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 16, 2019, Cboe EDGX Exchange, Inc. (the “Exchange” or “EDGX”) filed with the Securities and Exchange Commission (“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

Cboe EDGX Exchange, Inc. (the “Exchange” or “EDGX”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend the fee schedule applicable to Members and non-Members³ of the Exchange pursuant to EDGX Rules 15.1(a) and (c). Changes to the fee schedule pursuant to this proposal are effective upon filing. The text of the proposed rule change is attached [sic] as 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ A Member is defined as “any registered broker or dealer that has been admitted to membership in the Exchange.” See Exchange Rule 1.5(n).

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 Exchange proposes to amend its fee schedule applicable to its options trading platform (“EDGX Options”) to adopt a fee for the equity leg of a stock-option order, which orders would yield fee code “EQ”, effective August 16, 2019.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 options venues to which market participants may direct their order flow. Based on publicly available information, no single options exchange has more than 20% of the market share.⁴ Thus, in such a low-concentrated and highly competitive market, no single options exchange possesses significant pricing power in the execution of option order flow. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue to reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces

⁴ See Cboe Global Markets U.S. Options Market Volume Summary (August 15, 2019), available at https://markets.cboe.com/us/options/market_statistics/.

constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. In response to competitive pricing, the Exchange, like other options exchanges, offers rebates and assesses fees for certain order types executed on or routed through the Exchange.

Pursuant to rule filing SR-2019-CboeEDGX-039,⁵ the Exchange will implement stock-option order functionality on August 16, 2019. Stock-option orders are complex instruments that constitute the purchase or sale of a stated number of units of an underlying stock or a security convertible into the underlying stock coupled with the purchase or sale of an option contract(s) on the opposite side of the market and execute in the same manner as complex orders. Through this new functionality, the stock portions of stock-option strategy orders will be electronically communicated by the Exchange to a designated broker-dealer, who will then manage the execution of such stock portions. In connection with the new functionality, the Exchange proposes to adopt a stock handling fee of \$0.0010 per share for the processing and routing by the Exchange of the stock portion of stock-option strategy orders executed through those mechanisms. The purpose of the proposed stock handling fee is to cover the fees charges by the outside venue that prints the trade, as well as assist in covering the Exchange's costs in matching these stock-option orders against other stock option orders on the complex book. Additionally, the Exchange will also largely pass through to Members the fees assessed to the Exchange by the designated broker that will be managing the execution of these stock portions of stock-option strategy orders. The Exchange notes that other exchanges have likewise implemented fees for

⁵ See Securities Exchange Act Release No. 86353 (July 11, 2019), 84 FR 34230 (July 17, 2019) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Add Stock-Option Order Functionality and Complex Qualified Contingent Cross ("QCC") Order With Stock Functionality, and To Make Other Changes to its Rules) (SR-CboeEDGX-2019-039).

stock portions of stock-option strategy order in response to their respective implementations of stock-option strategy order functionality.⁶ Moreover, the proposed fee is identical to fees assessed by other options exchanges, including that of its affiliated exchange, Cboe Options, for stock legs executed as a part of stock-option strategy orders.⁷

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,⁸ in general, and furthers the requirements of Section 6(b)(4),⁹ in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. The Exchange also believes that the proposed rule change is consistent with the objectives of Section 6(b)(5) 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

⁶ See Securities Exchange Act Release No. 85909 (May 21, 2019), 84 FR 24587 (May 28, 2019) (SR-EMERALD-2019-21); Securities Exchange Act Release No. 83788 (August 7, 2018), 83 FR 40110 (August 13, 2018) (SR-MIAX-2018-18); and Securities Exchange Act Release No. 67383 (July 10, 2012), 77 FR 41841 (July 16, 2012) (SR-CBOE-2012-063).

⁷ See NASDAQ ISE Options Pricing Schedule, Section 4.12; NASDAQ MRX Options Pricing Schedule, Section 4(1); MIAX Emerald Fee Schedule, Section 1(a)(vi); MIAX Options Fee Schedule, Section 1(a)(x); and Cboe Options Fees Schedule, Stock Portion of Stock-Option Strategy Orders (each exchange charges the same fee of \$0.0010 per share and capped at \$50 per order). The Exchange notes that at this time it does not have the functionality available to impose a cap per order. The Exchange intends to have this functionality in place by Quarter 1 of 2020. The Exchange also does not believe that the absence of a cap prior to this timeframe will impact market participants as the stock-option strategy functionality will be new, thus large trades and large volume executed through such orders will take some time to gain traction on the Exchange, and, the Exchange notes that a majority of large complex orders executed on the Exchange are currently executed through its complex order auctions and QCC (including QCC with stock). The fee codes appended to these order types do not impose a cap.

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(4).

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, and, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that its proposed change to assess a charge for stock portions of stock-option strategy orders processed and routed through the Exchange transactions is consistent with Section 6(b)(4) of the Act in that the proposal is reasonable, equitable and not unfairly discriminatory. The Exchange believes the proposed stock handling fee for stock-option orders is reasonable and equitable as the proposed fee will cover the costs of developing and maintaining the systems that allow for the matching and processing of the stock legs of stock-option orders executed in the complex order book, as well as all fees charged by the outside venue that prints the trade. The Exchange also believes it is reasonable and equitable to largely pass through to the Member any fees assessed by the routing broker-dealer utilized by the Exchange with respect to the execution of the stock leg of any such order. The Exchange notes that other exchanges assess the same fee for stock components of stock option strategies for the purposes of covering similar costs.¹⁰

The Exchange also believes that the proposed fee for the stock legs of a stock-option strategy order is equitable and not unfairly discriminatory because it will be uniformly applied to all Members that execute stock-option orders in the complex order book on the Exchange. As noted, the proposed fee is identical to fees assessed by other options exchanges for stock legs

¹⁰ See supra note 6.

executed as a part of stock-option strategy orders.¹¹ As such, stock-option strategy orders are available on other options exchanges and participants can readily direct order flow to another exchange if they deem other exchanges' fees to be more favorable.

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 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. Specifically, the Exchange does not believe that the proposed change will impose any burden on intramarket competitions that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed change will apply uniformly to the stock portions of all market participants' stock-option strategy orders.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including 15 other options exchanges. Based on publicly available information, no single options exchange has more than 20% of the market share.¹² Therefore, no exchange possesses significant pricing power in the execution of option order flow. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. The proposed fee is substantially similar to fees charged for stock components of stock-option strategy orders by the Exchange's affiliate, Cboe Options, and other competing

¹¹ See supra note 7.

¹² See supra note 4.

exchanges,¹³ therefore, the Exchange believes that the proposed rule change appropriately reflects this competitive environment. Indeed, participants can readily choose to send their orders to other exchange, and, additionally off-exchange venues, if they deem fee levels at those other venues to be more favorable. 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.”¹⁴ 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’”¹⁵ Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

¹³ See supra note 6.

¹⁴ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

¹⁵ *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)).

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 Act¹⁶ and paragraph (f) of Rule 19b-4¹⁷ 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-CboeEDGX-2019-052 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.

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f).

All submissions should refer to File Number SR-CboeEDGX-2019-052. 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.

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

make available publicly. All submissions should refer to File Number SR-CboeEDGX-2019-052 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.¹⁸

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¹⁸ 17 CFR 200.30-3(a)(12).