

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-86611; File No. SR-CboeEDGX-2019-051)

August 8, 2019

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

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 August 1, 2019, 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, 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”) proposes to amend its fee schedule related to the Options Regulatory Fee. 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify the fee schedule applicable to the Exchange's options platform ("EDGX Options") to amend the rate of its Options Regulatory Fee ("ORF").³ Currently, the Exchange charges an ORF in the amount of \$0.0001 per contract side. The Exchange proposes to increase the amount of ORF from \$0.0001 per contract side to \$0.0002 per contract side. The proposed change to ORF should continue to balance the Exchange's regulatory expenses against the anticipated revenue.

The ORF is assessed by the Exchange on each Member for options transactions cleared by the Member that are cleared by the Options Clearing Corporation (OCC) in the customer range, regardless of the exchange on which the transaction occurs. In other words, the Exchange imposes the ORF on all customer-range transactions cleared by a Member, even if the transactions do not take place on the Exchange. The ORF is collected by OCC on behalf of the Exchange from the Clearing Member or non-Clearing Member that ultimately clears the transaction. With respect to linkage transactions, the Exchange reimburses its routing broker providing Routing Services for options regulatory fees it incurs in connection with the Routing Services it provides.

Revenue generated from ORF, when combined with all of the Exchange's other regulatory fees and fines, is designed to recover a material portion of the regulatory costs to the

³ The Exchange initially filed the proposed fee change on August 1, 2018 (SR-CboeEDGX-2018-028) for August 1, 2018 effectiveness. On business date August 9, 2018, the Exchange withdrew that filing and submitted this filing. [sic]

Exchange of the supervision and regulation of Member customer options business. Regulatory costs include direct regulatory expenses and certain indirect expenses for work allocated in support of the regulatory function. The direct expenses include in-house and third party service provider costs to support the day to day regulatory work such as surveillances, investigations and examinations. The indirect expenses include support from such areas as human resources, legal, information technology and accounting. These indirect expenses are estimated to be approximately 37% of EDGX Options' total regulatory costs for 2019. Thus, direct expenses are estimated to be approximately 63% of total regulatory costs for 2019. In addition, it is EDGX Options' practice that revenue generated from ORF not exceed more than 75% of total annual regulatory costs.

The Exchange monitors its regulatory costs and revenues at a minimum on a semi-annual basis. If the Exchange determines regulatory revenues exceed or are insufficient to cover a material portion of its regulatory costs, the Exchange will adjust the ORF by submitting a fee change filing to the Commission. The Exchange also notifies Members of adjustments to the ORF via regulatory circular.⁴ Based on the Exchange's most recent semi-annual review, the Exchange is proposing to increase the amount of ORF that will be collected by the Exchange from \$0.0001 per contract side to \$0.0002 per contract side. The proposed increase is based on the Exchange's estimated projections for its regulatory costs, balanced with recent options volumes. These expectations are estimated, preliminary and may change. There can be no assurance that the Exchange's final costs for 2019 will not differ materially from these expectations and prior practice, nor can the Exchange predict with certainty whether options

⁴ The Exchange provides Members with such notice at least 30 calendar days prior to the effective date of the change. The Exchange notified Members of the proposed rate change for August 1, 2019 on June 25, 2019. See EDGX Regulatory Circular RG19-020 "Modification of the Options Regulatory Fee."

volume will remain at the current level going forward; however, the Exchange believes that revenue generated from the ORF (as amended), when combined with all of the Exchange's other regulatory fees and fines, would cover a material portion, but not all, of the Exchange's regulatory costs⁵.

The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange's total regulatory costs.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.⁶ Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,⁷ in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using its facilities. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues or providers of routing services if they deem fee levels to be excessive.

The Exchange believes the proposed fee change is reasonable because the modest increase is necessary to offset the anticipated regulatory costs, and which, in combination with other regulatory fees and fines, still is not expected to exceed the Exchange's total regulatory

⁵ The Exchange notes that its regulatory responsibilities with respect to Member compliance with options sales practice rules have largely been allocated to FINRA under a 17d-2 agreement. The ORF is not designed to cover the cost of that options sales practice regulation.

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(4).

costs. The Exchange has designed the ORF to generate revenues that would be less than or equal to 75% of the Exchange's regulatory costs, which is consistent with the view of the Commission that regulatory fees be used for regulatory purposes and not to support the Exchange's business side. As discussed above, the Exchange determined to increase ORF after its semi-annual review of its regulatory costs and regulatory revenues, which includes revenues from ORF and other regulatory fees and fines. When taking into account recent options volume, coupled with the anticipated regulatory fees, the Exchange believes it's reasonable to increase the ORF amount by \$0.0001 per contract side.

Moreover, the Exchange believes the ORF ensures fairness by assessing higher fees to those Members that require more Exchange regulatory services based on the amount of customer options business they conduct. Regulating customer trading activity is much more labor intensive and requires greater expenditure of human and technical resources than regulating non-customer trading activity, which tends to be more automated and less labor-intensive. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (e.g., Member proprietary transactions) of its regulatory program.⁸ The Exchange believes the proposed fee change is equitable and not unfairly discriminatory in that it is charged to all Members on all their transactions that clear in the customer range at the OCC.

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 not necessary or appropriate in furtherance of the purposes of the Act. This proposal

⁸ If the Exchange changes its method of funding regulation or if circumstances otherwise change in the future, the Exchange may decide to modify the ORF or assess a separate regulatory fee on Member proprietary transactions if the Exchange deems it advisable.

does not create an unnecessary or inappropriate intra-market burden on competition because the ORF applies to all customer activity, thereby raising regulatory revenue to offset regulatory expenses. It also supplements the regulatory revenue derived from non-customer activity. The Exchange notes, however, the proposed change is not designed to address any competitive issues. Indeed, this proposal does not create an unnecessary or inappropriate inter-market burden on competition because it is a regulatory fee that supports regulation in furtherance of the purposes of the Act. The Exchange is obligated to ensure that the amount of regulatory revenue collected from the ORF, in combination with its other regulatory fees and fines, does not exceed regulatory costs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

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 Act⁹ and paragraph (f) of Rule 19b-4¹⁰ 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.

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f).

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 No. SR-CboeEDGX-2019-051 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, D.C. 20549-1090.

All submissions should refer to File No. SR-CboeEDGX-2019-051. 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 No. SR-CboeEDGX-2019-051, 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.¹¹

Jill M. Peterson
Assistant Secretary

¹¹ 17 CFR 200.30-3(a)(12).