

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-97136; File No. SR-CboeEDGX-2023-020)

March 14, 2023

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 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 10, 2023, Cboe EDGX Exchange, Inc. (“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 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 to modify its market data fees for EDGX Options Top.³ Particularly, the Exchange proposes to modify the Professional and Non-Professional User Fees, adopt a new Enterprise Fee for EDGX Options Top, and make other clarifying, non-substantive changes.⁴

The Exchange first proposes to reduce the rates for Professional and Non-Professional User fees for EDGX Options Top. The Exchange currently charges Internal Distributors and External Distributors that redistribute any of the EDGX Options Data Feeds different fees for their Professional Users⁵ and Non-Professional Users⁶. The Exchange currently assesses a

³ EDGX Options Top is an uncompressed data feed that offers top of book quotations and execution information based on options orders entered into the System. Uncompressed data is disseminated “as is” in the native format by the Exchange, with no compression.

⁴ The Exchange initially filed the proposed fee changes on January 3, 2023 (SR-CboeEDGX-2023-001). On February 28, 2023, the Exchange submitted SR-CboeEDGX-2023-015 in place of SR-CboeEDGX-2023-001, which the Exchange withdrew on March 1, 2023. On March 10, 2023 the Exchange withdrew CboeEDGX-2023-015 and submitted this proposal.

⁵ A Professional User of an Exchange Market Data product is any User other than a Non-Professional User. The Exchange proposes to amend the definition of “Professional User” in the Fee Schedule to further clarify that a Professional User is a natural person recipient of an Exchange Data product who is not a Non-Professional User.

⁶ A "Non-Professional User" of an Exchange Market Data product is a natural person or qualifying trust that uses Data only for personal purposes and not for any commercial purpose and, for a natural person who works in the United States, is not: (i) registered or qualified in any capacity with the Securities and Exchange Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an "investment adviser" as that term is defined in Section 202(a)(11) of

monthly fee for Professional Users of \$10.00 per User and a monthly fee of \$1.00 per Non-Professional User.⁷ Further, the Fee Schedule provides that Distributors and Users of any one of EDGX Options market data products (i.e., EDGX Options Top, EDGX Options Depth, EDGX Options Auction Feed, EDGX Options Complex Depth, EDGX Options Complex Top, and EDGX Options Complex Auction Fees) may receive, at no additional charge, access to any or all of the other market data products listed. The Exchange proposes to reduce the rates for the User fees for EDGX Options Top. Particularly, the Exchange proposes to reduce the monthly (i) Professional User fee from \$10 per user to \$5 per user and (ii) Non-Professional User fee from \$1.00 per user to \$0.10 per user. The Exchange also proposes to start charging separate User fees for EDGX Options Top. User Fees for the Exchange's remaining market data products will continue to receive, at no additional charge, access to any or all of the other market data products listed (with the exception of EDGX Options Top). The Exchange has reformatted the Market Data Fees tables to make this clear.⁸

The Exchange lastly proposes to establish a \$20,000 per month Enterprise Fee that will permit a Distributor to purchase a monthly (and optional) Enterprise license to receive the EDGX

the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt; or, for a natural person who works outside of the United States, does not perform the same functions as would disqualify such person as a Non-Professional User if he or she worked in the United States.

⁷ Distributors that receive EDGX Options Data Feeds are required to count every Professional User and Non-Professional User to which they provide the market data product(s)

⁸ The Exchange is not proposing any changes to the current User Fee rates for its other market data products at this time and Users of any one of the remaining market data products may continue to receive, at no additional charge, access to any or all of the other market data products listed (i.e., except for EDGX Options Top).

Options Top Data for distribution to an unlimited number of Professional and Non-Professional Users. The Enterprise Fee is an alternative to Professional and Non-Professional User fees and will permit a Distributor to pay a flat fee to receive the data for an unlimited number of Professional and Non-Professional Users, which the Exchange proposes to make clear in the Fee Schedule. The Enterprise Fee may provide an opportunity to reduce fees. For example, if a Distributor distributes EDGX Options Top to 15,000 Professional Users who each receive EDGX Options Top at \$5.00 per month (as proposed), then that Distributor will pay \$75,000 per month in Professional Users fees. If the Distributor instead were to purchase the proposed Enterprise license, then it would alternatively pay a flat fee of \$20,000 for an unlimited number of Professional and Non-Professional Users. A Distributor must pay a separate Enterprise Fee for each entity that controls the display of EDGX Options Top if it wishes for such Users to be covered by the Enterprise Fee rather than by per User fees.⁹ A Distributor that pays the Enterprise Fee will not have to report its number of such Users on a monthly basis. Rather, every six months, it must provide the Exchange with a count of the total number of Professional and Non-Professional users of EDGX Options Top.¹⁰ The Exchange notes that the purchase of an Enterprise license is voluntary and a firm may elect to instead use the per User structure and benefit from the proposed per User Fees described above. For example, a firm that does not have a sufficient number of Users to benefit from purchase of the license need not do so.

The Exchange lastly proposes to modify the definition of Professional User under the definitions section of the Market Data Fees section to clarify that a Professional “User” is any

⁹ For example, if a Distributor that distributes EDGX Options Top to Retail Brokerage Firm A and Retail Brokerage Firm B and wishes to have the Users under each firm covered by an Enterprise license, the Distributor would be subject to two Enterprise Fees.

¹⁰ See Cboe Global Markets north American Data Policies.

natural person recipient of an Exchange Market Data product who is not a Non-Professional User. The proposed modification also aligns the definition with that of the definition used by the Exchange’s affiliates Cboe Exchange, Inc. and Cboe C2 Exchange, Inc.¹¹

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.¹² Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹³ 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 Section 6(b)(4) of the Act,¹⁴ which requires 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 first notes that it operates in a highly competitive environment. Indeed, there are currently 16 registered options exchanges that trade options. Based on publicly

¹¹ See Cboe Data Services, LLC Fees Schedule and Cboe C2 Options Fees Schedule.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ 15 U.S.C. 78f(b)(4).

available information, no single options exchange has more than 17% of the market share.¹⁵ The Exchange believes top-of-book quotation and transaction data is highly competitive as national securities exchanges compete vigorously with each other to provide efficient, reliable, and low-cost data to a wide range of investors and market participants. Indeed, there are several competing products offered by other national securities exchanges today, not counting products offered by the Exchange's affiliates, and each of the Exchange's affiliated U.S. options exchanges also offers similar top-of-book data.¹⁶ Each of those exchanges offer top-of-book quotation and last sale information based on their own quotation and trading activity that is substantially similar to the information provided by the Exchange through the EDGX Options Top Feed. Further, the quote and last sale data contained in the EDGX Options Top Feed is identical to the data sent to OPRA for redistribution to the public.¹⁷ Accordingly, Exchange top-of-book data is widely available today from a number of different sources.

Moreover, the EDGX Options Top is distributed and purchased on a voluntary basis, in that neither the Exchange nor market data distributors are required by any rule or regulation to make this data available. Accordingly, Distributors and Users can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. As described above, market participants have a wide variety of alternative market data products

¹⁵ See Cboe Global Markets U.S. Options Market Month-to-Date Volume Summary (February 24, 2023), available at https://markets.cboe.com/us/options/market_statistics/.

¹⁶ See e.g., NYSE Arca Options Proprietary Market Data Fees Schedule, MIAX Options Exchange, Fee Schedule, Section 6 (Market Data Fees), Nasdaq PHLX Options 7 Pricing Schedule, Section 10 (Proprietary Data Feed Fees) and Cboe Data Services, LLC Fees Schedule.

¹⁷ The Exchange notes that it makes available the top-of-book and last sale data that is included in the EDGX Options Top Data Feed no earlier than the time at which the Exchange sends that data to OPRA.

from which to choose, such as similar proprietary data products offered by other exchanges and consolidated data. Further, the Exchange is not required to make any proprietary data products available or to offer any specific pricing alternatives to any customers. Moreover, persons (including broker-dealers) who subscribe to any exchange proprietary data feed must also have equivalent access to consolidated Options Information¹⁸ from OPRA for the same classes or series of options that are included in the proprietary data feed, and proprietary data feeds cannot be used to meet that particular requirement.¹⁹ As such, all proprietary data feeds are optional.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, 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.”²⁰ Making similar data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supracompetitive fees. In the event that a market participant views one exchange’s data

¹⁸ “Consolidated Options Information” means consolidated Last Sale Reports combined with either consolidated Quotation Information or the BBO furnished by OPRA. Access to consolidated Options Information is deemed “equivalent” if both kinds of information are equally accessible on the same terminal or work station. See Limited Liability Company Agreement of Options Price Reporting Authority, LLC (“OPRA Plan”), Section 5.2(c)(iii). The Exchange notes that this requirement under the OPRA Plan is also reiterated under the Cboe Global Markets Global Data Agreement and Cboe Global Markets North American Data Policies, which subscribers to any exchange proprietary product must sign and are subject to, respectively. Additionally, the Exchange’s Data Order Form (used for requesting the Exchange’s market data products) requires confirmation that the requesting market participant receives data from OPRA.

¹⁹ Id.

²⁰ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

product as more or less attractive than the competition they can and do switch between similar products. The proposed fees are a result of the competitive environment, as the Exchange seeks to adopt fees to attract purchasers of EDGX Options Top Data.

The Exchange believes the proposed changes to reduce the rates of the current Professional and Non-Professional User fees are reasonable as Distributors will be subject to lower rates for EDGX Options Top User fees. Additionally, the User fees continue to be in line with and/or lower than User fees assessed by other exchanges for similar data.²¹

The Exchange believes that the proposed fees are equitable and not unfairly discriminatory because they will be charged uniformly to Distributors who distribute EDGX Options Top. The Exchange also believes continuing to offer EDGX Options Top Data to Non-Professional Users at a lower cost than Professional Users results in greater equity among data recipients, as Professional Users are categorized as such based on their employment and participation in financial markets, and thus, are compensated to participate in the markets. Although Non-Professional Users too can receive significant financial benefits through their

²¹ See e.g., Nasdaq PHLX Options 7 Pricing Schedule, Section 10 (Proprietary Data Feed Fees), which provides for a fee of \$40 per month to professional users and \$1.00 per month to non-professional users to cover the usage of PHLX Options (TOPO) Data, TOPO Plus Orders, PHLX Orders and PHLX Depth Data feeds. See also NYSE American Options Proprietary Market Data Fees schedule, which provides for a fee of \$50 per month to professional users and \$1.00 per month to non-professional users of American Options Top Data, American Options Deep and American Options Complex products. By comparison, the total combined Professional User fee for the Exchange's market data products is significantly lower at \$11 per Professional User (i.e., \$1 per Professional Users of EDGX Options Top, as proposed, and \$10 per Professional User of any of the remaining EDGX Options market data products). The Exchange's combined Non-Professional User Fee at \$1.10 per Non-Professional User (i.e., \$0.10 per Non-Professional User of EDGX Options Top, as proposed, and \$1 per Non-Professional User of any of the remaining EDGX Options market data products) is still in line with, and not a significant departure from, PHLX's and NYSE American's aforementioned Non-Professional User fees.

participation in the markets, the Exchange believes it is reasonable to charge more for those Users who are more directly engaged in the markets.

The Exchange next notes it is not required to charge a single User fee to cover all its available data products, but none-the-less has opted to not charge for separate User Fees for both feeds since EDGX Options Top was adopted in January 2018.²² However, the Exchange now wishes to have separate User fees for EDGX Options Top. The Exchange believes the proposed change is reasonable, equitable and not unfairly discriminatory as all of EDGX Options data products are purely optional. Only those Distributors that deem the products to be of sufficient overall value and usefulness would purchase them for distribution to Users. Further, Distributors are not required to distribute, and Users are not required to receive, any one particular data product and may choose to receive none, one, or several of the Exchange's market data products. Indeed, less than 25% of the Exchange's market data subscriptions is for EDGX Options Top. Additionally, the Exchange is not required to provide any fee waiver to Distributors of EDGX Options Top. The Exchange believes the proposed change is equitable and not unfairly discriminatory as it will apply uniformly to Distributors.

The proposed Enterprise Fee for EDGX Options Top Feed is equitable and reasonable as the proposed fee could result in a fee reduction for Distributors with a large number of Professional and Non-Professional Users. If a Distributors has a smaller number of Professional Users of EDGX Options Top Data, then it may continue using the per User structure and benefit from the proposed per EDGX Options Top User Fee reductions. By reducing prices for recipient firms with a large number of Professional and Non-Professional Users, the Exchange believes

²² See Securities Exchange Act Release No. 82462 (January 8, 2018), 83 FR 1647 (January 12, 2018) (SR-CboeEDGX-2017-010).

that more firms may choose to receive and to distribute EDGX Options Top Data, thereby expanding the distribution of this market data for the benefit of investors.

The Exchange further believes that the proposed Enterprise Fee is reasonable because it will simplify reporting for certain recipients that have large numbers of Professional and Non-Professional Users. Firms that pay the proposed Enterprise Fee will not have to report the number of Users on a monthly basis as they currently do, but rather will only have to count Professional and Non-Professional Users every six months, which is a significant reduction in administrative burden. Finally, as described above the Enterprise Fee is entirely optional. A firm that does not have a sufficient number of Users to benefit from purchase of the license need not do so.

The Exchange lastly believes the proposed non-substantive clarifying changes will alleviate potential confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

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

The Exchange does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive environment, and its ability to price top-of-book data is constrained by competition among exchanges that offer similar data products to their customers. Top-of-book data is broadly disseminated by competing U.S. options exchanges and through OPRA. There are therefore a number of alternative products available to market participants and investors, including products offered by certain competing exchanges, as well as OPRA. In this competitive environment potential Distributors are free to choose which competing product to purchase to satisfy their need for market information. Often, the choice

comes down to price, as market data customers look to purchase cheaper data products, and quality, as market participants seek to purchase data that represents significant market liquidity.

The Exchange believes that the proposed fees do not put any market participants at a relative disadvantage compared to other market participants. As discussed, the proposed fees would apply to all similarly situated recipient firms of EDGX Options Top on an equal and non-discriminatory basis. The Exchange believes the differentiated fees for Professional and Non-Professional Users of EDGX Options Top is appropriate given Professional Users are categorized as such based on their employment and participation in financial markets, and thus, are compensated to participate in the markets. Non-Professional Users too can receive significant financial benefits through their participation in the markets, however the Exchange believes it is reasonable to charge more to those Users who are more directly engaged in the markets. The Exchange therefore believes that the proposed fee neither favors nor penalizes one or more categories of market participants in a manner that would impose an undue burden on competition.

The Exchange believes that the proposed fees do not impose a burden on competition or on other SROs that is not necessary or appropriate in furtherance of the purposes of the Act. In particular, market participants are not forced to subscribe to EDGX Options Top Data, or any of the Exchange's data feeds, as described above. As noted, the quote and last sale data contained in the Exchange's EDGX Options Top feed is identical to the data sent to OPRA for redistribution to the public. Accordingly, Exchange top-of-book data is therefore widely available today from a number of different sources.

Because market data customers can find suitable substitute feeds, an exchange that overprices its market data products stands a high risk that users may substitute another product.

These competitive pressures ensure that no one exchange's market data fees can impose an undue burden on competition, and the Exchange's proposed fees do not do so here.

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 Act²³ and paragraph (f) of Rule 19b-4²⁴ 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 email to rule-comments@sec.gov. Please include File Number SR-CboeEDGX-2023-020 on the subject line.

²³ 15 U.S.C. 78s(b)(3)(A).

²⁴ 17 CFR 240.19b-4(f).

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-2023-020. 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 (<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, 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.

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-2023-020 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.²⁵

Sherry R. Haywood,
Assistant Secretary.

²⁵ 17 CFR 200.30-3(a)(12).