

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-97481; File No. SR-CboeEDGX-2023-033)

May 11, 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 April 28, 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 March 1, 2023, the Exchange withdrew that filing and 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 SR-CboeEDGX-2023-020. On April 28, 2023, the Exchange withdrew that filing and submitted this filing.

⁵ A Professional User of an Exchange Market Data product is any User other than 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 the Investment Advisors Act of 1940 (whether or not registered or qualified under that

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

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 it is assessed in addition to the Distribution Fee, 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.

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

⁹ For example, if a Distributor (e.g., Refinitiv) that distributes EDGX Options Top to Retail Brokerage Firm A and Retail Brokerage Firm B (which “entities” redistribute BZX Options Top to its respective Users) 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.

Exchange and, in particular, the requirements of Section 6(b) of the Act.¹¹ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹² 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) requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes this proposal is consistent with Section 6(b)(8) of the Act, which requires that the rules of an exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.¹³ In addition, the Exchange believes that the proposed rule change is consistent with Section 11(A) of the Act as it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets, and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.¹⁴ The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,¹⁵ which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

¹³ 15 U.S.C. 78f(b)(8).

¹⁴ 15 U.S.C. 78k-1.

¹⁵ 15 U.S.C. 78f(b)(4).

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 available information, no single options exchange has more than 18% of the market share.¹⁶ 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.¹⁷ 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.¹⁸ 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

¹⁶ See Cboe Global Markets U.S. Options Market Month-to-Date Volume Summary (April 24, 2023), available at https://markets.cboe.com/us/options/market_statistics/.

¹⁷ 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.

¹⁸ 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.

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 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 Information¹⁹ 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.²⁰ As such, all proprietary data feeds are purely optional and only those that deem the product to be of sufficient overall value and usefulness would purchase it.

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

¹⁹ “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.

²⁰ Id.

been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”²¹ 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 product as more or less attractive than a competitor 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 who may be interested in purchasing only the EDGX Options Top Data Feed.

The Exchange believes the proposed changes to reduce the rates of the current Professional and Non-Professional User fees for EDGX Options Top Feed are reasonable as Distributors will be subject to lower User fees for EDGX Options Top Feed. Distributors who only wish to distribute EDGX Options Top Feed will therefore be subject to lower 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.²²

²¹ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

²² 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-

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 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 believes assessing lower User fees for EDGX Options Top as compared to the remaining EDGX Options market data feeds is also equitably and not unfairly discriminatory. Particularly, the EDGX Options Top Feed contains less information than other market data products, including EDGX Options Depth (indeed, the information contained in EDGX Options Top is a subset of the information that is included in EDGX Options Depth). The Exchange believes it is equitable to have pricing based, in part, upon the amount of information contained in each data feed and the value of that information to market participants. Thus, the Exchange believes it's reasonable for EDGX Options Top to have lower User fees than the other EDGX Options market data products because it offers less data than other products. Additionally, the Exchange believes the proposed reduced User fee for EDGX Options Top as compared to the User fees for the remaining EDGX Options market data products is reasonable, equitable and not unfairly discriminatory as the Exchange continues to provide that Users of any one of EDGX Options Depth, EDGX Options Auction Feed, EDGX Options Complex Top, EDGX Options Complex Depth, and/or EDGX Options

Professional User fees.

Complex Auction Feed may receive, at no additional charge, access to any or all of the other aforementioned market data products.

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 EDGX Options data feeds since EDGX Options Top was adopted in January 2018.²³ 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. As stated above, the Exchange also believes charging separate User fees is equitable as it allows the Exchange to assess prices based on the amount of information contained in each feed, which can provide an opportunity to assess lower fees for products that contain less information. Particularly, the proposed rule change enables market participants who only want top-of-book and execution data and do not need other types of market data, including depth-of-book, complex order and auction feed data, to purchase such top-of-book and execution data at a lower price. Those who wish to receive more comprehensive data, including the foregoing, may still continue to do so at the current (and higher) price. Additionally, as noted above, the data contained in the EDGX Options Top Feed is a subset of the data included in the EDGX Options Depth Feed. As such, a User that receives EDGX Options Depth Feed would not need to also receive the EDGX Options Top Feed since the EDGX Options Depth Feed is already inclusive of the data contained in the EDGX Options Top Feed. Only those Distributors that deem one or more of the products to be of sufficient overall value and usefulness would purchase them for distribution to Users. Further, Distributors are not

²³ See Securities Exchange Act Release No. 82462 (January 8, 2018), 83 FR 1647 (January 12, 2018) (SR-CboeEDGX-2017-010).

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.

Additionally, the Exchange is not required to provide any fee waiver to Distributors of EDGX Options Top, including for User fees. In fact, another exchange similarly adopted separate fees for different data products that historically had otherwise been provided under a single fee.²⁴

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 Distributor 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 Distributors with a large number of Professional and Non-Professional Users, the Exchange believes 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 Distributors 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

²⁴ See Securities Exchange Act Release No. 79556 (December 14, 2016), 81 FR 92935 (December 20, 2016) (SR-NASDAQ-2016-167).

that does not have a sufficient number of Users to benefit from purchase of the license need not do so.

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. For example, Top-of-book data is broadly disseminated by competing U.S. options exchanges. 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 Distributors 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 Act²⁵ and paragraph (f) of Rule 19b-4²⁶ 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.

²⁵ 15 U.S.C. 78s(b)(3)(A).

²⁶ 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 email to rule-comments@sec.gov. Please include File Number SR-CboeEDGX-2023-033 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-2023-033. 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. 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-2023-033 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.²⁷

Sherry R. Haywood

Assistant Secretary

²⁷ 17 CFR 200.30-3(a)(12).