

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-100494; File No. SR-CboeEDGX-2024-040)

July 11, 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 June 28, 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, 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 for its equity options platform (“EDGX Options”) relating to logical connectivity fees.³

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 Ports⁴; \$500 per port for Multicast PITCH Spin Server Ports (“Spin Ports”) and GRP Ports⁵; and \$600 per port for Ports with Bulk Quoting Capabilities⁶ (“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 The Exchange initially filed the proposed fee change on January 2, 2024 (SR-CboeEDGX-2024-006). On March 1, 2024, the Exchange withdrew that filing and submitted SR-CboeEDGX-2024-017. On April 30, 2024, the Exchange withdrew that filing and submitted SR_CboeEDGX-2024-023. On June 28, 2024, the Exchange will be withdrawing that filing and submitting this filing.

⁴ 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.

⁵ Spin Ports and GRP Ports are used to request and receive a retransmission of data from the Exchange’s Multicast PITCH data feeds.

⁶ 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.⁷

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.⁸ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁹ 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)¹⁰ 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)¹¹ of the Act, 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.

⁷ 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.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ Id.

¹¹ 15 U.S.C. 78f(b)(4).

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.¹² 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 recent and anticipated connectivity-related upgrades and changes. The Exchange and its affiliated exchanges recently launched a multi-year initiative to improve Cboe Exchange Platform performance and capacity requirements, including for its U.S. options markets, to increase competitiveness, support growth and advance a consistent world class platform. The goal of the project, among other things, is to provide faster and more consistent order handling and matching performance for options, while ensuring quicker processing time and supporting increasing volumes. For example, the Exchange is currently performing order handler and matching engine hardware upgrades across its markets to advance this goal. The Exchange anticipates that upgrades to its matching engines may result in a latency reduction up to 40% to 50% on the Exchange and that upgrades to its order handlers may offer lower variability in the processing of message, which can reduce the time a message takes to get to the matching engine. The Exchange expended, and will continue to expend, resources to innovate and modernize technology so that it may benefit its Members and continue to compete among other options markets. The Exchange also notes that neither it - nor its options exchange affiliates - have passed through or offset current or projected costs associated with these upgrades. The ability to continue to innovate with technology and offer new products to market

¹² 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.

participants allows the Exchange to remain competitive in the options space which currently has 17 options markets and potential new entrants. 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. Market participants may voluntarily choose to become a member of one or more of a number of different exchanges, of which, the Exchange is but one choice. Additionally, any Exchange member that is dissatisfied with the proposal is free to choose not to be a member of the Exchange and send order flow to another 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 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 connectivity fees.¹³ Based on publicly available information, no single options exchange has more than approximately 17% of the market share.¹⁴ 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

¹³ Id.

¹⁴ See Cboe Global Markets U.S. Options Market Volume Summary (June 21, 2024), available at https://markets.cboe.com/us/options/market_statistics/.

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 and discourage the purchasing of large amounts of superfluous ports. 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. Further, market participants may reduce or discontinue use of these ports in response to the proposed fees. Indeed, when the Exchange last increased pricing for logical ports in 2018, the Exchange observed within the first two months that market participants did in fact reduce the number of logical ports they maintained. Particularly, Logical Port quantities were reduced by approximately 20%. The Exchange similarly saw a decline in logical port quantities after the current proposed rate change in January 2024. Specifically, as of May 2024, Logical Port quantities have been reduced by approximately 8% since the announcement of the proposed fee change. This demonstrates that market participants can and do choose to disconnect, or reduce,

their connectivity from the Exchange, including in response to fee increases. The Exchange also does not assess any termination fee for a market participant to drop its connectivity or membership, nor is the Exchange aware of any other costs that would be incurred by a market participant to do so.

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 members¹⁵, and NYSE Arca Options has 69 members¹⁶, MIAX Options has 46 members¹⁷ and MIAX Pearl Options has 40 members.¹⁸ Accordingly, excessive fees would simply serve to reduce demand for these products, which market participants are under no regulatory obligation to utilize.

The Exchange lastly notes that it is not required by the Exchange Act, nor any other rule or regulation, to undertake a cost-of-service or rate-making approach with respect to fee

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

¹⁶ See <https://www.nyse.com/markets/arca-options/membership#directory>.

¹⁷ See https://www.miaxglobal.com/sites/default/files/page-files/MIAX_Options_Exchange_Members_April_2023_04282023.pdf.

¹⁸ See https://www.miaxglobal.com/sites/default/files/page-files/MIAX_Pearl_Exchange_Members_01172023_0.pdf.

proposals. Moreover, Congress's intent in enacting the 1975 Amendments to the Act was to enable competition - rather than government order - to determine prices. The principal purpose of the amendments was to facilitate the creation of a national market system for the trading of securities. Congress intended that this "national market system evolve through the interplay of *competitive forces* as unnecessary regulatory restrictions are removed."¹⁹ Other provisions of the Act confirm that intent. For example, the Act provides that an exchange must design its rules "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."²⁰ Likewise, the Act grants the Commission authority to amend or repeal "[t]he rules of [an] exchange [that] impose any burden on competition not necessary or appropriate in furtherance of the purposes of this chapter."²¹ In short, the promotion of free and open competition was a core congressional objective in creating the national market system.²² Indeed, the Commission has historically interpreted that mandate to promote competitive forces to determine prices whenever compatible with a national market system. Accordingly, the Exchange believes it has met its burden to demonstrate that its proposed fee change is reasonable and consistent with the immediate filing process chosen by Congress, which created a system whereby market forces determine access fees in the vast majority of cases, subject to oversight only in particular cases of abuse or market failure. The Exchange also believes that, even if it were possible as a matter of economic theory,

¹⁹ See H.R. Rep. No. 94-229, at 92 (1975) (Conf. Rep.) (emphasis added)

²⁰ 15 U.S.C. § 78f(b)(5).

²¹ 15 U.S.C. § 78f(8).

²² See also 15 U.S.C. § 78k-l(a)(1)(C)(ii) (purposes of Exchange Act include to promote "fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets"); Order, 73 Fed. Reg. at 74781 ("The Exchange Act and its legislative history strongly support the Commission's reliance on competition, whenever possible, in meeting its regulatory responsibilities for overseeing the SROs and the national market system.").

cost-based pricing for the proposed fee would be so complicated that it could not be done practically. Indeed, the Exchange believes that classification of costs could likely not be done without on-going debate over formulas for allocation²³, continual auditing, and considerable expense. The Exchange also believes cost-based analysis could create disincentives to reduce costs through efficient operation or innovation. Moreover, the industry could experience frequent rate increases based on escalating expense levels. The Exchange lastly cautions that as disputes arise regarding the appropriate measure and calculation of relevant costs and allocation of common costs, the Commission could find itself engaging in the kind of rigid ratemaking not contemplated by Section 11A of the Exchange Act and which the Commission has historically sought to avoid.

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.

²³ See, e.g., letter from Brian Sopinsky, General Counsel, Susquehanna International Group, LLP (“SIG”), to Vanessa Countryman, Secretary, Commission, dated February 7, 2023, letters from Gerald D. O’Connell, SIG, to Vanessa Countryman, Secretary, Commission, dated March 21, 2023, May 24, 2023, July 24, 2023 and September 18, 2023, *and* letters from John C. Pickford, SIG, to Vanessa Countryman, Secretary, Commission, dated January 4, 2024, and March 1, 2024 and letters from Thomas M. Merritt, Deputy General Counsel, Virtu Financial, Inc. (“Virtu”), to Vanessa Countryman, Secretary, Commission, dated November 8, 2023 and January 2, 2024. See also Securities Exchange Act Release No. 93883 (December 30, 2021), 87 FR 523 (January 5, 2022) (SR-IEX-2021-14) (Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend Its Fee Schedule for Market Data Fees) and Securities Exchange Act Release No. 94888 (May 11, 2022), 87 FR 29892 (May 17, 2022) (SR-PEARL-2022-18) (Notice of Filing of a Proposed Rule Change To Amend the MIAX PEARL Options Fee Schedule To Increase Certain Connectivity Fees and To Increase the Monthly Fees for MIAX Express Network Full Service Port; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change).

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.”²⁴

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’”²⁵ 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 rule change has become effective pursuant to Section 19(b)(3)(A) of the Act²⁶ and paragraph (f) of Rule 19b-4²⁷ 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

²⁴ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

²⁵ *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)).

²⁶ 15 U.S.C. 78s(b)(3)(A).

²⁷ 17 CFR 240.19b-4(f).

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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeEDGX-2024-040 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-2024-040. 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-2024-040 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.²⁸

J. Matthew DeLesDernier,

Deputy Secretary.

²⁸ 17 CFR 200.30-3(a)(12).