

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-100694; File No. SR-CboeEDGX-2024-049)

August 12, 2024

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend its Fees Schedule Concerning the Sales Value 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 July 30, 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”) proposes to amend its Fees 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 (https://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 Fees Schedule to add language concerning the application and collection of the Sales Value Fee, as described below. The proposed changes to the Fees Schedule do not change how the Exchange calculates or collects the Sales Value Fee from its Members, i.e., there are no changes to the application and assessment of the Sales Value Fee as a result of the proposed changes.

By way of background, Section 31 of the Securities Exchange Act of 1934 (the “Act”)³ requires each self-regulatory organization (“SRO”) to pay the Securities and Exchange Commission (“SEC” or “Commission”) twice annually a fee based on the aggregate dollar amount of certain sales of securities (i.e., “covered sales”). A covered sale is a “sale of a security, other than an exempt sale or a sale of a security future, occurring on a national securities exchange or by or through any member of a national securities association otherwise than on a national securities exchange.”⁴ Assessing a sales fee to defray the cost of these fees is common practice among the national securities exchanges and associations,⁵ and in fact the Exchange currently assesses a fee on its Members for covered sales on the Exchange to recoup these amounts. The Exchange now proposes to amend its Fees Schedule to include information regarding this fee, including an explanation and description of the fee and how it is collected.

³ 17 CFR §240.31.

⁴ 17 CFR 240.31(a)(6).

⁵ See, e.g., ISE Options 7, Section 12; NASDAQ Options 7, Section 8; NYSE Rule 393; and Cboe Options Fees Schedule, Sales Value Fee.

Specifically, the Exchange proposes to add a section to the Fees Schedule labeled “Sales Value Fee”. The proposed new section defines the Sales Value Fee (“Fee”) as the fee assessed by the Exchange to each Member for sales in securities when a sale in option securities occurs with respect to which the Exchange is obligated to pay a fee to the SEC under Section 31 of the Exchange Act or when a sell order in option securities is routed for execution at a market other than the Exchange, resulting in a covered sale on that market and an obligation of the routing broker providing Routing Services for the Exchange, as described in Exchange Rule 21.9, to pay the related sales fee of that market. The proposed section provides that to the extent the Exchange may collect more from Members under the section than is due from the Exchange to the Commission under Section 31 of the Act, for example due to rounding differences, the excess monies collected may be used by the Exchange to fund its general operating expenses. The Exchange may reimburse its routing broker for all Section 31-related fees incurred by the routing broker in connection with the Routing Services it provides.

The proposed section explains that the transactions to which the Fee applies are sales of options (other than options on a security index). The Fee is collected indirectly from Members through their clearing firms by the Options Clearing Corporation (“OCC”) on behalf of the Exchange with respect to options sales and options exercises.

The proposed section also sets forth the formula for calculating the Fee. Specifically, the Fee with respect to options sales and options exercises is equal to (i) the Section 31 fee rate multiplied by (ii) the Member’s aggregate dollar amount of covered sales resulting from options transactions occurring on the Exchange during any computational period. The Exchange notes that if the SEC’s Section 31 fee rate changes in the middle of a month, the Exchange will

perform a separate calculation with respect to covered sales under the new fee rate for the remaining portion of the month.

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.⁶ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁷ 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)⁸ 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) of the Act,⁹ 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 believes that the proposed rule change is consistent with these requirements because the proposed amended Fees Schedule text provides Members with detail

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

⁸ Id.

⁹ 15 U.S.C. 78f(b)(4).

regarding the circumstances under which the Exchange assesses a Sales Value Fee, and the current process by which the Fee is collected. As such, the proposed changes will increase transparency, help avoid Member confusion and foster better understanding of the application of the Fee. Accordingly, the Exchange believes the proposed rule change will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. Further, the Exchange believes the proposed change is reasonable, given that assessing a sales fee to defray the cost of fees assessed under Section 31 of the Act is common practice among the national securities exchanges and associations.¹⁰

As noted above, the proposed changes to the Fees Schedule do not change how the Exchange calculates or collects the Sales Value Fee from its Members, i.e., there are no changes to the application and assessment of the Sales Value Fee as a result of the proposed changes. Rather, the proposed changes will provide a more complete and accurate description of the Sales Value Fee (including an explanation of the Fee and how it is collected) to all Members. The Exchange believes the proposed change represents an equitable allocation of fees and is not unfairly discriminatory because it applies uniformly to all Members.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed changes will impose any burden on intramarket competition. Particularly, the proposed change applies uniformly to all Members, in that the Sales Value Fee will continue to be applied uniformly to all Members' applicable orders.

¹⁰ See, e.g., ISE Options 7, Section 12; NASDAQ Options 7, Section 8; NYSE Rule 393; and Cboe Options Fees Schedule, Sales Value Fee.

The Exchange does not believe that the proposed rule changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As noted above, assessing a sales fee to defray the cost of fees assessed under Section 31 of the Act is common practice among the national securities exchanges and associations.¹¹

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 Act¹² and paragraph (f) of Rule 19b-4¹³ 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:

¹¹ See, e.g., ISE Options 7, Section 12; NASDAQ Options 7, Section 8; NYSE Rule 393; and Cboe Options Fees Schedule, Sales Value Fee.

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f).

Electronic Comments:

- Use the Commission's internet comment form

(<https://www.sec.gov/rules/sro.shtml>); or

- Send an e-mail to rule-comments@sec.gov. Please include file number SR-CboeEDGX-2024-049 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-2024-049. 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 (<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-2024-049 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.¹⁴

Sherry R. Haywood,

Assistant Secretary.

¹⁴ 17 CFR 200.30-3(a)(12).