

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-82462; File No. SR-CboeEDGX-2017-010)

January 8, 2018

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Adopt Fees for Certain Market Data Products on the Exchange's Equity Options Platform

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 27, 2017, 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

The Exchange filed a proposal to amend the Market Data section of its fee schedule applicable to its equity options platform ("EDGX Options") to adopt fees for certain of its market data products, which are currently offered free of charge. The Exchange also proposes to amend the names of these market data products in Exchange Rule 21.15(b).

The text of the proposed rule change is available at the Exchange's website at [www.markets.cboe.com](http://www.markets.cboe.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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 Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts 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 the Market Data section of its fee schedule applicable to EDGX Options to adopt fees for certain of its market data products, which are currently offered free of charge. The Exchange also proposes to amend the names of these market data products in Exchange Rule 21.15(b).

The Exchange proposes to adopt fees for the following market data products: EDGX Options Depth (currently referred to as Multicast PITCH), EDGX Options Top (currently referred to as Multicast Top), and EDGX Options Auction Feed. Each of these market data products are currently offered free of charge. The Exchange also proposes to amend Rule 21.15(b) to revise the names of each of these market data products.

Multicast Pitch, to be renamed as EDGX Options Depth, is a data feed that offers depth of book quotations and execution information based on options orders entered into the System.<sup>3</sup> The Exchange offers separate EDGX Options Depth data feeds for the Exchange's Simple Book and the Exchange's Complex Order Book. The Exchange introduced Complex Order Book

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<sup>3</sup> Exchange Rule 21.15(b)(1).

functionality on October 23, 2017.<sup>4</sup> The Exchange’s Complex Book is the EDGX Options electronic book of Complex Orders.<sup>5</sup> The Exchange’s Simple Book is its regular electronic book of orders.<sup>6</sup>

Multicast TOP, to be renamed as EDGX Options Top, is a data feed that offers top of book quotations and execution information based on options orders entered into the System.<sup>7</sup> Like the EDGX Options Depth feed, the Exchange offers separate EDGX Options Top data feeds for the Exchange’s Simple Book and the Exchange’s Complex Order Book.

Finally, the Auction Feed, to be renamed the EDGX Options Auctions Feed, is a data feed that provides information regarding the current status of price and size information related to auctions conducted by the Exchange.<sup>8</sup> Like EDGX Options Depth and EDGX Options Top, the Exchange offers separate EDGX Options Auction data feeds for the Exchange’s Simple Book and the Exchange’s Complex Order Book.

The Exchange now proposes to amend its fee schedule to incorporate fees for distribution of each of the above market data products to subscribers. The proposed fees include the following, each of which are described in detail below: (i) Distribution Fees for both Internal and

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<sup>4</sup> Exchange Rule 21.20. See also Securities Exchange Act Release No. 81891 (October 17, 2017), 82 FR 49058 (October 23, 2017) (order approving the Exchange’s proposal to adopt a complex order book) (SR-BatsEDGX-2017-29).

<sup>5</sup> Exchange Rule 21.20.(a)(6). A “Complex Order” is any order involving the concurrent purchase and/or sale of two or more different options in the same underlying security (the “legs” or “components” of the complex order), for the same account, in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purposes of executing a particular investment strategy. Exchange Rule 21.20(a)(5).

<sup>6</sup> Exchange Rule 21.20(a)(10). See also Exchange Rule 16.1(a)(9) (defining the EDGX Options Book).

<sup>7</sup> Exchange Rule 21.15(b)(2).

<sup>8</sup> Exchange Rule 21.15(b)(5).

External Distributors;<sup>9</sup> and (ii) Usage Fees for both Professional<sup>10</sup> and Non-Professional<sup>11</sup> Users. The Exchange is proposing identical Distribution and Users fees for each market data product described above. Also, Distributors and Users of any one of the market data products subject to this proposal may receive access to any or all of the other market data products at no additional charge.

*Distribution Fees.* As proposed, each Internal Distributor and External Distributor that receives either the simple or complex versions of EDGX Options Depth, EDGX Options Top, and/or the EDGX Options Auction Feed shall pay a fee of \$500 per month.

*User Fees.* The Exchange proposes to charge Internal Distributors and External Distributors that redistribute either the simple or complex versions of EDGX Options Depth, EDGX Options Top, and/or the EDGX Options Auction Feed different fees for their Professional Users and Non-Professional Users. The Exchange will assess a monthly fee for Professional

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<sup>9</sup> A “Distributor” is defined as “any entity that receives the Exchange Market Data product directly from the Exchange or indirectly through another entity and then distributes it internally or externally to a third party.” See the Exchange’s fee schedule available at [http://markets.cboe.com/us/options/membership/fee\\_schedule/edgx/](http://markets.cboe.com/us/options/membership/fee_schedule/edgx/). An “Internal Distributor” is defined as “a Distributor that receives the Exchange Market Data product and then distributes that data to one or more Users within the Distributor’s own entity.” *Id.* An “External Distributor” is defined as “a Distributor that receives the Exchange Market Data product and then distributes that data to a third party or one or more Users outside the Distributor’s own entity.” *Id.*”

<sup>10</sup> A “Professional User” is defined as “any User other than a Non-Professional User.” See the Exchange’s fee schedule available at [http://markets.cboe.com/us/options/membership/fee\\_schedule/edgx/](http://markets.cboe.com/us/options/membership/fee_schedule/edgx/).

<sup>11</sup> A “Non-Professional User” is defined as “a natural person who is not: (i) registered or qualified in any capacity with the Commission, the Commodity 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 Advisers 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.” *Id.*

Users of \$10.00 per User. Non-Professional Users will be assessed a monthly fee of \$1.00 per User.

Distributors that receive either the simple or complex versions of EDGX Options Depth, EDGX Options Top, and/or the EDGX Options Auction Feed will be required to count every Professional User and Non-Professional User to which they provide the market data product(s), the requirements for which are identical to that currently in place for other market data products offered by the Exchange's equity trading platform.<sup>12</sup> Thus, the Distributor's count will include every person and device that accesses the data regardless of the purpose for which the individual or device uses the data. Distributors must report all Professional and Non-Professional Users in accordance with the following:

- In connection with a Distributor's distribution of the market data product, the Distributor should count as one User each unique User that the Distributor has entitled to have access to the market data product. However, where a device is dedicated specifically to a single individual, the Distributor should count only the individual and need not count the device.
- The Distributor should identify and report each unique User. If a User uses the same unique method to gain access to the market data product, the Distributor should count that as one User. However, if a unique User uses multiple methods to gain access to the market data product (*e.g.*, a single User has multiple passwords and user identifications), the Distributor should report all of those methods as an individual

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<sup>12</sup> See Securities Exchange Act Release Nos. 74282 (February 18, 2015); 80 FR 9487 (February 23, 2015) (SR-EDGX-2015-09) (proposing fees for the Bats One Feed); 75397 (July 8, 2015), 80 FR 41104 (July 14, 2015) (SR-EDGX-2015-28) (proposing user fees for the EDGX Top and Last Sale data feeds); and 75788 (August 28, 2015), 80 FR 53364 (September 3, 2015) (SR-EDGX-2015-38) (proposing fees for EDGX Book Viewer).

User.

- Distributors should report each unique individual person who receives access through multiple devices as one User so long as each device is dedicated specifically to that individual.
- If a Distributor entitles one or more individuals to use the same device, the Distributor should include only the individuals, and not the device, in the count.

The Exchange intends to implement the proposed changes to its fee schedule on January 2, 2018.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>13</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>14</sup> in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other recipients of Exchange data. The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all recipients of Exchange data and that the proposed fees are competitive with those charged by other venues and, therefore, reasonable and equitably allocated to recipients.

The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act<sup>15</sup> in that 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. Furthermore, the proposed rule change is consistent with Rule 603

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<sup>13</sup> 15 U.S.C. 78f.

<sup>14</sup> 15 U.S.C. 78f(b)(4).

<sup>15</sup> 15 U.S.C. 78k-1.

of Regulation NMS,<sup>16</sup> which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

In addition, the proposed fees would not permit unfair discrimination because all of the Exchange's customers and market data vendors will be subject to the proposed fees on an equivalent basis. EDGX Options Depth, EDGX Options Top, and the EDGX Options Auction Feed are 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. Firms 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. Moreover, the Exchange is not required to make any proprietary data products available or to offer any specific pricing alternatives to any customers.

In addition, the fees that are the subject of this rule filing are constrained by competition. As explained below in the Exchange's Statement on Burden on Competition, the existence of alternatives to EDGX Options Depth, EDGX Options Top, and the EDGX Options Auction Feed further ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect such alternatives. That is, the Exchange

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<sup>16</sup> 17 CFR 242.603.

competes with other exchanges (and their affiliates) that provide similar market data products. If another exchange (or its affiliate) were to charge less to distribute its similar product than the Exchange charges to distribute EDGX Options Depth, EDGX Options Top, and the EDGX Options Auction Feed, prospective Users likely would not subscribe to, or would cease subscribing to, EDGX Options Depth, EDGX Options Top, and the EDGX Options Auction Feed.

The Exchange notes that the Commission is not required to undertake a cost-of-service or rate-making approach. The Exchange believes that, even if it were possible as a matter of economic theory, cost-based pricing for non-core market data would be so complicated that it could not be done practically.

*Distribution Fee.* The Exchange believes that the proposed Distribution Fees are also reasonable, equitably allocated, and not unreasonably discriminatory. The fees for Members and non-Members are uniform except with respect to reasonable distinctions with respect to internal and external distribution, the fee for both are equal for each of the market data products subject to this proposal. The Exchange believes that the Distribution Fees for EDGX Options Depth, EDGX Options Top, and the EDGX Options Auction Feed are reasonable and fair in light of alternatives offered by other market centers. For example, EDGX Options Depth, EDGX Options Top, and the EDGX Options Auction Feed provides investors with alternative market data and competes with similar market data product currently offered by Nasdaq PHLX LLC (“PHLX”). Specifically, PHLX charges a fee of \$5,000 per month to External Distributors and \$4,000 per month to Internal Distributors for the TOPO Plus Orders feed,<sup>17</sup> which included

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<sup>17</sup> See a description of TOPO Plus Orders [available at <http://www.nasdaqtrader.com/Micro.aspx?id=topoplusorders>](http://www.nasdaqtrader.com/Micro.aspx?id=topoplusorders). See also Section IV of PHLX Rules outlining the fees for the TOPO Plus Orders feed.

PHLX's complex order book. PHLX also charges Internal Distributors \$2,000 per month and External Distributors \$2,500 per month for the Top of PHLX Options, which includes PHLX top of book data.<sup>18</sup> PHLX charges Internal Distributors \$4,000 per month and External Distributors \$4,500 per month for the PHLX Depth Data, which includes PHLX depth of book quotations.<sup>19</sup> Each of these fees charged by PHLX are higher than that proposed herein.

*User Fees.* The Exchange believes that implementing the Professional and Non-Professional User fees for EDGX Options Depth, EDGX Options Top, and the EDGX Options Auction Feed are equitable and reasonable because they will result in greater availability to Professional and Non-Professional Users. Moreover, introducing a modest Non-Professional User fee for EDGX Options Depth, EDGX Options Top, and the EDGX Options Auction Feed is reasonable because it provides an additional method for retail investors to access EDGX Options Depth, EDGX Options Top, and the EDGX Options Auction Feed data by providing the same data that is available to Professional Users. The Exchange believes that the proposed fees are equitable and not unfairly discriminatory because they will be charged uniformly to recipient firms and Users. The fee structure of differentiated Professional and Non-Professional fees is utilized by the Exchange for the Cboe One Feed and has long been used by other exchanges for their proprietary data products, and by the Nasdaq UTP and the CTA and CQ Plans in order to reduce the price of data to retail investors and make it more broadly available.<sup>20</sup> Offering EDGX

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<sup>18</sup> See Section IV of PHLX Rules outlining the fees for the Top of PHLX Options feed.

<sup>19</sup> See Section IV of PHLX Rules outlining the fees for the PHLX Depth Data feed.

<sup>20</sup> See Securities Exchange Act Release Nos. 74285 (February 18, 2015), 80 FR 9828 (February 24, 2015) (SR-BATS-2015-11); 74283 (February 18, 2015), 80 FR 9809 (February 24, 2015) (SR-EDGA-2015-09); 74282 (February 17, 2015), 80 FR 9487 (February 23, 2015) (SR-EDGX-2015-09); and 74284 (February 18, 2015), 80 FR 9792 (February 24, 2015) (SR-BYX-2015-09). See also, e.g., Securities Exchange Act Release No. 20002, File No. S7-433 (July 22, 1983) (establishing nonprofessional fees for CTA data); and Nasdaq Rules 7023(b), 7047.

Options Depth, EDGX Options Top, and the EDGX Options Auction Feed to Non-Professional Users with the same data available to Professional Users results in greater equity among data recipients. The requirement that Distributors count every Professional User and Non-Professional User to which they provide the market data product(s) is also equitable and reasonable because the requirements are identical to that currently in place for other market data products offered by the Exchange's equity trading platform.<sup>21</sup>

In addition, the proposed fees are reasonable when compared to similar fees for comparable products offered by PHLX. Specifically, PHLX charges a fee of \$40 per month to professional users and \$1.00 per month to non-professional users of TOPO Plus Orders feed, Top of PHLX Options, and PHLX Depth Data.<sup>22</sup> Each of these fees charged by PHLX are either equal to or higher than that proposed herein.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The Exchange's ability to price EDGX Options Depth, EDGX Options Top, and the EDGX Options Auction Feed is constrained by: (i) competition among exchanges, other trading platforms, and Trade Reporting Facilities ("TRF") that compete with each other in a variety of dimensions; (ii) the existence of inexpensive real-time consolidated data and market-specific data and free delayed data; and (iii) the inherent contestability of the market for proprietary data.

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<sup>21</sup> See Securities Exchange Act Release Nos. 74282 (February 18, 2015); 80 FR 9487 (February 23, 2015) (SR-EDGX-2015-09) (proposing fees for the Bats One Feed); 75397 (July 8, 2015), 80 FR 41104 (July 14, 2015) (SR-EDGX-2015-28) (proposing user fees for the EDGX Top and Last Sale data feeds); and 75788 (August 28, 2015), 80 FR 53364 (September 3, 2015) (SR-EDGX-2015-38) (proposing fees for EDGX Book Viewer).

<sup>22</sup> See Section IV of PHLX Rules outlining the fees for each of these PHLX market data products.

The Exchange and its market data products are subject to significant competitive forces and the proposed fees represent responses to that competition. To start, the Exchange competes intensely for order flow. It competes with the other national securities exchanges that currently trade equities, with electronic communication networks, with quotes posted in FINRA's Alternative Display Facility, with alternative trading systems, and with securities firms that primarily trade as principal with their customer order flow.

In addition, EDGX Options Depth, EDGX Options Top, and the EDGX Options Auction Feed compete with a number of alternative products. For instance, EDGX Options Depth, EDGX Options Top, and the EDGX Options Auction Feed do not provide a complete picture of all trading activity in a security. Rather, the other national securities exchanges, the several TRFs of FINRA, and Electronic Communication Networks ("ECN") that produce proprietary data all produce trades and trade reports. Each is currently permitted to produce last sale information products, and many currently do, including Nasdaq and NYSE. In addition, market participants can gain access to EDGX Options last sale and depth-of-book quotations, though integrated with the prices of other markets, on feeds made available through the SIPs.

In sum, the availability of a variety of alternative sources of information imposes significant competitive pressures on Exchange data products and the Exchange's compelling need to attract order flow imposes significant competitive pressure on the Exchange to act equitably, fairly, and reasonably in setting the proposed data product fees. The proposed data product fees are, in part, responses to that pressure. The Exchange believes that the proposed fees would reflect an equitable allocation of its overall costs to users of its facilities.

In addition, when establishing the proposed fees, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition.

The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all Users. The existence of alternatives to EDGX Options Depth, EDGX Options Top, and the EDGX Options Auction Feed, including existing similar feeds by other exchanges, consolidated data, and proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if its cost to purchase is not justified by the returns any particular vendor or subscriber would achieve through the purchase.

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

The Exchange has neither solicited nor received written 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 Act<sup>23</sup> and paragraph (f) of Rule 19b-4 thereunder.<sup>24</sup> 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.

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

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<sup>23</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>24</sup> 17 CFR 240.19b-4(f).

may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CboeEDGX-2017-010 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 CboeEDGX-2017-010. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, D.C. 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available

publicly. All submissions should refer to File Number CboeEDGX-2017-010 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.<sup>25</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>25</sup> 17 CFR 200.30-3(a)(12).