

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-89597; File No. SR-CboeEDGX-2020-041]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Amend its Fees Schedule

August 18, 2020.

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 August 10, 2020, 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”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend the 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 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 applicable to its options trading platform (“EDGX Options”) to adopt another fee for the equity leg of a stock-option order, which orders would yield fee code “EP”, effective August 10, 2020. The Exchange also proposes to amend the description of the existing fee for the equity leg of a stock-option order, which yields fee code “EQ”, and to establish a maximum fee per execution applicable to fee code EQ.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 options venues to which market participants may direct their order flow. Based on publicly available information, no single options exchange has more than 17% of the market share.³ Thus, in such a low-concentrated and highly competitive market, no single options exchange possesses significant pricing power in the execution of option order flow. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue to reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain the Exchange’s transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. In response to competitive pricing, the Exchange, like other options exchanges, offers rebates and assesses fees for certain order types executed on or routed through the Exchange.

Pursuant to rule filing SR-2019-CboeEDGX-039 [sic],⁴ the Exchange implemented stock-option order functionality on August 16, 2019. Stock-

option orders are complex instruments that constitute the purchase or sale of a stated number of units of an underlying stock or a security convertible into the underlying stock coupled with the purchase or sale of an option contract(s) on the opposite side of the market and execute in the same manner as complex orders. Through this functionality, the stock portions of stock-option strategy orders are electronically communicated by the Exchange to a designated broker-dealer (*i.e.*, Cowen), who then manages the execution of such stock portions. In connection with the functionality, the Exchange adopted a stock handling fee of \$0.0010 per share for the processing and routing by the Exchange of the stock portion of stock-option strategy orders executed through those mechanisms.⁵ The purpose of the stock handling fee is to cover the fees charges by the outside venue that prints the trade, as well as assist in covering the Exchange’s costs in matching these stock-option orders against other stock option orders on the complex book. Additionally, the Exchange also largely passes through to Members the fees assessed to the Exchange by the designated broker (*i.e.*, Cowen) that manages the execution of these stock portions of stock-option strategy orders.

Now, the Exchange proposes to amend its fee schedule to reflect the option of an additional designated broker-dealer, Penserra, to manage the execution of the stock portion of a stock-option order. Specifically, the Exchange proposes to adopt fee code EP, which would be applicable to equity leg orders whose executions are managed by Penserra. Unlike Cowen, Penserra will not assess the Exchange fees for managing the stock-portion of a stock-option order, but rather will assess and bill its customers directly. Therefore, the Exchange does not wish to assess the current stock handling fee which was adopted in part to recoup the fees assessed to the Exchange by the Exchange’s current designated broker-dealer, Cowen. As such, stock-portions of stock-option strategy orders managed by Penserra and yielding fee code EP will be free.

The Exchange also proposes to modify existing fee code EQ to specify that it is applicable to equity leg orders whose executions are managed by Cowen. Additionally, the Exchange proposes to establish a maximum fee of \$50.00 per execution under fee code EQ. The Exchange notes that Cowen currently applies the \$50 cap on a per execution

³ See Cboe Global Markets U.S. Options Market Volume Summary (August 7, 2020), available at https://markets.cboe.com/us/options/market_statistics/.

⁴ See Securities Exchange Act Release No. 86353 (July 11, 2019), 84 FR 34230 (July 17, 2019) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Add Stock-Option Order Functionality and Complex Qualified Contingent Cross (“QCC”) Order With Stock Functionality, and To Make Other Changes to its Rules) (SR-CboeEDGX-2019-039).

⁵ See Securities Exchange Act Release No. 86743 (August 23, 2019) 84 FR 45606 (August 29, 2020) [sic] (SR-CboeEDGX-2019-052).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

basis. The Exchange therefore proposes to similarly cap the stock-option fee on a per execution basis, which will more closely align to how Cowen applies the cap. Additionally, the Exchange believes the proposed cap ensures that market participants do not pay extremely large fees, not more than the capped amount, for the processing and routing by the Exchange of the stock portions of stock-option orders. The Exchange notes that other exchanges, including its affiliate, Cboe Exchange, Inc., have likewise implemented substantially similar fee caps in response to their respective implementations of stock-option strategy order functionality.⁶

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,⁷ in general, and furthers the requirements of Section 6(b)(4),⁸ in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. The Exchange also believes that the proposed rule change is consistent with the objectives of Section 6(b)(5) 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, and, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that its proposed change to adopt fee code EP, which will assess no fee for stock portions of stock-option strategy order executions managed by Penserra, is consistent with Section 6(b)(4) of the Act in that the proposal is reasonable, equitable and not unfairly discriminatory. Specifically, the

Exchange believes the proposal is reasonable as market participants will not be subject to a fee for the execution of the stock-portion of a stock-option order handled by one of the Exchange's designated broker-dealers, Penserra. The Exchange believes it's appropriate to not assess a fee for orders managed by Penserra as compared to those managed by Cowen, as Penserra will directly charge its customers for the stock portion of stock-option strategy orders and not charge the Exchange, unlike Cowen who does not directly charge market participants, but rather charges the Exchange. Further, the Exchange believes the proposal is equitable and not unfairly discriminatory because the proposed change applies to all TPHs and all TPHs that execute stock-option orders in the complex book will have the option to utilize Penserra to manage the execution of the stock portion of its stock-option strategy orders.

Additionally, the Exchange believes that the proposed description modification to existing fee code EQ will clarify that such executions are managed by Cowen. Furthermore, the Exchange believes its proposed change relating to how it caps the stock-option order fee is reasonable because the Exchange is capping the transactions the same way Cowen caps (and bills the Exchange) for these orders. The Exchange believes that its proposal to cap fee code EQ at \$50.00 per execution is also reasonable because it will limit the amount a market participant will be assessed for the routing and processing by the Exchange of the stock portion of stock-option strategy orders. As noted above, the proposed fee cap is identical to fees assessed by other options exchanges for stock legs executed as a part of stock-option strategy orders.⁹ As such, stock-option strategy orders are available on other options exchanges and participants can readily direct order flow to another exchange if they deem other exchanges' fees to be more favorable.

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 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. Specifically, the Exchange does not believe that the proposed change will impose any

burden on intramarket competitions that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed change will apply uniformly to the stock portions of all market participants' stock-option strategy orders.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including 15 other options exchanges. Based on publicly available information, no single options exchange has more than 17% of the market share.¹⁰ Therefore, no exchange possesses significant pricing power in the execution of option order flow. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. The proposed cap to fee code EQ is substantially similar to fee caps offered by the Exchange's affiliate, Cboe Options, and other competing exchanges,¹¹ therefore, the Exchange believes that the proposed rule change appropriately reflects this competitive environment. Indeed, participants can readily choose to send their orders to other exchange, and, additionally off-exchange venues, if they deem fee levels at those other venues to be more favorable. 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."¹² 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

⁶ See Securities Exchange Act Release No. 85909 (May 21, 2019), 84 FR 24587 (May 28, 2019) (SR-EMERALD-2019-21); Securities Exchange Act Release No. 83788 (August 7, 2018), 83 FR 40110 (August 13, 2018) (SR-MIAX-2018-18); and Securities Exchange Act Release No. 67383 (July 10, 2012), 77 FR 41841 (July 16, 2012) (SR-CBOE-2012-063).

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(4).

⁹ See *supra* note 6.

¹⁰ See *supra* note 5.

¹¹ See *supra* note 6.

¹² See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

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' . . .".¹³ Accordingly, the Exchange does not believe its proposed fee 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 Act¹⁴ and paragraph (f) of Rule 19b-4¹⁵ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-CboeEDGX-2020-041 on the subject line.

¹³ *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)).

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f).

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to File Number SR-CboeEDGX-2020-041. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change.

Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeEDGX-2020-041 and should be submitted on or before September 14, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

J. Matthew DeLesDernier,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-39, OMB Control No. 3235-0049]

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services,

¹⁶ 17 CFR 200.30-3(a)(12).

100 F Street NE, Washington, DC 20549-2736

Extension:
Form ADV

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the "Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension of the previously approved collection of information discussed below.

The title for the collection of information is "Form ADV under the Investment Advisers Act of 1940." Form ADV is a three-part investment adviser registration form. Part 1 of Form ADV contains information used primarily by the Securities and Exchange Commission (the "Commission") staff and Part 2 is the client brochure. Part 3 requires registered investment advisers that offer services to retail investors to prepare and file with the Commission, post to the adviser's website (if it has one), and deliver to retail investors a relationship summary. The Commission uses the information on Form ADV to determine eligibility for registration with us and to manage our regulatory and examination programs. Clients use the information required in Form ADV to determine whether to hire or retain an investment adviser, as well as what types of accounts and services are appropriate for their needs. This collection of information is found at 17 CFR 279.1, 17 CFR 275.203-1, 17 CFR 275.204-1 and 17 CFR 275.204-4 and is mandatory.

The Commission's examination staff use the information to determine eligibility for registration with us and to manage our regulatory, examination, and enforcement programs; it will be accorded the same level of confidentiality accorded to other responses provided to the Commission in the context of its examination and oversight program.

The respondents to this information collection are investment advisers registered with the Commission. Our latest data indicate that there were 13,520 advisers registered with the Commission as of January 30, 2020. The Commission has estimated that Form ADV imposes an annual burden of approximately 26.19 hours per respondent. Based on this figure, the Commission estimates a total annual burden of 466,505 hours for this collection of information.

The public may view background documentation for this information collection at the following website: www.reginfo.gov. Find this particular