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For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90901; File No. SR-CboeEDGX-2020-064]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish a Policy Relating to Billing Errors

January 11, 2021.

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 December 31, 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 and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ 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 proposes to amend its options and equities fees schedules to adopt a provision relating to billing errors and fee disputes.

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 options and equities fees schedules to adopt a provision relating to billing errors and fee disputes. Particularly, the Exchange proposes to provide that after three calendar months, all fees and rebates assessed by the Exchange would be considered final. More specifically, the Exchange would adopt language in the fees schedules that would provide that all fees and rebates assessed prior to the three full calendar months before the month in which the Exchange becomes aware of a billing error shall be considered final. Particularly, the Exchange will resolve an error by crediting or debiting Members and Non-Members based on the fees or rebates that should have been applied in the three full calendar months preceding the month in which the Exchange became aware of the error, including to all impacted transactions that occurred during those months.⁵ The Exchange will apply the three month look back regardless of whether the error was discovered by the Exchange or by a Member or Non-Member that submitted a fee dispute to the Exchange. The Exchange also proposes to provide all

⁵ For example, if the Exchange becomes aware of a transaction fee billing error on January 4, 2021, the Exchange will resolve the error by crediting or debiting Members based on the fees or rebates that should have been applied to any impacted transactions during October, November and December 2020. The Exchange notes that because it bills in arrears, the Exchange would be able to correct the error in advance of issuing the January 2021 invoice and therefore, transactions impacted through the date of discovery (in this example, January 4, 2021) and thereafter, would be billed correctly.

disputes concerning fees and rebates assessed by the Exchange would have to be submitted to the Exchange in writing and accompanied by supporting documentation.

The purpose of the proposed change is to encourage Members and Non-Members to promptly review their Exchange invoices so that any disputed charges can be addressed in a timely manner. The Exchange notes that it provides Members with both daily and monthly fee reports and thus believes they should be aware of any potential billing errors within three months. Requiring that Members and Non-Members submit disputes in writing and provide supporting documentation encourages them to promptly review their invoices so that any disputed charges can be addressed in a timely manner while the information and data underlying those charges (e.g., applicable fees and order information) is still easily and readily available. This practice will avoid issues that may arise when Members or Non-Members do not dispute an invoice in a timely manner and will conserve Exchange resources that would have to be expended to resolve untimely billing disputes. As such, the proposed rule change would alleviate administrative burdens related to billing disputes, which could divert staff resources away from the Exchange’s regulatory and business purposes. The proposed rule change to provide all fees and rebates are final after three calendar months also provides both the Exchange and Members and Non-Members finality and the ability to close their books after a known period of time.

The Exchange notes that a number of exchanges have explicitly stated that they consider all fees to be final after a similar period of time.⁶ Additionally, several other exchanges have adopted similar provisions in their rules that provide for a process for Members and Non-Members to submit fee disputes.⁷ The proposed billing policy will apply to all charges and rebates reflected in the Exchange’s fees schedules.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the

⁶ See e.g. Securities Exchange Act Release No. 87650 (December 3, 2019), 84 FR 67304 (December 9, 2019) (SR-NYSECHX-2019-024); Securities Exchange Act Release No. 84430 (October 16, 2018), 83 FR 53347 (October 22, 2018) (SR-NYSESTAT-2018-23); and Securities Exchange Act Release No. 79060 (October 6, 2016), 81 FR 70716 (October 13, 2016) (SR-ISEGemini-2016-11).

⁷ See e.g., MEMX LLC, Rule 15.3, IEX Rule 15.120, Nasdaq Rule Equity 7, Section 70, Nasdaq BX Rule Equity 7, Section 111, and Nasdaq PHLX Rule Equity 7, Section 2.

²¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

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.

With respect to the proposed billing procedure, the Exchange believes that the requirement to submit all billing disputes in writing, and with supporting documentation is reasonable because the Exchange provides Members with ample tools to monitor and account for various charges incurred in a given month. Additionally, the Exchange notes that most Members and Non-Members that pay exchange fees are sophisticated entities, so it is appropriate to expect them to promptly review their invoices for errors and to be capable of identifying such errors. The proposed provision also promotes the protection of investors and the public interest by providing a clear and concise mechanism for Members and Non-Members to dispute fees and for the Exchange to review such disputes in a timely manner. Moreover, the proposed billing dispute language, which will lower the Exchange’s administrative burden, is similar to billing dispute language of other exchanges.¹¹ In addition, the proposed billing procedure is fair, equitable, and not unfairly discriminatory because it will apply equally to all Members (and Non-Members that pay Exchange fees).

The Exchange also believes that providing that all fees and rebates are final after three months (*i.e.*, resolving billing errors only for the three full calendar months preceding the month in which the Exchange became aware of

the error), is reasonable as both the Exchange and Members and Non-Members have an interest in knowing when its fee assessments are final and when reliance can be placed on those assessments. Indeed, without some deadline on billing errors, the Exchange and Members and Non-Members would never be able to close their books with any confidence. Furthermore, as noted above, a number of Exchanges similarly consider their fees final after a similar period of time.¹² The proposed change is also equitable, and not unfairly discriminatory because it will apply equally to all Members (and Non-Members that pay Exchange fees) and apply in cases where either the Member (or Non-Member) discovers the error or the Exchange discovers the error.

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

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. With respect to the billing procedure and billing error policy, the proposed rule change would establish a clear process that would apply equally to all Members.

Additionally, the proposed rule change is similar to rules of other exchanges. The Exchange does not believe such proposed changes would impair the ability of Members or competing order execution venues to maintain their competitive standing in the financial markets. Moreover, because the proposed changes would apply equally to all Members, the proposal does not impose any burden on competition.

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

No comments were solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹³ and Rule 19b-4(f)(6)¹⁴ 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-2020-064 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-2020-064. 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;

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ *Id.*

¹¹ See supra note 7.

¹² See supra note 6.

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6).

the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeEDGX–2020–064 and should be submitted on or before February 5, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

J. Matthew DeLesDernier,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90894; File No. SR–PEARL–2020–37]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule Regarding Tape B Securities

January 11, 2021.

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 December 31, 2020, MIAX PEARL, LLC (“MIAX PEARL” or “Exchange”) 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 the Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the fee schedule applicable for MIAX PEARL Equities, an equities trading facility of the Exchange (the “Fee Schedule”).³ The proposed changes will become effective January 1, 2021.

The text of the proposed rule change is available on the Exchange’s website at <http://www.miaxoptions.com/rule-filings/pearl> at MIAX PEARL’s principal office, 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 purpose of the proposed rule change is to amend the MIAX PEARL Equities Fee Schedule to increase the rebate for displayed orders⁴ that add liquidity in Tape B securities priced at or above \$1.00 to the MIAX PEARL Equities Book⁵ from \$0.0032 to \$0.0035 per share. The Exchange also proposes to decrease the fee for orders that remove liquidity in Tape B Securities priced at or above \$1.00 from the MIAX PEARL Equities Book from \$0.0028 to \$0.0027 per share.

The Exchange does not propose to amend the rates to add or remove liquidity in Tapes A and C securities. The rebate provided to displayed orders that add liquidity in Tapes A and C securities priced at or above \$1.00 will remain \$0.0032 per share and the fee to remove liquidity in Tape A and C securities priced at or above \$1.00 will remain \$0.0028 per share. Lastly, the Exchange proposes to amend the Fee Schedule to delineate the rates applicable to displayed orders that add liquidity and orders that remove liquidity in Tapes A, B, and C securities priced at or above \$1.00.

The Exchange 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 rebates/incentives to be insufficient. More specifically, the Exchange is only one of several equities venues (including both registered exchanges and various alternative

trading systems) to which market participants may direct their order flow and execute their trades. Indeed, equity trading is currently dispersed across 16 exchanges,⁶ 31 alternative trading systems,⁷ and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly available information, no single registered equities exchange currently has more than approximately 20% of total market share.⁸ Thus, in such a low-concentrated and highly competitive market, no single equities trading venue possesses significant pricing power in the execution of trades, and, the Exchange currently represents a very small percentage of the overall market.

The purpose of this proposed change is for business and competitive reasons. As a new entrant into the equities market, the Exchange initially adopted a rebate of \$0.0028 per share for displayed orders that add liquidity and fee of \$0.0028 per share for orders that remove liquidity in securities priced at or above \$1.00.⁹ The Exchange later increased the rebate for displayed orders that add liquidity in securities priced at or above \$1.00 to \$0.0032 per share to further encourage market participants to submit displayed orders to the Exchange.¹⁰ The fee to remove liquidity in securities priced at or above \$1.00 has been unchanged since its adoption.

The Exchange now believes that it is appropriate to increase the rebate to \$0.0035 per share for displayed orders that add liquidity in Tape B securities priced at or above \$1.00. The Exchange believes that this proposed increased rebate will result in encouraging market participants to submit more displayed orders to the Exchange, thereby increasing displayed order liquidity on the MIAX PEARL Equities Book, which should benefit all Exchange participants by providing more trading opportunities and tighter spreads. The Exchange also believes a corresponding change to decrease the fee to \$0.0027 per share for orders that remove liquidity in Tape B securities priced at or above \$1.00 is similarly appropriate. The Exchange believes the decreased fee would

⁶ See Cboe Global Markets, U.S. Equities Market Volume Summary, available at https://markets.cboe.com/us/equities/market_share/.

⁷ See FINRA ATS Transparency Data, available at <https://otctransparency.finra.org/otctransparency/AtsIssueData>. A list of alternative trading systems registered with the Commission is available at <https://www.sec.gov/foia/docs/atlist.htm>.

⁸ See *supra* note 6.

⁹ See Securities Exchange Act Release No. 90102 (October 6, 2020), 85 FR 64559 (October 13, 2020) (SR–PEARL–2020–17).

¹⁰ See Securities Exchange Act Release No. 90400 (November 12, 2020), 85 FR 73550 (November 18, 2020) (SR–PEARL–2020–24).

¹⁵ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ See Exchange Rule 1901.

⁴ See Exchange Rule 2614(c)(3).

⁵ The term “MIAX PEARL Equities Book” means the electronic book of orders in equity securities maintained by the System. See Exchange Rule 1901. The term “System” means the automated trading system used by the Exchange for the trading of securities. See Exchange Rule 100.