

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](mailto:rule-comments@sec.gov). Please include File Number SR-CboeBZX-2023-001 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-CboeBZX-2023-001. 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-CboeBZX-2023-001 and should be submitted on or before February 13, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-96679; File No. SR-CboeEDGX-2023-003]

### Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Exchange's Fees Schedule Concerning Membership Fees and Market Maker Appointment Fees

January 17, 2023.

Pursuant to section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act"),<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on January 3, 2023, 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>20</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

### 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 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 ([http://markets.cboe.com/us/options/regulation/rule\\_filings/edgx/](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 self-regulatory organization 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 those 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 adopt new Membership fees. First, the Exchange proposes to establish a monthly Participant Fee for Options Members of the Exchange of \$500. Additionally, EDGX Options Market Makers would be assessed a Market Maker Participant Fee of \$750 per month (*i.e.*, Market Makers would pay a monthly fee of \$1,250). The Participant Fees are non-refundable. If a firm becomes a Member during a calendar month after the first trading day of the month, the participant fee for the Member for that calendar month will be prorated based on the remaining trading days in the calendar month.

The Exchange also proposes to adopt fees relating to Market Maker appointments (set forth in the “Market Maker Appointments Sliding Scale”) which will be based on an Appointment Unit Tier schedule that assigns an appointment weight to each class within a tier. Particularly, EDGX Options

Market Makers must select class appointments in the classes they seek to make markets electronically.<sup>4</sup> As proposed, a Market Maker will be charged for one or more “Appointment Units” (which will scale from 1 “unit” to more than 6 “units”), depending on which classes they select appointments

in. All classes will be placed within a specific tier according to trading volume statistics (excluding the proposed AA Tier), and assigned an “appointment weight” depending upon its tier location as follows:

| Appointment unit tier | Option class          | Appointment weight |
|-----------------------|-----------------------|--------------------|
| AA                    | IWM                   | .50                |
|                       | SPY                   | .50                |
|                       | VXX                   | .100               |
| A*                    | Classes 1–60          | .100               |
| B*                    | Classes 61–120        | .060               |
| C*                    | Classes 121–345       | .040               |
| D*                    | Classes 346–570       | .025               |
| E*                    | Classes 571–999       | .015               |
| F*                    | All Remaining Classes | .001               |

\* Excludes Tier AA.

The Exchange will rebalance the above tiers (excluding the “AA” tier above) once each calendar quarter, which may result in additions or deletions to their composition and announces such rebalances pursuant to Exchange Rule 16.3 at least 10 business days before the rebalance takes effect. The proposed appointment unit tier assignment and rebalances are based on national average daily volume. When a class changes tiers, it will be assigned the appointment unit of that tier. Appointment weights for each assigned class will be summed for each Market Maker ID used to trade to obtain the total appointment units. If the sum of appointments is a fractional amount, the total will be rounded up to the next highest whole Appointment Unit. Total quantity will be determined by the highest quantity used at any point during the month. The following lists the proposed progressive monthly fees for Appointment Units:<sup>5</sup>

| Appointment units | Monthly fee |
|-------------------|-------------|
| 1                 | \$0         |
| 2                 | 500         |
| 3–5               | 350         |
| >6                | 100         |

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.<sup>6</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>7</sup> 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)<sup>8</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that there is value in becoming a Member of the

Exchange and that the proposed Participant Fees are reasonable. The proposed fees are also significantly lower than the membership fees imposed by several other options exchanges that charge such fees.<sup>9</sup> They are also comparable to fees assessed by the Exchange’s affiliated options exchange Cboe BZX Exchange, Inc. (“BZX Options”).<sup>10</sup> Other national securities exchanges also recently adopted participant fees for their exchange members.<sup>11</sup> The Exchange also historically has not, currently does not, nor does it presently contemplate charging any application fees for Membership nor so-called “headcount fees,” (e.g., fees charged for each Form U4 filed for registration of a representative or a principal or the transfer or re-licensing of such personnel<sup>12</sup>), further highlighting the reasonableness of the proposed Participant Fees. Furthermore, EDGX Options Members have not been assessed any membership-related fees since the platform became available over 7 years ago. The proposed changes are designed to update fees for the Exchange’s services to reflect their current value—rather than their value when it was a new exchange seven years

<sup>4</sup> See EDGX Options Rule 22.3(a).

<sup>5</sup> For example, if a Market Maker’s total appointment units amount to 2.5 units, the Market Maker will be assessed a total monthly appointment fee of \$850 (1 appointment unit at \$0, 1 appointment unit at \$500 and 1 appointment unit at \$350).

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> *Id.*

<sup>9</sup> See e.g., PHLX Section 8A, Permit and Registration Fees, which generally assesses monthly Permit Fees between \$4,000 and \$6,000. See also, BOX Options Fee Schedule, Section IX Participant

Fees, which assesses non-Market Makers a Participant Fee of \$1,500 per month and assesses Market Maker’s Trading Permit fees between \$4,000 and \$10,000 per month; NYSE American Options Fees Schedule, Section III(A) Monthly ATP Fees and NYSE Arca Options Fees and Charges, OTP Trading Participant Rights, which assesses a monthly permit (“ATP”) fee of \$1,000 for Clearing Members and Order Floor Providers, and a monthly ATP fees up to \$8,000 for Market-Makers; and MIA Options Fee Schedule, Section 3, Membership Fees, which assesses an Electronic Exchange Members Trading Permit fee of \$1,500 per month and a Market Maker Trading Permit Fee between \$7,000 and \$22,000 per month.

<sup>10</sup> See Cboe BZX Options Fee Schedule, Membership Fees, which assesses BZX Options Members a monthly fee between \$500 and \$1,000.

<sup>11</sup> See e.g., Securities Exchange Act Release No. 93927 (January 7, 2022), 87 FR 2191 (January 13, 2022) (SR-MEMX-2021-19) (introduction of membership fees by MEMX). See also Securities Exchange Act Release No. 94894 (May 11, 2022), 87 FR 29987 (May 17, 2022) (SR-BOX-2022-17).

<sup>12</sup> See, e.g., “NASDAQ Membership Fees,” (\$55 for each Form U-4 filed for the registration of a Representative or Principal, and \$55 for each Form U-4 filed for the transfer or re-licensing of a Representative or Principal).

ago—based on the Exchange’s ability to deliver value to its customers through technology, liquidity, and functionality. Newly-opened exchanges often charge no fees for certain services such as membership, in order to attract order flow to an exchange, and later amend their fees to reflect the true value of those services.<sup>13</sup> Allowing newly-opened exchanges time to build and sustain market share before charging non-transactional fees encourages market entry and promotes competition.

The Exchange believes that the proposed Participant Fees are not unfairly discriminatory because it would be assessed uniformly across all Members or firms that seek to become Members. Additionally, the Exchange believes that the proposed fees are not unfairly discriminatory because no broker-dealer is required to become a Member of the Exchange. There is also no regulatory requirement that Market Makers connect and access any one options exchange or that any market participant connect to any one particular options exchange. Moreover, a Market Maker membership is not a requirement to participate on the Exchange and participation on an exchange in any capacity is completely voluntary. Indeed, while the Exchange currently has 51 members that trade options, Cboe BZX has 63 members that trade options, Cboe Options has 98 Trading Permit Holders (“TPHs”) (*i.e.*, members) and Cboe C2 has 52 TPHs. There is also no firm that is a Member of EDGX Options only. Further, based on publicly available information regarding a sample of the Exchange’s competitors, NYSE American Options has 73 members,<sup>14</sup> and NYSE Arca Options has 67 members,<sup>15</sup> MIAX Options has 44 members<sup>16</sup> and MIAX Pearl Options has 41 members.<sup>17</sup> BOX Exchange, Inc. (“BOX”) noted in a recent rule change to adopt Electronic Market Maker Trading Permit Fees that it reviewed membership details at three options exchanges and found that there are 62 market making firms across those

three exchanges.<sup>18</sup> Particularly, BOX found that 42 of the 62 market making firms access only one of the three exchanges. BOX additionally identified numerous market makers that are members of other options exchanges, but not BOX.

Accordingly, the vigorous competition among national securities exchanges provides many alternatives for firms to voluntarily decide whether membership to the Exchange is appropriate and worthwhile, and as noted above, no broker-dealer is required to become a Member of the Exchange. Indeed, there are currently 15 other registered options exchanges that trade options and one additional options exchange expected to launch in 2023. Further, low barriers to entry mean that new exchanges may rapidly and inexpensively enter the market and offer additional substitute platforms to further compete with the Exchange and the products it offers. For example, there are 3 exchanges that have been added in the U.S. options markets in the last 5 years (*i.e.*, Nasdaq MRX, LLC, MIAX Pearl, LLC, and MIAX Emerald LLC) and one additional options exchange that is expected to launch in 2023 (*i.e.*, MEMX LLC).

Notwithstanding the foregoing, the Exchange still believes that the proposed fee of \$500 as a monthly Participant Fee, and additional fee of \$750 for Market Makers is reasonable, equitably allocated and not unfairly discriminatory, even for a broker-dealer that determines it should join the Exchange for business purposes, as those business reasons should presumably result in revenue capable of covering the proposed fee.

The Exchange believes its proposed Market Maker Appointments Sliding Scale fees are also reasonable as its affiliated exchange, Cboe Exchange, Inc. (“Cboe Options”), offers the same structure with respect to fees for appointment classes and as the proposed fees are significantly lower than the Cboe Options fees that were adopted recently in 2020.<sup>19</sup> The Exchange believes the proposed tier compositions, corresponding appointment weights and rebalance process are also reasonable as they are

the same as they are for Cboe Options. In addition, other exchanges offer a similar structure with respect to assessing Market-Maker fees based on appointment classes and the proposed fees are again significantly lower than such fees, including the fees just recently adopted by BOX.<sup>20</sup>

Moreover, as discussed above, there is no regulatory requirement that any market participant, including Market Makers, connect to any one particular options exchange. This is evidenced by the fact that no firm is an EDGX Options only member and further illustrated by the analysis described above by BOX in which it found 42 of 62 market making firms across three exchanges access only one of those three exchanges. Also as noted, a Market Maker membership is not a requirement to participate on the Exchange and participation on an exchange in any capacity is completely voluntary. Accordingly, Market Makers choose if and how to access a particular exchange and because it is a choice; if a Market Maker deems a particular exchange as charging excessive fees to participate, such Market Maker may not connect, and existing Market Makers would disconnect from the Exchange.

The Exchange believes the proposed Market Maker Appointments Sliding Scale fees are equitable and not unfairly discriminatory because they will apply uniformly to all Market Makers, and all similarly situated Market Makers (*i.e.*, those with same number of Appointment Units), will be subject to the same fee. The Exchange also believes that assessing Market Makers that quote in fewer classes lower total fees is reasonable and appropriate as it will allow the Exchange to retain and attract smaller-scale Market Makers, which are an integral component of the options industry marketplace. The Exchange believes it’s equitable and not

<sup>13</sup> See *e.g.*, Securities Exchange Act Release No. 93927 (January 7, 2022), 87 FR 2191 (January 13, 2022) (SR–MEMX–2021–19) (introduction of membership fees by MEMX).

<sup>14</sup> See <https://www.nyse.com/markets/american-options/membership#directory>.

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

<sup>16</sup> See [https://www.miaxoptions.com/sites/default/files/page-files/MIAX\\_Options\\_Exchange\\_Members\\_12222021.pdf](https://www.miaxoptions.com/sites/default/files/page-files/MIAX_Options_Exchange_Members_12222021.pdf).

<sup>17</sup> See [https://www.miaxoptions.com/sites/default/files/page-files/MIAX\\_Pearl\\_Options\\_Exchange\\_Members\\_12012021.pdf](https://www.miaxoptions.com/sites/default/files/page-files/MIAX_Pearl_Options_Exchange_Members_12012021.pdf).

<sup>18</sup> See Securities and Exchange Release No. 94894 (May 11, 2022), 87 FR 29987 (May 17, 2022) (SR–BOX–2022–17).

<sup>19</sup> See Securities Exchange Act Release No. 90333 (November 4, 2020), 85 FR 71666 (November 10, 2020) (SR–CBOE–2020–105). See also Cboe Options Fees Schedule, Market-Maker EAP Appointments Sliding Scale, which assesses fees between \$3,100 to \$6,000 per appointment unit versus the proposed Market Maker Appointments Sliding Scale which assesses significantly lower rates between \$100 to \$500 per appointment unit.

<sup>20</sup> See *e.g.*, NYSE Arca, Inc. (“NYSEArca”) Fee Schedule, which assesses Market Makers \$6,000 for up to 175 option issues, an additional \$5,000 for up to 350 option issues, an additional \$4,000 for up to 1,000 option issues, and an additional \$3,000 for all option issues traded on the Exchange. See also Miami International Securities Exchange, LLC (“MIAX”) Fee Schedule Fee, which assesses Market Makers \$7,000 for up to 10 classes or up to 20% of classes by volume, \$12,000 for up to 40 classes or up to 35% of classes by volume, \$17,000 for up to 100 classes or up to 50% or classes by volume, and \$22,000 for over 100 classes or over 50% of classes by volume up to all classes listed on MIAX. See Securities and Exchange Release No. 94894 (May 11, 2022), 87 FR 29987 (May 17, 2022) (SR–BOX–2022–17) and BOX Exchange Fees Schedule, Section 1. Participant Fees, which assesses Market Makers \$4,000 for up to 10 option classes, \$6,000 for up to 40 classes, \$8,000 for up to 100 classes and \$10,000 for over 100 classes. By comparison, the Exchange anticipates that EDGX Options Market Makers on average would need approximately 9.5 Appointment Units, costing \$2,050 per month for appointment fees.

unfairly discriminatory to assess higher fees for Market Makers that have a higher number of class appointments since they are likely to utilize more bandwidth and capacity on the Exchange's network. The Exchange also notes that other options exchanges assess fees at different rates based upon a member's participation on that exchange, and, as such, this concept is not new or novel.<sup>21</sup> The Exchange lastly believes that the proposed Market Maker Participant and Market Maker Appointments Sliding Scale fees are equitable and not unfairly discriminatory because Market Makers generally consume the most bandwidth and resources of the Exchange's network. As such, the Exchange believes it's equitable and not unfairly discriminatory to assess Market Makers an additional Participant Fee and Market Maker Appointments Sliding Scale fees.

#### *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 proposed fee change will not impact intramarket competition because it will apply to all similarly situated Members equally. The Exchange also believes that the proposed Market Maker Participant and Market Maker Appointments Sliding Scale fees do not place certain market participants at a relative disadvantage to other market participants because the proposed fees do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the fee rates are designed in order to provide objective criteria for Market Makers of different sizes and business models that best matches their quoting activity on the Exchange. Further, as noted above, Market Makers generally consume the most bandwidth and resources of the network.

The Exchange's proposed Participant Fees, including the Market Maker Participant Fee, will be lower than the cost of membership on other exchanges as described in detail above and therefore, may stimulate intermarket competition by attracting additional firms to become Members on the Exchange or at least should not deter interested participants from joining the Exchange. In addition, as discussed in

the statutory basis section above, participant fees are subject to competition from other exchanges. Accordingly, if the changes proposed herein are unattractive to market participants, the Exchange can, and likely will, see a decline in membership as a result. The Exchange operates in a highly competitive market in which market participants can determine whether or not to join the Exchange based on the value received compared to the cost of joining and maintaining membership on the Exchange.

#### *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 is effective upon filing pursuant to section 19(b)(3)(A)<sup>22</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>23</sup> thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such 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 shall institute proceedings under section 19(b)(2)(B)<sup>24</sup> of the Act 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

<sup>22</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>23</sup> 17 CFR 240.19b-4(f)(2).

<sup>24</sup> 15 U.S.C. 78s(b)(2)(B).

- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CboeEDGX-2023-003 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-2023-003. 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-2023-003, and should be submitted on or before February 13, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>25</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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

<sup>21</sup> *Id.*