

Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–BOX–2021–02. 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 such filing also will be available for inspection and copying at the principal office of BOX. 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–BOX–2021–02 and should be submitted on or before February 18, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁸

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90970; File No. SR–CboeEDGX–2021–007]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish a Monthly Fee Assessed on Members' MPIDs

January 22, 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 January 13, 2021, Cboe EDGX Exchange, Inc. (the “Exchange”) 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 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 Equities”) proposes to amend its fee schedule to establish a fee in connection with a Member's Market Participant Identifier(s) (“MPID”). 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 to adopt a monthly fee assessed on Members' MPIDs.³

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 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues that do not have similar self-regulatory responsibilities under the Exchange Act, to which market participants may direct their order flow. Based on publicly available information,⁴ no single registered equities exchange has more than 16% of consolidated equity market share and currently the Exchange represents approximately 7% of the U.S. equities market. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. The Exchange further notes that broker-dealers are not compelled to be Members of the Exchange, and a significant proportion of broker-dealers that trade U.S. equity securities have, in fact, chosen not to apply for membership on the Exchange.

By way of background, an MPID is a four-character unique identifier that is approved by the Exchange and assigned to a Member for use on the Exchange to identify the Member firm on the orders sent to the Exchange and resulting executions. Members may choose to request more than one MPID as a unique identifier(s) for their transactions on the Exchange. The Exchange notes that a Member may have multiple MPIDs for use by separate business units and trading desks or to support Sponsored Participant⁵ access. Certain members currently leverage multiple MPIDs to obtain benefits from and added value in their participation on the Exchange. Multiple MPIDs provide unique benefits to and efficiencies for Members by allowing: (1) Members to manage their trading activity more efficiently by assigning different MPIDs to different trading desks and/or strategies within the firm; and (2) Sponsoring Members⁶

⁴ See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (December 18, 2020), available at https://markets.cboe.com/us/equities/market_statistics/.

⁵ A Sponsored Participant is a person which has entered into a sponsorship arrangement with a Sponsoring Member pursuant to Rule 11.3, which permits a Sponsored Participant to obtain authorized access to the System only if such access is authorized in advance by one or more Sponsoring Members. See Rules 1.5(z) and 11.3.

⁶ A Sponsoring Member is a Member that is a registered broker-dealer and that has been designated by a Sponsored Participant to execute, clear and settle transactions resulting from the System. The Sponsoring Member shall be either (i) a clearing firm with membership in a clearing agency registered with the Commission that maintains facilities through which transactions may be cleared or (ii) a correspondent firm with a

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ The Exchange initially filed the proposed fee changes January 4, 2021 (SR–CboeEDGX–2021–004). On January 13, 2021, the Exchange withdrew that filing and submitted this proposal.

²⁸ 17 CFR 200.30–3(a)(12).

to segregate Sponsored Participants by MPID to allow for detailed client-level reporting, billing, and administration, and to market the ability to use separate MPIDs to Sponsored Participants, which, in turn, may serve as a potential incentive for increased order flow traded through the Sponsoring Member.

The Exchange proposes to adopt a fee applicable to Members that use multiple MPIDs to facilitate their trading on the Exchange. Specifically, as proposed, the Exchange would assess a monthly MPID Fee of \$350 per MPID per Member, with a Member's first MPID provided free of charge. The Exchange believes the proposed assessment of an MPID Fee aligns with the additional value and benefits provided to Members that choose to utilize more than one MPID to facilitate their trading on the Exchange. The Exchange also believes that assessing a fee on additional MPIDs will be beneficial because such fee will promote efficiency in MPID use.

The MPID Fee will be assessed on a pro-rated basis for new MPIDs by charging a Member based on the trading day in the month during which an additional MPID becomes effective for use. If a Member cancels an additional MPID on or after the first business day of the month, the Member will be required to pay the entire MPID Fee for that month. The Exchange believes that this practice is appropriate to balance the administrative costs associated with disabling MPIDs.

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.⁷ Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,⁸ which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities. The Exchange 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 the proposed MPID Fee is consistent with the Act in that it is reasonable, equitable, and not unfairly discriminatory. In particular, the Exchange believes that the proposed fee is reasonable because it is reasonably aligned with the benefits provided to Members that choose to utilize multiple MPIDs to facilitate their trading on the Exchange. While each Member must have an MPID to participate on the Exchange, additional MPIDs are optional and will be assessed the proposed fee. Additional MPIDs currently allow for Members to realize certain benefits from and added value to their participation on the Exchange but also require the Exchange to allocate additional administrative resources to manage each MPID that a Member chooses to use for its trading activity. Therefore, the Exchange believes that it is reasonable to assess a modest fee on any additional MPIDs that Members choose to use to facilitate their trading. The Exchange again notes that it is optional for a Member to request and employ additional MPIDs, and a large portion (approximately 42%) of the Exchange's Members currently utilize just the one MPID necessary to participate on the Exchange.

The Exchange also believes that assessing a modest fee on additional MPIDs is reasonably designed to promote efficiency in MPID use. The Exchange had previously implemented an MPID Fee,⁹ and observed that, as a result of an MPID Fee, Members were incentivized to more effectively administer their MPIDs and reduce the number of under-used or superfluous MPIDs, or MPIDs that did not contribute additional value to a Member's participation on the Exchange. Reduction of such MPIDs, in turn, reduces Exchange resources allocated to administration and maintenance of those MPIDs. In particular, the Exchange observed that within the first few months of introducing the previous MPID Fee, the number of MPIDs on the

Exchange decreased by approximately 17%, demonstrating that Members may choose to be more efficient in their use of MPIDs in response to an MPID Fee, such as that proposed in this fee change.¹⁰

The Exchange further believes the proposed MPID Fee is reasonable because the amount assessed is less than the analogous fees charged by at least one other market; namely, Nasdaq Stock Market LLC ("Nasdaq").¹¹ The Exchange's proposed MPID Fee at \$350 a month per MPID, with no charge associated with a Member's first MPID, is lower than Nasdaq's MPID fee of \$550 per MPID, which is charged for all MPIDs used by a Nasdaq member, including a member's first MPIDs. Additionally, the Exchange believes that charging a full-month's fee for an additional MPID cancelled on or after the first business day of the month is reasonable in that it reasonably accounts for the administrative costs associated with disabling such MPIDs, and is a practice consistent with Nasdaq's similar cancellation policy in connection with its MPID fees.¹²

The Exchange believes that the proposed MPID Fee is equitable and not unfairly discriminatory because it will apply equally to all Members that choose to employ two or more MPIDs based on the number of additional MPIDs that they use to facilitate their trading on the Exchange. As stated, additional MPIDs beyond a Member's first MPID are optional, and Members may choose to trade using such additional MPIDs to achieve additional benefits and added value to support their individual business needs. Moreover, the Exchange believes the proposed fee is equitable and not unfairly discriminatory because it is proportional to the potential value or benefit received by Members with a greater number of MPIDs. That is, those Members that choose to employ a greater number of additional MPIDs have the opportunity to more effectively manage firm-wide trading activity and client-level administration, as well as potentially appeal to customers through the use of separate MPIDs, which may result in increased order flow through a Sponsoring Member. A Member may request at any time that the Exchange terminate an MPID, including MPIDs

¹⁰ The reduction in MPIDs may also demonstrate that Members are free to cancel MPIDs on the Exchange and choose, instead, to utilize unique identifiers associated with participation on other exchanges.

¹¹ See Nasdaq Price List, MPID Fees, available at <http://nasdaqtrader.com/Trader.aspx?id=PriceListTrading2>.

¹² See *id.*

clearing arrangement with any such clearing firm. See Rule 1.5(aa).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4).

⁹ See Securities and Exchange Release No. 65189 (August 24, 2011), 76 FR 53990 (August 30, 2011) (SR-EDGX-2011-26). The Exchange notes that its prior MPID Fees expired as a result of its integration with BATs technology, acquired by Cboe Global Markets, Inc. in 2017.

that may be under-used or superfluous, or that do not contribute additional value to a Member's participation on the Exchange.

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 intramarket competition that is not necessary in furtherance of the purposes of the Act because the proposed MPID Fee will apply equally to all Members that choose to employ additional MPIDs and equally to each additional MPID. As stated, additional MPIDs are optional and Members may choose to utilize additional MPIDs, or not, based on their view of the additional benefits and added value provided by utilizing the single MPID necessary to participate on the Exchange. The Exchange believes the proposed fee will be assessed proportionately to the potential value or benefit received by Members with a greater number of MPIDs and notes that a Member may request at any time that the Exchange terminate any MPID, including those that may be under-used or superfluous, or that do not contribute additional value to a Member's participation on the Exchange.

Next, the Exchange believes the proposed rule change does not 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, including competition for exchange memberships. Members have numerous alternative venues that they may participate on, including 15 other equities exchanges, as well as off-exchange venues, including over 50 alternative trading systems.¹³ The Exchange represents a small percentage of the overall market. Based on publicly available information, no single equities exchange has more than 16% market share.¹⁴ Indeed, participants can readily choose to submit their order flow to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable.¹⁵ In addition to this the Exchange notes that at least one other exchange currently has MPID fees in place,¹⁶ which have been previously filed with the Commission. 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." 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 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'. . . .". 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 is effective upon filing pursuant to Section 19(b)(3)(A) of the Act¹⁷ and subparagraph (f)(2) of Rule 19b-4 thereunder,¹⁸ 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) of the Act¹⁹ 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 No. SR-CboeEDGX-2021-007 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 No. SR-CboeEDGX-2021-007. 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 No. SR-CboeEDGX-2021-007, and should

¹³ See U.S. Securities and Exchange Commission Alternative Trading Systems ("ATS") List (December 4, 2020), available at <https://www.sec.gov/foia/docs/atstlist.htm>.

¹⁴ See *supra* note 4.

¹⁵ See e.g., *supra* note 10.

¹⁶ See *supra* note 11.

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f)(2).

¹⁹ 15 U.S.C. 78s(b)(2)(B).

be submitted on or before February 18, 2021.

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

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90968; File No. SR-CboeBZX-2021-009]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Opening Process for Simple Orders

January 22, 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 January 11, 2021, Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) 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

Cboe BZX Exchange, Inc. (the “Exchange” or “BZX Options”) proposes to amend its opening process for simple orders. 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/equities/regulation/rule_filings/bzx/), 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 Rule 21.7 regarding its opening process for simple orders. Currently, following the occurrence of an opening rotation trigger pursuant to Rule 21.7(d), the System conducts an opening rotation for an option series. Following the opening rotation trigger, the System conducts the Maximum Composite Width Check pursuant to Rule 21.7(e)(1) to determine if a series is eligible to open. If the Composite Market⁵ of a series is not crossed, and the Composite Width⁶ of the series is less than or equal to the Maximum Composite Width (as defined in Rule 21.7(a)), the series is eligible to open. Additionally, if the Composite Market of a series is not crossed, and the Composite Width of the series is greater than the Maximum Composite Width, but there are (i) no non-M Capacity (a) market orders or (b) buy (sell) limit orders with prices higher (lower) than the Composite Market midpoint and (ii) no orders or quotes marketable against each other, the series is eligible to open. Once a series become eligible to open, the System conducts the opening auction for the series (*i.e.*, determines the opening trade price pursuant to Rule 21.7(e)(2) and opens the series pursuant to Rule 21.7(e)(3)). The Exchange may also determine to compel a series to

open in the interest of fair and orderly markets, including if the opening width is wider than the Maximum Composite Width, pursuant to Rule 21.7(h).

Currently, if a series cannot satisfy these conditions described above (and thus is not eligible to open), the series is ineligible to open.⁷ When that occurs, the Queuing Period⁸ for the series continues (including the dissemination of opening auction updates) until the Maximum Composite Width Check is satisfied or the Exchange determines to open the series pursuant to Rule 21.7(h). The proposed rule change adds that such a series may open pursuant to a forced opening as set forth in proposed Rule 21.7(f).⁹ Specifically, as proposed, if a series in an equity or exchange-traded product (“ETP”) option class¹⁰ is unable to open because it does not satisfy the Maximum Composite Width Check described above within a time period (which the Exchange determines for all equity and ETP option classes)¹¹ after the occurrence of the opening rotation trigger for the class pursuant to Rule 21.7(d), and the Composite Market is not crossed, the System forces the series to open after that time period upon the System’s observation of an away best bid and offer (“ABBO”) (with a non-zero offer)¹² for the series. For a

⁷ See Rule 21.7(e)(1)(C). The proposed rule change codifies in this provision that a series is not eligible to open if there is no Composite Market or if the Composite Market is crossed. This is true today and implied by the current rule text. Rule 21.7(e)(1)(A) and (B) both state that the Maximum Composite Width Check is only satisfied if the Composite Market of a series is not crossed, and the proposed rule change merely adds the same language to subparagraph (C) (*i.e.*, if the Composite Market of a series is crossed, then neither of the conditions in subparagraph (A) or (B) could be satisfied, and the series would be ineligible to open). Additionally, if there were no Composite Market or if it were crossed, the System would be unable to perform the Maximum Composite Width Check, thus meaning the series could not satisfy that check and thus would not be eligible to open. This proposed change merely adds detail to the Rules for additional transparency.

⁸ The term “Queuing Period” means the time period prior to the initiation of an opening rotation during which the System accepts orders and quotes in the Queuing Book (the book into which Users may submit orders for participation in the opening rotation) for participation in the opening rotation for the applicable trading session. See Rule 21.7(a).

⁹ The proposed forced opening process has no impact on the modified opening auction process set forth in Rule 21.7(j).

¹⁰ The proposed rule change is limited to series in equity and ETP option classes because these classes are eligible for listing on all U.S. options exchanges.

¹¹ As the Exchange currently does with respect to all other determinations it makes pursuant to Rule 21.7, the Exchange will announce these determinations (and changes thereto) pursuant to Exchange Notice or technical specifications.

¹² Such an ABBO would indicate that an away exchange is open, as it would have disseminated an opening quote.

²⁰ 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).

⁵ The term “Composite Market” means the market for a series comprised of (1) the higher of the then-current best appointed Market-Maker bulk message bid on the Exchange and the away best bid (“ABB”) (if there is an ABB) and (2) the lower of the then-current best appointed Market-Maker bulk message offer on the Exchange and the away best offer (“ABO”) (if there is an ABO). The term “Composite Bid (Offer)” means the bid (offer) used to determine the Composite Market. See Rule 21.7(a).

⁶ The term “Composite Width” means the width of the Composite Market (*i.e.*, the width between the Composite Bid and the Composite Offer) of a series. See Rule 21.7(a).