

time if they believe it to be valuable or may decline to purchase such data.

### *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 operates in a highly competitive environment in which the Exchange must continually adjust its fees to remain competitive. Because competitors are free to modify their own fees in response, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. As discussed above, the Exchange's historical Short Volume Reports offering is subject to direct competition from several other options exchanges that offer similar data products. Moreover, purchase of historical Short Volume Reports is optional. It is designed to help investors understand underlying market trends to improve the quality of investment decisions, but is not necessary to execute a trade.

The proposed rule changes are grounded in the Exchange's efforts to compete more effectively. In this competitive environment, potential purchasers are free to choose which, if any, similar product to purchase to satisfy their need for market information. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges. Further, the Exchange believes that these changes will not cause any unnecessary or inappropriate burden on intermarket competition, as the proposed incentive program applies uniformly to any purchaser of historical Short Volume Reports.

### *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 Act<sup>26</sup> and paragraph (f) of Rule 19b-4<sup>27</sup> 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 (<https://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-CboeBYX-2023-017 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-CboeBYX-2023-017. 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 (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication

submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CboeBYX-2023-017 and should be submitted on or before January 10, 2024.

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

**Sherry R. Haywood,**  
*Assistant Secretary.*

[FR Doc. 2023-27922 Filed 12-19-23; 8:45 am]

BILLING CODE 8011-01-P

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-99166; File No. SR-NYSEARCA-2023-83]

### **Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Connectivity Fee Schedule**

December 14, 2023.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 ("Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on November 30, 2023, NYSE Arca, Inc. ("NYSE Arca" or 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 self-regulatory organization. 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 the Connectivity Fee Schedule (the "Fee Schedule") to add circuits provided by Fixed Income and Data Services ("FIDS") for connectivity into and out of the data center in Mahwah, New Jersey (the "MDC"). The proposed rule change is available on the Exchange's website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, 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,

<sup>28</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.

<sup>26</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>27</sup> 17 CFR 240.19b-4(f).

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 the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend the Connectivity Fee Schedule (the "Fee Schedule") to add circuits provided by Fixed Income and Data Services ("FIDS")<sup>4</sup> for connectivity into and out of the data center in Mahwah, New Jersey (the "MDC").

As background, market participants that request to receive colocation services directly from the Exchange ("Users") require wired circuits<sup>5</sup> to connect into and out of the MDC. A User's equipment in the MDC's colocation hall connects to a circuit leading out of the MDC, which connects

to the User's equipment in their back office or another data center.

Before 2013, all such circuits were provided by ICE's predecessor, NYSE Euronext. In response to customer demand for more connectivity options, in 2013, the MDC opened two "meet-me-rooms" to telecommunications service providers ("Telecoms"),<sup>6</sup> to enable Telecoms to offer circuits into the MDC in competition with NYSE Euronext. Currently, 16 Telecoms operate in the meet-me-rooms and provide circuit options to Users requiring connectivity into and out of the MDC. As of June 1, 2023, more than 95% of the circuits for which Users contracted were supplied by Telecoms, and all but two of the Users that used FIDS circuits as of that date also connected to Telecom circuits in the MMRs.

The Exchange proposes to add several circuits provided by FIDS to the Fee Schedule. Specifically, the Exchange proposes to amend the Fee Schedule to add two different types of FIDS circuits, each available in three different sizes. Because FIDS is not a telecommunications provider, FIDS would purchase circuits from

telecommunications providers, with portions allocated and sold to Users.

First, the Exchange proposes to amend the Fee Schedule to add "Optic Access" circuits supplied by FIDS. Users can use an Optic Access circuit to connect between the MDC and the FIDS access centers at the following five third-party owned data centers: (1) 111 Eighth Avenue, New York, NY; (2) 32 Avenue of the Americas, New York, NY; (3) 165 Halsey, Newark, NJ; (4) Secaucus, NJ (the "Secaucus Access Center"); and (5) Carteret, NJ (the "Carteret Access Center"). Optic Access circuits are available in 1 Gb, 10 Gb, and 40 Gb sizes.

Second, the Exchange proposes to amend the Fee Schedule to add lower-latency "Optic Low Latency" circuits supplied by FIDS that Users can use to connect between the MDC and FIDS's Secaucus Access Center or Carteret Access Center. Optic Low Latency circuits are available in 1 Gb, 10 Gb, and 40 Gb sizes.

The Exchange proposes to add the following chart to the Fee Schedule, under the new heading "E. FIDS Circuits":

| Type of service                       | Fees  |
|---------------------------------------|---|
| Optic Access Circuit—1 Gb .....       | \$1,500 initial charge plus \$650 monthly charge.   |
| Optic Access Circuit—10 Gb .....      | \$5,000 initial charge plus \$1,900 monthly charge. |
| Optic Access Circuit—40 Gb .....      | \$5,000 initial charge plus \$4,000 monthly charge. |
| Optic Low Latency Circuit—1 Gb .....  | \$1,500 initial charge plus \$2,750 monthly charge. |
| Optic Low Latency Circuit—10 Gb ..... | \$5,000 initial charge plus \$3,950 monthly charge. |
| Optic Low Latency Circuit—40 Gb ..... | \$5,000 initial charge plus \$8,250 monthly charge. |

Application and Impact of the Proposed Changes

The proposed change is not targeted at, or expected to be limited in applicability to, a specific segment of market participant. The FIDS circuits would be available for purchase for any potential User requiring a circuit between the MDC and the FIDS access centers at the third-party owned data centers listed above. The proposed changes do not apply differently to distinct types or sizes of customers. Rather, they apply to all customers equally.

Use of the services proposed in this filing are completely voluntary and

available to all market participants on a non-discriminatory basis.

The proposed changes are not otherwise intended to address any other issues relating to services related to the MDC and/or related fees, and the Exchange is not aware of any problems that market participants would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>8</sup> in particular, because it is 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 because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>9</sup> because it

<sup>4</sup> Through its FIDS business (previously ICE Data Services), Intercontinental Exchange, Inc. ("ICE") operates the MDC. The Exchange is an indirect subsidiary of ICE and is an affiliate of the New York Stock Exchange LLC, NYSE American LLC, NYSE Chicago, Inc., and NYSE National, Inc. (together, the "Affiliate SROs"). Each Affiliate SRO has submitted substantially the same proposed rule change. See SR-NYSE-2023-48, SR-NYSEAMER-

2023-65, SR-NYSECHX-2023-24, and SR-NYSEENAT-2023-29.

<sup>5</sup> In addition to wired fiber optic connections, Users may use FIDS or third-party wireless connections to the MDC. In such a case, the portion of the connection closest to the MDC is wired. Other than Telecoms, Users are the only FIDS customers with equipment physically located in the MDC.

<sup>6</sup> In this filing, telecommunication service providers that choose to provide circuits at the MDC are referred to as "Telecoms." Telecoms are licensed by the Federal Communications Commission ("FCC") and are not required to be, or be affiliated with, a member of the Exchange or an Affiliate SRO.

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

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78f(b)(4).

provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

#### The Proposed Change Is Reasonable

The Exchange believes that the proposed rule change is reasonable. In considering the reasonableness of proposed services and fees, the Commission's market-based test considers "whether the exchange was subject to significant competitive forces in setting the terms of its proposal . . . , including the level of any fees."<sup>10</sup> If the Exchange meets that burden, "the Commission will find that its proposal is consistent with the Act unless 'there is a substantial countervailing basis to find that the terms' of the proposal violate the Act or the rules thereunder."<sup>11</sup> Here, the Exchange is subject to significant competitive forces in setting the terms on which it offers its proposal, in particular because substantially similar substitutes are available, and the third-party vendors are not at a competitive disadvantage created by the Exchange.

The proposed FIDS circuits would compete with circuits currently offered by the 16 Telecoms operating in the meet-me-rooms at the MDC. The Telecom circuits are reasonable substitutes for the FIDS circuits. The Commission has recognized that products do not need to be identical or equivalent to be considered substitutable; it is sufficient that they be substantially similar.<sup>12</sup> The circuits provided by FIDS and by the Telecoms all perform the same function: connecting into and out of the MDC. The providers of these circuits design them to perform with particular combinations of latency, bandwidth, price, termination point, and other factors that they believe will attract

Users, and Users choose from among these competing services on the basis of their business needs.

The proposed FIDS circuits are sufficiently similar substitutes to the circuits offered by the 16 Telecoms even though the proposed FIDS circuits would all terminate in one of the five data centers mentioned above, while circuits from the 16 Telecoms could terminate in those locations or additional locations. While neither the Exchange nor FIDS knows the end point of any particular Telecom circuit, the Exchange understands that the Telecoms can offer circuits terminating in any location, including the five data center locations where the FIDS circuits would terminate. In addition, Users can choose to configure their pathway leading out of colocation in the way that best suits their business needs, which may include connecting to the User's equipment at one of the five data center locations that serve as termination points for the proposed FIDS circuits, or connecting first to one of those five data centers with a FIDS- or Telecom-supplied circuit and then further connecting to another remote location using a telecommunication provider-supplied circuit.

The proposed FIDS circuits do not have a distance or latency advantage over the Telecoms' circuits within the MDC. FIDS has normalized (a) the distance between the meet-me-rooms and the colocation halls and (b) the distance between the rooms where the FIDS circuits are located and the colocation halls. As a result, a User choosing whether to use the proposed FIDS circuits or Telecom circuits does not face any difference in the distances or latency within the MDC.

The Exchange also believes that the proposed FIDS circuits do not have any latency or bandwidth advantage over the Telecoms' circuits as a whole outside of the MDC. FIDS would purchase the proposed FIDS circuits from third-party telecommunications providers and would allocate and resell portions of them to Users. The Exchange believes that the Telecoms operating in the meet-me-rooms offer circuits with a variety of latency and bandwidth specifications, some of which may exceed the specifications of the proposed FIDS circuits.<sup>13</sup> The Exchange

believes that Users consider these latency and bandwidth factors—as well as other factors, such as price and termination point—in determining which circuit offerings will best serve their business needs.<sup>14</sup>

In sum, the Exchange does not believe that there is anything about the proposed FIDS circuits that would make the Telecoms' circuits inadequate substitutes.

Nor does the Exchange have a meaningful competitive advantage over the Telecoms by virtue of the fact that it owns and operates the MDC's meet-me-rooms. The Exchange understands that Telecoms choose to pay fees to the Exchange for the opportunity to install equipment in the MDC's meet-me-rooms because of the financial benefits those Telecoms can accrue by selling circuits to Users. It is therefore in the Exchange's best interest to set fees at the MDC—including both the meet-me-room fees that Telecoms pay and the FIDS circuit fees that Users would pay—at a level that encourages market participants, including Telecoms, to maximize their use of the MDC.<sup>15</sup>

Setting the FIDS circuit fees at a reasonable level makes it more likely that Users will connect into and out of the MDC. Competitive rates for circuits, whether FIDS circuits or Telecom circuits, help draw more Users and Hosted Customers<sup>16</sup> into the MDC, which directly benefits the Exchange by increasing the customer base to whom the Exchange can sell its colocation services (including cabinets, power, ports, and connectivity to many third-party data feeds) and encouraging greater participation on the Exchange. In other words, by setting the fees for FIDS circuits at a level attractive to Users, the Exchange spurs demand for all of the services it sells at the MDC.

If the Exchange were to set the price of the FIDS circuits too high, Users would likely respond by choosing one of the many alternative options offered by the 16 Telecoms. Conversely, if the

<sup>10</sup> Securities Exchange Act Release No. 90209 (October 15, 2020), 85 FR 67044, 67049 (October 21, 2020) (Order Granting Accelerated Approval to Establish a Wireless Fee Schedule Setting Forth Available Wireless Bandwidth Connections and Wireless Market Data Connections) (SR-NYSE-2020-05, SR-NYSEAMER-2020-05, SR-NYSEArca-2020-08, SR-NYSECHX-2020-02, SR-NYSEAT-2020-03, SR-NYSE-2020-11, SR-NYSEAMER-2020-10, SR-NYSEArca-2020-15, SR-NYSECHX-2020-05, SR-NYSEAT-2020-08) ("Wireless Approval Order"), citing Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74781 (December 9, 2008) ("2008 ArcaBook Approval Order"). See *NetCoalition v. SEC*, 615 F.3d 525 (D.C. Cir. 2010).

<sup>11</sup> Wireless Approval Order, *supra* note 10, at 67049, citing 2008 ArcaBook Approval Order, *supra* note 10, at 74781.

<sup>12</sup> See 2008 ArcaBook Approval Order, *supra* note 10, at 74789 and note 295 (recognizing that products need not be identical to be substitutable).

<sup>13</sup> The specifications of FIDS's competitors' circuits are not publicly known. The Exchange understands that FIDS has gleaned any information it has about its competitors through anecdotal communications, by observing customers' purchasing choices in the competitive market, and from its own experience as a purchaser of circuits from telecommunication providers to build FIDS's own networks.

<sup>14</sup> The fact that the FIDS circuits do not have an advantage is reflected by the fact that Users choose to use Telecom circuits for the vast majority of their circuit needs. Whereas before 2013, NYSE Euronext provided 100% of such circuits, today more than 95% of the circuits that Users have contracted for are supplied by third-party Telecoms, with FIDS supplying less than 5%.

<sup>15</sup> See Securities Exchange Act Release No. 98000 (July 26, 2023), 88 FR 50244 (August 1, 2023) (SR-NYSEARCA-2023-47) ("MMR Notice").

<sup>16</sup> "Hosting" is a service offered by a User to another entity in the User's space within the MDC. The Exchange allows Users to act as Hosting Users for a monthly fee. See Securities Exchange Act Release No. 76010 (September 29, 2015), 80 FR 60197 (October 5, 2015) (SR-NYSEArca-2015-82). Hosting Users' customers are referred to as "Hosted Customers".

Exchange were to offer the FIDS circuits at prices aimed at undercutting comparable Telecom circuits, the Telecoms might reassess whether it makes financial sense for them to continue to participate in the MDC's meet-me-rooms. Their departure might negatively impact User participation in colocation and on the Exchange. As a result, the Exchange is not motivated to undercut the prices of Telecom circuits.

For these reasons, the proposed change is reasonable.

#### The Proposed Change Is an Equitable Allocation of Fees and Credits

The Exchange believes that its proposal equitably allocates its fees among market participants. The Exchange believes that the proposed change is equitable because it would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all market participants equally.

In addition, the Exchange believes that the proposal is equitable because only market participants that voluntarily select to receive the proposed FIDS circuits would be charged for them. The proposed FIDS circuits are available to all market participants on an equal basis, and all market participants that voluntarily choose to purchase a FIDS circuit are charged the same amount for that circuit as all other market participants purchasing that type of FIDS circuit.

Moreover, any telecommunications service provider licensed by the FCC is eligible to be a Telecom operating in the MRR, irrespective of size and type. The Exchange's MMR services are available to all Telecoms on an equal basis at standardized pricing.

#### The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes its proposal is not unfairly discriminatory. The proposed change does not apply differently to distinct types or sizes of market participants. Rather, it applies to all market participants equally. The purchase of any proposed service is completely voluntary and the Fee Schedule will be applied uniformly to all market participants.

In addition, the Exchange believes that the proposal is not unfairly discriminatory because only market participants that voluntarily select to receive the proposed FIDS circuits would be charged for them. The proposed FIDS circuits are available to all market participants on an equal basis, and all market participants that voluntarily choose to purchase a FIDS circuit are charged the same amount for

that circuit as all other market participants purchasing that type of FIDS circuit.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

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

The Exchange believes that the proposal will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Section 6(b)(8) of the Act.<sup>17</sup>

The proposed change would not impose a burden on competition among national securities exchanges or among members of the Exchange. The proposed change would enhance competition in the market for circuits transmitting data into and out of colocation at the MDC by adding FIDS as the 17th provider of such circuits, in addition to the 16 Telecoms that also sell such circuits to Users. The proposed FIDS circuits do not have any latency, bandwidth, or other advantage over the Telecoms' circuits. The proposal would not burden competition in the sale of such circuits, but rather, enhance it by providing Users with an additional choice for their circuit needs.

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

No written comments were solicited or received with respect to the proposed rule change.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>18</sup> and Rule 19b-4(f)(6) thereunder.<sup>19</sup> Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

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>20</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 (<https://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-NYSEARCA-2023-83 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-NYSEARCA-2023-83. 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 (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions;

<sup>17</sup> 15 U.S.C. 78f(b)(8).

<sup>18</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>19</sup> 17 CFR 240.19b-4(f)(6).

<sup>20</sup> 15 U.S.C. 78s(b)(2)(B).

you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSEARCA–2023–83 and should be submitted on or before January 10, 2024.

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

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2023–27909 Filed 12–19–23; 8:45 am]

BILLING CODE 8011–01–P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99185; File No. SR–CboeEDGX–2023–072]

### Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Provide a Discount on the Purchase of Historical Equity Short Volume and Trade Reports

December 14, 2023.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that on December 1, 2023, Cboe EDGX Exchange, Inc. (the “Exchange” or “EDGX”) filed with the Securities and Exchange Commission (“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”) proposes to amend its 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/](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 update its Fee Schedule to provide a discount on fees assessed to EDGX Members (“Members”)<sup>3</sup> and non-Members that purchase \$20,000 or more of U.S. Equity Short Volume and Trades Reports (“Short Volume Reports”), effective December 1, 2023 through December 31, 2023.

By way of background, the Short Volume Report is an end-of-day report that summarizes certain equity trading activity on the Exchange, including trade date,<sup>4</sup> total volume,<sup>5</sup> short volume,<sup>6</sup> and sell short exempt volume,<sup>7</sup> by symbol.<sup>8</sup> The Short Volume Report also includes an end-of-month report that provides a record of all short sale transactions for the month, including trade date and time (in microseconds),<sup>9</sup> trade size,<sup>10</sup> trade

<sup>3</sup> See Rule 1.5(n) (“Member”). The term “Member” shall mean any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a “member” of the Exchange as that term is defined in section 3(a)(3) of the Act. Membership may be granted to a sole proprietor, partnership, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to section 15 of the Act, and which has been approved by the Exchange.

<sup>4</sup> “Trade date” is the date of trading activity in yyyy–mm–dd format.

<sup>5</sup> “Total volume” is the total number of shares transacted.

<sup>6</sup> “Short volume” is the total number of shares sold short.

<sup>7</sup> “Short exempt volume” is the total number of shares sold short classified as exempt.

<sup>8</sup> “Symbol” refers to the Cboe formatted symbol in which the trading activity occurred. See [https://cdn.cboe.com/resources/membership/US\\_Symbolology\\_Reference.pdf](https://cdn.cboe.com/resources/membership/US_Symbolology_Reference.pdf).

<sup>9</sup> “Trade date and time” is the date and time of trading activity in yyyy–mm–dd hh:mm:ss.000000 ET format.

<sup>10</sup> “Trade size” is the number of shares transacted.

price,<sup>11</sup> and type of short sale execution,<sup>12</sup> by symbol and exchange.<sup>13</sup> The Short Volume Report is a completely voluntary product, in that the Exchange is not required by any rule or regulation to make this data available and that potential customers may purchase it on an ad-hoc basis only if they voluntarily choose to do so.

Cboe LiveVol, LLC (“LiveVol”), a wholly owned subsidiary of the Exchange’s parent company, Cboe Global Markets, Inc., makes the Short Volume Report available for purchase to Users on the LiveVol DataShop website ([datashop.cboe.com](http://datashop.cboe.com)). Both the end-of-day report and end-of-month report are included in the cost of the Short Volume Report and are available for purchase by both Members as well as non-Members on an annual or monthly<sup>14</sup> basis. The monthly fee is \$750 per Internal Distributor<sup>15</sup> and \$1,250 per External Distributor.<sup>16</sup> Additionally, the Exchange offers historical reports containing both the end-of-day volume and end-of-month trading activity. The fee per month of historical data is \$500. The Short Volume Report provided on a historical basis is only for display use redistribution (e.g., the data may be provided on the User’s platform). Therefore, Users of the historical data may not charge separately for data included in the Short Volume Report or incorporate such data into their product. The Exchange notes that the Short

<sup>11</sup> “Trade price” is the price at which shares were transacted.

<sup>12</sup> “Short type” is a data field that will indicate whether the transaction was a short sale or short sale exempt transaction. A short sale transaction is a transaction in which a seller sells a security which the seller does not own, or the seller has borrowed for its own account (see 17 CFR 242.200). A short sale exempt transaction is a short sale transaction that is exempt from the short sale price test restrictions of Regulation SHO Rule 201 (see 17 CFR 242.201(c)).

<sup>13</sup> “Exchange” is the market identifier (Z = BZX, Y = BYX, X = EDGX, A = EDGA).

<sup>14</sup> The monthly fees for the Report are assessed on a rolling period based on the original subscription date. For example, if a User subscribes to the Report on October 24, 2023, the monthly fee will cover the period of October 24, 2023, through November 23, 2023. If the User cancels its subscription prior to November 23, 2023, and no refund is issued, the User will continue to receive both the end-of-day and end-of-month components of the Report for the subscription period.

<sup>15</sup> An Internal Distributor of an Exchange Market Data product is a Distributor that receives the Exchange Market Data product and then distributes that data to one or more Users within the Distributor’s own entity. See Cboe EDGX U.S. Equities Exchange Fee Schedule.

<sup>16</sup> An External Distributor of an Exchange Market Data product is a Distributor that receives the Exchange Market Data product and then distributes that data to a third party or one or more Users outside the Distributor’s own entity. See Cboe EDGX U.S. Equities Exchange Fee Schedule.

<sup>21</sup> 17 CFR 200.30–3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b–4.