This document is scheduled to be published in the Federal Register on 08/21/2020 and available online at **federalregister.gov/d/2020-18353**, and on **govinfo.gov**

8011-01p

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-89579; File No. SR-CboeEDGX-2020-040]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Adopt Fees for a New Data Product on its Equity Options Platform to be Known as Intraday Open-Close Data

August 17, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on August 3, 2020, Cboe EDGX Exchange, Inc. (the "Exchange" or "EDGX") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The 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 Options") is filing with the Securities and Exchange Commission ("Commission") a proposed rule change to adopt fees for a new data product on its equity options platform ("EDGX Options") to be known as Intraday Open-Close Data. The text of the proposed rule change is provided in Exhibit 5.

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

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 recently adopted a new data product on EDGX to be known as Intraday Open-Close Data, which will be available for purchase to EDGX Members and non-Members.[3] The Exchange now proposes to adopt fees for Intraday Open-Close Data. Cboe LiveVol, LLC ("LiveVol"), a wholly owned subsidiary of the Exchange's parent company, Cboe Global Markets, Inc., will make the Intraday Open-Close Data available for purchase to Members and non-Members on the LiveVol DataShop website (datashop.cboe.com).

By way of background, the Exchange historically offered Open-Close Data, which is an end-of-day volume summary of trading activity on the Exchange at the option level by origin (customer, professional customer, broker-dealer, and market maker), side of the market (buy or sell), price, and transaction type (opening or closing). The customer and professional customer

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[3] See SR-EDGX-2020-036.

volume is further broken down into trade size buckets (less than 100 contracts, 100-199 contracts, greater than 199 contracts). The Open-Close Data is proprietary EDGX trade data and does not include trade data from any other exchange. It is also a historical data product and not a real-time data feed.

The Exchange recently adopted a similar product: Intraday Open-Close Data. The Intraday Open-Close Data will provide similar information to that of Open-Close Data but will be produced and updated every 10 minutes during the trading day. Data is captured in "snapshots" taken every 10 minutes throughout the trading day and is available to subscribers within five minutes of the conclusion of each 10-minute period. For example, subscribers to the intraday product will receive the first calculation of intraday data by approximately 9:42 a.m. ET, which represents data captured from 9:30 a.m. to 9:40 a.m. Subscribers will receive the next update at 9:52 a.m., representing the data previously provided together with data captured from 9:40 a.m. through 9:50 a.m., and so forth. Each update will represent the aggregate data captured from the current "snapshot" and all previous "snapshots." The Intraday Open-Close Data will provide a volume summary of trading activity on the Exchange at the option level by origin (customer, professional customer, broker-dealer, and market maker), side of the market (buy or sell), and transaction type (opening or closing). The customer and professional customer volume will be further broken down into trade size buckets (less than 100 contracts, 100-199 contracts, greater than 199 contracts). The Intraday Open-Close Data is also proprietary EDGX trade data and does not include trade data from any other exchange. In contrast to the existing Open-Close Data product, the Intraday Open-Close Data will not provide execution price.

The Exchange anticipates a wide variety of market participants to purchase Intraday Open-Close Data, including, but not limited to, individual customers, buy-side investors, and

investment banks. The Exchange believes the Intraday Open-Close Data product may also provide helpful trading information regarding investor sentiment that may allow market participants to make better trading decisions throughout the day and may be used to create and test trading models and analytical strategies and provides comprehensive insight into trading on EDGX. For example, intraday open data may allow a market participant to identify new interest or possible risks throughout the trading day, while intraday closing data may allow a market participant to identify fading interests in a security. The product 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 subscribers may purchase it only if they voluntarily choose to do so. The Exchange notes that other exchanges offer a similar data product. [4]

The Exchange proposes to provide in its Fee Schedule that Members and non-Members may purchase Intraday Open-Close Data on a subscription basis (monthly or annually) or by ad hoc request for a specified month (historical file). The Exchange proposes to assess a monthly fee of $1,000 (or $12,000 per year) for subscribing to the data feed. The Exchange also proposes to assess a fee of $500 per request per month for an ad-hoc request of historical Intraday Open/Close data covering all Exchange-listed securities. An ad-hoc request can be for any number of months beginning with January 2020 for which the data is available.[5] The proposed

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4 See Securities Exchange Act Release No. 61317 (January 8, 2010), 75 FR 2915 (January 19, 2010) (SR-ISE-2009-103); Securities Exchange Act Release No. 62887 (September 10, 2010), 75 FR 57092 (September 17, 2010) (SR-Phlx-2010-121); Securities Exchange Act Release No. 65587 (October 18, 2011), 76 FR 65765 (October 24, 2011) (SR-NASDAQ-2011-144); and Securities Exchange Act Release No. 81632 (September 15, 2017), 82 FR 44235 (September 21, 2017) (SR-GEMX-2017-42).

5 For example, a Member or non-Member that requests historical Intraday Open/Close Data for the months of January 2020 and February 2020, would be assessed a total of $1,000. The Exchange notes that it may make historical data prior to January 2020 available in the future and that such historical data would be available to all Members or non-Members.

subscription and ad-hoc fees will apply both to Members or non-Members. The Exchange notes that other exchanges provide similar data products that may be purchased on both a subscription and ad-hoc basis and are similarly priced.[6]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest, and that it is not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange also believes that its proposal to adopt fees for Intraday Open-Close Data is consistent with Section 6(b) of the Act in general, and furthers the objectives of Section 6(b)(4) of the Act[9] in particular, in that it is an equitable allocation of dues, fees and other charges among its members and other recipients of Exchange data.

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6 See Price List – U.S. Derivatives Data for Nasdaq PHLX, LLC ("PHLX"), The Nasdaq Stock Market, LLC ("Nasdaq"), Nasdaq ISE, LLC ("ISE"), and Nasaq GEMX, LLC ("GEMX"), available at http://www.nasdaqtrader.com/Trader.aspx?id=DPPriceListOptions#web. Particularly, PHLX offers "Nasdaq PHLX Options Trade Outline (PHOTO)" and assesses $1,500 per month for an intra-day subscription and $750 per month for historical reports; Nasdaq offers the "Nasdaq Options Trade Outline (NOTO)" and assesses $750 per month for an intra-day subscription and $500 per month for historical reports; ISE offers the "Nasdaq ISE Open/Close Trade Profile" and assesses $2,000 per month for an intra-day subscription and $1,000 per month for historical reports; and GEMX offers the "Nasdaq GEMX Open/Close Trade Profile" and assesses $1,000 per month for an intra-day subscription and $750 per month for historical reports.

7 15 U.S.C. 78f.

8 15 U.S.C. 78f(b)(5).

9 15 U.S.C. 78f(b)(4).

In adopting Regulation NMS, the Commission granted self-regulatory organizations ("SROs") and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. Particularly, Intraday Open-Close Data further broadens the availability of U.S. option market data to investors consistent with the principles of Regulation NMS. The data product also promotes increased transparency through the dissemination of Intraday Open-Close Data. Particularly, information regarding opening and closing activity across different option series during the trading day may indicate investor sentiment, which may allow market participants to make better informed trading decisions throughout the day. Subscribers to the data may also be able to enhance their ability to analyze option trade and volume data and create and test trading models and analytical strategies. The Exchange believes Intraday Open-Close Data provides a valuable tool that subscribers can use to gain comprehensive insight into the trading activity in a particular series, but also emphasizes such data is not necessary for trading. Moreover, other exchanges offer a similar data product.[10]

The Exchange operates in a highly competitive environment. Indeed, there are currently 16 registered options exchanges that trade options. Based on publicly available information, no single options exchange has more than 17% of the market share and currently the Exchange represents only approximately 4.16% of the market share.[11] The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, in Regulation NMS, the

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10 See supra note 4.

11 See Cboe Global Markets U.S. Options Market Month-to-Date Volume Summary (July 31, 2020), available at https://markets.cboe.com/us/options/market_statistics/.

Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."[12] Making similar data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supracompetitive fees. In the event that a market participant views one exchange's data product as more or less attractive than the competition they can and do switch between similar products. The proposed fees are a result of the competitive environment, as the Exchange seeks to adopt fees to attract purchasers of the recently introduced Intraday Open-Close Data product.

The Exchange believes the proposed fees are reasonable as the proposed fees are both modest and similar to, or even lower than, the fees assessed by other exchanges that provide similar data products.[13] Indeed, proposing fees that are excessively higher than established fees for similar data products would simply serve to reduce demand for the Exchange's data product, which as noted, is entirely optional. Like the Exchange's Intraday Open-Close Data product, other exchanges offer similar data products that each provide insight into trading on those markets and may likewise aid in assessing investor sentiment. Although each of these similar Intraday Open-Close data products provide only proprietary trade data and not trade data from other exchanges, it's possible investors are still able to gauge overall investor sentiment across different option series based on open and closing interest on any one exchange.[14] Similarly,

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

13 See supra note 6.

14 The exchange notes that its Intraday Open-Close data product does not include data on any exclusive, singly-listed option series.

market participants may be able to analyze option trade and volume data, and create and test trading models and analytical strategies using only Intraday Open-Close data relating to trading activity on one or more of the other markets that provide similar data products. As such, if a market participant views another exchange's Intraday Open-Close data as more attractive than its proposed Intraday Open-Close data product, then such market participant can merely choose not to purchase the Exchange's Intraday Open-Close Data and instead purchase another exchange's Intraday Open-Close data product, which offer similar data points, albeit based on that other market's trading activity.

The Exchange also believes the proposed fees are reasonable as they would support the introduction of a new market data product that is designed to aid investors by providing insight into trading on EDGX Options. The recently adopted Intraday Open-Close Data would provide options market participants with valuable information about opening and closing transactions executed on the Exchange throughout the trading day, similar to other trade data products offered by competing options exchanges. In turn, this data would assist market participants in gauging investor sentiment and trading activity, resulting in potentially better informed trading decisions. As noted above, users may also use such data to create and test trading models and analytical strategies.

Selling market data, such as Intraday Open-Close Data, is also a means by which exchanges compete to attract business. To the extent that the Exchange is successful in attracting subscribers for the Intraday Open-Close Data, it may earn trading revenues and further enhance the value of its data products. If the market deems the proposed fees to be unfair or inequitable, firms can diminish or discontinue their use of the data and/or avail themselves of similar

products offered by other exchanges.[15] The Exchange therefore believes that the proposed fees for Intraday Open-Close Data reflect the competitive environment and would be properly assessed on Member or non-Member users. The Exchange also believes the proposed fees are equitable and not unfairly discriminatory as the fees would apply equally to all users who choose to purchase such data. The Exchange's proposed fees would not differentiate between subscribers that purchase Intraday Open-Close Data and are set at a modest level that would allow any interested Member or non-Member to purchase such data based on their business needs.

As noted above, the Exchange anticipates a wide variety of market participants to purchase Intraday Open-Close Data, including but not limited to individual customers, buy-side investors and investment banks. The Exchange reiterates that the decision as to whether or not to purchase the Intraday Open-Close Data is entirely optional for all potential subscribers. Indeed, no market participant is required to purchase the Intraday Open-Close Data, and the Exchange is not required to make the Intraday Open-Close Data available to all investors. Rather, the Exchange is voluntarily making Intraday Open-Close Data available, as requested by customers, and market participants may choose to receive (and pay for) this data based on their own business needs. Potential purchasers may request the data at any 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 result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange believes that the proposal will promote competition by permitting the

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15 See supra note 6.

Exchange to sell a data product similar to those offered by other competitor options exchanges.[16] The Exchange made Open-Close Data available in order to keep pace with changes in the industry and evolving customer needs, and believes the data product will contribute to robust competition among national securities exchanges. At least four other U.S. options exchanges offer a market data product that is substantially similar to the Intraday Open-Close Data. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

Furthermore, the Exchange operates in a highly competitive environment, and its ability to price Intraday Open-Close Data is constrained by competition among exchanges that offer similar data products to their customers. As discussed, there are currently a number of similar products available to market participants and investors. At least four other U.S. options exchanges offer a market data product that is substantially similar to the Intraday Open-Close Data, which the Exchange must consider in its pricing discipline in order to compete for the market data.[17] For example, proposing fees that are excessively higher than established fees for similar data products would simply serve to reduce demand for the Exchange's data product, which as discussed, market participants are under no obligation to utilize. 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.

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16 Id.

17 See e.g., Cboe Options Fees Schedule, Livevol Fees, Open-Close Data. See also Nasdaq ISE Options 7 Pricing Schedule, Section 10.A and Nasdaq PHLX Options 7 Pricing Schedule, Section 10, PHLX Options Trade Outline ("PHOTO").

The Exchange also does not believe the proposed fees would cause any unnecessary or in appropriate burden on intermarket competition as other exchanges are free to introduce their own comparable data product and lower their prices to better compete with the Exchange's offering. The Exchange does not believe the proposed rule change would cause any unnecessary or inappropriate burden on intramarket competition. Particularly, the proposed product and fees apply uniformly to any purchaser, in that it does not differentiate between subscribers that purchase Intraday Open-Close Data. The proposed fees are set at a modest level that would allow any interested Member or non-Member to purchase such data based on their business needs.

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

The Exchange has neither solicited nor received written 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[18] and paragraph (f) of Rule 19b-4[19] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

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.

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18 15 U.S.C. 78s(b)(3)(A).

19 17 CFR 240.19b-4(f).

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 e-mail to rule-comments@sec.gov. Please include File Number SR-CboeEDGX-2020-040 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CboeEDGX-2020-040. This file number should be included on the subject line if e-mail 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, D.C. 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeEDGX-2020-040 and should be submitted on or before **[INSERT DATE 21 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER]**.

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

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020-18353 Filed: 8/20/2020 8:45 am; Publication Date: 8/21/2020]

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[20] 17 CFR 200.30-3(a)(12).