

FINRA's fees. The Exchange's rule text will reflect the current registration rate that will be assessed by FINRA as of January 2, 2022. The proposed fee change is identical to that adopted by FINRA for use of Web CRD for the registration of FINRA members and their associated persons. These costs are borne by FINRA when a Non-FINRA member uses Web CRD.

The Exchange believes that its proposal to increase the \$100 fee for each initial Form U4 filed for the registration of a representative or principal to \$125 is equitable and not unfairly discriminatory as the amendment will reflect the current fee that will be assessed by FINRA to all members who require Form U4 filings as of January 2, 2022. Further, the proposal is also equitable and not unfairly discriminatory because the Exchange will not be collecting or retaining these fees; therefore, the Exchange will not be in a position to apply them in an inequitable or unfairly discriminatory manner. The proposed rule change was based on recent fee adjustments currently assessed by FINRA.<sup>16</sup> Thus, the proposed change does not raise any new or novel issues. 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 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 believes that its proposal to increase the \$100 fee for each initial Form U4 filed for the registration of a representative or principal to \$125 does not impose an undue burden on competition as the amendment will reflect the current fee that will be assessed by FINRA to all members who require Form U4 filings as of January 2, 2022. Further, the proposal does not impose an undue burden on competition because the Exchange will not be collecting or retaining these fees; therefore, the Exchange will not be in a position to apply them in an inequitable or unfairly discriminatory manner.

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

Written comments were neither solicited nor received.

### **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)(ii) of the Act,<sup>17</sup> and Rule 19b-4(f)(2)<sup>18</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 shall institute proceedings to determine whether the proposed rule 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-EMERALD-2021-46 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number SR-EMERALD-2021-46. 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; 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-EMERALD-2021-46 and should be submitted on or before February 9, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-93963; File Nos. SR-CboeBYX-2021-027; SR-CboeBZX-2021-076; SR-CboeEDGA-2021-024; SR-CboeEDGX-2021-048]

### **Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Cboe BZX Exchange, Inc.; Cboe EDGA Exchange, Inc.; Cboe EDGX Exchange, Inc.; Order Granting Approval of Proposed Rule Changes To Amend Each Exchange's Rules in Connection With a Risk Setting That Users May Elect To Apply to Their Orders in Hard To Borrow Securities**

January 12, 2022.

#### **I. Introduction**

On November 8, 2021, Cboe BYX Exchange, Inc. ("CboeBYX") and Cboe BZX Exchange, Inc. ("CboeBZX"), and on November 18, 2021, Cboe EDGA Exchange, Inc. ("CboeEDGA") and Cboe EDGX Exchange, Inc. ("CboeEDGX," and collectively, the "Exchanges"), each filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to allow each Exchange to offer its Users<sup>3</sup> a hard to borrow risk setting

<sup>19</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.

<sup>3</sup> A User is any Member or Sponsored Participant who is authorized to obtain access to the System.

See Cboe BYX Rule 1.5(cc); Cboe BZX Rule 1.5(cc);

<sup>16</sup> See *supra* note 4.

<sup>17</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>18</sup> 17 CFR 240.19b-4(f)(2).

(“Hard to Borrow List”) that Users may elect to apply to their short sale orders in U.S. equity securities. The proposed rule changes were published for comment in the **Federal Register** on November 29, 2021.<sup>4</sup>

The Commission has received no comments on the proposed rule changes. This order approves the proposed rule changes.

## II. Description of the Proposed Rule Changes

The Exchanges propose to include a Hard to Borrow List within their risk settings. The Exchanges currently offer certain optional risk settings applicable to a User’s activities on the Exchange.<sup>5</sup> These risk settings currently provide Users with controls to restrict the types of securities transacted, including restricted securities and easy to borrow securities, as well as restricting activity to test symbols only.<sup>6</sup>

According to the Exchanges, when utilized, these optional risk tools act as a risk filter by evaluating a User’s orders to determine whether the orders comply with certain criteria established by the User.<sup>7</sup> The proposal will offer Users an optional tool to evaluate whether their orders comply with User established criteria.<sup>8</sup> Specifically, orders submitted in securities included on a User’s Hard to Borrow List will be rejected back to the User.<sup>9</sup> The Hard to Borrow List resides at a User’s port level, a User-specific logical session used to access the Exchange.<sup>10</sup> Users may upload a Hard to Borrow List to their preferred port(s) via a web-based application programming interface.<sup>11</sup> When uploaded to the port, Users may apply the setting to some or all of the market-participant identifiers (MPID) that they use to access the Exchange via the specified port.<sup>12</sup>

Cboe EDGA Rule 1.5(ee); and Cboe EDGX Rule 1.5(ee).

<sup>4</sup> See Securities Exchange Act Release Nos. 93638 (November 22, 2021), 86 FR 67767 (SR-CboeBYX-2021-027) (“BYX Notice”); 93641 (November 22, 2021), 86 FR 67763 (SR-CboeBZX-2021-076) (“BZX Notice”); 93642 (November 22, 2021), 86 FR 67765 (SR-CboeEDGA-2021-024) (“EDGA Notice”); and 93643 (November 22, 2021), 86 FR 67774 (SR-CboeEDGX-2021-048) (“EDGX Notice”). The proposed rule changes are nearly identical.

<sup>5</sup> See Interpretation and Policy .01 to CboeBYX Rule 11.13; Interpretation and Policy .01 to CboeBZX Rule 11.13; Interpretation and Policy .01 to CboeEDGA Rule 11.10; and Interpretation and Policy .01 to CboeEDGX Rule 11.10.

<sup>6</sup> See BYX Notice at 67767; BZX Notice at 67764; EDGA Notice at 67765; and EDGX Notice at 67775.

<sup>7</sup> *Id.*

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

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

The Exchanges state that, as is the case with the Exchanges’ existing risk settings, the User, and not the Exchange, will have the full responsibility for ensuring that their orders comply with applicable securities rules, laws, and regulations, and may not rely on the Hard to Borrow List for any such purpose.<sup>13</sup> Furthermore, use of the Hard to Borrow List does not automatically constitute compliance with Exchange Rules.<sup>14</sup> The Exchanges state that they do not believe that the use of the Hard to Borrow List can replace User-managed risk management solutions.<sup>15</sup>

The Exchanges propose to make the risk setting available to their Users upon request and will not require Users to utilize the Hard to Borrow List.<sup>16</sup> The Exchanges also state that they will not provide preferential treatment to Users using the Hard to Borrow List.<sup>17</sup>

In support of the proposal, the Exchanges assert the Hard to Borrow List will offer Users another option in efficient risk management of their access to the Exchange.<sup>18</sup> For example, the Exchanges state the Hard to Borrow List may assist some Users in managing borrowing costs for their short sale transactions.<sup>19</sup> According to the Exchanges, day over day borrowing costs in hard to borrow securities may be costly, and while a locate may be secured by a User prior to routing their short sale transactions to one of the Exchanges, borrowing costs may make such transactions less desirable.<sup>20</sup> The Exchanges state by utilizing the Hard to Borrow List, Users have a tool that enables them to manage their costs by rejecting orders in such securities.<sup>21</sup>

## III. Discussion and Commission Findings

After careful review of the proposals, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>22</sup> In

<sup>13</sup> See BYX Notice at 67767; BZX Notice at 67764; EDGA Notice at 67765; and EDGX Notice at 67775 (citing Securities and Exchange Act Release No. 50103 (July 28 2004), 69 FR 48007 (August 6, 2004) (Final Rule: Short Sales) at 48014, regarding hard to borrow lists and the locate requirements under 17 CFR 242.203 (Regulation SHO Rule 203—Borrowing and delivery requirements)).

<sup>14</sup> See BYX Notice at 67767; BZX Notice at 67764; EDGA Notice at 67766; and EDGX Notice at 67775.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

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

<sup>22</sup> In approving the proposed rule changes, the Commission notes that it has considered the

particular, the Commission finds that the proposed rule changes are consistent with Section 6(b)(5) of the Act,<sup>23</sup> which requires, among other things, that the Exchanges’ rules 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 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.

The Commission believes that the proposed rule changes are reasonably designed to provide a useful risk management tool to Users on the Exchanges. Adding a Hard to Borrow List could allow Users on the Exchanges to better manage borrowing costs for such securities. The Exchanges currently provide risk controls restricting certain transactions by symbol,<sup>24</sup> and the Commission believes that the proposed rule change would provide an additional option for Users seeking to further tailor their risk management capability while transacting on the Exchanges.

The Commission notes that the proposed Hard to Borrow List is an optional functionality. The Commission reminds Users electing to use the proposed risk control to be mindful of their obligations under all applicable securities laws, rules, and regulations and emphasizes that the proposed risk control is not a substitute for a Users’ own systems, processes, and procedures for compliance with such laws, rules, and regulations. The Commission expects the Exchanges to periodically assess whether its risk control settings are operating in a manner that is consistent with the promotion of fair and orderly markets.

For the foregoing reasons, the Commission finds that the proposal is consistent with the requirements of the Act.

## IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act<sup>25</sup> that the proposed rule changes (SR-CboeBYX-2021-027, SR-CboeBZX-2021-076, SR-CboeEDGA-2021-024, SR-CboeEDGX-

proposed rules’ impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>23</sup> 15 U.S.C. 78f(b)(5).

<sup>24</sup> See, e.g., Interpretation and Policy .01 to CboeBYX Rule 11.13(d); Interpretation and Policy .01 to CboeBZX Rule 11.13(d); Interpretation and Policy .01 to CboeEDGA Rule 11.10(d); and Interpretation and Policy .01 to CboeEDGX Rule 11.10(d).

<sup>25</sup> 15 U.S.C. 78f(b)(5).

2021-048), be, and hereby are, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>26</sup>

**J. Matthew DeLesDernier,**  
*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-93969; File No. SR-MIAX-2021-64]

### Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by To Amend Its Fee Schedule

January 12, 2022.

Pursuant to the provisions of 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 29, 2021, Miami International Securities Exchange LLC (“MIAX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a 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

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule (the “Fee Schedule”) to reflect adjustments to the Financial Industry Regulatory Authority (“FINRA”) Registration Fees.<sup>3</sup>

While the changes proposed herein are effective upon filing, the Exchange has designated the amendments to become operative on January 2, 2022.<sup>4</sup>

The text of the proposed rule change is available on the Exchange’s website at <http://www.miaxoptions.com/rule-filings>, at MIAX’s principal office, and at the Commission’s Public Reference Room.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to amend Section 2(c) of the Fee Schedule, Web CRD Fees, to reflect adjustments to the FINRA Registration Fees.<sup>5</sup> The FINRA fees are collected and retained by FINRA via Web Central Registration Depository (“CRD”) for the registration of associated persons of MIAX Electronic Exchange Member<sup>6</sup> and Market Maker<sup>7</sup> organizations that are not also FINRA members (“Non-FINRA members”).<sup>8</sup> The Exchange merely lists these fees in its Fee Schedule. The Exchange does not collect or retain these fees.

Since January 2, 2013, FINRA has assessed, and the Exchange has listed in its Fee Schedule, a \$100 fee for the FINRA CRD process [sic] fee.<sup>9</sup> This fee is for all initial, transfer, relicense, and dual registration Form U4 filings.<sup>10</sup> This fee is assessed when a non-FINRA firm (*i.e.*, a firm that is not a member of FINRA) submits its first initial, transfer, relicense, or dual registration Form U4 filing on behalf of a registered person.<sup>11</sup>

The Exchange now proposes to amend, under the General Registration Fees in Section 2(c) of the Fee Schedule, the FINRA CRD Processing Fee from \$100 to \$125 for each initial Form U4

<sup>5</sup> *Id.*

<sup>6</sup> “Electronic Exchange Member” means the holder of a Trading Permit who is not a Market Maker. Electronic Exchange Members are deemed “members” under the Exchange Act. *See* Exchange Rule 100.

<sup>7</sup> “Market Makers” means “Lead Market Makers,” “Primary Lead Market Makers” and “Registered Market Makers” collectively. *See* Exchange Rule 100.

<sup>8</sup> *See* Securities Exchange Act Release No. 68415 (December 12, 2012), 77 FR 74905 (December 18, 2012) (SR-MIAX-2012-01).

<sup>9</sup> *See id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

filed for the registration of a representative or principal. This amendment is made in accordance with a recent FINRA rule change to adjust its fees.<sup>12</sup>

The FINRA fees are collected and retained by FINRA via Web CRD for the registration of employees of the Exchange who are Non-FINRA members. The FINRA Web CRD Fees are user-based, and there is no distinction in the cost incurred by FINRA if the user is a FINRA member or a Non-FINRA member. Accordingly, the proposed fees mirror those currently assessed by FINRA. The Exchange merely lists these fees in its Fee Schedule. The Exchange does not collect or retain these fees.

##### Implementation

The proposed rule change will become operative on January 2, 2022.

##### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with 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>13</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>14</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>15</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes it is reasonable to increase the \$100 fee for each initial Form U4 filed for the registration of a representative or principal to \$125 in accordance with an adjustment to FINRA’s fees. The Exchange’s rule text

<sup>12</sup> *Id.* FINRA operates Web CRD, the central licensing and registration system for the U.S. securities industry. FINRA uses Web CRD to maintain the qualification, employment and disciplinary histories of registered associated persons of broker-dealers. FINRA noted in its rule change that it was adjusting its fees to provide sustainable funding for FINRA’s regulatory mission.

<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

<sup>15</sup> *Id.*

<sup>26</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.

<sup>3</sup> *See* Fee Schedule, Section 2(c).

<sup>4</sup> *See* Securities Exchange Act Release No. 90176 (October 14, 2020), 85 FR 66592 (October 20, 2020) (SR-FINRA-2020-032) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Adjust FINRA Fees to Provide Sustainable Funding for FINRA’s Regulatory Mission).