

the Exchange. Further, if the changes proposed herein are unattractive to market participants, the Exchange can, and likely will, see a decline in connectivity via 10 Gb physical ports as a result. The Exchange operates in a highly competitive market in which market participants can determine whether or not to connect directly to the Exchange based on the value received compared to the cost of doing so.

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 Act¹⁸ and paragraph (f) of Rule 19b-4¹⁹ 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. Please include file number SR-CboeBZX-2023-047 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to file number SR-CboeBZX-2023-047. 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-CboeBZX-2023-047 and should be submitted on or before August 11, 2023.

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

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2023-15477 Filed 7-20-23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97929; File No. SR-CboeEDGX-2023-045]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule Related to Physical Port Fees

July 17, 2023.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 3, 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 Options") proposes to amend its Fees Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (http://markets.cboe.com/us/options/regulation/rule_filings/edgx/), 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 for its equity options platform ("EDGX Options") relating to physical connectivity fees, effective July 3, 2023.

By way of background, a physical port is utilized by a Member or non-Member to connect to the Exchange at the data centers where the Exchange's servers are located. The Exchange currently assesses the following physical connectivity fees for Members and non-Members on a monthly basis: \$2,500 per physical port for a 1 gigabit ("Gb") circuit and \$7,500 per physical port for a 10 Gb circuit. The Exchange proposes to increase the monthly fee for 10 Gb physical ports from \$7,500 to \$8,500 per port. The Exchange notes the proposed fee change better enables it to continue to maintain and improve its market

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 17 CFR 240.19b-4(f).

²⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

technology and services and also notes that the proposed fee amount, even as amended, continues to be in line with, or even lower than, amounts assessed by other exchanges for similar connections.³ The physical ports may also be used to access the Systems for the following affiliate exchanges and only one monthly fee currently (and will continue) to apply per port: the Exchange's equities platform (EDGX Equities), Cboe BZX Exchange, Inc. (options and equities platforms), Cboe BYX Exchange, Inc., Cboe EDGA Exchange, Inc., and Cboe C2 Exchange, Inc., ("Affiliate Exchanges").⁴

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.⁵ Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)⁶ 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)⁷ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with section 6(b)(4)⁸ of the Act, 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 believes the proposed fee change is reasonable as it reflects a moderate increase in physical connectivity fees for 10Gb physical ports. Further, the current 10 Gb physical port fee has remained unchanged since June 2018.⁹ Since its last increase 5 years ago however, there has been notable inflation. Particularly, the dollar has had an average inflation rate of 3.9% per year between 2018 and today, producing a cumulative price increase of approximately 21.1% inflation since the fee for the 10 Gb physical port was last modified.¹⁰ Accordingly, the Exchange believes the proposed fee is reasonable as it represents only an approximate 13% increase from the rates adopted five years ago, notwithstanding the cumulative rate of 21.1%.

The Exchange also believes the proposed fee is reasonable as it is still in line with, or even lower than, amounts assessed by other exchanges for similar connections.¹¹ As noted above, the proposed fee is also the same as is concurrently being proposed for its Affiliate Exchanges. Further, Members are able to utilize a single port to connect to any of the Affiliate Exchanges with no additional fee assessed for that same physical port. Particularly, the Exchange believes the proposed monthly per port fee is reasonable, equitable and not unfairly discriminatory as it is assessed only once, even if it connects with another affiliate exchange since only one port is being used and the Exchange does not wish to charge multiple fees for the same port.

The Exchange also believes that the proposed fee change is not unfairly discriminatory because it would be assessed uniformly across all market participants that purchase the physical ports. Further, Members and non-Members will continue to choose the method of connectivity based on their

specific needs and no broker-dealer is required to become a Member of, let alone connect directly to, the Exchange. There is also no regulatory requirement that any market participant connect to any one particular exchange. Moreover, direct connectivity is not a requirement to participate on the Exchange. The Exchange also believes substitutable products and services are available to market participants, including, among other things, other options exchanges that a market participant may connect to in lieu of the Exchange, indirect connectivity to the Exchange via a third-party reseller of connectivity, and/or trading of any options product, such as within the Over-the-Counter (OTC) markets. Indeed, there are currently 16 registered options exchanges that trade options, some of which have similar or lower connectivity fees.¹² Based on publicly available information, no single options exchange has more than approximately 19% of the market share.¹³ Further, low barriers to entry mean that new exchanges may rapidly enter the market and offer additional substitute platforms to further compete with the Exchange and the products it offers. For example, there are 3 exchanges that have been added in the U.S. options markets in the last 5 years (*i.e.*, Nasdaq MRX, LLC, MIAAX Pearl, LLC, and MIAAX Emerald LLC) and one additional options exchange that is expected to launch in 2023 (*i.e.*, MEMX LLC).

As noted above, there is no regulatory requirement that any market participant connect to any one options exchange, nor that any market participant connect at a particular connection speed or act in a particular capacity on the Exchange, or trade any particular product offered on an exchange. Moreover, membership is not a requirement to participate on the Exchange. A market participant may submit orders to the Exchange via a Member broker or a third-party reseller of connectivity. Indeed, the Exchange is unaware of any one options exchange whose membership includes every registered broker-dealer. By way of example, while the Exchange currently has 51 members that trade options, Cboe BZX has 61 members that trade options, and Cboe C2 has 52 Trading Permit Holders ("TPHs") (*i.e.*, members). There is also no firm that is a Member of EDGX Options only. Further, based on publicly available information regarding

³ See *e.g.*, The Nasdaq Stock Market LLC ("Nasdaq"), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of \$15,000 for each 10Gb Ultra fiber connection to the respective exchange, which is analogous to the Exchange's 10Gb physical port. See also New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gb LX LCN Circuits (which are analogous to the Exchange's 10 Gb physical port) are assessed \$22,000 per month, per port.

⁴ The Affiliate Exchanges are also submitting contemporaneous identical rule filings.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

⁷ *Id.*

⁸ 15 U.S.C. 78f(b)(4).

⁹ See Securities and Exchange Release No. 83430 (June 14, 2018), 83 FR 28697 (June 20, 2018) (SR-CboeEDGX-2018-017).

¹⁰ See <https://www.officialdata.org/us/inflation/2010?amount=1>.

¹¹ See *e.g.*, The Nasdaq Stock Market LLC ("Nasdaq"), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of \$15,000 for each 10Gb Ultra fiber connection to the respective exchange, which is analogous to the Exchange's 10Gb physical port. See also New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gb LX LCN Circuits (which are analogous to the Exchange's 10 Gb physical port) are assessed \$22,000 per month, per port.

¹² *Id.*

¹³ See Cboe Global Markets U.S. Options Market Volume Summary (June 27, 2023), available at https://markets.cboe.com/us/options/market_statistics/.

a sample of the Exchange's competitors, NYSE American Options has 71 members,¹⁴ and NYSE Arca Options has 69 members,¹⁵ MIAX Options has 46 members¹⁶ and MIAX Pearl Options has 40 members.¹⁷

Additionally, the Exchange notes that non-Members such as Service Bureaus and Extranets resell exchange connectivity. This indirect connectivity is another viable alternative for market participants to trade on the Exchange without connecting directly to the Exchange (and thus not pay the Exchange's connectivity fees), which alternative is already being used by non-Members and further constrains the price that the Exchange is able to charge for connectivity to its Exchange. The Exchange notes that it could, but chooses not to, preclude market participants from reselling its connectivity. The Exchange also chooses not to adopt fees that would be assessed to third-party resellers on a per customer basis (*i.e.*, fee based on number of Members that connect to the Exchange indirectly via the third-party). Indeed, the Exchange does not receive any connectivity revenue when connectivity is resold by a third-party, which often is resold to multiple customers, some of whom are agency broker-dealers that have numerous customers of their own.

Accordingly, the vigorous competition among national securities exchanges provides many alternatives for firms to voluntarily decide whether direct connectivity to the Exchange is appropriate and worthwhile, and as noted above, no broker-dealer is required to become a Member of the Exchange, let alone connect directly to it. In the event that a market participant views the Exchange's proposed fee change as more or less attractive than the competition, that market participant can choose to connect to the Exchange indirectly or may choose not to connect to that exchange and connect instead to one or more of the other 15 options markets. Notwithstanding the foregoing, the Exchange still believes that the proposed fee increase is reasonable, equitably allocated and not unfairly discriminatory, even for market participants that determine to connect directly to the Exchange for business

purposes, as those business reasons should presumably result in revenue capable of covering the proposed fee.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed fee change will not impact intramarket competition because it will apply to all similarly situated Members equally (*i.e.*, all market participants that choose to purchase the 10 Gb physical port).

The Exchange's proposed fee is still lower than some fees for similar connectivity on other exchanges and therefore may stimulate intermarket competition by attracting additional firms to connect to the Exchange or at least should not deter interested participants from connecting directly to the Exchange. Further, if the changes proposed herein are unattractive to market participants, the Exchange can, and likely will, see a decline in connectivity via 10 Gb physical ports as a result. The Exchange operates in a highly competitive market in which market participants can determine whether or not to connect directly to the Exchange based on the value received compared to the cost of doing so.

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 Act¹⁸ and paragraph (f) of Rule 19b-4¹⁹ 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.

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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeEDGX-2023-045 on the subject line.

Paper Comments

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

All submissions should refer to file number SR-CboeEDGX-2023-045. 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-CboeEDGX-2023-045 and should be submitted on or before August 11, 2023.

²⁰ 17 CFR 200.30-3(a)(12).

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

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

¹⁶ See https://www.miaxglobal.com/sites/default/files/page-files/MIAX_Options_Exchange_Members_April_2023_04282023.pdf.

¹⁷ See https://www.miaxglobal.com/sites/default/files/page-files/MIAX_Pearl_Exchange_Members_01172023_0.pdf.

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

J. Matthew DeLesDernier,
Deputy Secretary.

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BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97922; File No. SR-NASDAQ-2023-019]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of a Proposed Rule Change To List and Trade Shares of the Valkyrie Bitcoin Fund Under Nasdaq Rule 5711(d), Commodity-Based Trust Shares

July 17, 2023.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 3, 2023, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “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

The Exchange proposes to list and trade shares of the Valkyrie Bitcoin Fund (the “Trust”) under Nasdaq Rule 5711(d) (“Commodity-Based Trust Shares”). The shares of the Trust are referred to herein as the “Shares.”

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 list and trade Shares of the Trust under Nasdaq Rule 5711(d), which governs the listing and trading of Commodity-Based Trust Shares on the Exchange.³

Description of the Trust

The Shares will be issued by the Trust, a Delaware statutory trust. The Trust will operate pursuant to a trust agreement (the “Trust Agreement”) between Valkyrie Digital Assets, LLC (the “Sponsor”) and Delaware Trust Company, as the Trust’s trustee (the “Trustee”). The Shares will be registered with the Commission by means of the Trust’s registrations statement on Form S-1 (the “Registration Statement”).⁴ Pursuant to the Trust Agreement, the Sponsor will enter into a custodian agreement (the “Custodian Agreement”) with a qualified custodian (the “Custodian”) to act as custodian for the Trust’s bitcoins. Pursuant to the Custodian Agreement, the Custodian will establish accounts that hold the bitcoins deposited with the Custodian on behalf of the Trust. U.S. Bancorp Fund Services, LLC will act as the transfer agent for the Trust (the “Transfer Agent”) and as the administrator of the Trust (the “Administrator”) to perform various administrative, accounting and recordkeeping functions on behalf of the Trust.

The investment objective of the Trust is for the Shares to reflect the performance of the value of a bitcoin as represented by the CME CF Bitcoin Reference Rate—New York Variant (the “Index”), less the Trust’s liabilities and expenses. The purpose of the Trust is to provide investors with a cost-effective and convenient way to invest in bitcoin in a manner that is more efficient and

³ Nasdaq Rule 5711(d)(iv)(A) defines Commodity-Based Trust Shares as “a security (1) that is issued by a trust (“Trust”) that holds a specified commodity deposited with the Trust; (2) that is issued by such Trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity; and (3) that, when aggregated in the same specified minimum number, may be redeemed at a holder’s request by such Trust which will deliver to the redeeming holder the quantity of the underlying commodity.”

⁴ See Amendment No. 2 to Registration Statement on Form S-1, dated May 8, 2023 filed with the Commission by the Sponsor on behalf of the Trust (File No. 333-252344). The descriptions of the Trust contained herein are based, in part, on information in the Registration Statement. The Registration Statement is not yet effective and the Shares will not trade on the Exchange until such time that the Registration Statement is effective.

convenient than the purchase of a stand-alone bitcoin, while also mitigating some of the risk by reducing the volatility typically associated with the purchase of stand-alone bitcoin and without the uncertain and often complex requirements relating to acquiring and/or holding bitcoin.

The Trust will only hold bitcoin, and will, from time to time, issue Baskets⁵ in exchange for deposits of bitcoins and to distribute bitcoins in connection with redemptions of Baskets. The Shares of the Trust represent units of fractional undivided beneficial interest in, and ownership of, the Trust. The bitcoins held by the Custodian on behalf of the Trust will be transferred out of the Bitcoin Account only in the following circumstances: transferred to pay the Sponsor’s Fee, distributed to Authorized Participants or Liquidity Providers, as applicable, in connection with the redemption of Baskets, transferred to be sold on an as-needed basis to pay Additional Trust Expenses, sold on behalf of the Trust in the event the Trust terminates and liquidates its assets or as otherwise required by law or regulation.

Custody of the Trust’s Bitcoins

The Trust will engage a Custodian to custody the Trust’s bitcoin. The Trust will select a Custodian that is a qualified custodian under the Investment Advisers Act of 1940. Under the Custodian Agreement, the Custodian will be responsible for the safety and security of the Trust’s Bitcoins as well as overseeing the process of deposit, withdrawal, sale and purchase of the Trust’s bitcoins. The Custodian will custody the bitcoin in accordance with the terms of the Custodian Agreement.

All bitcoins exist and are stored on the Blockchain, the decentralized transaction ledger of the Bitcoin Network. The Blockchain records most transactions (including mining of new bitcoins) for all bitcoins in existence, and in doing so verifies the location of each bitcoin (or fraction thereof) in a particular digital wallet. The Bitcoin Account will be maintained by the Custodian and cold storage⁶ mechanisms will be used for the Vault Account by the Custodian. Each digital wallet of the Trust may be accessed

⁵ A Basket equals a block of 50,000 Shares.

⁶ The term “cold storage” refers to a safeguarding method by which the private keys corresponding to bitcoins stored on a digital wallet are removed from any computers actively connected to the internet. Cold storage of private keys may involve keeping such wallet on a non-networked computer or electronic device or storing the public key and private keys relating to the digital wallet on a storage device (for example, a USB thumb drive) or printed medium (for example, papyrus or paper) and deleting the digital wallet from all computers.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.