

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-89540; File No. SR-CboeEDGX-2020-039)

August 13, 2020

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Fee Schedule

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ 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 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

Cboe EDGX Exchange, Inc. (the “Exchange” or “EDGX”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend the 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/), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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

The Exchange proposes to amend its fee schedule in connection with its Retail Volume Tiers.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 13 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues that do not have similar self-regulatory responsibilities under the Exchange Act, to which market participants may direct their order flow. Based on publicly available information, no single registered equities exchange has more than 20% of the market share.⁴ Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow.

The Exchange in particular operates a “Maker-Taker” model whereby it pays credits to members that add liquidity and assesses fees to those that remove liquidity. The Exchange’s Fees Schedule sets forth the standard rebates and rates applied per share for orders that provide and remove liquidity, respectively. Particularly, for securities at or above \$1.00, the Exchange provides a standard rebate of \$0.0017 per share for orders that add liquidity and assesses a fee of \$0.0027 per share for orders that remove liquidity, and for securities below \$1.00, the Exchange provides a standard rebate of \$0.00003 per share for orders that add liquidity and assesses a standard fee of 30% of dollar value per share for orders that remove liquidity. The Exchange believes that the ever-shifting market share among the exchanges from month to month

⁴ See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (July 29, 2020), available at https://markets.cboe.com/us/equities/market_statistics/.

demonstrates that market participants can shift order flow, or discontinue to reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

In response to the competitive environment, the Exchange also offers tiered pricing which provides Members opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Tiered pricing provides incremental incentives for Members to strive for higher or different tier levels by offering increasingly higher discounts or enhanced benefits for satisfying increasingly more stringent criteria or different criteria. Pursuant to footnote 3 of the fee schedule, the Exchange currently offers Retail Volume Tiers which provide Retail Member Organizations (“RMOs”)⁵ an opportunity to receive an enhanced rebate from the standard rebate for Retail Orders⁶ that add liquidity (i.e., yielding fee code “ZA”⁷). Currently, the Retail Volume Tiers offer three levels of criteria difficulty and incentive opportunities in which RMOs may qualify for enhanced rebates for Retail Orders. The tier structures are designed to encourage RMOs to increase their order flow in order to receive an enhanced rebate on their liquidity adding orders, and the Exchange now proposes to amend existing Retail Volume Tier 2 in footnote 3 of the fee schedule

⁵ A “Retail Member Organization” or “RMO” is a Member (or a division thereof) that has been approved by the Exchange under this Rule to submit Retail Orders. See EDGX Rule 11.21(a)(1).

⁶ A “Retail Order” is an agency or riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person and is submitted to the Exchange by a Retail Member Organization, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. See EDGX Rule 11.21(a)(2).

⁷ Appended to Retail Orders that add liquidity to EDGX and offered a rebate of \$0.0032 per share.

and renumber it to Retail Volume Tier 3. Additionally the Exchange proposes to renumber existing Retail Volume Tier 3 to Retail Volume Tier 2.

Currently, Retail Volume Tier 2 provides a rebate of \$0.0037 per share to RMOs that add a Retail Order Average Daily Volume (“ADV”)⁸ (i.e., yielding fee code ZA) of equal to or greater than 0.50% of the Total Consolidated Volume (“TCV”).⁹ Now, the Exchange proposes to increase the rebate to \$0.0038 per share. The proposed criteria under existing Retail Volume Tier 2 is designed to encourage RMOs to increase retail order flow on the Exchange. The Exchange notes that the proposed Retail Volume Tier 3 is available to all RMOs and is competitively achievable for all RMOs that submit liquidity adding retail order flow, in that, all firms that submit the requisite liquidity adding retail order flow could compete to meet the tier. Additionally, the Exchange proposes to renumber existing Retail Volume Tier 3 to Retail Volume Tier 2, and renumber the amended Retail Volume Tier 2 to Retail Volume Tier 3. Such renumbering will provide the Retail Volume Tiers in order from smallest rebate to largest rebate, which is consistent with the organization of the Exchange’s Fee Schedule.

The Exchange believes the proposed opportunity to receive an enhanced rebate on qualifying Retail Orders incentivizes an increase in overall order flow to the Exchange. It provides liquidity adding RMOs on the Exchange a further incentive to contribute to a deeper, more liquid market, and liquidity executing Members on the Exchange a further incentive to increase transactions and take execution opportunities provided by such increased liquidity,

⁸ ADV means average daily volume calculated as the number of shares added to, removed from, or routed by, the Exchange, or any combination or subset thereof, per day. ADV is calculated on a monthly basis.

⁹ TCV means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

together providing for overall enhanced price discovery and price improvement opportunities on the Exchange. As such, this benefits all Members by contributing towards a robust and well-balanced market ecosystem.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,¹⁰ in general, and furthers the objectives of Section 6(b)(4),¹¹ in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with the objectives of Section 6(b)(5)¹² requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As described above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The proposed rule change reflects a competitive pricing structure designed to incentivize market participants to direct their order flow to

¹⁰ 15 U.S.C. 78f.

¹¹ 15 U.S.C. 78f(b)(4).

¹² 15 U.S.C. 78f.(b)(5).

the Exchange, which the Exchange believes would enhance market quality to the benefit of all Members.

In particular, the Exchange believes the proposed amendment is reasonable because it provides an opportunity for RMOs to receive an enhanced rebate on qualifying orders by means of liquidity adding orders and removing or Retail Orders. The Exchange notes that relative volume-based incentives and discounts have been widely adopted by exchanges,¹³ including the Exchange,¹⁴ and are reasonable, equitable and non-discriminatory because they are open to all RMOs on an equal basis and provide additional benefits or discounts that are reasonably related to (i) the value to an exchange's market quality and (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns. Additionally, as noted above, the Exchange operates in a highly competitive market. The Exchange is only one of several equity venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. It is also only one of several maker-taker exchanges. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume thresholds. These competing pricing schedules, moreover, are presently comparable to those that

¹³ See e.g., Nasdaq PSX Price List, Rebate to Add Displayed Liquidity (Per Share Executed), which provides rebates to members for adding displayed liquidity over certain thresholds of TCV ranging between \$0.0020 and \$0.0026; Cboe BZX U.S. Equities Exchange Fee Schedule, Footnote 1, Add Volume Tiers, which provides similar incentives for liquidity adding orders and offers rebates ranging between \$0.0018 and \$0.0032; Nasdaq Price List, Rebate to Add Displayed Designated Retail Liquidity, which offer rebates of \$0.00325 and \$0.0033 for Add Displayed Designated Retail Liquidity.

¹⁴ See generally, Cboe EDGX U.S. Equities Exchange Fee Schedule, Footnote 1, Add Volume Tiers, which provides incentives for ADV/ADAV order flow as a percentage of TCV and for criteria based on certain other threshold components (i.e. Step-Up Add TCV, average OCV, and AIM and Customer orders); and Footnote 3, Retail Volume Tiers, which provides incentives for Retail Step-Up Add TCV and Retail Order ADV as a percentage of TCV.

the Exchange provides, including the pricing of comparable tiers.¹⁵

Moreover, the Exchange believes the proposed amendment is reasonable because it is designed to encourage overall order flow, that is, both adding and removing orders as a result of the proposed amendment to proposed Retail Volume Tier 3. Indeed, the Exchange notes that greater add volume order flow provides for deeper, more liquid markets and execution opportunities, and greater remove volume order flow increases transactions on the Exchange, which incentivizes liquidity providers to submit additional liquidity and execution opportunities, thus, providing an overall increase in price discovery and transparency on the Exchange. Also, an increase in Retail Order flow, which generally are submitted in smaller sizes, tends to attract Market-Makers, as smaller size orders are easier to hedge. Increased Market-Maker activity facilitates tighter spreads, signaling additional corresponding increase in order flow from other market participants, which contributes towards a robust, well-balanced market ecosystem. Increased overall order flow benefits all investors by deepening the Exchange's liquidity pool, potentially providing even greater execution incentives and opportunities, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection.

The Exchange believes that the proposal represents an equitable allocation of rebates and is not unfairly discriminatory because all RMOs will continue to be eligible for proposed Retail Volume Tier 3. The proposed tier is designed as an incentive to any and all RMOs interested in meeting the tier criteria to submit additional adding and removing, or Retail, order flow to the Exchange. RMOs will have the opportunity to submit the requisite order flow and will receive the applicable enhanced rebate if the tier criteria is met. The Exchange additionally notes that

¹⁵ See supra note 13.

while the proposed Retail Volume tier is applicable only to RMOs, the Exchange does not believe this application is discriminatory as the Exchange offers similar rebates to non-RMO order flow.¹⁶

Without having a view of activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would definitely result in any RMOs qualifying for the proposed amended tier. While the Exchange has no way of predicting with certainty how the proposed change will impact RMO activity, the Exchange anticipates that at least two RMOs will be able to compete for and reach proposed Retail Volume Tier 3. The Exchange also notes that the proposed amended tier will not adversely impact any RMO's pricing or their ability to qualify for other rebate tiers. Rather, should a RMO not meet the criteria for proposed Retail Volume Tier 3, the RMO will merely not receive the corresponding proposed enhanced rebate. Furthermore, the proposed rebate would uniformly apply to all RMOs that meet the required criteria.

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

The Exchange does not believe that the proposed rule change will impose any burden on intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, as discussed above, the Exchange believes that the proposed change would encourage the submission of additional order flow to a public exchange, thereby promoting market depth, execution incentives and enhanced execution opportunities, as well as price discovery and transparency for all Members. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering

¹⁶ Such as the 15 other Add Volume Tiers and the Tape B Volume Tier which provide opportunities to all Members to submit the requisite order flow to receive an enhanced rebate.

competition among orders, which promotes “more efficient pricing of individual stocks for all types of orders, large and small.”¹⁷

The Exchange believes the proposed rule change does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed change applies to all RMOs equally in that all RMOs are eligible for the proposed amended tier, have a reasonable opportunity to meet the tier’s criteria and will all receive the proposed rebate if such criteria is met. As indicated above, the Exchange does not believe that offering RMOs, specifically, opportunities to meet certain tier criteria for enhanced rebates imposes a burden on intramarket competition as the Exchange offers many similar rebate opportunities for non-RMOs.¹⁸ Overall, the proposed change is designed to attract additional order flow to the Exchange. The Exchange believes that the proposal to increase the proposed Retail Volume Tier 3 rebate would incentivize market participants to direct liquidity removing order flow to the Exchange and, as a result, increase execution opportunities, which would further incentivize the provision of liquidity and continued order flow and improve price transparency on the Exchange. Greater overall order flow and pricing transparency benefits all market participants on the Exchange by generally providing more trading opportunities, enhancing market quality, and continuing to encourage Members to send orders, thereby contributing towards a robust and well-balanced market ecosystem, which benefits all market participants.

Next, the Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the

¹⁷ Securities Exchange Act Release No. 51808, 70 FR 37495, 37498-99 (June 29, 2005) (S7-10-04) (Final Rule).

¹⁸ See supra note 14.

Act. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including 12 other equities exchanges and off-exchange venues and alternative trading systems. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single equities exchange has more than 20% of the market share.¹⁹ Therefore, no exchange possesses significant pricing power in the execution of order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that “current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”²⁰ The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the

¹⁹ See *supra* note 6 [sic].

²⁰ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

execution of order flow from broker dealers' ...".²¹ Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)²² of the Act and subparagraph (f)(2) of Rule 19b-4²³ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)²⁴ of the Act to determine whether the proposed rule change should be approved or disapproved.

²¹ NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

²² 15 U.S.C. 78s(b)(3)(A).

²³ 17 CFR 240.19b-4(f)(2).

²⁴ 15 U.S.C. 78s(b)(2)(B).

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-2020-039 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-2020-039. 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, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons

submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeEDGX-2020-039 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.²⁵

J. Matthew DeLesDernier
Assistant Secretary

²⁵ 17 CFR 200.30-3(a)(12).