

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-91494; File No. SR-CboeEDGX-2021-018)

April 7, 2021

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) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 1, 2021, 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, 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”) 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

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 applicable to its equities trading platform (“EDGX Equities”) to include an additional Remove Volume Tier. The Exchange proposes to implement the proposed change to its fee schedule on April 1, 2021.

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 16 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,³ no single registered equities exchange has more than 16% of the market share. 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 fee schedule sets forth the standard rebates and rates applied per share for orders that provide and remove liquidity, respectively. Additionally, in response to the competitive environment, the Exchange

³ See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (March 29, 2021), available at https://markets.cboe.com/us/equities/market_statistics/.

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 an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

Pursuant to footnote 1 of the Fee Schedule, the Exchange offers a Remove Volume Tier that provides a reduced fee to Members meeting certain volume thresholds. Now, the Exchange is proposing to rename the existing Remove Volume Tier to Remove Volume Tier 1, and add an additional Remove Volume Tier 2. The proposed Remove Volume Tier 2 offers a reduced fee of \$0.0026 for orders in securities at or above \$1.00 and 0.28% of total dollar value for orders in securities below \$1.00 yielding fee code “N”,⁴ “W”,⁵ and “BB”⁶ where a Member has (1) a Step-Up Add TCV⁷ from January 2021 equal to or greater than 0.15%; (2) an ADAV⁸ greater than or equal to 0.08% of the TCV⁹ for Non-Displayed orders that yield fee codes DM,¹⁰ HA,¹¹ HI,¹²

⁴ Orders yielding Fee Code “N” are orders removing liquidity from EDGX (Tape C).

⁵ Orders yielding Fee Code “W” are orders removing liquidity from EDGX (Tape A).

⁶ Orders yielding Fee Code “BB” are orders removing liquidity from EDGX (Tape B).

⁷ Step-Up Add TCV means ADAV as a percentage of TCV in the relevant baseline month subtracted from current ADAV as a percentage of TCV.

⁸ ADAV means average daily added volume calculated as the number of shares added per day.

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.

¹⁰ Orders yielding Fee Code “DM” are orders adding liquidity using MidPoint Discretionary order within discretionary range.

¹¹ Orders yielding Fee Code “HA” are Non-Displayed orders adding liquidity.

¹² Orders yielding Fee Code “HI” are Non-Displayed orders that receive price improvement and add liquidity.

MM,¹³ or RP;¹⁴ and (3) removes an ADV¹⁵ greater than or equal to 0.75% of the TCV. The proposed Remove Volume Tier 2 is designed to incentivize Members to increase their orders that add liquidity on the Exchange for displayed and non-displayed orders, as well as remove displayed volume on the Exchange in order to receive a reduced fee on their qualifying, liquidity removing orders.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,¹⁶ in general, and furthers the objectives of Section 6(b)(4),¹⁷ in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members, issuers and other persons using its facilities. 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 changes reflect a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance market quality to the benefit of all Members. The Exchange notes that relative volume-based incentives and discounts have been widely adopted by exchanges, including the Exchange, and are reasonable, equitable and non-discriminatory because they are

¹³ Orders yielding Fee Code “MM” are Non-Displayed orders adding liquidity using MidPoint Peg.

¹⁴ Orders yielding Fee Code “RP” are Non-Displayed orders adding liquidity using Supplemental Peg.

¹⁵ 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.

¹⁶ 15 U.S.C. 78f.

¹⁷ 15 U.S.C. 78f(b)(4).

open to all members 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. Competing equity exchanges offer similar tiered pricing structures, including schedules of rebates and fees that apply based upon members achieving certain volume and/or growth thresholds, as well as assess similar fees or rebates for similar types of orders, to that of the Exchange.

The Exchange believes the proposed addition to the Remove Volume Tiers is reasonable because it provides an additional opportunity for Members to receive a discounted rate for liquidity removing orders. The Exchange notes the proposed tier is available to all Members and is competitively achievable for all Members that submit the requisite order flow, in that, all firms are eligible for the proposed tier and those that submit the requisite order flow could compete to meet the proposed tier. Each Member will uniformly receive the respective proposed reduced fee if the corresponding tier criteria is met.

The Exchange believes the Remove Volume Tier is a reasonable means to incentivize Members to continue to provide liquidity adding, displayed volume to the Exchange by offering them a different, additional opportunity than that of the Add Volume Tiers - to receive a reduced fee on their liquidity removing orders by meeting the proposed criteria in submitting additional add volume order flow.

Overall, the Exchange believes that adding new tier criteria each based on a Member's liquidity adding and removing orders, will benefit all market participants by incentivizing continuous liquidity and thus, deeper more liquid markets as well as increased execution opportunities. Particularly, the proposed tier is designed to incentivize Members to increase their

orders that add displayed and non-displayed volume on the Exchange in order to receive a reduced fee on their qualifying, liquidity removing orders. This overall increase in activity deepens the Exchange's liquidity pool, offers additional cost savings, supports the quality of price discovery, promotes market transparency and improves market quality, for all investors.

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 Members qualifying for the proposed tiers. While the Exchange has no way of predicting with certainty how the proposed tiers will impact Member activity, the Exchange anticipates that for the proposed Remove Volume Tier 2 at least one Member will be able to compete for and achieve the proposed criteria. The Exchange notes, however, that the proposed tier is open to any Member that satisfies the tier's criteria. The Exchange also notes that the proposed tier will not adversely impact any Member's pricing or their ability to qualify for other tiers. Rather, should a Member not meet the proposed criteria for the proposed tier, the Member will merely not receive the corresponding reduced fee.

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

The Exchange does not believe that the proposed rule changes will impose any burden on competition 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 competition among

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

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 Members equally in that all Members are eligible for the proposed Remove Volume Tier 2 and have a reasonable opportunity to meet the tier’s criteria and will all receive the proposed reduced fee if such criteria is met. Additionally, the proposed tier is designed to attract additional order flow to the Exchange. The Exchange believes that the additional tier criteria would incentivize market participants to direct liquidity adding and removing order flow to the Exchange, bringing with it improved price transparency. Greater overall order flow and pricing transparency benefits all market participants on the Exchange by 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 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 other equities exchanges, 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 16% of the market share.¹⁸ Therefore, no exchange possesses significant pricing power in the execution of order

¹⁸ Supra note 3.

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.”¹⁹ 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 execution of order flow from broker dealers’....”²⁰ 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 neither solicited nor received comments on the proposed rule change.

¹⁹ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

²⁰ *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)).

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 Act²¹ and paragraph (f) of Rule 19b-4²² 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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CboeEDGX-2021-018 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-2021-018. This file number should be included on the subject line if e-mail is used. To help the Commission process and

²¹ 15 U.S.C. 78s(b)(3)(A).

²² 17 CFR 240.19b-4(f).

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-2021-018 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.²³

J. Matthew DeLesDernier
Assistant Secretary

²³ 17 CFR 200.30-3(a)(12).