SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-93718; File No. SR-CboeEDGX-2021-050)

December 6, 2021

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend its 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 December 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" or "EDGX Equities") proposes to amend its 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/) [sic], 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 1) add a new Growth Tier 4, and 2) modify the Remove Volume Tier 1, effective December 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 rebates 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,

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

respectively. Currently, for orders in securities priced at or above $1.00, the Exchange provides a standard rebate of $0.00160 per share for orders that add liquidity and assesses a fee of $0.0030 per share for orders that remove liquidity. For orders in securities priced below $1.00, the Exchange provides a standard rebate of $0.00009 per share for orders that add liquidity and assesses a fee of 0.30% of total dollar value for orders that remove liquidity. Additionally, 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 an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

Under footnote 1 of the Fee Schedule the Exchange currently offers various Add/Remove Volume Tiers. In particular, the Exchange offers three Growth Tiers that each provide an enhanced rebate for Members' qualifying orders yielding fee codes B,[4] V,[5] Y,[6] 3[7] and 4,[8] where a Member reaches certain add volume-based criteria, including "growing" its volume over a certain baseline month. Currently, the Growth Tiers are as follows:

- Growth Tier 1 provides a rebate of $0.0026 per share to qualifying orders (i.e., orders yielding fee codes B, V, Y, 3, or 4) where 1) the Member adds an ADV[9]

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4 Orders yielding Fee Code "B" are orders adding liquidity to EDGX (Tape B).

5 Orders yielding Fee Code "V" are orders adding liquidity to EDGX (Tape A).

6 Orders yielding Fee Code "Y" are orders adding liquidity to EDGX (Tape C).

7 Orders yielding Fee Code "3" are orders adding liquidity to EDGX in the pre and post market (Tapes A or C).

8 Orders yielding Fee Code "4" are orders adding liquidity to EDGX in the pre and post market (Tape B).

9 "ADAV" means average daily added volume calculated as the number of shares added per day and "ADV" means average daily volume calculated as the number of shares

equal to or greater than 0.20% of the TCV;[10] and 2) the Member has a Step-Up Add TCV[11] from August 2021 equal to or greater than 0.10% of [sic] the Member adds a Step-Up ADAV[12] from August 2021 equal to or greater than 8 million shares.

- Growth Tier 2 provides a rebate of $0.0027 per share to qualifying orders (i.e., orders yielding fee codes B, V, Y, 3, or 4) where 1) the Member adds a Step-Up ADAV from June 2021 equal to or greater than 0.10% of the TCV or the Member adds a Step-Up ADAV from June 2021 equal to or greater than 8 million; and 2) the Member has a total remove ADV equal to or greater than 0.70% of TCV.
- Growth Tier 3 provides a rebate of $0.0030 per share to qualifying orders (i.e., orders yielding fee codes B, V, Y, 3, or 4) where 1) the Member has a Step-Up Add TCV from January 2021 equal to or greater than 0.10%; 2) the Member adds an ADV equal to or greater than 0.50% of the TCV; and 3) the Member removes an ADV equal to or greater than 0.75% of the TCV.

Now, the Exchange proposes to add Growth Tier 4 as follows:

- Proposed Growth Tier 4 provides a rebate of $0.0034 per share to qualifying orders (i.e., orders yielding fee codes B, V, Y, 3, or 4) where 1) the Member adds

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added to, removed from, or routed by, the Exchange, or any combination or subset thereof, per day. ADAV and ADV is calculated on a monthly basis.

10 "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.

11 "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.

12 "Step-Up ADAV" means ADAV in the relevant baseline month subtracted from current ADAV.

a Step-Up ADAV from October 2021 equal to or greater than 0.10% of the TCV or the Member adds a Step-Up ADAV from October 2021 equal to or greater than 10 million shares; and 2) the Member has a total remove ADV equal to or greater than 0.60% of TCV.

Under footnote 1 of the Fee Schedule the Exchange also currently offers two Remove Volume Tiers that each provide an enhanced rebate for Members' qualifying orders yielding fee codes BB,[13] N,[14] and W[15] where a Member reaches certain remove volume-based criteria. Currently, the Remove Volume Tiers are as follows:

- Remove Volume Tier 1 provides a reduced fee of $0.00275 per share in securities at or above $1.00 and 0.28% of total dollar value in securities priced below $1.00 to qualifying orders (i.e., orders yielding fee codes BB, NN, or W) where 1) the Member adds a Step-Up ADAV from June 2021 equal to or greater than 0.10% of the TCV or the Member adds a Step-Up ADAV from June 2021 equal to or greater than 8 million shares; and 2) the Member has a total remove ADV equal to or greater than 0.70% of the TCV.
- Remove Volume Tier 2 provides a reduced fee of $0.00275 per share in securities at or above $1.00 and 0.28% of total dollar value in securities priced below $1.00 to qualifying orders (i.e., orders yielding fee codes BB, NN, or W) where 1) the Member has an ADAV equal to or greater than 0.25% of TCV with displayed

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13 Orders yielding Fee Code "BB" are orders removing liquidity from EDGX (Tape B).

14 Orders yielding Fee Code "N" are orders removing liquidity from EDGX (Tape C).

15 Orders yielding Fee Code "W" are orders removing liquidity from EDGX (Tape A).

orders that yield fee codes B, V or Y; or 2) the Member adds Retail Order ADV (i.e., yielding fee code ZA) equal to or greater than 0.45% of the TCV.

Now, the Exchange proposes to modify Remove Volume Tier 1 as follows:

- Proposed Remove Volume Tier 1 provides a reduced fee of $0.00275 per share in securities at or above $1.00 and 0.28% of total dollar value in securities priced below $1.00 to qualifying orders (i.e., orders yielding fee codes BB, NN, or W) where 1) the Member adds a Step-Up ADAV from June 2021 equal to or greater than 0.10% of the TCV or the Member adds a Step-Up ADAV from June 2021 equal to or greater than 8 million shares; and 2) the Member has a total remove ADV equal to or greater than 0.60% (instead of 0.70%) of the TCV.

The proposed amendment to the Remove Volume Tier 1 would lessen the difficulty of the existing criteria while keeping the reduced fee the same.

Overall, the proposed new Growth Tier and the amendments to the Remove Volume Tier are designed to provide Members with an opportunity to receive an enhanced rebate or reduced fee by increasing their order flow to the Exchange, which further contributes to a deeper, more liquid market and provides even more execution opportunities for active market participants. Incentivizing an increase in liquidity adding or removing volume, through enhanced rebate or reduced fee opportunities, encourages liquidity adding Members on the Exchange to contribute to a deeper, more liquid market, and liquidity executing Members on the Exchange to increase transactions and take execution opportunities provided by such increased liquidity, together providing for overall enhanced price discovery and price improvement opportunities on the Exchange. As such, increased overall order flow 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,[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 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)[18] 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 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. Additionally, the Exchange notes that relative volume-based incentives

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16 15 U.S.C. 78f.

17 15 U.S.C. 78f(b)(4).

18 15 U.S.C. 78f.(b)(5).

and discounts have been widely adopted by exchanges,[19] including the Exchange,[20] and are reasonable, equitable and non-discriminatory because they are 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.

In particular, the Exchange believes the proposed Growth Tier 4 and the proposed change to the Remove Volume Tier 1 are reasonable because the Tiers will be available to all Members and provide all Members with an additional opportunity to receive an enhanced rebate or reduced fee. The Exchange further believes the proposed Growth Tier 4 will provide a reasonable means to encourage overall growth in Members' order flow to the Exchange and to incentivize Members to continue to provide liquidity adding volume to the Exchange by offering them an additional opportunity to receive an enhanced rebate on qualifying orders. Similarly, the Exchange believes the Remove Volume Tier 1, even as amended, will provide a reasonable means to encourage overall growth in Members' order flow to the Exchange and to incentivize Members to continue to add and remove liquidity on the Exchange by offering them an additional opportunity to receive a reduced fee on qualifying orders. An overall increase in activity would deepen the Exchange's liquidity pool, offers additional cost savings, support the

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19 See BZX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

20 See EDGX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

quality of price discovery, promote market transparency and improve market quality, for all investors.

Further, the Exchange believes that the proposed changes are reasonable as it does not represent a significant departure from the criteria currently offered in the Fee Schedule. For example, the Exchange notes similar criteria is offered under the existing Growth Tiers and the change to the Remove Volume Tier 1 slightly lessens the difficulty of achieving the Tier. Additionally, the Exchange believes that the proposed enhanced rebate under Growth Tier 4 and reduced fee under the Remove Volume Tier 1, which is not being changed, continues to be commensurate with the new criteria.

The Exchange also believes that the proposal represents an equitable allocation of fees and rebates and is not unfairly discriminatory because all Members will be eligible for Growth Tier 4 and will continue to be eligible for the Remove Volume Tier 1 and have the opportunity to meet each Tier's criteria and receive the corresponding enhanced rebate or reduced fee if such criteria is met. 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 Growth Tier 4 or the Remove Volume Tier 1, as amended. While the Exchange has no way of predicting with certainty how the proposed changes will impact Member activity, the Exchange anticipates that at least one Member will be able to satisfy the criteria proposed under each proposed tier. The Exchange also notes that proposed changes will not adversely impact any Member's ability to qualify for reduced fees or enhanced rebates offered under other tiers. Should a Member not meet the proposed new criteria, the Member will merely not receive that corresponding enhanced rebate.

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 changes to the Remove Volume Tier 1 and the proposed Growth Tier 4 apply to all Members equally in that all Members are eligible for each of the Tiers, have a reasonable opportunity to meet the Tiers' criteria and will receive the enhanced rebate or reduced fee on their qualifying orders if such criteria is met. The Exchange does not believe the proposed changes burdens competition, but rather, enhances competition as it is intended to increase the competitiveness of EDGX by adding a new pricing incentive and amending an existing pricing incentive in order to attract order flow and incentivize participants to increase their participation on the Exchange, providing for additional execution opportunities for market participants and improved price transparency. Greater overall order flow, trading opportunities, and pricing transparency benefits all market participants on the Exchange by enhancing market quality and continuing to encourage Members to send orders, thereby contributing towards a robust and well-balanced market ecosystem.

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.[21] 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."[22] 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

21 Supra note 3.

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

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'….".[23] 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.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[24] and paragraph (f) of Rule 19b-4[25] 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.

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23 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)).

24 15 U.S.C. 78s(b)(3)(A).

25 17 CFR 240.19b-4(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CboeEDGX-2021-050 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-2021-050. 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-2021-050 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.[26]

J. Matthew DeLesDernier
Assistant Secretary

[26] 17 CFR 200.30-3(a)(12).