

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-86926; File No. SR-CboeEDGX-2019-056)

September 11, 2019

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating 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 September 3, 2019, 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 its Fee Schedule. The text of the proposed rule change is attached [sic] as 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 for its equity options platform (“EDGX Options”), effective September 3, 2019.

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 options venues to which market participants may direct their order flow. Based on publicly available information, no single options exchange has more than 24% of the market share and currently the Exchange represents only 3% of the market share.³ Thus, in such a low-concentrated and highly competitive market, no single options exchange, including the Exchange, possesses significant pricing power in the execution of option order flow. The Exchange believes that the ever-shifting market share among the exchanges from month to month 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. The Exchange’s Fees Schedule sets forth standard rebates and rates applied per contract. For

³ See Cboe Global Markets U.S. Options Market Volume Summary (August 30, 2019), available at https://markets.cboe.com/us/options/market_statistics/.

example, the Exchange assesses a standard fee of \$0.20 per contract for Market Maker orders that add liquidity in both Penny and Non-Penny Securities. 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.

For example, the Exchange currently offers seven Market Maker Volume Tiers under Footnote 2 of the fee schedule which provide reduced fees between \$0.17 per contract and \$0.01 per contract for qualifying Market Maker orders which meet certain add liquidity thresholds and yield fee codes PM and NM. Under the current Market Maker Volume Tiers, a Member receives a reduced fee between \$0.01 - \$0.17 per contract, where the Member has an ADV⁴ in Market Maker orders greater or equal to a specified percentage of OCV⁵ (Tiers 1 – 5). Members also have an opportunity to receive a reduced fee of \$0.03-\$0.04 per contract under Tiers 6 and 7 where the Member satisfies alternative criteria including, reaching specified ADV thresholds in (i) in Customer orders, (ii) Customer or Market Maker orders, (iii) AIM Agency Orders and (iv) complex Customer orders. The Exchange proposes to adopt a new Market Maker Volume Tier, “Tier 2” and renumber the remaining tiers accordingly.

⁴ "ADV" means average daily volume calculated as the number of contracts added or removed, combined, per day. ADV is calculated on a monthly basis. See Cboe EDGX Options Exchange Fee Schedule.

⁵ "OCV" means the total equity and ETF options volume that clears in the Customer range at the Options Clearing Corporation ("OCC") for the month for which the fees apply, excluding volume on any day that the Exchange experiences an Exchange System Disruption and on any day with a scheduled early market close. See Cboe EDGX Options Exchange Fee Schedule.

The Exchange believes the proposed MM Penny Add Tier will provide Members an additional opportunity and alternative means to receive a reduced fee for meeting the corresponding proposed criteria. The Exchange believes the proposed tier, along with the existing tiers, also provide an incremental incentive for Members to strive for the highest tier levels, which provide increasingly higher discounts for such transactions.

Particularly, the Exchange proposes to add new Market Maker Volume Tier 2, which would provide a reduced fee of \$0.13 per contract where a Member (i) has an ADV in Market Maker orders greater than or equal to 0.15% of average OCV, (ii) Member has a Step-Up ADAV⁶ in Market Maker orders from July 2019 greater than or equal to 0.10% of average OCV; and (iii) Member has on EDGX Equities an ADAV greater than or equal to 0.30% of average TCV⁷. As such, under the proposed Tier, the Exchange is adopting an alternative set of criteria that Members must meet in addition to the standard ADV in Market Maker orders threshold. Particularly, Members must additionally satisfy a (i) cross-asset threshold, which is designed to incentivize members to achieve certain levels of participation on both the Exchange's options and equities platform ("EDGX Equities") and (ii) a step-up ADAV threshold, which is designed to encourage growth (i.e., Members must increase their relative liquidity each month over a predetermined baseline (in this case the month being July 2019)). Overall, the proposed reduced fee and corresponding criteria is designed to encourage Members to increase their order flow,

⁶ "ADAV" means average daily added volume calculated as the number of contracts added. ADAV is calculated on a monthly basis. See Cboe EDGX Options Exchange Fee Schedule. To alleviate confusion, the Exchange also proposes to adopt the definition of "Step-Up ADAV" in the Fees Schedule, which term shall mean ADAV in the relevant baseline month subtracted from current ADAV.

⁷ "TCV" means total consolidated volume calculated as the volume reported by all exchanges to the consolidated transaction reporting plan for the month for which the fees apply. See Cboe EDGX Options Exchange Fee Schedule.

thereby contributing to a deeper and more liquid market, which benefits all market participants and provides greater execution opportunities on the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,⁸ in general, and furthers the requirements of Section 6(b)(4),⁹ in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. 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 the Exchange, which the Exchange believes would enhance market quality to the benefit of all Members.

In particular, the Exchange believes the proposed tier is reasonable because it provides an additional opportunity for Members to receive lower fees by providing a different set of criteria they can reach for. The Exchange notes that volume-based incentives and discounts have been widely adopted by exchanges¹⁰, including the Exchange¹¹, and are reasonable, equitable and non-discriminatory because they are open to all members on an equal basis and provide additional

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(4).

¹⁰ See e.g., Cboe BZX U.S. Options Exchange Fee Schedule, Footnotes 6 and 7, Market Maker Penny Pilot and Non-Penny Pilot Volume Tiers which provide enhanced rebates for Market Maker orders where Members meet certain volume thresholds.

¹¹ See e.g., Cboe EDGX U.S. Options Exchange Fee Schedule, Footnote 2, Market Maker Volume Tiers, which provide reduced fees between \$0.01 and \$0.17 per contract for Market Maker Penny and Non-Penny orders where Members meet certain volume thresholds.

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 highly competitive market. The Exchange is only one of several options venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. Competing options 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 and/or growth thresholds. These competing pricing schedules, moreover, are presently comparable to those that the Exchange provides, including pricing incentives tied to comparable tiers.¹²

Moreover, the Exchange believes the proposed Market Maker Tier 2 is a reasonable means to encourage Members to increase their liquidity on the Exchange and also their participation on EDGX Equities. The Exchange believes that adopting a tier with alternative criteria to the existing Market Maker Volume Tiers, will encourage those Members who could not previously achieve the criteria under the existing Market Maker Volume Tiers, to increase their order flow on EDGX options and equities. For example, the proposed tier would provide an opportunity for Members who have an ADV in Market Makers Orders of at least 0.15% of average OCV, but less than 0.25% of average OCV (the requirement under current Tier 2), to receive the same lower fee as offered under current Tier 2 if they can otherwise meet the threshold requirement based on EDGX equities participation and can grow a modest amount

¹² See e.g., Cboe BZX U.S. Options Exchange Fee Schedule, Footnotes 6 and 7, Market Maker Penny Pilot and Non-Penny Pilot Add Volume Tiers, which provide enhanced rebates between \$0.33 - \$0.54 per contract where Members, among other things including a cross-asset threshold, meet a specified level of ADAV in Market Maker orders as a percentage of OCV.

since July 2019. Similarly, for Market Makers that participate on both EDGX Options and Equities, and do not currently meet the ADV threshold under current Tier 2 (i.e., 0.25%), but can or do meet the proposed equities ADAV threshold, the proposed tier may incentivize those participants to grow their options volume in order to receive reduced fees. Increased liquidity benefits all investors by deepening the Exchange's liquidity pool, 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 also believes that proposed reduced fee is reasonable based on the difficulty of satisfying the tier's criteria and ensures the proposed fee and threshold appropriately reflects the incremental difficulty to achieve the existing Market Maker Volume Tiers. The proposed reduced fee amount also does not represent a significant departure from the reduced fees currently offered under the Exchange's existing Market Maker Volume Tiers. Indeed, the proposed reduced fee amount is the same offered as the existing Market Maker Volume Tier 2 (i.e., \$0.13 per contract) and within the range of the reduced fees offered under the remaining Market Maker Volume Tiers (i.e., \$0.17 - \$0.01 per contract).

The Exchange believes that the proposal represents an equitable allocation of fees and is not unfairly discriminatory because it applies uniformly to all Market Makers. Additionally a number of Market Makers have a reasonable opportunity to satisfy the tier's criteria, which the Exchange believe is less stringent than other existing Market Maker Volume Tiers. While the Exchange has no way of knowing whether this proposed rule change would definitively result in any particular Market Maker qualifying for the proposed tier, the Exchange anticipates one to three members meeting, or being reasonably able to meet, the proposed criteria. The Exchange believes the proposed tier could provide an incentive for other Members to submit additional

liquidity on EDGX Options and Equities to qualify for the proposed reduced fee. To the extent a Member participates on the Exchange but not on EDGX Equities, the Exchange does believe that the proposal is still reasonable, equitably allocated and non-discriminatory with respect to such Member based on the overall benefit to the Exchange resulting from the success of EDGX Equities. Particularly, the Exchange believes such success allows the Exchange to continue to provide and potentially expand its existing incentive programs to the benefit of all participants on the Exchange, whether they participate on EDGX Equities or not. The proposed pricing program is also fair and equitable in that membership in EDGX Equities is available to all market participants, which would provide them with access to the benefits on EDGX Equities provided by the proposed change, even where a member of EDGX Equities is not necessarily eligible for the proposed reduced fee on the Exchange.

The Exchange lastly notes that the proposal 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, the Member will merely not receive the proposed reduced fee. Furthermore, the proposed reduced fee would apply to all Members that meet the required criteria under proposed Market Maker Volume Tier 2.

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 liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities 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."¹³

The Exchange believes the proposed rule change does 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 uniformly to market participants. As discussed above, to the extent a Member participates on the Exchange but not on EDGX Equities, the Exchange notes that the proposed change can provide an overall benefit to the Exchange resulting from the success of EDGX Equities. Such success enables the Exchange to continue to provide and potentially expand its existing incentive programs to the benefit of all participants on the Exchange, whether they participate on EDGX Equities or not. The proposed pricing program is also fair and equitable in that membership in EDGX Equities is available to all market participants. Additionally the proposed change is designed to attract additional order flow to the Exchange and EDGX Equities. Greater liquidity benefits all market participants on the Exchange by providing more trading opportunities and encourages Members to send orders, thereby contributing to robust levels of liquidity, which benefits all market participant.

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 15 other options exchanges and off-exchange venues. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no

¹³ Securities Exchange Act Release No. 51808, 70 FR 37495, 37498-99 (June 29, 2005) (S7-10-04) (Final Rule).

single options exchange has more than 24% of the market share.¹⁴ Therefore, no exchange possesses significant pricing power in the execution of option 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.”¹⁵ 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’”¹⁶ Accordingly, the Exchange does not believe

¹⁴ See Cboe Global Markets U.S. Options Market Volume Summary (August 30, 2019), available at https://markets.cboe.com/us/options/market_statistics/.

¹⁵ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

¹⁶ *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)).

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 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 has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁷ and paragraph (f) of Rule 19b-4¹⁸ 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

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CboeEDGX-2019-056 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-2019-056. 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-2019-056 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.¹⁹

Jill M. Peterson
Assistant Secretary

¹⁹ 17 CFR 200.30-3(a)(12).