SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-95459; File No. SR-CboeEDGX-2022-035)

August 9, 2022

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 August 1, 2022, 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 Options") 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/), 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

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

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 to (1) eliminate the Step Up Mechanism ("SUM") Auction Pricing Tier and (2) modify the Automated Improvement Mechanism ("AIM") Tier 2, effective August 1, 2022.

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 17% of the market share and currently the Exchange represents only approximately 7% 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.

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3 See Cboe Global Markets U.S. Options Market Monthly Volume Summary (July 27, 2022), available at https://markets.cboe.com/us/options/market_statistics/.

The Exchange's Fees Schedule sets forth standard rebates and rates applied per contract. For example, the Exchange provides standard rebates ranging from $0.01 up to $0.21 per contract for Customer orders in both Penny and Non-Penny Securities. Additionally, in response to the competitive environment, the Exchange also offers tiered pricing, which provides Members with 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 two tiers related to Customer volume under proposed footnote 9 (Automated Improvement Mechanism ("AIM") Tier) applicable to orders yielding fee code "BC", which fee code is appended to Customer Agency orders executed in AIM. Orders yielding fee code BC are currently provided a standard rebate of $0.06 per contract. The AIM Tiers currently provide enhanced rebates between $0.11 and $0.14 per contract for qualifying orders that yield fee code BC where a Member meets the respective tier's volume threshold. Under AIM Tier 2, a Member will receive an enhanced rebate of $0.14 per contract on such orders where it has an ADV[4] in Customer orders greater than or equal to 0.50% of average OCV[5]. The Exchange now proposes to reduce the enhanced rebate amount under AIM Tier 2 from $0.14 per contract to $0.12 per contract.

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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 also offers Members an opportunity to receive an additional rebate under footnote 3 of the Fee Schedule (Step Up Mechanism ("SUM") Auction Pricing Tier). Under the SUM Response Tier, the Exchange provides an additional rebate of $0.05 per contract for any order submitted in response to, and executed against, an order subject to the SUM Auction.[6] The Exchange no longer wishes to maintain this rebate and proposes to eliminate the SUM Auction Pricing Tier from the Fee Schedule (and eliminate corresponding references to footnote 3 in the Fee Codes and Associated Fees table). Further, the Exchange would rather redirect future resources and funding into other programs and tiers intended to incentivize increased order flow.

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.[7] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[8] 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

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6 Applicable to orders yielding fee codes: NB, NC, NF, NM, NN, NO, NP, NT, PB, PC, PF, PM, PN, PO, PP and PT.

7 15 U.S.C. 78f(b).

8 15 U.S.C. 78f(b)(5).

is consistent with the Section 6(b)(5)[9] requirement that the rules of an exchange not be 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 the Exchange, which the Exchange believes would enhance market quality to the benefit of all Members.

The Exchange believes the proposed reduction in rebate amount under AIM Tier 2 for orders yielding fee code BC is reasonable, equitable, and not unfairly discriminatory. The Exchange believes that the proposed change to AIM Tier 2 is reasonable because it continues to provide an enhanced rebate (albeit at a lower amount), which the Exchange believes is still commensurate with the current criteria. The proposed rule change is equitable and unfairly discriminatory as the amended rebate amount applies uniformly to all Members' respective qualifying Customer orders. The Exchange believes that AIM Tier 2 continues to benefit all Members by contributing towards a robust and well-balanced market ecosystem. Indeed, the Exchange believes AIM Tier 2 will continue to incentivize increased Customer order flow and overall order flow to the Exchange's Book, which creates more trading opportunities, which, in turn attracts Market-Makers. A resulting increase in Market-Maker activity may facilitate tighter spreads, which may lead to an additional increase of order flow from other market participants. 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,

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9 Id.

supporting the quality of price discovery, promoting market transparency, and improving investor protection.

The Exchange believes that eliminating the SUM Auction Pricing Tier under Footnote 3 is reasonable because the Exchange is not required to maintain this program or provide additional rebates. Members may still have other opportunities to obtain enhanced rebates, such as via the Customer Volume Tiers or Market-Maker Volume Tiers.[10] The Exchange believes that eliminating the SUM Auction Pricing Tier is equitable and not unfairly discriminatory because it applies uniformly to all Members. The Exchange also notes that the proposed changes will not adversely impact any Member's ability to otherwise qualify for reduced fees or enhanced rebates offered under other tiers.

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. In particular, 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. Indeed, the Exchange notes the proposed change to AIM Tier 2 will apply to all Members equally in that all Members will continue to be eligible for AIM Tier 2, have a reasonable opportunity to meet the tier's criteria and receive the enhanced rebate (albeit at a slightly lower amount) on their qualifying orders if such criteria is met. Also, as stated above, the proposal to eliminate the SUM Auction Pricing Tier will also apply to all Members, in that, such Tier will not be available for any Member. The Exchange does not believe the proposed changes burden competition as all Members will continue to have an opportunity receive enhanced rebates or

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10 See Cboe EDGX Options Fees Schedule, Footnotes 1 and 2.

reduced fees offered under various tiers, including AIM Tier 2, which tiers are generally designed to increase the competitiveness of EDGX and 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 benefit 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.

The Exchange also 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 they may participate on and direct their order flow, including 15 other options exchanges. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single options exchange has more than 17% of the market share. Therefore, no exchange possesses significant pricing power in the execution of order flow. Indeed, participants can readily choose to send their orders to other exchanges if they deem fee levels at those other venues to be more favorable. As noted above, the Exchange believes that the proposed fee changes are comparable to that of other exchanges offering similar functionality. 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." 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'….". 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[11] and paragraph (f) of Rule 19b-4[12] 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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11 15 U.S.C. 78s(b)(3)(A).

12 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-2022-035 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-2022-035. 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. 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-2022-035, 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.[13]

J. Matthew DeLesDernier,
Deputy Secretary.

[13] 17 CFR 200.30-3(a)(12).