

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-96073; File No. SR-CboeEDGX-2022-043)

October 13, 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 October 3, 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

on the 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 to modify rebates related to Automated Improvement Mechanism (“AIM”) transactions, effective October 3, 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 18% of the market share and currently the Exchange represents only approximately 6% 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

³ See Cboe Global Markets U.S. Options Market Monthly Volume Summary (September 30, 2022), available at https://markets.cboe.com/us/options/market_statistics/.

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 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. The Fee Codes and Associated Fees section of the Fees Schedule also provides for certain fee codes associated with certain order types and market participants that provide for various other fees or rebates. Fee code BC, for example, is appended to Customer Agency orders executed in the Automated Improvement Mechanism ("AIM" or "AIM Auction") and currently offers a rebate of \$0.06 per contract. Additionally, the Fee Schedule offers tiered pricing which provides Members⁴ opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. 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 AIM Volume Tiers which provide enhanced rebates between \$0.11 and \$0.12 per contract for qualifying Customer orders that yield fee code BC where a Member meets the respective tiers' volume threshold.⁵ More specifically, AIM Tier 1 currently offers an enhanced rebate of \$0.11

⁴ See Exchange Rule 1.5(n).

⁵ See Cboe EDGX U.S. Options Exchange Fees Schedule, Footnote 9, Automated Improvement Mechanism ("AIM") Tiers.

per contract for a Member’s qualifying orders (i.e., yielding fee code BC) if a Member has an ADV⁶ in Customer Orders greater than or equal to 0.30% of average OCV⁷. AIM Tier 2 currently offers an enhanced rebate of \$0.12 per contract for a Member’s qualifying orders (i.e., yielding fee code BC) if a Member has an ADV in Customer Orders greater than or equal to 0.50% of average OCV. The Exchange first proposes to reduce the current rebates for both AIM Tiers. Specifically, the Exchange proposes to reduce the current enhanced rebate for AIM Tier 1 from \$0.11 per contract to \$0.09 per contract. The Exchange proposes to reduce the current enhanced rebate for AIM Tier 2 from \$0.12 per contract to \$0.10 per contract. The Exchange notes that it believes the AIM Tiers continue to provide Members with an opportunity to receive an enhanced rebate (albeit at a lower amount), thus providing a continued incentive to submit Customer order flow to the Exchange.

The Exchange also proposes to adopt new supplemental AIM Tiers (under Footnote 9) which would provide additional rebates (i.e., in addition to the standard rebate or enhanced rebates Members may receive for Customer Agency orders executed in AIM). The proposed tiers would be applicable to fee code BC and applied on an order-by-order basis. In addition to a volume threshold described below, the proposed tiers would include criteria based on the “Interaction Rate” of the order. Particularly, the Exchange proposes to add new Supplemental Tier 1, which would provide an additional

⁶ “ADV” means average daily volume calculated as the number of contracts added or removed, combined, per day.

⁷ “OCC Customer Volume or “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.

rebate of \$0.02 per contract where a Member (i) has an ADV in Customer Orders greater than or equal to 0.50% of average OCV and (ii) the order has an Interaction Rate greater than or equal to 51% and less than 80%. The Exchange proposes to add new Supplemental Tier 2, which would provide an additional rebate of \$0.05 per contract where a Member (i) has Member has an ADV in Customer Orders greater than or equal to 0.50% of average OCV and (ii) the order has an Interaction Rate greater than or equal to 0% and less than 51%. The “Interaction Rate” of an order refers to the percentage of the Agency Order that traded against the Initiating Order.⁸ By way of example, if an AIM Agency Order trades 35 out of 40 contracts with the paired Initiating Order (i.e., 15 [sic] contracts were executed against a response or unrelated order), the Interaction Rate would be 87.5% ($35 \div 40$). Because the Interaction Rate was above 80% in this example, that order would not qualify for either additional rebate. However, if an AIM Agency Order trades 25 out of 40 contracts with the paired Initiating Order, the Interaction Rate would be 62.5% ($25 \div 40$), and that order would be entitled to an additional rebate of \$0.02 per contract (provided the Member also meets the requirements of the first prong and has an ADV in Customer Orders greater than or equal to 0.50% of average OCV). The proposed new tiers are designed to incentivize order flow providers to continue to route AIM orders to the Exchange, notwithstanding the potential for such orders to be broken up. The Exchange also proposes to clarify that the additional proposed rebates will apply to the Member that submitted a qualifying AIM Agency Order, including a

⁸ An Options Member may electronically submit for execution in AIM an order it represents as agent (“Agency Order”) against principal interest or a solicited order(s) (except for an order for the account of any Options Market Maker registered in the applicable series on the Exchange) (an “Initiating Order”). See EDGX Options Rule 21.19.

Member who routed an order to the Exchange with a Designated Give Up, when the Agency Order trades with a Response Order.

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.⁹

Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁰ 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 is consistent with the Section 6(b)(5)¹¹ 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

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ Id.

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 amounts under AIM Tiers 1 and 2 for orders yielding fee code BC is reasonable both tiers continue to provide an enhanced rebate (albeit at lower amounts), which the Exchange believes is still commensurate with the current criteria. The proposed rule change is equitable and unfairly [sic] discriminatory as the amended rebate amounts apply uniformly to all Members' respective qualifying Customer orders. The Exchange believes that the current AIM Tiers continue to benefit all Members by contributing towards a robust and well-balanced market ecosystem. Indeed, the Exchange believes AIM Tiers 1 and 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, supporting the quality of price discovery, promoting market transparency, and improving investor protection.

The Exchange believes the proposed rule change to adopt new AIM Supplemental Tiers is reasonable because it provides an opportunity for Members to receive additional rebates for meeting certain thresholds and based on the Interaction Rate of the AIM order. The Exchange also believes the proposed additional rebates are commensurate with the proposed criteria. The Exchange further believes the proposal encourages the use

of AIM. Specifically, the Exchange believes that the proposed additional rebates for AIM Agency Orders would incentivize Agency Order flow to AIM Auctions, notwithstanding the potential for such orders to be broken up. Additional auction order flow provides market participants with additional trading opportunities at improved prices. Moreover, exchanges have a history of providing credits when an auctioned order is broken up.¹² Lastly, the proposed additional rebates are not unreasonably discriminatory because such rebates are equally available to all Members submitting AIM Agency Orders to the Exchange.

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, but rather, serves to increase intra-market competition by incentivizing members to direct their orders, and, in particular, Customer orders, to the Exchange's AIM Auction, in turn providing for more opportunities to compete at improved prices. Moreover, the Exchange notes the proposed change to AIM Tiers will apply to all Members equally in that all Members will be eligible to receive the rebates under the tiers, have a reasonable opportunity to meet the tier's criteria and receive the enhanced rebates (albeit at a lower amount) on their qualifying orders if such criteria is met.

¹² See e.g., Nasdaq ISE Options 7 Pricing Schedule, Facilitation and Solicitation Break-Up Rebate.

Also, as stated above, the proposal to adopt the proposed Supplemental AIM Tiers will also apply to all Members, in that, such Tier will be available for any Member that meets the criteria. The Exchange does not believe the proposed changes burden competition as all Members will continue to have an opportunity receive enhanced rebates or additional rebates offered under various tiers, 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 18% 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 Act¹³ and paragraph (f) of Rule 19b-4¹⁴ 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-2022-043 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.

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f).

All submissions should refer to File Number SR-CboeEDGX-2022-043. 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, D.C. 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-2022-043 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.¹⁵

J. Matthew DeLesDernier,
Deputy Secretary.

¹⁵ 17 CFR 200.30-3(a)(12).