SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-96645; File No. SR-CboeEDGX-2023-002)

January 12, 2023

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 January 3, 2023, 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 amend three Market Maker Volume Tiers and increase the Market Maker Add Liquidity Fee, effective January 3, 2023.

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 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 assesses a standard fee of $0.20 per contract for Market Maker

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

orders that add liquidity in both Penny and Non-Penny Securities and $0.23 per contract for Market Maker orders that remove liquidity in both Penny and Non-Penny securities. The Fee Codes and Associated Fees section of the Fees Schedule also provide for certain fee codes associated with certain order types and market participants that provide for various other fees or rebates. Additionally, the Fee Schedule offers tiered pricing which provides Members[4] 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, pursuant to Footnote 2 of the Fees Schedule, the Exchange currently offers eight [sic] Market Maker Volume Tiers which provide reduced fees between $0.01 and $0.17 per contract for qualifying Market Makers orders that yield fee code PM or NM where a Member meets the respective tiers' volume thresholds.[5] The Exchange proposes to amend the reduced fees that correspond to Market Maker Volume Tiers 4, 5 and 6. Currently, Market Maker Volume Tier 4 provides a reduced fee of $0.07 per contract for a Member's qualifying orders (i.e., yielding fee code PM or NM) if a Member has an ADV[6] in Customer orders greater than or

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4 See Exchange Rule 1.5(n).

5 See Cboe EDGX U.S. Options Exchange Fees Schedule, Footnote 2, Market Maker Volume Tiers.

6 "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.

equal to 0.50% of average OCV[7]; Market Maker Volume Tier 5 provides a reduced fee of $0.03 per contract for a Member's qualifying orders (i.e., yielding fee code PM or NM) if a Member has an ADV in Customer orders greater than or equal to 0.95% of average OCV; and Market Maker Volume Tier 6 provides a reduced fee of $0.01 per contract for a Member's qualifying orders (i.e., yielding fee code PM or NM) if a Member has an ADV in Customer orders greater than or equal to 1.45% of average OCV. The Exchange proposes to increase each of the offered reduced fees for each of these tiers by $0.01 per contract. More specifically, the Exchange proposes to increase the reduced fees as follows: under Tier 4 from $0.07 per contract to $0.08 per contract; under Tier 5 from $0.03 per contract to $0.04 per contract; and under Tier 6 from $0.01 per contract to $0.02 per contract. The Exchange also proposes to amend the criteria under Tier 5.[8] Particularly, the Exchange proposes to require that Members have an ADV in Market Maker orders of greater than or equal to 1.20% (instead of 0.95%) of average OCV.

The Exchange lastly proposes to increase the standard fee for Market Maker orders that remove liquidity in both Penny and Non-Penny Securities (i.e., yield fee codes PT and NT, respectively) from $0.23 per contract to $0.024 per contract.

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

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7 "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.

8 In connection with the proposed fee changes, the Exchange also proposes to update the corresponding listed fees of "$0.07", "$0.03" and "$0.01" for fee codes PM and NM in the Standard Rates table to the proposed new rates of "$0.08", "$0.04" and "$0.02", respectively.

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. Additionally, the Exchange notes that relative volume-based incentives and discounts have been widely adopted by exchanges,[12] including the Exchange,[13] 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 exchanges offer similar tiered pricing structures, including schedules

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9 15 U.S.C. 78f(b).

10 15 U.S.C. 78f(b)(5).

11 Id.

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

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

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 that increasing the reduced fees offered under Market Maker Volume Tiers 4, 5 and 6 under Footnote 2 are reasonable because Members are still eligible to receive reduced fees for meeting the corresponding criteria, albeit at less of a discount than before. While Market Maker Volume Tiers 4, 5 and 6 will provide a lower fee reduction than that currently offered and while the proposed change to the criteria under Tier 5 will make it more difficult to attain, the Exchange still believes that the changes are reasonable as the tiers, even as amended, will continue to incentivize Members to send additional Market Maker orders to the Exchange. An overall increase in activity would deepen the Exchange's liquidity pool, offers additional cost savings, support the quality of price discovery, promote market transparency and improve market quality, for all investors. Moreover, the Exchange is not required to maintain these tiers nor provide reduced fees. The Exchange believes the proposed changes to the reduced fees offered under these tiers still remain commensurate with the corresponding criteria under the respective tiers, including the proposed change to the criteria under Tier 5. Further, Members still have other opportunities to obtain reduced fees that are not being modified such as via Market Maker Volume Tiers 1 through 3.[14]

The Exchange believes the proposed change is also equitable and not unfairly discriminatory because it applies uniformly to all Members. Without having a view of activity on other markets and off-exchange venues, the Exchange has no way of knowing whether these proposed changes would definitely result in any Members qualifying for Tiers 4, 5 and 6. While

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[14] See Cboe EDGX Options Fees Schedule, Footnote 2.

the Exchange has no way of predicting with certainty how the proposed changes will impact Member activity, based on trading activity from the prior months, the Exchange anticipates that at least 3 Members will achieve Tier 4, 1 Member will achieve Tier 5, and 1 Member will achieve Tier 6. The Exchange also believes 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.

The Exchange believes the proposed change to increase the standard fee for Market Maker orders that remove liquidity in both Penny and Non-Penny Securities (i.e., yield fee codes PT and NT, respectively) is reasonable because it is a modest increase and is still in line with (and in fact lower than) fees assessed for similar transactions at other exchanges.[15] The Exchange believes the proposed change is equitable and not unfairly discriminatory because it applies uniformly to all Members.

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. Particularly, the proposal to amend the Market Maker Volume Tiers and Market Maker fees for orders that remove liquidity applies to all Members. All Members will continue to have an

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15 See, e.g., NYSE Arca Fee Schedule, Transaction Fee for Electronic Executions – Per Contract, which provides Market Makers that remove liquidity are assessed \$0.50 per contract in Penny Issues and \$1.10 per contract in Non-Penny Issues. See also Cboe BZX Options Fees Schedule, which provides Market Makers that remove liquidity are assessed \$0.50 per contract in Penny Program Securities and \$1.10 per contract in Non-Penny Program Securities.

opportunity to receive reduced fees under various tiers, including Market Maker Volume Tiers 1 through 6, 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. 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[16] and paragraph (f) of Rule 19b-4[17] 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.

16 15 U.S.C. 78s(b)(3)(A).

17 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-2023-002 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-2023-002. 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-2023-002, 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.[18]

Sherry R. Haywood,
Assistant Secretary.

[18] 17 CFR 200.30-3(a)(12).