

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-96914; File No. SR-CboeEDGX-2023-008)

February 14, 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 February 1, 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”) 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

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, effective February 1, 2023.

Specifically, the Exchange proposes to eliminate the rebate currently provided for Customer-to-Customer orders in Penny and Non-Penny Securities that add liquidity (currently yielding fee codes PC and NC, respectively) and to amend the Fee Schedule so that such orders will be free.

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 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.

³ See Cboe Global Markets U.S. Options Market Monthly Volume Summary (January 24, 2023), available at https://markets.cboe.com/us/options/market_statistics/.

The Exchange's Fee Schedule sets forth standard rebates and rates applied per contract. For example, the Exchange currently provides a standard rebate of \$0.01 per contract for Customer orders in both Penny and Non-Penny Securities. The Fee Codes and Associated Fees section of the Fee Schedule also provides for certain fee codes associated with certain order types and market participants that provide for various other fees or rebates.

The Exchange no longer wishes to provide a rebate for Customer-to-Customer orders in Penny and Non-Penny Securities that add liquidity and now proposes to amend its Fee Schedule so that such orders will be free. As such, the Exchange also proposes to adopt new fee codes TP and TN, which will apply to Customer-to-Customer (i.e., "Customer (contra Customer)) orders in Penny and Non-Penny Securities that add liquidity, respectively; the proposed fee codes assess no fee for such transactions. The Exchange notes that it currently assesses no charge or a marginal charge on other Customer transactions. For example, the Exchange does not charge a transaction fee for Complex Customer-to-Customer orders (yielding fee code ZC). Customer-to-Customer orders in Penny and Non-Penny Securities that remove liquidity, as well as Customer orders that execute against any Non-Customer as the contra-party in Penny and Non-Penny Securities will still be eligible for the current rebate (i.e., the standard rebate of \$0.01 per contract). Accordingly, the Exchange proposes to amend the definition of fee code PC to clarify that such fee code (and corresponding standard rebate) applies to Customer contra Non-Customer orders in Penny Securities, as well as Customer contra Customer orders in Penny Securities that remove liquidity. Similarly, the Exchange proposes to amend the definition of fee code NC to clarify that such fee code (and related standard rebate) applies to Customer contra Non-Customer orders in Non-Penny Securities, as well as Customer contra Customer orders in Non-Penny Securities that remove liquidity.

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.⁴ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁵ 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)⁶ 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 market participants.

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

⁶ Id.

The Exchange also believes the proposed change to assess no charge for Customer-to-Customer orders executed in Penny and Non-Penny Securities which add liquidity is consistent with Section 6(b)(4) of the Act in that the proposal is reasonable, equitable and not unfairly discriminatory. The Exchange believes that eliminating the rebate for Customer-to-Customer orders in Penny and Non-Penny Securities that add liquidity is reasonable because the Exchange is not required to maintain this rebate. Further, the Exchange believes that it is a reasonable and equitable change because Customers will still not have to pay any fee for Customer-to-Customer orders in Penny and Non-Penny Securities which add liquidity. Moreover, it is in line with other types of Customer orders for which the Exchange does not assess a fee or provide a rebate. As described above, the Exchange currently does not charge a transaction fee or provide a rebate for various other Customer orders, including Complex Customer-to-Customer orders. Further, Customers executing an order in Penny and Non-Penny Securities with a Non-Customer or Customers executing an order in Penny and Non-Penny Securities which removes liquidity will still be eligible for the current rebate, i.e., a standard rebate of \$0.01 per contract.

The Exchange believes that, although it is eliminating the rebate for Customer-to-Customer orders executed in Penny and Non-Penny Securities which add liquidity, the proposal to not assess any fees for such transactions will continue to incentivize Customer-to-Customer order flow in Penny and Non-Penny Securities, which enhances liquidity on the Exchange. This enhanced Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in Market Maker activity in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

The Exchange also believes that the proposal to make Customer-to-Customer orders that add liquidity free is equitable and not unfairly discriminatory because it will apply equally to all

Customer-to-Customer transactions in Penny and Non-Penny Securities that add liquidity, i.e. all Customers will be assessed the same amount for these transactions. Moreover, the Exchange believes that continuing to not assess any fee to Customer orders is equitable and not unfairly discriminatory because, as stated above, Customer order flow enhances liquidity on the Exchange, in turn providing more trading opportunities and attracting Market-Makers to facilitate tighter spreads to the benefit of all market participants. Moreover, the options industry has a long history of providing preferential pricing to Customers, and the Exchange's current Fee Schedule currently does so in many places, as do the fees structures of multiple other exchanges.⁷

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 eliminate the rebate for Customer-to-Customer orders executed in Penny and Non-Penny Securities that add liquidity will apply uniformly to all Customers transacting in Penny and Non-Penny Securities. As described above, while no fee will continue to be assessed for Customers, different market participants have different circumstances, such as the fact that preferential pricing to Customers is a long-standing options industry practice which

⁷ See, e.g., EDGX Options Fee Schedule, "Fee Codes and Associated Fees", which, for example, provides Customer AIM Agency orders (i.e., orders yielding fee code BC) a rebate and also which assesses no fee (nor provides any rebate) for QCC Agency and Contra Customer orders (i.e., yielding fee codes QA and QC, respectively). See also Cboe Options Fees Schedule, Rate Table – All Products Excluding Underlying Symbol List A, which, for example, assesses no fee (nor provides any rebate) for Customer orders in equity options.

serves to enhance Customer order flow, thereby attracting Market-Makers to facilitate tighter spreads and trading opportunities to the benefit of all market participants. In addition to this, the Exchange notes that it currently assesses no charge and provides no rebate for various other types of Customer orders that execute against another Customer as a contra party.

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. 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)(ii) of the Act⁸ and Rule 19b-4(f)(2)⁹ 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 shall 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:

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

⁹ 17 CFR 240.19b-4(f)(2).

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-2023-008 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-2023-008. 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-2023-008 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.¹⁰

Sherry R. Haywood,
Assistant Secretary.

¹⁰ 17 CFR 200.30-3(a)(12).