

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-97042; File No. SR-CboeEDGX-2023-016)

March 3, 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 March 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/) [sic], 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 applicable to its equities trading platform (“EDGX Equities”) as follows: 1) by modifying and eliminating certain Growth Tiers; 2) by modifying and eliminating certain Non-Displayed Add Volume Tiers; 3) by modifying the criteria of Retail Growth Tier 3; and 4) by introducing new fee code DX and modifying the description of existing fee code DQ. The Exchange proposes to implement these changes effective March 1, 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 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues that do not have similar self-regulatory responsibilities under the Securities Exchange Act of 1934 (the “Act”), to which market participants may direct their order flow. Based on publicly available information,³ no single registered equities exchange has more than 15% of the market share. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. The Exchange in particular operates a “Maker-Taker” model whereby it pays rebates to members that add liquidity and assesses fees to those that remove liquidity. The Exchange’s Fee

³ See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (February 22, 2023), available at https://www.cboe.com/us/equities/market_statistics/.

Schedule sets forth the standard rebates and rates applied per share for orders that provide and remove liquidity, respectively. Currently, for orders in securities priced at or above \$1.00, the Exchange provides a standard rebate of \$0.00160 per share for orders that add liquidity and assesses a fee of \$0.0030 per share for orders that remove liquidity. For orders in securities priced below \$1.00, the Exchange provides a standard rebate of \$0.00009 per share for orders that add liquidity and assesses a fee of 0.30% of the total dollar value for orders that remove liquidity. 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.

Growth Tiers

Under footnote 1 of the Fee Schedule, the Exchange currently offers various Add/Remove Volume Tiers. In particular, the Exchange offers five Growth Tiers that each provide an enhanced rebate for Members' qualifying orders yielding fee codes B,⁴ V,⁵ Y,⁶ 3,⁷ and 4,⁸ where a Member reaches certain add volume-based criteria, including "growing" its volume over a certain baseline month. First, the Exchange is proposing to discontinue Growth Tiers 1 – 3, as no Members have satisfied the criteria within the past six months and the

⁴ Fee code B is appended to orders adding liquidity to EDGX in Tape B securities.

⁵ Fee code V is appended to orders adding liquidity to EDGX in Tape A securities.

⁶ Fee code Y is appended to orders adding liquidity to EDGX in Tape C securities.

⁷ Fee code 3 is appended to orders adding liquidity to EDGX in the pre and post market in Tapes A or C securities.

⁸ Fee code 4 is appended to orders adding liquidity to EDGX in the pre and post market in Tape B securities.

Exchange no longer wishes to, nor is required to, maintain such tiers. More specifically, the proposed change removes these tiers as the Exchange would rather redirect future resources and funding into other programs and tiers intended to incentivize increased order flow.

Second, the Exchange proposes to modify the criteria of Growth Tier 4 and Growth Tier 5, in addition to renumbering the tiers following the discontinuation of Growth Tiers 1 – 3.

Currently, Growth Tier 4 (proposed Growth Tier 1) is as follows:

- Growth Tier 4 provides a rebate of \$0.0034 per share to qualifying orders (i.e., orders yielding fee codes B, V, Y, 3, or 4) where 1) MPID adds a Step-Up ADAV⁹ from October 2021 $\geq 0.12\%$ of the TCV¹⁰ or MPID adds a Step-Up ADAV from October 2021 $\geq 16,000,000$; and 2) MPID adds an ADV $\geq 0.30\%$ of TCV or MPID adds an ADV $\geq 35,000,000$.

Now, the Exchange proposes to add a third prong of criteria. The proposed criteria for current Growth Tier 4 (proposed Growth Tier 1) is as follows:

- Proposed Growth Tier 1 provides a rebate of \$0.0034 per share to qualifying orders (i.e., orders yielding fee codes B, V, Y, 3, or 4) where 1) MPID adds a Step-Up ADAV from October 2021 $\geq 0.12\%$ of the TCV or MPID adds a Step-Up ADAV from October 2021 $\geq 16,000,000$; and 2) MPID adds an ADV $\geq 0.30\%$ of TCV or MPID adds an ADV $\geq 35,000,000$; and 3) MPID adds an ADAV $\geq 0.30\%$ of TCV with displayed orders that yield fee codes B, V, or Y.

⁹ ADAV means average daily added volume calculated as the number of shares added per day ADAV is calculated on a monthly basis. Step-Up ADAV means ADAV in the relevant baseline month subtracted from current ADAV.

¹⁰ TCV means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

The proposed modification to proposed Growth Tier 1 is designed to encourage MPIDs to grow their volume in displayed liquidity with orders yielding fee codes B, V, or Y.

In addition, the Exchange also proposes to modify the criteria of current Growth Tier 5 (proposed Growth Tier 2). Currently, Growth Tier 5 is as follows:

- Growth Tier 5 provides a rebate of \$0.0034 per share to qualifying orders (i.e., orders yielding fee codes B, V, Y, 3, or 4) where 1) Member adds a Step-Up ADAV from October 2022 $\geq 0.15\%$ of the TCV or Member adds a Step-Up ADAV from October 2022 $\geq 15,000,000$; and 2) Member has a total remove ADV $\geq 0.45\%$ of TCV or Member has a total remove ADV $\geq 45,000,000$.

Now, the Exchange proposes to add a third prong of criteria. The proposed criteria for current Growth Tier 5 (proposed Growth Tier 2) is as follows:

- Proposed Growth Tier 2 provides a rebate of \$0.0034 per share to qualifying orders (i.e., orders yielding fee codes B, V, Y, 3, or 4) where 1) Member adds a Step-Up ADAV from October 2022 $\geq 0.15\%$ of the TCV or Member adds a Step-Up ADAV from October 2022 $\geq 15,000,000$; and 2) Member has a total remove ADV $\geq 0.45\%$ of TCV or Member has a total remove ADV $\geq 45,000,000$; and 3) Member adds a Retail Step-Up ADV (i.e., yielding fee codes ZA¹¹ or ZO¹²) from August 2022 $\geq 0.10\%$ of TCV.

The proposed modification to proposed Growth Tier 2 is intended to incentivize Members to grow retail volume on the Exchange.

¹¹ Fee code ZA is appended to Retail Orders that add liquidity.

¹² Fee code ZO is appended to Retail orders that adds liquidity during the pre- and post-market.

Non-Displayed Add Volume Tiers

In addition to the Growth Tiers offered under footnote 1, the Exchange also offers Non-Displayed Add Volume Tiers that each provide an enhanced rebate for Members' qualifying orders yielding fee codes DM,¹³ HA,¹⁴ MM,¹⁵ and RP,¹⁶ where a Member reaches certain volume-based criteria offered in each tier. The Exchange now proposes to discontinue the use of Non-Displayed Step-Up Volume Tiers 1 and 2, as no Members have satisfied the criteria within the past six months and the Exchange no longer wishes to, nor is required to, maintain such tiers. More specifically, the proposed change removes these tiers as the Exchange would rather redirect future resources and funding into other programs and tiers intended to incentivize increased order flow.

The Exchange also proposes to amend the criteria of current Non-Displayed Step-Up Volume Tier 3, in addition to renumbering this tier following the discontinuation of Non-Displayed Step-Up Volume Tiers 1 and 2. Currently, the criteria for Non-Displayed Step-Up Volume Tier 3 (proposed Non-Displayed Step-Up Volume Tier 1) is as follows:

- Non-Displayed Step-Up Volume Tier 3 provides a rebate of \$0.0026 per share to qualifying orders (i.e., orders yielding fee code DM, HA, MM, or RP) where 1) Members adds a Step-Up ADAV from October 2022 $\geq 0.15\%$ of the TCV or Member

¹³ Fee code DM is appended to orders that add liquidity using MidPoint Discretionary Order within discretionary range.

¹⁴ Fee code HA is appended to non-displayed orders that add liquidity.

¹⁵ Fee code MM is appended to non-displayed orders that add liquidity using Mid-Point Peg.

¹⁶ Fee code RP is appended to non-displayed orders that add liquidity using Supplemental Peg.

adds a Step-Up ADAV from October 2022 \geq 15,000,000; and 2) Member has a total remove ADV \geq 0.45% of TCV or Member has a total remove ADV \geq 45,000,000.

Now, the Exchange proposes to add a third prong of criteria. The proposed criteria for proposed Non-Displayed Step-Up Volume Tier 1 is as follows:

- Non-Displayed Step-Up Volume Tier 1 provides a rebate of \$0.0026 per share to qualifying orders (i.e., orders yielding fee code DM, HA, MM, or RP) where 1) Members adds a Step-Up ADAV from October 2022 \geq 0.15% of the TCV or Member adds a Step-Up ADAV from October 2022 \geq 15,000,000; 2) Member has a total remove ADV \geq 0.45% of TCV or Member has a total remove ADV \geq 45,000,000; and 3) Member adds a Retail Step-Up ADV (i.e., yielding fee codes ZA or ZO) from August 2022 \geq 0.10% of TCV.

The proposed modification to proposed Non-Displayed Step-Up Volume Tier 1 is intended to incentivize Members to add non-displayed retail volume on the Exchange.

Retail Volume Tiers

Pursuant to footnote 2 of the Fee Schedule, the Exchange offers Retail Volume Tiers which provide Retail Member Organizations (“RMOs”)¹⁷ an opportunity to receive an enhanced rebate from the standard rebate for Retail Orders¹⁸ that add liquidity (i.e., yielding fee code ZA or ZO). Currently, the Retail Volume Tiers offer three Retail Growth Tiers, where a Member is

¹⁷ See EDGX Rule 11.21(a)(1). A “Retail Member Organization” or “RMO” is a Member (or a division thereof) that has been approved by the Exchange under this Rule to submit Retail Orders.

¹⁸ See EDGX Rule 11.21(a)(2). A “Retail Order” is an agency or riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person and is submitted to the Exchange by a Retail Member Organization, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology.

eligible for an enhanced rebate for qualifying orders (i.e., yielding fee code ZA or ZO) meeting certain add volume-based criteria, including “growing” its volume over a certain baseline month. The Exchange now proposes to amend the criteria of Retail Growth Tier 3. Currently, the criteria for Retail Growth Tier 3 is as follows:

- Retail Growth Tier 3 provides a rebate of \$0.0037 per share to qualifying orders (i.e., orders yielding fee code ZA or ZO) where 1) Member adds a Step-Up ADAV from October 2022 $\geq 0.15\%$ of the TCV or Member adds a Step-Up ADAV from October 2022 $\geq 15,000,000$; and 2) Member has a total remove ADV $\geq 0.45\%$ of TCV or Member has a total remove ADV $\geq 45,000,000$.

Now, the Exchange proposes to add a third prong of criteria. Proposed Retail Growth Tier 3 is as follows:

- Retail Growth Tier 3 provides a rebate of \$0.0037 per share to qualifying orders (i.e., orders yielding fee code ZA or ZO) where 1) Member adds a Step-Up ADAV from October 2022 $\geq 0.15\%$ of the TCV or Member adds a Step-Up ADAV from October 2022 $\geq 15,000,000$; 2) Member has a total remove ADV $\geq 0.45\%$ of TCV or Member has a total remove ADV $\geq 45,000,000$; and 3) Members adds a Retail Step-Up ADV (i.e., yielding fee code ZA or ZO) from August 2022 $\geq 0.10\%$ of TCV.

The proposed modification to Retail Growth Tier 3 is intended to incentivize RMOs to add retail volume on the Exchange.

Further, the Growth Tiers, Non-Displayed Add Volume Tiers, and Retail Volume Tiers are intended to provide Members an opportunity to receive an enhanced rebate by increasing their order flow to the Exchange, which further contributes to a deeper, more liquid market and provides even more execution opportunities for active market participants. Incentivizing an

increase in liquidity adding or removing volume, through enhanced rebate opportunities, encourages liquidity adding Members on the Exchange to contribute to a deeper, more liquid market, and liquidity executing Members on the Exchange to increase transactions and take execution opportunities provided by such increased liquidity, together providing for overall enhanced price discovery and price improvement opportunities on the Exchange. As such, increased overall order flow benefits all Members by contributing towards a robust and well-balanced market ecosystem.

Fee Codes DQ and DX

The Exchange currently offers fee code DQ, which is appended to Midpoint Discretionary Orders (“MDOs”)¹⁹ using the Quote Depletion Protection (“QDP”)²⁰ order instruction. QDP is designed to provide enhanced protections to MDOs by tracking significant executions that constitute the best bid or offer on the EDGX Book²¹ and enabling Users to avoid potentially unfavorable executions by preventing MDOs entered with the optional QDP instruction from exercising discretion to trade at more aggressive prices when QDP has been triggered.²² Currently, MDOs entered with the QDP instruction are appended fee code DQ and assessed a flat fee of \$0.00040 per share in securities at or above \$1.00 and 0.30% of dollar value for securities priced below \$1.00. The Exchange now proposes to amend fee code DQ to be appended to MDOs entered with a QDP instruction that add liquidity to the Exchange. There

¹⁹ See Exchange Rule 11.8(g).

²⁰ See Exchange Rule 11.8(g)(10).

²¹ See Exchange Rule 1.5(d).

²² See Securities Exchange Act Release No. 89007 (June 4, 2020), 85 FR 35454 (June 10, 2020) (SR-CboeEDGX-2020-010) (“Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Amend the Rule Relating to MidPoint Discretionary Orders to Allow Optional Offset or Quote Depletion Protection Instructions”).

would be no change to the fee associated with fee code DQ. The Exchange now proposes to introduce fee code DX, which would be appended to MDOs with a QDP instruction that remove liquidity from the Exchange. Orders appended with fee code DX would be assessed a fee of \$0.00060 per share in securities at or above \$1.00 and 0.30% of dollar value for securities priced below \$1.00.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.²³ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)²⁴ 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)²⁵ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers as well as Section 6(b)(4)²⁶ as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

²³ 15 U.S.C. 78f(b).

²⁴ 15 U.S.C. 78f(b)(5).

²⁵ Id.

²⁶ 15 U.S.C. 78f(b)(4)

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 Exchange believes that its proposal to modify proposed Growth Tiers 1 and 2, proposed Non-Displayed Step-Up Volume Tier 1, and Retail Growth Tier 3 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. Additionally, the Exchange notes that relative volume-based incentives and discounts have been widely adopted by exchanges,²⁷ including the Exchange,²⁸ 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 equity exchanges offer similar tiered pricing structures, including schedules 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.

In particular, the Exchange believes the proposed modifications to the criteria of proposed Growth Tiers 1 and 2, proposed Non-Displayed Step-Up Volume Tier 1, and Retail Growth Tier 3 are reasonable because they will be available to all Members and provide all Members with an additional opportunity to receive an enhanced rebate. The Exchange further believes the proposed modifications to proposed Growth Tiers 1 and 2, proposed Non-Displayed

²⁷ See e.g., BZX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

²⁸ See e.g., EDGX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

Step-Up Volume Tier 1, and Retail Growth Tier 3 will provide a reasonable means to encourage liquidity adding displayed orders, liquidity adding non-displayed orders, and retail orders, respectively, in Members' order flow to the Exchange and to incentivize Members to continue to provide liquidity adding volume to the Exchange by offering them an additional opportunity to receive an enhanced rebate on qualifying orders. 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.

The Exchange believes that the proposed changes to proposed Growth Tiers 1 and 2, proposed Non-Displayed Step-Up Volume Tier 1, and Retail Growth Tier 3 are reasonable as they do not represent a significant departure from the criteria currently offered in the Fee Schedule. The Exchange also believes that the proposal represents an equitable allocation of fees and rebates and is not unfairly discriminatory because all Members will be eligible for the proposed new tiers and have the opportunity to meet the tiers' criteria and receive the corresponding enhanced rebate if such criteria is met. Without having a view of activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would definitely result in any Members qualifying the new proposed tiers. While the Exchange has no way of predicting with certainty how the proposed changes will impact Member activity, based on the prior months volume, the Exchange anticipates that at least one Member will be able to satisfy the criteria proposed under proposed Growth Tiers 1 and 2, proposed Non-Displayed Step-Up Volume Tier 1, and Retail Growth Tier 3. The Exchange also notes that proposed changes will not adversely impact any Member's ability to qualify for enhanced rebates offered under other tiers. Should a Member not meet the proposed new criteria, the Member will merely not receive that corresponding enhanced rebate.

The Exchange believes the proposed addition of fee code DX and the revised applicability of fee code DQ are reasonable as the Exchange offers many other fee codes that are specifically designed for orders that add liquidity to the Exchange or remove liquidity from the Exchange.²⁹ While the fee assessed for orders appended with fee code DX will be slightly higher than the fee assessed for orders appended with fee code DQ, the Exchange believes that promoting liquidity-adding MDOs containing a QDP instruction represents an equitable allocation of fees and rebates and is not unfairly discriminatory because the fees will apply to all Members who add or remove liquidity utilizing an MDO with a QDP instruction, equally. Furthermore, the Exchange believes that assessing a lower fee under fee code DQ will promote a reasonable means to encourage liquidity adding volume to the Exchange for MDOs utilizing a QDP instruction. While Members are assessed a small fee to utilize MDOs with a QDP instruction, the Exchange believes that promoting liquidity adding activity would help deepen the Exchange's liquidity pool, support the quality of price discovery, and improve market quality, for all investors

Finally, the Exchange believes that the proposed rule change to eliminate Growth Tiers 1 – 3 and Non-Displayed Step-Up Volume Tiers 1 and 2 is reasonable because the Exchange is not required to maintain these tiers or provide Members an opportunity to receive enhanced rebates. The Exchange believes the proposal to eliminate these tiers is also equitable and not unfairly discriminatory because it applies to all Members (i.e., the tiers will not be available for any Member). The Exchange notes that no Members have satisfied the criteria of Growth Tiers 1 – 3 and Non-Displayed Step-Up Volume Tiers 1 – 2 in any of the past six months. The Exchange also notes that the proposed rule change to remove these tiers merely

²⁹ See e.g., EDGX Equities Fee Schedule, Fee Codes 3 and 6.

results in Members not receiving an enhanced rebate, which, as noted above, the Exchange is not required to offer or maintain. Furthermore, the proposed rule change to eliminate Growth Tiers 1 – 3 and Non-Displayed Step-Up Volume Tiers 1 – 2 enables the Exchange to redirect resources and funding into other programs and tiers intended to incentivize increased order flow.

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. Rather, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional order flow to a public exchange, thereby promoting market depth, execution incentives and enhanced execution opportunities, as well as price discovery and transparency for all Members. As a result, the Exchange believes that the proposed changes further 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.”

The Exchange believes the proposed rule changes do not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed changes to proposed Growth Tiers 1 and 2, proposed Non-Displayed Step-Up Volume Tier 1, and Retail Growth Tier 3 will apply to all Members equally in that all Members are eligible for each of the Tiers, have a reasonable opportunity to meet the Tiers’ criteria and will receive the enhanced rebate on their qualifying orders if such criteria is met. The Exchange does not believe the proposed changes burdens competition, but rather, enhances competition as it is intended to increase the competitiveness of EDGX by amending an existing pricing incentive and adopting pricing incentives in order to 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 benefits 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. Finally, the Exchange does not believe the proposed rule change to eliminate Growth Tiers 1 – 3 and Non-Displayed Step-Up Volume Tiers 1 – 2 will impose any burden on intramarket competition because it applies to all Members uniformly, as in, the tiers will not longer be available to any Member.

The Exchange does not believe the proposal to introduce the DX fee code does not impose a burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed fees associated with fee code DX would apply to all Members equally in that all Members would be subject to the same flat fee for the execution of an MDO with a QDP instruction that removes liquidity from the Exchange. Although MDOs entered with the QDP instruction would be subject to the pricing described in this proposed rule change, the Exchange does not believe that pricing would impose any significant burden on intramarket competition as this fee would be applied in the same manner to the execution of any MDO entered with a QDP instruction that removes liquidity from the Exchange. Both MDO and the associated QDP instruction are available to all Members on an equal and non-discriminatory basis. As a result, any Member can decide to use (or not use) the QDP instruction based on the benefits provided by that instruction in potentially avoiding unfavorable executions, and the associated charge that the Exchange proposes to introduce. As discussed, any firm that chooses to use the QDP instruction with an MDO that removes liquidity would be charged the same flat

fee for the execution of orders that are entered with this instruction. The proposal to modify fee code DQ to apply only to MDO orders using the QDP instruction that add liquidity to the Exchange similarly does not impose a burden on intramarket competition in that the applicability of the fee code will apply equally to all Members in that all Members would be subject to the same flat fee for the execution of an MDO with a QDP instruction that adds liquidity to the Exchange and the Exchange does not propose a change to the existing fee.

Next, the Exchange believes the proposed rule changes 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 other equities exchanges, off-exchange venues, and alternative trading systems. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single equities exchange has more than 15% of the market share.³⁰ Therefore, no exchange possesses significant pricing power in the execution of 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

³⁰ Supra note 8 [sic].

important to investors and listed companies.”³¹ 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’”³² 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 Act³³ and paragraph (f) of Rule 19b-4³⁴ 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,

³¹ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

³² *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)).

³³ 15 U.S.C. 78s(b)(3)(A).

³⁴ 17 CFR 240.19b-4(f).

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-2023-016 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-2023-016. 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-2023-016, 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.³⁵

Sherry R. Haywood

Assistant Secretary

³⁵ 17 CFR 200.30-3(a)(12).