SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-97186; File No. SR-CboeEDGX-2023-019)

March 22, 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 9, 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.[3] Specifically, the Exchange proposes to eliminate the rebate currently provided for the liquidity adding side of Customer-to-Customer orders in Penny and Non-Penny Securities (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.[4] 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

3 The Exchange initially filed the proposed fee changes on February 1, 2023 (SR-CboeEDGX-2023-008). On March 9, 2023, the Exchange withdrew that filing and submitting this proposal.

4 See Cboe Global Markets U.S. Options Market Monthly Volume Summary (March 6, 2023), available at https://markets.cboe.com/us/options/market_statistics/.

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 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 that add or remove liquidity, 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 the liquidity adding side of Customer-to-Customer orders in Penny and Non-Penny Securities 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 the liquidity adding side of Customer-to-Customer (i.e., "Customer (contra Customer)") orders in Penny and Non-Penny Securities, 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 types of Customer transactions. For example, the Exchange does not charge a transaction fee for Complex Customer-to-Customer orders (yielding fee code ZC). The liquidity removing side of Customer-to-Customer orders in Penny and Non-Penny Securities, 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 the liquidity removing side of Customer contra Customer orders in Penny Securities. 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 the liquidity removing side of Customer contra Customer orders in Non-Penny Securities.

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

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

6 15 U.S.C. 78f(b)(5).

7 Id.

competitive pricing structure that is 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. While the Exchange is eliminating a rebate for the liquidity adding side of Customer-to-Customer orders in Penny and Non-Penny Securities, the Exchange believes that providing that the liquidity adding side of the order will instead be free will still continue to incentivize Customer order flow in Penny and Non-Penny Securities as such Customer orders will still not be subject to any transaction fees, which may lead to an increase in liquidity on the Exchange. An overall increase in 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 the proposed change to assess no charge for the liquidity adding side of Customer-to-Customer orders executed in Penny and Non-Penny Securities 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 the liquidity adding side of Customer-to-Customer orders in Penny and Non-Penny Securities is reasonable because Customers will continue to not be subject to any fees for such transactions. Additionally, the Exchange is not required to maintain this rebate.

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 on the liquidity removing side of orders executed in Penny and Non-

Penny Securities will still be eligible for the current rebate, i.e., a standard rebate of $0.01 per contract.

The Exchange further believes that continuing to not assess any fee to any side of a Customer order regardless of whether they are removing or adding liquidity (as compared to other market participants that must always pay a fee) is equitable and not unfairly discriminatory because, as stated above, the Exchange wishes to incentivize (and at least not discourage) Customer order flow, which can attract 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. Further, 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.[8] Customers executing an order in Penny and Non-Penny Securities will continue to either receive the benefit of a rebate or free transaction, depending on if the order is removing or adding liquidity and whether they are transacting against a Customer or Non-Customer.

The Exchange also believes the proposed changes are reasonable, equitably allocated and not unreasonably discriminatory despite a proposed distinction between fees for Customer orders that add liquidity and those that remove liquidity, regardless of the capacity of the contra party. Particularly, the Exchange believes providing rebates for the liquidity removing side of an order is reasonable, equitable and not unfairly discriminatory because it provides an incentive to bring

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8 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.

additional liquidity to the Exchange, thereby promoting price discovery and enhancing order execution opportunities for Members. The Exchange believes that not providing a rebate for orders that add liquidity is reasonable, equitable and not unfairly discriminatory because the Exchange must balance the cost of credits for orders that remove liquidity. Further, the Exchange is not proposing to adopt any fee for the liquidity adding side of Customer orders, but rather merely removing the current rebate, which as noted it's not required to maintain.

The Exchange lastly believes that the proposal to make the liquidity adding side of Customer-to-Customer orders free is equitable and not unfairly discriminatory because it will apply equally to all liquidity adding sides of Customer-to-Customer transactions in Penny and Non-Penny Securities, i.e. all Customers will be assessed the same amount (no fee) for these transactions.

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 the liquidity adding side of Customer-to-Customer orders executed in Penny and Non-Penny Securities 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 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 Act[9] and Rule 19b-4(f)(2)[10] 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:

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[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 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-2023-019 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-2023-019. 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-2023-019 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.[11]

Sherry R. Haywood

Assistant Secretary

[11] 17 CFR 200.30-3(a)(12).