SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- 97547; File No. SR-CboeEDGX-2023-036)

May 23, 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 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on May 10, 2023, Cboe EDGX Exchange, Inc. ("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 applicable to its equities trading platform ("EDGX Equities") as follows: 1) by modifying and introducing certain Add/Remove Volume Tiers; 2) by eliminating certain Growth Tiers; 3) by modifying the criteria of the Non-Displayed Add Volume Tiers; 4) by eliminating certain Non-Displayed Step-Up Tiers; 5) by eliminating certain Retail Growth Tiers; and 6) by introducing new fee code DX and modifying the description and fee associated with fee code DQ. The Exchange proposes to implement these changes effective May 1, 2023.[3]

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,[4] no single registered equities exchange has more than 16% of the market share. Thus, in such a low-concentrated and highly competitive

3 The Exchange initially filed the proposed fee changes on May 1, 2023 (SR-CboeEDGX-2023-034). On May 10, 2023, the Exchange withdrew that filing and submitted this proposal.

4 See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (April 21, 2023), available at https://www.cboe.com/us/equities/market_statistics/.

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 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.[5] 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.[6] 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.

Add/Remove Volume Tiers

Under footnote 1 of the Fee Schedule, the Exchange currently offers various Add/Remove Volume Tiers. In particular, the Exchange offers three Add Volume Tiers that each provide an enhanced rebate for Members' qualifying orders yielding fee codes B,[7] V,[8] Y,[9] 3,[10]

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5 See EDGX Equities Fee Schedule, Standard Rates.

6 Id.

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

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

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

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

and 4,[11] where a Member reaches certain add volume-based criteria. First, the Exchange is proposing to introduce a new Add Volume Tier 2 and a new Add Volume Tier 5 to provide Members an additional manner in which they could receive an enhanced rebate if certain criteria is met. The proposed criteria for proposed Add Volume Tier 2 is as follows:

- Add Volume Tier 2 provides a rebate of $0.0025 per share for securities priced above $1.00 to qualifying orders (i.e., orders yielding fee B, V, Y, 3, or 4) where Member adds an ADV[12] (excluding fee codes ZA[13] or ZO[14]) ≥ 0.18% of the TCV[15] or Members adds an ADV (excluding fee codes ZA or ZO) ≥ 20,000,000.

The criteria for proposed Add Volume Tier 5 is as follows:

- Add Volume Tier 5 provides a rebate of $0.0029 per share for securities priced above $1.00 to qualifying orders (i.e., orders yielding fee codes B, V, Y, 3, or 4) where Member adds a Retail Order ADV (i.e., yielding fee codes ZA or ZO) ≥ 0.45% of the TCV.

The Exchange believes proposed Add Volume Tier 2 and proposed Add Volume Tier 5 provide rebates commensurate with the difficulty of meeting the criteria associated with the proposed tiers.

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

12 "ADV" means average daily volume calculated as the number of shares added to, removed from, or routed by, the Exchange, or any combination or subset thereof, per day. ADV is calculated on a monthly basis.

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

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

15 "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.

Second, the Exchange proposes to modify the criteria of existing Add Volume Tier 1. Currently, the criteria for Add Volume Tier 1 is as follows:

- Add Volume Tier 1 provides a rebate of \$0.0020 per share for securities priced above \$1.00 to qualifying orders (i.e., orders yielding fee B, V, Y, 3, or 4) where Member adds an ADV ≥ 0.20% of the TCV.

Now, the Exchange proposes to exclude retail orders from the calculation of ADV, lower the TCV threshold, and add an additional prong of criteria that Members may satisfy to achieve the enhanced rebate. The proposed criteria is as follows:

- Add Volume Tier 1 provides a rebate of \$0.0020 per share for securities priced above \$1.00 to qualifying orders (i.e., orders yielding fee B, V, Y, 3, or 4) where Member adds an ADV (excluding fee codes ZA and ZO) ≥ 0.15% of the TCV or Member adds an ADV (excluding fee codes ZA and ZO) ≥ 16,000,000.

Third, the Exchange proposes to renumber current Add Volume Tiers 2 and 3 and modify the criteria of proposed Add Volume Tiers 3 and 4 (current Add Volume Tiers 2 and 3). Currently, Add Volume Tiers 2 and 3 (proposed Add Volume Tiers 3 and 4) read as follows:

- Add Volume Tier 2 provides a rebate of \$0.0027 per share to qualifying orders (i.e., orders yielding fee codes B, V, Y, 3, or 4) where 1) Member adds an ADV ≥ 0.22% of the TCV; or 2) Member adds an ADV ≥ 25,000,000.
- Add Volume Tier 3 provides a rebate of \$0.0029 per share to qualifying orders (i.e., orders yielding fee codes B, V, Y, 3, or 4) where Member adds an ADV ≥ 0.65% of the TCV.

Now, the Exchange proposes to exclude retail orders from the calculation of ADV. The proposed criteria for current Add Volume Tiers 2 and 3 (proposed Add Volume Tiers 3 and 4) is as follows:

- Proposed Add Volume Tier 3 provides a rebate of $0.0027 per share to qualifying orders (i.e., orders yielding fee codes B, V, Y, 3, or 4) where 1) Member adds an ADV (excluding fee codes ZA and ZO) ≥ 0.22% of the TCV; or 2) Member adds an ADV (excluding fee codes ZA and ZO) ≥ 25,000,000.
- Proposed Add Volume Tier 4 provides a rebate of $0.0029 per share to qualifying orders (i.e., orders yielding fee codes B, V, Y, 3, or 4) where Member adds an ADV (excluding fee codes ZA and ZO) ≥ 0.65% of the TCV.

The proposed modifications to current Add Volume Tier 1 and proposed Add Volume Tiers 3 and 4 removes retail orders from the calculation of ADV. By removing retail orders from the calculation of ADV, the Exchange is limiting the amount of orders that qualify for ADV. However, in Add Volume Tier 1 the Exchange has also proposed to lower the TCV percentage and provided additional criteria by which Members may receive an enhanced rebate. The Exchange has also proposed to introduce a new Add Volume Tier 2, which offers a slightly higher rebate for achieving criteria that is slightly more difficult than Add Volume Tier 1. The Exchange believes that by introducing proposed Add Volume Tier 2, decreasing the difficulty of the criteria under Add Volume Tier 1, and removing retail orders from the calculation of ADV in proposed Add Volume Tiers 3 and 4, Members are still incentivized to add volume on the Exchange, thereby contributing to a deeper and more liquid market, which benefits all market participants and provides greater execution opportunities on the Exchange.

Growth Tiers

In addition to the Add/Remove Volume Tiers offered under footnote 1, the Exchange also offers Growth Tiers that each provide an enhanced rebate for Members' qualifying orders yielding fee codes B, V, Y, 3, and 4, where a Member reaches certain add volume-based criteria, including "growing" its volume over a certain baseline month. The Exchange now proposes to discontinue Growth Tiers 1 – 3, 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.[16] 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 notes that it proposed a new Growth Tier 1 in its April 2023 fee filing (the "April Filing")[17] and the tier proposed in the April Filing shall remain in effect following the suspension of its March 2023 proposed fees. As a result of the Notice, existing Growth Tiers 1 and 2, which were proposed in the Exchange's March Filing, shall revert back to Growth Tiers 4 and 5 as they originally appeared in February 2023, prior to the Exchange's March Filing.[18]

Non-Displayed Add Volume Tiers

In addition to the Add/Remove Volume Tiers and Growth Tiers offered under footnote 1, the Exchange also offers Non-Displayed Add Volume Tiers that each provide an enhanced

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16 On April 28, 2023, the Commission issued Securities Exchange Act Release No. 97406 (the "Notice"), which temporarily suspended File Number SR-CboeEDGX-2023-016 (the "March Filing"). As a result of the Notice, the Exchange's proposed changes to its fee schedule as detailed in SR-CboeEDGX-2023-016 have been temporarily suspended, and all proposed changes to the Growth Tiers mentioned in this paragraph refer to the Growth Tiers as they appeared on the Exchange's fee schedule on February 28, 2023.

17 See Securities Exchange Act Release No. 97393 (April 27, 2023); SR-CboeEDGX-2023-030 (April 17, 2023) ("Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend its Fee Schedule").

18 Id.

rebate for Members' qualifying orders yielding fee codes DM,[19] HA,[20] MM,[21] and RP,[22] where a Member reaches certain volume-based criteria offered in each tier. The Exchange now proposes to amend the criteria of current Non-Displayed Add Volume Tiers 1 – 3. Currently, the criteria for Non-Displayed Add Volume Tiers 1 – 3 is as follows:

- Non-Displayed Add Volume Tier 1 provides a rebate of \$0.0015 per share to qualifying orders (i.e., orders yielding fee code DM, HA, MM, or RP) where 1) Member has an ADAV[23] ≥ 0.05% of TCV for Non-Displayed orders that yield fee codes DM, HA, HI, MM or RP; or 2) Member has an ADAV ≥ 4,000,000 for Non-Displayed orders that yield fee codes DM, HA, HI, MM or RP.
- Non-Displayed Add Volume Tier 2 provides a rebate of \$0.0020 per share to qualifying orders (i.e., orders yielding fee code DM, HA, MM, or RP) where 1) Member has an ADAV ≥ 0.08% of TCV for Non-Displayed orders that yield fee codes DM, HA, HI, MM or RP; or 2) Member has an ADAV ≥ 7,000,000 for Non-Displayed orders that yield fee codes DM, HA, HI, MM or RP.
- Non-Displayed Add Volume Tier 3 provides a rebate of \$0.0025 per share to qualifying orders (i.e., orders yielding fee code DM, HA, MM, or RP) where 1) Member has an ADAV ≥ 0.10% of TCV for Non-Displayed orders that yield fee

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

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

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

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

23 "ADAV" means average daily added volume calculated as the number of shares added per day. ADAV is calculated on a monthly basis.

codes DM, HA, HI, MM or RP; or 2) Member has an ADAV ≥ 9,000,000 for Non-Displayed orders that yield fee codes DM, HA, HI, MM or RP.

Now, the Exchange proposes to revise the second prong of criteria in Non-Displayed Add Volume Tiers 1 – 3. The proposed criteria for Non-Displayed Add Volume Tiers 1 – 3 is as follows:

- Non-Displayed Add Volume Tier 1 provides a rebate of $0.0015 per share to qualifying orders (i.e., orders yielding fee code DM, HA, MM, or RP) where 1) Member has an ADAV[24] ≥ 0.05% of TCV for Non-Displayed orders that yield fee codes DM, HA, HI, MM or RP; or 2) Member has an ADAV ≥ 5,000,000 for Non-Displayed orders that yield fee codes DM, HA, HI, MM or RP.
- Non-Displayed Add Volume Tier 2 provides a rebate of $0.0020 per share to qualifying orders (i.e., orders yielding fee code DM, HA, MM, or RP) where 1) Member has an ADAV ≥ 0.08% of TCV for Non-Displayed orders that yield fee codes DM, HA, HI, MM or RP; or 2) Member has an ADAV ≥ 8,000,000 for Non-Displayed orders that yield fee codes DM, HA, HI, MM or RP.
- Non-Displayed Add Volume Tier 3 provides a rebate of $0.0025 per share to qualifying orders (i.e., orders yielding fee code DM, HA, MM, or RP) where 1) Member has an ADAV ≥ 0.10% of TCV for Non-Displayed orders that yield fee codes DM, HA, HI, MM or RP; or 2) Member has an ADAV ≥ 10,000,000 for Non-Displayed orders that yield fee codes DM, HA, HI, MM or RP.

24 “ADAV” means average daily added volume calculated as the number of shares added per day. ADAV is calculated on a monthly basis.

The proposed modifications to Non-Displayed Add Volume Tiers 1 – 3 is intended to incentivize Members to add non-displayed retail volume on the Exchange by slightly increasing the difficulty of the criteria that must be achieved in order to receive an enhanced rebate. By increasing the difficulty of a criteria while keeping the enhanced rebate the same, the proposed criteria slightly increases the difficulty required for Members to meet the applicable tier threshold while continuing to encourage Members to add non-displayed liquidity to the Exchange, thereby contributing to a deeper and more liquid market, which benefits all market participants and provides greater execution opportunities on the Exchange.

Non-Displayed Step-Up Tiers

In addition to the Add/Remove Volume Tiers, Growth Tiers, and the Non-Displayed Add Volume Tiers under footnote 1, the Exchange also offers Non-Displayed Step-Up Volume Tiers that each provide an enhanced rebate for Members' qualifying orders yielding fee codes DM, HA, MM, and RP, where a Member reaches certain volume-based criteria, including "growing" its volume over a certain baseline month. The Exchange now proposes to discontinue Non-Displayed Step-Up 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.[25] 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

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[25] Pursuant to the Notice issued by the Commission on April 28, 2023 (supra note 16), the Exchange's proposed changes to its fee schedule as detailed in SR-CboeEDGX-2023-016 have been temporarily suspended, and all proposed changes to the Non-Displayed Step-Up Tiers mentioned in this paragraph refer to the Non-Displayed Step-Up Tiers as they appeared on the Exchange's fee schedule on February 28, 2023. The Exchange notes that current Non-Displayed Step-Up Tier 1 (as of April 1, 2023) will be renumbered back to Non-Displayed Step-Up Tier 3 as the Notice stays the implementation of the fees as described in SR-CboeEDGX-2023-016.

order flow. As a result of the Notice, existing Non-Displayed Step-Up Volume Tier 1, which was proposed in the Exchange's March Filing, shall revert back to Non-Displayed Step-Up Volume Tier 3 as it originally appeared in February 2023, prior to the Exchange's March Filing.[26]

Retail Growth Tiers

Pursuant to footnote 2 of the Fee Schedule, the Exchange offers Retail Volume Tiers which provide Retail Member Organizations ("RMOs")[27] an opportunity to receive an enhanced rebate from the standard rebate for Retail Orders[28] 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 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 eliminate Retail Growth Tiers 1 and 2, as Members have not consistently satisfied the criteria of these tiers over 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.

Fee Codes DQ and DX

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26 Supra note 16.

27 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.

28 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.

In the Exchange's March Filing, the Exchange proposed an amendment to fee code DQ, which is appended to Midpoint Discretionary Orders ("MDOs") [29] entered with a Quote Depletion Protection ("QDP") [30] 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 Book[31] 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.[32] The Exchange proposed amending fee code DQ to be appended to MDOs entered with a QDP instruction that added liquidity to the Exchange. There was no proposed change to the fee associated with fee code DQ. At the time of the March Filing, MDOs entered with the QDP instruction were 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. Also in its March Filing, the Exchange proposed 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 $0.00100 per share in securities at or above $1.00 and 0.30% of dollar value for securities priced below $1.00. As a result of the Notice issued by the Commission on April 28, 2023, the Exchange's March Filing was temporarily suspended and all proposed changes to fee codes DX and DQ mentioned

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29 See Exchange Rule 11.8(g).

30 See Exchange Rule 11.8(g)(10).

31 See Exchange Rule 1.5(d).

32 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").

in this paragraph refer to the fee codes as they appeared on the Exchange's fee schedule on February 28, 2023.[33]

As a result of the reversion back to the February 28, 2023, fee schedule, 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 would be no change to the fee associated with fee code DQ. Also as a result of the reversion back to the February 28, 2023, fee schedule, the Exchange also 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 $0.0010 per share in securities at or above $1.00 and 0.30% of dollar value for securities priced below $1.00.[34] While the Exchange notes the difference between the fees assessed for fee codes DX and DQ, the Exchange believes that charging a lower fee for MDOs entered with a QDP instruction that add liquidity to the Exchange under fee code DQ will incentivize Users to submit liquidity-adding MDOs containing a QDP instruction, thereby contributing to a deeper and more liquid market, which benefits all market participants and provides greater execution opportunities on the Exchange.

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

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33 Supra note 16.

34 The Exchange notes that its April Filing proposed an amendment of the rate associated with fee code DX from $0.00060 to $0.0010. The rate of $0.0010 proposed above is in-line with the rate of $0.0010 proposed in the April Filing and the Exchange is merely re-introducing the proposed rate of $0.0010 as a result of the Notice and subsequent suspension of the proposed changes contained within its March Filing.

Section 6(b) of the Act.[35] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[36] 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)[37] 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)[38] 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.

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: 1) introduce new Add Volume Tiers 2 and 5 and modify current Add Volume Tiers 1, 2, and 3; and 2) modify Non-Displayed Add Volume Tiers 1 – 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

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35 15 U.S.C. 78f(b).

36 15 U.S.C. 78f(b)(5).

37 Id.

38 15 U.S.C. 78f(b)(4)

widely adopted by exchanges,[39] including the Exchange,[40] 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 its proposal to: 1) introduce new Add Volume Tiers 2 and 5 and modify current Add Volume Tiers 1, 2, and 3; and 2) modify Non-Displayed Add Volume Tiers 1 – 3 is reasonable because the revised tiers will be available to all Members and provide all Members with an additional opportunity to receive an enhanced rebate or a reduced fee. The Exchange further believes the proposed modifications to its Add/Remove Volume Tiers and Non-Displayed Add Volume Tiers will provide a reasonable means to encourage liquidity adding displayed orders and liquidity adding non-displayed 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 or reduced fee 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.

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

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

The Exchange believes that its proposal to eliminate Growth Tiers 1 – 3,[41] Non-Displayed Step-Up Volume Tiers 1 and 2,[42] and Retail Growth 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 Members have not consistently satisfied the criteria over the past six months. The Exchange also notes that the proposed rule change to remove these tiers merely 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, Non-Displayed Step-Up Volume Tiers 1 and 2, and Retail Growth Tiers 1 and 2 enables the Exchange to redirect resources and funding into other programs and tiers intended to incentivize increased order flow.

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.[43] 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.

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[41] Supra note 16.

[42] Supra note 25.

[43] See e.g., EDGX Equities Fee Schedule, Fee Codes 3 and 6.

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.

The Exchange believes that the proposed changes to its Add/Remove Volume Tiers and Non-Displayed Add Volume Tiers 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 proposed Add Volume Tier 1, at least two Members will be able to satisfy proposed Add Volume Tier 2, at least two Members will be able to satisfy proposed Add Volume Tier 3, at least one Member will be able to satisfy proposed Add Volume Tier 4, at least 1 Member will be able to satisfy proposed Add Volume Tier 5, at least two Members will be able to satisfy proposed Non-Displayed Add Volume Tier 1, at least two Members will be able to satisfy proposed Non-Displayed Add Volume Tier 2, and at least one Member will be able to satisfy proposed Non-Displayed Add Volume 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. Furthermore, the proposed rule change to eliminate Growth Tiers 1 – 3, Non-Displayed Step-Up Volume Tiers 1 and 2, and Retail Growth Tiers 1 and 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 the Exchange's Add/Remove Volume Tiers and Non-Displayed Add Volume Tiers 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. In addition, the Exchange proposal to eliminate Growth Tiers 1 – 3, Non-Displayed Step-Up Volume Tiers 1 and 2, and Retail Growth Tiers 1 and 2 will not impose any burden on intramarket competition because it applies to all Members uniformly, as in, the tiers will no longer be available to any Member. The Exchange does not believe the proposed changes burden 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.

The Exchange believes 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 16% of the market share.[44] 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

[44] Supra note 3.

important to investors and listed companies."[45] 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'….".[46] 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[47] and paragraph (f) of Rule 19b-4[48] 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

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

46 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)).

47 15 U.S.C. 78s(b)(3)(A).

48 17 CFR 240.19b-4(f).

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-2023-036 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-2023-036. 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. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR-CboeEDGX-2023-036, 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.[49]

Sherry R. Haywood,

Assistant Secretary

[49] 17 CFR 200.30-3(a)(12).