

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-98137; File No. SR-CboeEDGX-2023-051)

August 15, 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 August 1, 2023, Cboe EDGX Exchange, Inc. (“Exchange” or “EDGX”) filed with the Securities and Exchange Commission (“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 the criteria of Add Volume Tier 6; and 4) modifying the rates associated with Remove Volume Tier 1. The Exchange proposes to implement these changes effective August 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 14% 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 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

³ See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (July 24, 2023), available at https://www.cboe.com/us/equities/market_statistics/.

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.⁴ 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.⁵ 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 Volume Tiers

Under footnote 1 of the Fee Schedule, the Exchange currently offers various Add/Remove Volume Tiers. In particular, the Exchange offers six Add Volume Tiers that each provide an enhanced rebate for Members' qualifying orders yielding fee codes B,⁶ V,⁷ Y,⁸ 3,⁹ and 4,¹⁰ where a Member reaches certain add volume-based criteria. The Exchange is proposing to modify the criteria associated with Add Volume Tier 6. Currently, the criteria for Add Volume Tier 6 is as follows:

- Add Volume Tier 6 provides a rebate of \$0.0034 per share for securities priced above \$1.00 to qualifying orders (i.e., orders yielding fee B, V, Y, 3, or 4) where (1) MPID

⁴ See EDGX Equities Fee Schedule, Standard Rates.

⁵ Id.

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

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

⁸ Fee code Y is appended to orders adding liquidity to EDGX in Tape C securities.

⁹ Fee code 3 is appended to orders adding liquidity to EDGX in the pre and post market in Tapes A or C securities.

¹⁰ Fee code 4 is appended to orders adding liquidity to EDGX in the pre and post market in Tape B securities.

adds an ADV¹¹ (excluding fee codes ZA¹² or ZO¹³) $\geq 37,500,000$; and (2) MPID has a QDP ADV (i.e., yielding fee codes DQ¹⁴ and DX¹⁵) $\geq 8,000,000$.

The proposed criteria for Add Volume Tier 6 is as follows:

- Add Volume Tier 6 provides a rebate of \$0.0033 per share for securities priced above \$1.00 to qualifying orders (i.e., orders yielding fee B, V, Y, 3, or 4) where (1) MPID adds an ADV (excluding fee codes ZA or ZO) $\geq 27,500,000$; and (2) MPID has a QDP ADV (i.e., yielding fee codes DQ and DX) $\geq 3,500,000$.

The Exchange believes that the proposed modifications to Add Volume Tier 6 continue to incentivize Members 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. The Exchange further believes the lower proposed rebate associated with Add Volume Tier 6 provides a rebate commensurate with the difficulty of meeting the revised criteria associated with the tier.

Remove Volume Tiers

In addition to the Add/Remove Volume Tiers offered under footnote 1, the Exchange also offers three Remove Volume Tiers that each assess a reduced fee for Members' qualifying orders yielding fee codes BB,¹⁶ N¹⁷ and W,¹⁸ where a Member reaches certain add volume-based

¹¹ "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.

¹² Fee code ZA is appended to Retail Orders that add liquidity.

¹³ Fee code ZO is appended to Retail orders that adds liquidity during the pre- and post-market.

¹⁴ Fee code DQ is appended to orders using the QDP order type that add liquidity to EDGX.

¹⁵ Fee code DX is appended to orders using the QDP order type that remove liquidity from EDGX.

¹⁶ Fee code BB is appended to orders that remove liquidity from EDGX in Tape B securities.

¹⁷ Fee code N is appended to orders that remove liquidity from EDGX in Tape C securities.

¹⁸ Fee code W is appended to orders that remove liquidity from EDGX in Tape A securities.

criteria. Currently, Members who satisfy the criteria of Remove Volume Tier 1 are assessed a reduced fee of \$0.00285 for securities priced above \$1.00 and a reduced fee of 0.28% of total dollar value for securities priced at or below \$1.00. The Exchange now proposes to revise the fees associated with Remove Volume Tier 1. As proposed, Members who satisfy the criteria of Remove Volume Tier 1 will be assessed a reduced fee of \$0.0029 for securities priced above \$1.00 and a reduced fee of 0.29% of total dollar value for securities priced at or below \$1.00. The Exchange does not propose to revise the fees associated with Remove Volume Tiers 2 or 3. The purpose of increasing the reduced fee associated with Remove Volume Tier 1 is for business and competitive reasons, as the Exchange believes that increasing such fee as proposed would decrease the Exchange's expenditures with respect to transaction pricing in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added liquidity. The Exchange notes that despite the modest increase of the fee associated with Remove Volume Tier 1, the reduced fee remains competitive and continues to be in-line with the reduced fee assessed under Remove Volume Tiers 2 and 3.¹⁹

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.²⁰ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)²¹ 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,

¹⁹ See e.g., EDGX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

²⁰ 15 U.S.C. 78f(b).

²¹ 15 U.S.C. 78f(b)(5).

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)²² 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)²³ 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 modify the criteria of Add Volume Tier 6 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,²⁴ including the Exchange,²⁵ 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

²² Id.

²³ 15 U.S.C. 78f(b)(4)

²⁴ See e.g., BZX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

²⁵ See e.g., EDGX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

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 modify the criteria of Add Volume Tier 6 is reasonable because the revised tier 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 Add Volume Tier 6 will provide a reasonable means to encourage liquidity adding displayed orders 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.

In addition, the Exchange believes that its proposal to increase the reduced fee assessed to Members that satisfy the criteria of Remove Volume Tier 1 is reasonable, equitable, and consistent with the Act because such change is designed to decrease the Exchange's expenditures with respect to transaction pricing in order to offset some of the costs associated with the Exchange's current pricing structure, which provides various rebates for liquidity-adding orders, and the Exchange's operations generally, in a manner that is consistent with the Exchange's overall pricing philosophy of encouraging added liquidity. The proposed increased reduced fee (\$0.0029 per share for securities priced above \$1.00 and 0.29% of total dollar value for securities priced at or below \$1.00) is reasonable and appropriate because it represents only a modest increase from the current reduced fee (\$0.00285 per share for securities priced above \$1.00 and

0.28% of total dollar value for securities priced at or below \$1.00) and remains competitive with the reduced fees offered under Remove Volume Tiers 2 and 3. The Exchange further believes that the proposed increase to the reduced fee associated with Remove Volume Tier 1 is not unfairly discriminatory because it applies to all Members equally, in that all Members will receive the reduced fee upon satisfying the criteria of Remove Volume Tier 1.

The Exchange believes that the proposed changes to Add Volume Tier 6 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 revised tiers and have the opportunity to meet the tiers' criteria and receive the corresponding enhanced rebate or reduced fee 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 6, and at least two Members will be able to satisfy Remove Volume Tier 1. The Exchange also notes that proposed changes will not adversely impact any Member's ability to qualify for enhanced rebates or reduced fees offered under other tiers. Should a Member not meet the proposed new criteria, the Member will merely not receive that corresponding enhanced rebate or reduced fee.

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 Volume Tier 6 and Remove Volume Tier 1 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 or reduced fee on their qualifying orders if such criteria is met. 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.

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 14% of the market share.²⁶ 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 important to investors and listed companies.”²⁷ 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’....”²⁸ Accordingly, the Exchange does not believe

²⁶ Supra note 4.

²⁷ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

²⁸ *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)).

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 Act²⁹ and paragraph (f) of Rule 19b-4³⁰ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeEDGX-2023-051 on the subject line.

²⁹ 15 U.S.C. 78s(b)(3)(A).

³⁰ 17 CFR 240.19b-4(f).

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-2023-051. This file number should be included on the subject line if email 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 (<https://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 a.m. and 3 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-2023-051 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³¹

Sherry R. Haywood,

Assistant Secretary.

³¹ 17 CFR 200.30-3(a)(12).