

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-99132; File No. SR-CboeEDGX-2023-078)

December 11, 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”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 8, 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 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/](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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 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 introducing Add Volume Tier 7; 2) by modifying the Market Quality Tier; 3) by introducing a new Non-Displayed Add Volume Tier; 4) by modifying Remove Volume Tier 3; and 5) by introducing a new Retail Volume Tier. The Exchange proposes to implement these changes effective December 1, 2023.<sup>3</sup>

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,<sup>4</sup> 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

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<sup>3</sup> The Exchange initially filed the proposed fee change on December 1, 2023 (SR-CboeEDGX-2023-074). On December 8, 2023, the Exchange withdrew that filing and submitted SR-CboeEDGX-2023-077. On December 8, 2023, the Exchange withdrew that filing and submitted this proposal.

<sup>4</sup> See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (November 28, 2023), available at [https://www.cboe.com/us/equities/market\\_statistics/](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.<sup>5</sup> 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.<sup>6</sup> 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 & Market Quality 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,<sup>7</sup> V,<sup>8</sup> Y,<sup>9</sup> 3,<sup>10</sup> and 4,<sup>11</sup> where a Member reaches certain add volume-based criteria.<sup>12</sup> First, the Exchange is proposing to introduce a new Add Volume Tier 7 to provide Members an additional manner in

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<sup>5</sup> See EDGX Equities Fee Schedule, Standard Rates.

<sup>6</sup> Id.

<sup>7</sup> Fee code B is appended to orders adding liquidity to EDGX in Tape B securities.

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

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

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

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

<sup>12</sup> The Exchange notes that unless otherwise noted on the fee schedule, enhanced rebates or reduced fees offered under footnote 1 are only available to securities priced at or above \$1.00.

which they could receive an enhanced rebate if certain criteria is met. The proposed criteria for proposed Add Volume Tier 7 is as follows:

- Add Volume Tier 7 provides a rebate of \$0.0034 per share for securities priced at or above \$1.00 to qualifying orders (i.e., orders yielding fee B, V, Y, 3, or 4) where: (1) Member has a total remove ADV<sup>13</sup>  $\geq$  0.40% of the TCV<sup>14</sup> or Member has a total remove ADV  $\geq$  40,000,000; and (2) Member has a Hidden, Primary Peg ADV<sup>15</sup>  $\geq$  1,000,000; and (3) Member has a Hidden Midpoint ADV (i.e., yielding fee codes DM<sup>16</sup> or MM<sup>17</sup>)  $\geq$  5,000,000.

Second, the Exchange proposes to modify the criteria of the existing Market Quality Tier.

Currently, the criteria for the Market Quality Tier is as follows:

- The Market Quality Tier provides a rebate of \$0.0028 per share for securities priced at or above \$1.00 to qualifying orders (i.e., orders yielding fee B, V, Y, 3, or 4) where: (1) Member adds an ADV  $\geq$  0.25% of the TCV; and (2) Member adds an ADV  $\geq$  0.10% of the TCV as Non-Displayed orders that yield fee codes DM, HA,<sup>18</sup> HI,<sup>19</sup> MM or RP.<sup>20</sup>

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<sup>13</sup> “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.

<sup>14</sup> “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.

<sup>15</sup> The Exchange notes that it also proposes to add a definition for Hidden, Primary Peg ADV to the Definitions section of the fee schedule, “Hidden, Primary Peg ADV” means ADV in non-displayed orders that include a Primary Peg instruction as defined in EDGX Equities Rule 11.6(j)(2).

<sup>16</sup> Fee code DM is appended to orders adding liquidity to EDGX using MidPoint Discretionary order within discretionary range.

<sup>17</sup> Fee code MM is appended to non-displayed orders adding liquidity to EDGX using Mid-Point Peg.

<sup>18</sup> Fee code HA is appended to non-displayed orders adding liquidity to EDGX.

<sup>19</sup> Fee code HI is appended to non-displayed orders adding liquidity to EDGX that receive price improvement.

<sup>20</sup> Fee code RP is appended to non-displayed orders adding liquidity to EDGX using Supplemental Peg.

Now, the Exchange proposes to amend the second prong of criteria in the Market Quality Tier. The proposed criteria is as follows:

- The Market Quality Tier provides a rebate of \$0.0028 per share for securities priced at or above \$1.00 to qualifying orders (i.e., orders yielding fee B, V, Y, 3, or 4) where: (1) Member adds an ADV  $\geq 0.25\%$  of the TCV; and (2) Members adds an ADV  $\geq 0.12\%$  of the TCV as Non-Displayed orders that yield fee codes DM, HA, HI, MM or RP.

#### **Non-Displayed Add Volume Tiers**

In addition to the Add/Remove Volume Tiers offered under footnote 1, the Exchange also offers three Non-Displayed Add 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 offered in each tier. The Exchange now proposes to introduce Non-Displayed Add Volume Tier 4. The proposed criteria for Non-Displayed Add Volume Tier 4 is as follows:

- Non-Displayed Add Volume Tier 4 provides a rebate of \$0.0025 per share for securities priced at or above \$1.00 to qualifying orders (i.e., orders yielding fee DM, HA, MM, or RP) where: (1) Member has a total remove ADV  $\geq 0.40\%$  of the TCV or Member has a total remove ADV  $\geq 40,000,000$ ; and (2) Member has a Hidden, Primary Peg ADV  $\geq 1,000,000$ ; and (3) Member has a Hidden Midpoint ADV (i.e., yielding fee codes DM or MM)  $\geq 5,000,000$ .

The Exchange also proposes to make minor grammatical changes to the introductory text associated with the Non-Displayed Add Volume Tiers. These changes are non-substantive in nature.

## Remove Volume Tiers

In addition to the Add/Remove Volume Tiers and Non-Displayed Add 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,<sup>21</sup> N,<sup>22</sup> and W<sup>23</sup> where a Member reaches certain add volume-based criteria. The Exchange now proposes to amend Remove Volume Tier 3. Currently, the criteria for Remove Volume Tier 3 is as follows:

- Remove Volume Tier 3 provides a reduced fee of \$0.00275 per share for securities priced at or above \$1.00 to qualifying orders (i.e., orders yielding fee codes BB, N, or W) and a reduced fee of 0.28% of total dollar value for securities priced below \$1.00 where: (1) Member has an ADAV  $\geq 0.30\%$  of the TCV; and (2) Member has a total remove ADV  $\geq 0.40\%$  of the TCV; and (3) Member adds Retail Pre Market Order ADV (i.e., yielding fee code ZO)  $\geq 3,000,000$ .

Now, the Exchange proposes to amend the second prong of criteria in Remove Volume Tier 3. The proposed criteria is as follows:

- Proposed Remove Volume Tier 3 provides a reduced fee of \$0.00275 per share for securities priced at or above \$1.00 to qualifying orders (i.e., orders yielding fee codes BB, N, or W) and a reduced fee of 0.28% of total dollar value for securities priced below \$1.00 where: (1) Member has an ADAV  $\geq 0.30\%$  of the TCV; and (2) Member has a total remove ADV  $\geq 0.40\%$  of the TCV or Member has a total remove ADV  $\geq 40,000,000$ ; and (3) Member adds Retail Pre Market Order ADV (i.e., yielding fee code ZO)  $\geq 3,000,000$ .

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<sup>21</sup> Fee code BB is appended to orders that remove liquidity from EDGX in Tape B securities.

<sup>22</sup> Fee code N is appended to orders that remove liquidity from EDGX in Tape C securities.

<sup>23</sup> Fee code W is appended to orders that remove liquidity from EDGX in Tape A securities.

## Retail Volume Tiers

Pursuant to footnote 2 of the Fee Schedule, the Exchange offers Retail Volume Tiers which provide Retail Member Organizations (“RMOs”)<sup>24</sup> an opportunity to receive an enhanced rebate from the standard rebate for Retail Orders<sup>25</sup> that add liquidity (i.e., yielding fee code ZA or ZO). Currently, the Retail Volume Tiers offer two Retail Volume 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. The Exchange now proposes to introduce Retail Volume Tier 3. The proposed criteria for Retail Volume Tier 3 is as follows:

- Proposed Retail Volume Tier 3 provides an enhanced rebate of \$0.0037 per share for securities priced above \$1.00 to qualifying orders (i.e., orders yielding fee ZA or ZO) where: (1) Member has a total remove ADV  $\geq 0.40\%$  of the TCV or Member has a total remove ADV  $\geq 40,000,000$ ; and (2) Member has a Hidden, Primary Peg ADV  $\geq 1,000,000$ ; and (3) Member has a Hidden Midpoint ADV (i.e., yielding fee codes DM or MM)  $\geq 5,000,000$ .

Together, the proposed addition of Retail Volume Tier 3, proposed addition of Add Volume Tier 7, proposed amendment to the Market Quality Tier, proposed addition of Non-Displayed Add Volume Tier 4, and proposed amendment to Remove Volume Tier 3 are each intended to provide Members an alternative opportunity to earn an enhanced rebate or a reduced fee by increasing their order flow to the Exchange, which further contributes to a deeper, more

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<sup>24</sup> 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.

<sup>25</sup> 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.

liquid market and provides even more execution opportunities for active market participants. Incentivizing an increase in liquidity adding or removing volume, through enhanced rebate or reduced fee 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.

The Exchange also proposes to make minor grammatical changes to the introductory text associated with the Retail Volume Tiers. These changes are non-substantive in nature.

## 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.<sup>26</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>27</sup> 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)<sup>28</sup> requirement

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<sup>26</sup> 15 U.S.C. 78f(b).

<sup>27</sup> 15 U.S.C. 78f(b)(5).

<sup>28</sup> Id.



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)<sup>29</sup> 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 Tier 7; 2) modify the Market Quality Tier; 3) introduce new Non-Displayed Add Volume Tier 4; 4) modify Remove Volume Tier 3; and 5) introduce new Retail Volume 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. Specifically, the Exchange's proposal to introduce slightly more difficult criteria to its Market Quality Tier and Remove Volume Tier is not a significant departure from existing criteria, is reasonably correlated to the enhanced rebate or reduced fee offered by the Exchange and other competing exchanges,<sup>30</sup> and will continue to incentivize Members to submit order flow to the Exchange. Additionally, the Exchange notes that relative volume-based incentives and discounts have been widely adopted by exchanges,<sup>31</sup> including the Exchange,<sup>32</sup> and are reasonable, equitable and non-

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<sup>29</sup> 15 U.S.C. 78f(b)(4)

<sup>30</sup> See MIAX Pearl Equities Exchange Fee Schedule, Remove Volume Tier, available at [https://www.miaxglobal.com/sites/default/files/fee\\_schedule-files/MIAX\\_Pearl\\_Equities\\_Fee\\_Schedule\\_12012023.pdf](https://www.miaxglobal.com/sites/default/files/fee_schedule-files/MIAX_Pearl_Equities_Fee_Schedule_12012023.pdf) See also MEMX Equities Fee Schedule, Liquidity Removal Tier, available at <https://info.memxtrading.com/equities-trading-resources/us-equities-fee-schedule/>.

<sup>31</sup> See e.g., BZX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

<sup>32</sup> See e.g., EDGX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

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. Further, the Exchange believes that its proposal to incentivize Hidden, Primary Peg ADV<sup>33</sup> and Hidden Midpoint ADV<sup>34</sup> will encourage Members to submit additional non-displayed orders to the Exchange using pegged order types. The Exchange believes that non-displayed, Primary Peg<sup>35</sup> orders will reduce the number of cancel/replace messages submitted by Members to the Exchange and non-displayed MidPoint Peg<sup>36</sup> orders will encourage greater liquidity with the potential for price improvement on the Exchange.

In particular, the Exchange believes its proposal to: 1) introduce new Add Volume Tier 7; 2) modify the Market Quality Tier; 3) introduce new Non-Displayed Add Volume Tier 4; 4) modify Remove Volume Tier 3; and 5) introduce new Retail Volume Tier 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 Volume Tier, Non-Displayed Add Volume Tier,

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<sup>33</sup> Supra note 15.

<sup>34</sup> Supra notes 16 – 17.

<sup>35</sup> See EDGX Equities Rule 11.6(j)(2). A “Primary Peg” order is an order with instructions to peg to the NBB, for a buy order, or the NBO, for a sell order.

<sup>36</sup> See EDGX Equities Rule 11.8(d). A MidPoint Peg Order is a non-displayed Market Order or Limit Order with an instruction to execute at the midpoint of the NBBO, or, alternatively, pegged to the less aggressive of the midpoint of the NBBO or one minimum price variation inside the same side of the NBBO as the order.

and Retail Volume Tier 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. Further, the Exchange wishes to encourage the use of the Primary Peg and MidPoint Peg order types by introducing criteria specific to Hidden, Primary Peg ADV and Hidden Midpoint ADV. While the proposed criteria in the Market Quality Tier and Remove Volume Tier 3 are slightly more difficult than the current criteria found in those tiers, the proposed criteria is not a significant departure from existing criteria, is reasonably correlated to the enhanced rebate or reduced fee offered by the Exchange, and will continue to incentivize Members to submit order flow to the Exchange. 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 its Add/Remove Volume Tiers, Market Quality Tier, Non-Displayed Add Volume Tier, and Retail Volume Tier 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 7, at least two Members will be able to satisfy the proposed Market Quality Tier, at least one Member will be able to satisfy proposed Non-Displayed Add Volume Tier 4, at least one Member will be able to satisfy proposed Remove Volume Tier 3, and at least 1 Member will be able to satisfy proposed Retail 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.

**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, Market Quality Tier, Non-Displayed Add Volume Tier, and Retail Volume Tier 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 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.<sup>37</sup> 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

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<sup>37</sup> Supra note 3.

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.”<sup>38</sup> 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’ ....”<sup>39</sup> 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<sup>40</sup> and paragraph (f) of Rule 19b-4<sup>41</sup> 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,

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<sup>38</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

<sup>39</sup> *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)).

<sup>40</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>41</sup> 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-CboeEDGX-2023-078 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-2023-078. 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-2023-078 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.<sup>42</sup>

**Sherry R. Haywood,**  
*Assistant Secretary.*

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<sup>42</sup> 17 CFR 200.30-3(a)(12).