

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-99280; File No. SR-CboeEDGX-2024-002)

January 5, 2024

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 January 2, 2024, 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 standard rate associated with certain fee codes; 2) by discontinuing Remove Volume Tier 1; and 3) by modifying Remove Volume Tier 3. The Exchange proposes to implement these changes effective January 2, 2024.

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 13% 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 (December 20, 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.

Standard Rates

Currently, the Exchange offers standard rates to add liquidity for orders appended with fee codes 3,⁶ 4,⁷ B,⁸ V,⁹ and Y.¹⁰ The Exchange now proposes to revise the standard rebate associated with securities priced below \$1.00 from \$0.00009 per share to \$0.00003 per share for orders appended with fee codes 3, 4, B, V, or Y. The purpose of reducing the standard rebate associated with securities priced below \$1.00 is for business and competitive reasons, as the Exchange believes that reducing such rebate 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

⁴ See EDGX Equities Fee Schedule, Standard Rates.

⁵ Id.

⁶ Fee code 3 is appended to orders adding liquidity to EDGX in the pre and post market in Tapes A or C securities.

⁷ Fee code 4 is appended to orders adding liquidity to EDGX in the pre and post market in Tape B securities.

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

⁹ Fee code V is appended to orders adding liquidity to EDGX in Tape A securities.

¹⁰ Fee code Y is appended to orders adding liquidity to EDGX in Tape C securities.

despite the decrease in the standard rebate associated with securities priced below \$1.00, the standard rebate remains competitive and continues to be more favorable for Members than the standard rate provided by competing exchanges.¹¹

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 Remove Volume Tiers that each assess a reduced fee for Members' qualifying orders yielding fee codes BB,¹² N,¹³ and W¹⁴ where a Member reaches certain add volume-based criteria. The Exchange now proposes to discontinue Remove Volume Tier 1 as the Exchange no longer wishes to, nor is required to, maintain such tier. More specifically, the proposed change removes this tier as the Exchange would rather redirect future resources and funding into other programs and tiers intended to incentivize increased order flow. In conjunction with discontinuing Remove Volume Tier 1, the Exchange proposes to renumber Remove Volume Tiers 2 and 3 as Remove Volume Tiers 1 and 2, respectively, following the deletion of current Remove Volume Tier 1.

In addition to the proposed deletion of Remove Tier 1, the Exchange proposes to amend the criteria of proposed Remove Volume Tier 2 (current Remove Volume Tier 3). Currently, the criteria for proposed Remove Volume Tier 2 is as follows:

¹¹ See, e.g., NYSE Arca Fee Equities Fees and Charges; Standard Rates, available at https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf; see also Nasdaq Price List; Add and Remove Rates; Rebates and Fees, Shares Executed Below \$1.00, available at <https://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2>. NYSE Arca provides a rebate to add liquidity equal to 0.0% of Dollar Value for securities priced below \$1.00 and Nasdaq provides rebates of \$0.00 to add liquidity in securities priced below \$1.00.

¹² Fee code BB is appended to orders that remove liquidity from EDGX in Tape B securities.

¹³ Fee code N is appended to orders that remove liquidity from EDGX in Tape C securities.

¹⁴ Fee code W is appended to orders that remove liquidity from EDGX in Tape A securities.

- Proposed Remove Volume Tier 2 (current 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 ADAV¹⁵ \geq 0.30% of the TCV;¹⁶ and (2) Member has a total remove ADV¹⁷ \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.

Now, the Exchange proposes to amend the second prong of criteria in proposed Remove Volume Tier 2 by removing the total remove ADV share requirement. The proposed criteria is as follows:

- Proposed Remove Volume Tier 2 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.

The proposed amendment to proposed Remove Volume Tier 2 is intended to slightly increase the difficulty of achieving an existing opportunity to earn an enhanced rebate by providing a single alternative for Members to increase their order flow to the Exchange.

¹⁵ ADAV means average daily added volume calculated as the number of shares added per day, calculated on a monthly basis.

¹⁶ 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.

¹⁷ 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.

Submitting increased order flow to the Exchange will further contribute to a deeper, more liquid market and provide even more execution opportunities for active market participants.

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

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.¹⁸ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁹ 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)²⁰ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers,

¹⁸ 15 U.S.C. 78f(b).

¹⁹ 15 U.S.C. 78f(b)(5).

²⁰ Id.

issuers, brokers, or dealers as well as Section 6(b)(4)²¹ 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) modify the standard rebates associated with securities priced below \$1.00 and 2) modify proposed Retail Volume Tier 2 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 proposed criteria for proposed Remove Volume Tier 2 is not a significant departure from existing criteria, continues to be reasonably correlated to the enhanced rebate offered by the Exchange and other competing exchanges,²² 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,²³ including the Exchange,²⁴ 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

²¹ 15 U.S.C. 78f(b)(4)

²² See, e.g., 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; and MEMX Equities Fee Schedule, Liquidity Removal Tier, available at <https://info.memxtrading.com/equities-trading-resources/us-equities-fee-schedule/>.

²³ See, e.g., BZX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

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

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 modify proposed Retail Volume Tier 2 is reasonable because the revised tier will be available to all Members and provide all Members with an opportunity to receive an enhanced rebate. The Exchange further believes the proposed modification to proposed Remove Volume Tier 2 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 opportunity to receive an enhanced rebate on qualifying orders. While the proposed criteria in proposed Remove Volume Tier 2 is slightly more difficult than the current criteria found in that tier, the proposed criteria is not a significant departure from existing criteria, is reasonably correlated to the enhanced rebate 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.

Further, the Exchange believes that its proposal to modify the standard rebate associated with securities priced below \$1.00 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 decreased standard rebate of \$0.00003 per share is reasonable and appropriate because it remains competitive with the standard rebate offered by other exchanges.²⁵ The Exchange further believes that the proposed decrease to the standard rebate associated with securities priced below \$1.00 is not unfairly discriminatory because it applies to all Members equally, in that all Members will received the lower standard rebate upon submitting orders appended with fee codes B, V, Y, 3, or 4.

The Exchange believes that its proposal to eliminate current Remove Volume Tier 1 is reasonable because the Exchange is not required to maintain this tier nor is it required to provide Members an opportunity to receive enhanced rebates. The Exchange believes its proposal to eliminate this tier is also equitable and not unfairly discriminatory because it applies to all Members (i.e., the tier will not be available for any Member). The Exchange also notes that the proposed rule change to remove this tier 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 current Remove Volume Tier 1 enables the Exchange to redirect resources and funding into other programs and tiers intended to incentivize increased order flow.

The Exchange believes that the proposed changes to its standard rebate associated with securities priced below \$1.00 and Remove Volume Tiers are reasonable as they do not represent a significant departure from the criteria or rebates 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 standard

²⁵ Supra note 11.

rebate and revised tier and have the opportunity to meet the revised tier's 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 Remove Volume Tier 2. 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 standard rebate associated with securities priced below \$1.00 and the proposed changes to proposed Remove Volume Tier 2 will

apply to all Members equally in that all Members are eligible for the standard rebate and the proposed revised tier, have a reasonable opportunity to meet the proposed tier's 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.

The Exchange believes the proposed elimination of Remove Volume Tier 1 does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed change to eliminate the Remove Volume Tier 1 will not impose any burden on intramarket competition because the changes apply to all Members uniformly, as in, the tier will no longer be available to any Member.

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 13% 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 its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

²⁶ Supra note 3.

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)).

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-2024-002 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-2024-002. 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-2024-002 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

Christina Z. Milnor,

Assistant Secretary.

³¹ 17 CFR 200.30-3(a)(12).