Item 1. **<u>Text of the Proposed Rule Change</u>**

(a) Cboe EDGX Exchange, Inc. (the "Exchange" or "EDGX") proposes to amend its Fee Schedule by changing the criteria for Remove Volume Tier 2, and Retail Volume Tier 1. The text of the proposed rule change is provided in Exhibit 5.

(b) Not applicable.

(c) Not applicable.

Item 2. **<u>Procedures of the Self-Regulatory Organization</u>**

(a) The Exchange's President (or designee) pursuant to delegated authority approved the proposed rule change on February 28, 2025.

(b) Please refer questions and comments on the proposed rule change to Pat Sexton, Executive Vice President, General Counsel, and Corporate Secretary, (312) 786-7467, or Matthew Iwamaye, Vice President, Associate General Counsel, (732) 687-9355, Cboe EDGX Exchange, Inc., 433 West Van Buren Street, Chicago, Illinois 60607

Item 3. **<u>Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change</u>**

(a) <u>Purpose</u>

The Exchange proposes to amend its Fee Schedule by changing the criteria for Remove Volume Tier 2, and Retail Volume Tier 1. The Exchange will implement these changes to its Fee Schedule on March 7, 2025.[1]

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

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1 The Exchange initially filed the proposed fee change on March 3, 2025 (SR-CboeEDGX-2025-017). On March 7, 2025, the Exchange withdrew that filing and submitted this filing.

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 Act, to which market participants may direct their order flow. Based on publicly available information,[2] no single registered equities exchange has more than 16% 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 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.[3] For orders in securities priced below $1.00, the Exchange provides a standard rebate of $0.00003 per share for orders that add liquidity and assesses a fee of 0.30% of the total dollar value for orders that remove liquidity.[4] 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

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2 See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (September 23, 2024), available at https://www.cboe.com/us/equities/market_statistics/.

3 See EDGX Equities Fee Schedule, Standard Rates.

4 Id.

levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

Remove Volume Tier 2

Under footnote 1of the Fee Schedule, the Exchange currently offers various Add/Remove Volume Tiers. In particular, the Exchange offers two Remove Volume Tiers that each assess a reduced fee for Members' qualifying orders yielding fee codes BB,[5] N,[6] and W[7] where a Member reaches certain add volume-based criteria. The Exchange now proposes to amend the criteria of Remove Volume Tier 2. Currently, the criteria for Remove Volume Tier 2 is as follows:

- Remove Volume Tier 2 provides a reduced fee of $0.00285 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[8] of greater than or equal to 0.30% of the TCV;[9] (2) Member has a total remove ADV[10] greater than or equal to 0.40% of the TCV or Member has a total remove ADV of greater than or equal to 40,000,000; and (3) Member adds a Retail

5 Fee code BB is appended to orders that remove liquidity from EDGX (Tape B).

6 Fee code N is appended to orders that remove liquidity from EDGX (Tape C).

7 Fee code W is appended to orders that remove liquidity from EDGX (Tape A).

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

9 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. The Exchange excludes from its calculation of TCV volume on any day that the Exchange experiences an Exchange System Disruption, on any day with a scheduled early market close, and the Russell Reconstitution Day.

10 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.

Pre Market Order ADV (i.e., yielding fee code ZO) greater than or equal to 1,500,000 million shares.

Now, the Exchange proposes to amend the first prong of the criteria in Remove Volume Tier 2 by adding alternative criteria to prong 1, as follows:

- Proposed Remove Volume Tier 2 provides a reduced fee of $0.00285 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) a Member has an ADAV ≥ 0.30% of the TCV or a Member has an ADAV ≥ 35,000,000; (2) Member has a total remove ADV ≥ 0.40% of the TCV or Member has a total remove ADV ≥ 40,000,000; and (3) Member adds Retail Pre Market Order ADV (i.e., yielding fee code ZO) ≥ 1,500,000.

The proposed amendment to Remove Volume Tier 2 is intended to slightly decrease the difficulty of achieving an existing opportunity to earn a reduced fee by providing an alternative for Members to increase their order flow to the Exchange (as provided under proposed prong 1). 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 removing volume, through reduced fee opportunities, encourages liquidity removing Members on the Exchange to increase transactions and take execution opportunities, and liquidity adding Members to contribute to a deeper, more liquid market, on the Exchange, 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.

Retail Volume Tier 1

Under footnote 2 of the Fee Schedule, the Exchange currently offers various Retail Volume Tiers. In particular, the Exchanges offers three Retail Volume Tiers that provide enhanced rebates for Members' qualifying orders yielding fee codes ZA[11] or ZO,[12] when a Member reaches certain add volume-based criteria. The Exchange now proposes to amend the criteria of Retail Volume Tier 1. Currently, the criteria for Retail Volume Tier 1 is as follows:

- Retail Volume Tier 1 provides an enhanced rebate of $0.0034 per share to qualifying orders, where (1) a Member adds a Retail Order ADV (i.e., orders yielding fee codes ZA or ZO) ≥ 0.30% of the TCV; and (2) Member has an ADAV (i.e., yielding fees codes B, V, Y) ≥ 20,000,000

Now, the Exchange proposes to amend the prongs 1 and 2 of the required criteria, as follows:

- Proposed Retail Volume 1 provides an enhanced rebate of $0.0034 per share to qualifying orders, where (1) a Member adds a Retail Order ADV (i.e., yielding fee codes ZA or ZO) ≥ 0.25% of the TCV; and (2) Member has an ADAV (i.e., yielding fee codes B, V, Y) ≥ 5,000,000.

The proposed amendments to Retail Volume 1 are intended to slightly decrease the difficulty of achieving an existing opportunity to earn an enhanced rebate by reducing

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[11] Fee code ZA is appended to Retail Orders that add liquidity.

[12] Fee code ZO is appended to Retail Orders that add liquidity in the pre and post market.

the ADV and ADAV requirements necessary to satisfy prongs 1 and 2. These proposed amendments are designed to incentivized Members to increase their order flow to the Exchange. 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. Increased Retail Order liquidity encourages liquidity removing Members on the Exchange to increase transactions and take execution opportunities, and liquidity adding Members to contribute to a deeper, more liquid market, on the Exchange, 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.

(b) Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[13] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[14] 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

13 15 U.S.C. 78f(b).

14 15 U.S.C. 78f(b)(5).

interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[15] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As described above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The Exchange believes that its proposal to make the criteria for Remove Volume Tier 2, and Retail Volume Tier 1, more easily achievable, reflects a competitive pricing structure designed to incentivize market participants to direct their flow to the Exchange, which the Exchange believes would enhanced market quality to the benefit of all Members.

Specifically, the Exchange's proposed criteria for Remove Volume Tier 2 and Retail Volume Tier 1 are not significant departures from existing criteria and continue to be reasonably correlated to the reduced fee/enhanced rebate offered by the Exchange and other competing exchanges,[16] 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,[17] including the Exchange,[18] 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

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15 Id.

16 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; MEMX Equities Fee Schedule, Liquidity Removal Tier, available at MEMX Equities Fee Schedule – MEMX Exchanges (memxtrading.com).

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

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

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.

The Exchange further believes the proposed modifications to Remove Volume Tier 2 and Retail Volume Tier 1 will provide a reasonable means to encourage liquidity removing orders in Members' order flow to the Exchange and to incentivize Members to continue to provide liquidity removing volume to the Exchange by offering them an opportunity to receive a reduced fee/enhanced rebate on qualifying orders. Not only is the proposed criteria in proposed Remove Volume Tier 2 and Retail Volume 1 slightly less difficult than the criteria currently found in those tiers, the proposed criteria is not a significant departure from existing criteria, and is reasonably correlated to the reduced fee/enhanced rebates 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 proposal represents an equitable allocation of fees and rebates and is not unfairly discriminatory because all Members will be eligible for the proposed revised tiers and have the opportunity to meet the revised tiers' criteria and receive the corresponding reduced fee/enhanced rebate if such criteria are 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 and proposed Retail Volume Tier 1. The Exchange also notes that proposed changes will not adversely impact any Member's ability to qualify for reduced fees/enhanced rebates offered under other tiers. Should a Member not meet the proposed new criteria, the Member will merely not receive that corresponding reduced fee/enhanced rebate.

Item 4. 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 Remove Volume Tier 2 and Retail Volume Tier 1 will apply to all Members equally in that all Members are eligible for the proposed revised tiers, have a reasonable opportunity to meet the proposed tiers' criteria and will receive the reduced fee/enhanced rebate on their qualifying orders if such criteria is met. The Exchange does not believe the proposed changes burden competition, but rather, enhance competition as they are intended to increase the competitiveness of EDGX by amending an existing pricing incentive 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 16% of the market share.[19] 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

[19] Supra note 3.

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."[20] 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'...".[21] 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.

Item 5. <u>Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others</u>

The Exchange neither solicited nor received comments on the proposed rule change.

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

21 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) (SRNYSEArca-2006-21)).

Item 6. <u>Extension of Time Period for Commission Action</u>

Not applicable.

Item 7. <u>Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)</u>

(a) The proposed rule change is filed for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act[22] and Rule 19b-4(f)(2)[23] thereunder.

(b) The Exchange designates that the proposed rule change establishes or changes a due, fee, or other charge imposed by the Exchange, which renders the proposed rule change effective upon filing with the Securities and Exchange Commission (the "Commission"). At any time within 60 days of the filing of this 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.

(c) Not applicable.

(d) Not applicable.

Item 8. <u>Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission</u>

The proposed rule change is not based on a rule either of another self-regulatory organization or of the Commission.

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22 15 U.S.C. 78s(b)(3)(A).

23 17 CFR 240.19b-4(f)(2).

Item 9. **Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act**

Not applicable.

Item 10. **Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act**

Not applicable.

Item 11. **Exhibits**

Exhibit 1. Completed Notice of Proposed Rule Change for publication in the

Exhibit 2-4. Not applicable

Exhibit 5. Proposed rule text.