SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-90604; File No. SR-CboeEDGX-2020-060)

December 8, 2020

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend its Fees Schedule

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on December 3, 2020, Cboe EDGX Exchange, Inc. (the "Exchange" or "EDGX") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the "Exchange" or "EDGX") is filing with the Securities and Exchange Commission ("Commission") a proposed rule change to amend the 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.

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

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 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") by amending (1) Retail Volume Tiers, (2) modifying Fee Codes EA and ER and (3) eliminating unused fee codes[3].

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues that do not have similar self-regulatory responsibilities under the Exchange Act, to which market participants may direct their order flow. Based on publicly available information,[4] no single registered equities exchange has more than 16% of the

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3 The Exchange initially filed the proposed fee changes on December 1, 2020 (SR-CboeEDGX-2020-059). On December 3, 2020, the Exchange withdrew that filing and submitted this proposal.

4 See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (November 27, 2020), available at https://markets.cboe.com/us/equities/market_statistics/.

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 credits to members that provide 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 priced at or above $1.00, the Exchange provides a standard rebate of $0.00160 per share for orders that add liquidity, assesses a standard fee of $0.00270 per share for orders that remove liquidity and assesses a standard fee of $0.0030 for orders that are routed. For orders priced below $1.00, the Exchange a standard rebate of $0.00009 per share for orders that add liquidity, assesses a fee of 0.30% of Dollar Value for orders that remove liquidity and for orders that are routed. 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.

<u>Retail Volume Tiers</u>

Pursuant to footnote 3 of the fee schedule, the Exchange currently offers Retail Volume Tiers which provide Retail Member Organizations ("RMOs")[5] an opportunity to receive an enhanced rebate from the standard rebate for Retail Orders[6] that add liquidity (i.e., yielding fee code

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[5] 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. <u>See</u> EDGX Rule 11.21(a)(1).

[6] 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

"ZA"[7]). Currently, the Retail Volume Tiers offer three levels of criteria difficulty and incentive opportunities in which RMOs may qualify for enhanced rebates for Retail Orders. The tier structure is designed to encourage RMOs to increase their order flow in order to receive an enhanced rebate on their liquidity adding orders, and the Exchange now proposes to amend existing Retail Volume Tiers 1, 2 and 3. The current Retail Volume Tiers are as follows:

- Tier 1 provides an enhanced rebate of $0.0034 for a Member's qualifying orders (i.e., yielding fee code ZA) where a Member adds a Retail Order ADV[8] (i.e., yielding fee code ZA) greater than or equal to 0.35% of the TCV[9].
- Tier 2 provides an enhanced rebate of $0.0037 for a Member's qualifying orders (i.e., yielding fee code ZA) where a Member (1) has a Retail Step-Up Add TCV[10] (i.e. yielding fee code ZA) from May 2020 greater than or equal to 0.10% and (2) removes a Retail Order ADV (i.e., yielding fee code ZR) greater than or equal to 0.15% of the TCV.
- Tier 3 provides an enhanced rebate of $0.0036 for a Member's qualifying orders (i.e., yielding fee code ZA) where a Member adds a Retail Order ADV (i.e. yielding fee code ZA) greater than or equal to 0.60% of the TCV.

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with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. See EDGX Rule 11.21(a)(2).

7 Appended to Retail Orders that add liquidity to EDGX and offered a rebate of $0.0032 per share.

8 "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.

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.

10 "Step-Up Add TCV" means ADAV as a percentage of TCV in the relevant baseline month subtracted from current ADAV as a percentage of TCV.

The Exchange proposes to update the criteria in Retail Volume Tier 2, adopt new Retail Volume Tier 4 and renumber Retail Volume Tiers 2 and 3. First, the Exchange proposes to ease the criteria under Retail Volume Tier 2. Particularly, to meet the proposed criteria in Tier 2 a Member must continue to satisfy the first prong of Retail Volume Tier 2 but also remove an ADV greater than or equal to 0.70% of the TCV (instead of removing Retail Order ADV greater than or equal to 0.15%). The Exchange also proposes to adopt a new Retail Volume Tier 4 which would provide a rebate of $0.0037 per share where a Member (1) has a Retail Step-Up Add TCV[11] (i.e. yielding fee code ZA) from July 2020 greater than or equal to 0.05% and (2) adds a Retail Order ADV (i.e., yielding fee code ZA) greater than or equal to 0.40% of the TCV. The Exchange also proposes to switch the order of current Retail Volume Tiers 2 and 3 such that Retail Volume Tier 2 becomes Retail Volume Tier 3 and Retail Volume Tier 3 becomes Retail Volume Tier 2. The proposed change would provide that the Retail Volume Tiers would be in ascending order with respect to the available rebates, which the Exchange believes would alleviate potential confusion and make the table easier for market participants to follow.

The Exchange notes Retail Volume Tier 2, as modified, continues to be available to all RMOs and provide RMOs an opportunity to receive an enhanced rebate. Moreover, the proposed change to Retail Volume Tier 2 and the proposed new Retail Volume Tier 4 are both designed to encourage RMOs to increase retail order flow on the Exchange, which further contributes to a deeper, more liquid market and provides even more execution opportunities for active market participants at improved prices.

<u>Fee Codes EA and ER</u>

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11 "Step-Up Add TCV" means ADAV as a percentage of TCV in the relevant baseline month subtracted from current ADAV as a percentage of TCV.

The Exchange proposes to amend fee codes EA and ER which are appended to Internalized Trades. An Internalized Trade is a trade where the two orders inadvertently match against each other and share the same Market Participant Identifier ("MPID"). Fee code EA is appended to the side of an Internalized Trade that adds liquidity, while fee code ER is appended to the side of an Internalized Trade that removes liquidity. Orders that yield fee codes EA or ER are currently charged a fee of $0.00050 per share in securities priced at or above $1.00 and 0.15% of the dollar value of the trade in securities priced below $1.00. The Exchange proposes to provide that both fee codes apply to Displayed orders only. The proposed rule change would allow Non-Displayed orders that inadvertently match against each other and share the same MPID to be eligible to receive better prices, including rebates applicable to Non-Displayed orders that add liquidity[12].

Elimination of Certain Routing Fee Codes

The Exchange assesses fees in connection with orders routed away to various exchanges. The Exchange proposes to eliminate several routing-related fee codes that have been unused for several years. Particularly, the Exchange proposes to eliminate the following fee codes:

- Fee Code 9, which is appended to orders routed to NYSE Arca and adds liquidity (Tapes A or C) and provides a rebate of $0.00210 per share for securities priced at or above $1.00 and are free for securities priced below $1.00;
- Fee Code NB, which is appended to orders routed to any exchange not covered by Fee Code NA and adds non-displayed liquidity and assesses a fee of $0.00300 per

12 See e.g., Cboe EDGX Equities Fees Schedule, Fee Code HA which provides Non-Displayed orders that add liquidity a rebate of $0.00100 and Footnote 1 which provides for 3 incentive tiers applicable to Non-Displayed Orders.

share for securities priced at or above $1.00 and a fee of 0.30% of dollar value for securities priced below $1.00;

- Fee Code R, which is appended to orders re-routed by NYSE and assesses a fee of 0.00300 per share for securities priced at or above $1.00 and a fee of 0.30% of dollar value for securities priced below $1.00;
- Fee Code RA, which is appended to orders re-routed to EDGA and adds liquidity and assess a fee of 0.00300 per share for securities priced at or above $1.00 and are free for securities priced below $1.00; and
- Fee Code RB, which is appended to orders routed to BX and adds liquidity and assess a fee of 0.00200 per share for securities priced at or above $1.00 and are free for securities priced below $1.00.

As noted, above the Exchange has observed no volume in recent years in orders yielding fee codes 9, NB, R, RA and RB. The Exchange believes that because no Members elect to route their orders that yield these fee codes, the current demand (or lack thereof) does not warrant the infrastructure and ongoing Systems maintenance required to support separate fee codes specifically applicable to these types of transactions. Therefore, the Exchange now proposes to delete fee codes 9, NB, R, RA and RB in the Fee Schedule. The Exchange notes that Members will continue to be able to choose to route their orders to any exchange covered by these fee codes and such orders will be automatically and uniformly assessed the current fees (or rebates) in place for routed orders, as applicable (e.g., the standard fees applied to routed orders, which yields fee code X).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[13] in general, and furthers the objectives of Section 6(b)(4),[14] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members, issuers and other persons using its facilities. 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 proposed rule changes reflect 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.

In particular, the Exchange believes the proposed changes to Retail Volume Tier 2 (to be renumbered to Retail Volume Tier 3) are reasonable because the tier, as modified, continues to be available to all RMOs and provides RMOs an opportunity to receive an enhanced rebate using less stringent criteria. Similarly, the Exchange believes Retail Volume Tier 4 provides an additional opportunity for RMOs to receive an enhanced rebate if they meet the proposed criteria. The Exchange next notes that relative volume-based incentives and discounts have been widely adopted by exchanges, including the Exchange, and are reasonable, equitable and non-discriminatory because they are open to all Members (and RMOs as applicable) 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. Additionally, as noted above, the Exchange

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13 15 U.S.C. 78f.

14 15 U.S.C. 78f(b)(4).

operates in a highly competitive market. The Exchange is only one of several equity venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. It is also only one of several maker-taker exchanges. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume thresholds. These competing pricing schedules, moreover, are presently comparable to those that the Exchange provides, including the pricing of comparable tiers.

The Exchange also believes that the current enhanced rebates under Retail Volume Tier 2, along with the proposed new rebate under Retail Volume Tier 4 are commensurate with the proposed criteria. That is, these rebates reasonably reflect the difficulty in achieving the corresponding criteria as amended.

The Exchange believes that the proposal relating to the Retail Volume Tiers also represents an equitable allocation of rebates and is not unfairly discriminatory because all RMOs will continue to be eligible for each Retail Volume Tier. The proposed changes are designed as an incentive to any and all RMOs interested in meeting the tier criteria, as amended to submit additional adding and/or removing, or Retail, order flow to the Exchange. The Exchange notes that greater add volume order flow provides for deeper, more liquid markets and execution opportunities, and greater remove volume order flow increases transactions on the Exchange, which incentivizes liquidity providers to submit additional liquidity and execution opportunities, thus, providing an overall increase in price discovery and transparency on the Exchange. Also, an increase in Retail Order flow, which orders are generally submitted in smaller sizes, tends to attract Market-Makers, as smaller size orders are easier to hedge. Increased Market-Maker activity facilitates tighter spreads, signaling an additional corresponding increase in order flow from other market participants, which contributes towards a robust, well-balanced market ecosystem. Increased overall order flow benefits all investors by deepening the Exchange's liquidity pool, potentially providing even greater execution incentives and opportunities, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. The Exchange also notes all RMOs will continue to have the opportunity to submit the requisite order flow and will receive the applicable enhanced rebate if the tier criteria is met. The Exchange additionally notes that while the Retail Volume Tiers are applicable only to RMOs, the Exchange does not believe this application is discriminatory as the Exchange offers similar rebates to non-RMO order flow.[15]

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 RMOs qualifying for the proposed amended tier. The Exchange notes that most recently, one Member satisfied Retail Volume Tier 2. While the Exchange has no way of predicting with certainty how the proposed tier will impact Member activity, the Exchange anticipates that at least one Member will be able to satisfy Retail Volume Tier 2 (as amended). The Exchange also anticipates that approximately two Members will be able to satisfy new Retail Volume Tier 4. The Exchange also notes that the proposed amended tiers will not adversely impact any RMO's ability to qualify for other rebate tiers. Rather, should an RMO not meet the criteria for Retail Volume Tier 2, as amended, or Retail Volume Tier 4 as proposed, the RMO will merely not

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15 Such as the other Add/Remove Volume Tiers under Footnote 1 of the EDGX Fees Schedule which provide opportunities to all Members to submit the requisite order flow to receive an enhanced rebate.

receive the corresponding proposed enhanced rebate. Furthermore, the rebates under each Retail Volume Tiers would uniformly apply to all RMOs that meet the required criteria.

The Exchange believes renumbering Retail Volume Tiers 2 and 3 will eliminate potential confusion and make the Fees Schedule easier to read by organizing the Retail Volume Tier program in ascending order with respect to available rebates.

The Exchange believes it's reasonable to exclude non-displayed orders from Fee Codes EA and ER as such orders would then be eligible to receive better prices, including rebates applicable to Non-Displayed orders that add liquidity.[16] The Exchange notes that other exchanges do not require Non-Displayed orders that match against each other and share the same MPID to be subject to specific internalization fees, but rather are treated the same as other non-displayed transactions.[17] The Exchange believes the proposed change is equitable and not unfairly discriminatory because it applies equally to all Members.

The Exchange also believes the proposed rule change to remove fee codes 9, NB, R, RA and RB is reasonable as the Exchange has observed no volume in orders yielding these fee codes and, therefore, the Exchange believes the proposed change will have a de minimis impact. Additionally, the Exchange believes that infrastructure and ongoing Systems maintenance required to support separate fee codes specifically applicable to these types of routed orders is not warranted or necessary in light of the fact that it has not received any recent volume yielding these fee codes. As noted above, to the extent volume for transactions currently covered by these fee codes ever increases, such orders will be automatically and uniformly assessed the current

16 See e.g., Cboe EDGX Equities Fees Schedule, Fee Code HA which provides Non-Displayed orders that add liquidity a rebate of $0.00100 and Footnote 1 which provides for 3 incentive tiers applicable to Non-Displayed Orders.

17 See e.g., Cboe BZX Equities Fees Schedule, Cboe BYX Equities Fees Schedule and Cboe EDGA Fees Schedule.

fees (or rebates) in place for routed orders, as applicable (e.g., the standard fees applied to routed orders, which yield fee code X). Finally, the Exchange believes that the proposed elimination of the fee codes is equitable and not unfairly discriminatory as it applies equally to all members that use the Exchange to route orders. If members do not favor the Exchange's pricing for routed orders, they can send their routable orders directly to away markets instead of using routing functionality provided by the Exchange. Routing through the Exchange is voluntary, and the Exchange operates in a competitive environment where market participants can readily direct order flow to competing venues or providers of routing services if they deem fee levels to be excessive.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Rather, as discussed above, the Exchange believes that the proposed change 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 change furthers 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 change 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 changes to the Retail Volume Tier program apply to all RMOs equally in that all RMOs are eligible for those tiers, have a reasonable opportunity to meet the tiers' criteria and will receive the enhanced rebates if such criteria are met. Additionally, the proposed tiers are designed to attract additional order flow to the Exchange. The Exchange believes that the updated tier criteria would incentivize market participants to direct liquidity adding and/or removing order flow to the Exchange, bringing with it 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. Additionally, the proposed change to fee codes EA, ER and the proposal to remove unused routing-related fee codes apply equally to all Members.

Next, the Exchange believes the proposed rule change 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 15 other equities exchanges and 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. 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." 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'….". 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[18] and paragraph (f) of Rule 19b-4[19] 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

18 15 U.S.C. 78s(b)(3)(A).

19 17 CFR 240.19b-4(f).

Commission takes such action, the Commission will institute proceedings to to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CboeEDGX-2020-060 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-2020-060. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m.

and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeEDGX-2020-060 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

J. Matthew DeLesDernier
Assistant Secretary

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[20] 17 CFR 200.30-3(a)(12).