

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-100501; File No. SR-CboeEDGX-2024-042)

July 11, 2024

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 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 1, 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 and II below, which Items have been prepared by the self-regulatory organization. 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 Fees 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Fees Schedule, effective July 1, 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 17 options venues to which market participants may direct their order flow. Based on publicly available information, no single options exchange has more than 15% of the market share.³ Thus, in such a low-concentrated and highly competitive market, no single options exchange, including the Exchange, possesses significant pricing power in the execution of option order flow. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain the Exchange’s transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

The Exchange’s Fees Schedule sets forth standard rebates and rates applied per contract. For example, the Exchange provides standard rebates ranging from \$0.01 up to \$0.22 per contract for Customer orders in Penny and Non-Penny Securities. The Fee Codes and Associated Fees section of the Fees Schedule also provides for certain fee codes associated with certain

³ See Cboe Global Markets U.S. Options Market Monthly Volume Summary (June 26, 2024), available at https://markets.cboe.com/us/options/market_statistics/.

order types and market participants that provide for various other fees or rebates. For example, the Exchange provides a rebate of \$0.01 per contract for Customer orders that remove liquidity, in Non-Penny Securities, yielding fee code NC; provides a rebate of \$0.01 per contract for Customer orders that remove liquidity, in Penny Securities, yielding fee code PC; and provides a rebate of \$0.01 per contract for Customer (contra Non-Customer) orders that add liquidity, yielding fee code CA.

Customer Volume Tiers

The Exchange proposes to amend Footnote 1 (Customer Volume Tiers), applicable to orders yielding fee codes PC, NC, and CA.⁴ Pursuant to Footnote 1 of the Fee Schedule, the Exchange currently offers five Customer Volume Tiers that provide rebates between \$0.10 and \$0.22 per contract for qualifying customer orders yielding fee codes PC, NC and CA where a Member meets required criteria. The Exchange proposes to amend this Customer Volume Tier program to add a new Customer Volume Tier, specifically a Customer Cross-Asset Tier, which requires participation on the Exchange's equities platform ("EDGX Equities"). Under the proposed tier, the Exchange would provide a rebate of \$0.18 per contract if a Member has (1) an ADV in Customer orders of $\geq 1.75\%$ of average OCV; (2) an ADAV in Simple Customer Non-Crossing orders yielding fee code CA $\geq 0.55\%$ of average OCV; (3) an ADV in Firm orders $\geq 0.20\%$ of average OCV; and (4) has on EDGX Equities an ADAV $\geq 0.45\%$ of average TCV.⁵

The Exchange believes that the proposed changes to the Customer Volume Tier program are designed overall to incentivize more Customer order flow and to direct an increase of order

⁴ As part of the proposed rule change, the Exchange proposes to amend "Required Criteria" language in Tiers 3, 4, and 5 to conform to new proposed language in Tier 6 and list "yielding fee code CA" directly within the requirements (rather than in a parenthetical).

⁵ The Exchange notes that the Fee Codes and Associated Fees table already includes a reference to a rebate of \$0.18 for fee codes PC and NC (as such amount is also offered under Tier 4 of the Customer Volume Tiers) and as such, no further updates are required with respect to the Fee Codes and Associated Fees table.

flow to the EDGX Options Order Book. The Exchange believes that an increase in Customer order flow and overall order flow to the Exchange's Book creates more trading opportunities, which, in turn attracts Market Makers. A resulting increase in Market Maker activity may facilitate tighter spreads, which may lead to an additional increase of order flow from other market participants, further contributing to a deeper, more liquid market to the benefit of all market participants by creating a more robust and well-balanced market ecosystem.

2. 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.⁶ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁷ 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)⁸ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,⁹ which

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

⁸ Id.

⁹ 15 U.S.C. 78f(b)(4).

requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities.

In particular, the Exchange believes the proposed change to the Customer Volume Tier program is reasonable because it provides an additional opportunity for Members to receive a rebate by providing alternative criteria for which they can reach. The Exchange notes that volume-based incentives and discounts have been widely adopted by exchanges,¹⁰ including the Exchange,¹¹ and are reasonable, equitable and non-discriminatory because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to (i) the value to an exchange's market quality and (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns. Additionally, as noted above, the Exchange operates in a highly competitive market. The Exchange is only one of several options venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. Competing options 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 and/or growth thresholds. These competing pricing schedules, moreover, are presently comparable to those that the Exchange provides.

Moreover, the Exchange believes the proposed Customer Cross-Asset Tier is a reasonable means to encourage Members to increase their liquidity on the Exchange and also their participation on EDGX Equities. The Exchange believes that adopting tiers with alternative criteria to the existing Customer Volume Tiers may encourage those Members who could not

¹⁰ See e.g., Cboe BZX U.S. Options Exchange Fee Schedule, Footnote 1, Customer Penny Add Volume Tiers, which provide enhanced rebates between \$0.35 and \$0.53 per contract for certain Customer Penny orders where Members meet certain volume thresholds.

¹¹ See e.g., Cboe EDGX U.S. Options Exchange Fee Schedule, Footnote 2, Market Maker Volume Tiers which provide enhanced rebates for certain Market Maker Penny and Non-Penny orders where Members meet certain volume thresholds.

previously achieve the criteria under existing Customer Volume Tiers to increase their order flow on EDGX Options and Equities.

For example, the proposed Customer Cross-Asset Tier would provide an opportunity for Members who have an ADAV in Simple Customer Non-Crossing orders yielding fee code CA of at least 0.55% of average OCV, but less than the more stringent 0.65% of average OCV (the requirement under current Tier 4) or the more stringent 1.25% of average OCV (the requirement under current Tier 5) orders of at least 0.20% of average OCV and have an ADV in Customer orders of at least 1.75% of average OCV, but less than the more stringent 2.00% of average OCV (the requirement under current Tier 5), to receive a higher rebate than they may currently receive but equal or slightly lower than the rebate they would receive for reaching the more stringent criteria under current Tiers 4 and 5, if they also meet the other threshold requirements, including the threshold requirement based on EDGX Equities participation. Similarly, for Members that participate on both EDGX Options and Equities, and do not currently meet the thresholds under current tiers, but can or do meet the proposed equities thresholds, the proposed tier may incentivize those participants to grow their options volume in order to receive enhanced rebates. Increased liquidity benefits all investors by deepening the Exchange's liquidity pool, 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 believes that proposed enhanced rebate is reasonable based on the difficulty of satisfying the tier's criteria and ensures the proposed rebate and thresholds appropriately reflect the incremental difficulty to achieve the existing Customer Volume Tiers.

The proposed enhanced rebate amounts also do not represent a significant departure from the enhanced rebates currently offered under the Exchange's existing Customer Volume Tiers.

Indeed, the proposed enhanced rebate amount under the proposed Customer Cross-Asset Tier (\$0.18) is incrementally higher than current Tiers 1, 2, and 3 (\$0.10, \$0.13, and \$0.17, respectively), which the Exchange believes offer slightly less stringent criteria than the proposed Customer Cross-Asset Tier, but is incrementally lower than the rebate offered under existing Tier 5 (\$0.22), which the Exchange believes is more stringent than the proposed criteria under the proposed Customer Cross-Asset Tier. Similarly, the proposed enhanced rebate amount under the proposed Customer Cross-Asset Tier (\$0.18) is the same as current Tier 4 (\$0.18), which the Exchange believes reflects a similar level of difficulty but using alternative types of criteria. The Exchange also notes that the proposed rebate remains within the range of the enhanced rebates offered under the current Customer Volume Tiers (i.e., \$0.10 - \$0.22).

As noted above, the Exchange believes that the proposed changes to the Customer Volume Tier program will incentivize more Customer order flow and direct an increase of order flow to the EDGX Options Order Book. The Exchange believes that an increase in Customer order flow and overall order flow to the Exchange's Book creates more trading opportunities, which, in turn attracts Market Makers. The Exchange notes that increased Market Maker activity, particularly, facilitates tighter spreads and an increase in overall liquidity provider activity, both of which signal additional corresponding increase in order flow from other market participants, contributing towards a robust, well-balanced market ecosystem. Indeed, increased overall order flow benefits investors across both the Exchange's options and equities platforms by continuing to deepen 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 believes that the proposal represents an equitable allocation of fees and is not unfairly discriminatory because it applies uniformly to all Members. While the Exchange has no way of knowing whether this proposed rule change would definitively result in any particular Market Maker qualifying for the proposed tiers, the Exchange anticipates that approximately one Market Maker will be able to compete for and achieve the proposed criteria of the Customer Cross-Asset Tier; however, the proposed tier is open to any Market Maker that satisfies the tier's criteria. The Exchange believes the proposed tier could provide an incentive for other Members to submit additional liquidity on EDGX Options and Equities to qualify for the proposed enhanced rebates. To the extent a Member participates on the Exchange but not on EDGX Equities, the Exchange does believe that the proposal is still reasonable, equitably allocated and non-discriminatory with respect to such Member based on the overall benefit to the Exchange resulting from the success of EDGX Equities. Particularly, the Exchange believes such success allows the Exchange to continue to provide and potentially expand its existing incentive programs to the benefit of all participants on the Exchange, whether they participate on EDGX Equities or not. The proposed pricing program is also fair and equitable in that membership in EDGX Equities is available to all market participants, which would provide them with access to the benefits on EDGX Equities provided by the proposed change, even where a member of EDGX Equities is not necessarily eligible for the proposed enhanced rebates on the Exchange.

The Exchange also notes that it does not believe the proposed tier will adversely impact any Member's pricing or ability to qualify for other tiers. Rather, should a Member not meet the proposed criteria, the Member will merely not receive the proposed enhanced rebate, and has five alternative choices to aim to achieve under the Customer Volume Tiers. Furthermore, the proposed enhanced rebate would apply to all Members that meet the required criteria under

proposed tier.

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. The Exchange does not believe the proposed changes to the Customer Volume Tiers will impose any burden on intramarket competition. Particularly, the proposed change applies uniformly to all Members. As discussed above, to the extent a Member participates on the Exchange but not on EDGX Equities, the Exchange notes that the proposed changes can provide an overall benefit to the Exchange resulting from the success of EDGX Equities. Such success enables the Exchange to continue to provide and potentially expand its existing incentive programs to the benefit of all participants on the Exchange, whether they participate on EDGX Equities or not. The proposed pricing program is also fair and equitable in that membership in EDGX Equities is available to all market participants. Additionally, the proposed change is designed to attract additional order flow to the Exchange and EDGX Equities. Greater liquidity benefits all market participants on the Exchange by providing more trading opportunities and encourages Members to send orders, thereby contributing to robust levels of liquidity, which benefits all market participant. 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."¹²

The Exchange does not believe that the proposed rule changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the

¹² Securities Exchange Act Release No. 51808, 70 FR 37495, 37498-99 (June 29, 2005) (S7-10-04) (Final Rule).

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 16 other options exchanges and off-exchange venues. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single options exchange has more than 15% of the market share.¹³ Therefore, no exchange possesses significant pricing power in the execution of option 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.”¹⁴ 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’”¹⁵ Accordingly, the Exchange does not believe

¹³ See *supra* note 3.

¹⁴ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

¹⁵ *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No.

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 Act¹⁶ and paragraph (f) of Rule 19b-4¹⁷ 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.

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-2024-042 on the subject line.

59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 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-2024-042. 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-2024-042 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.¹⁸

J. Matthew DeLesDernier,

Deputy Secretary.

¹⁸ 17 CFR 200.30-3(a)(12).