

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-96356; File No. SR-CboeEDGX-2022-050)

November 18, 2022

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”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 10, 2022, Cboe EDGX Exchange, Inc. (the “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/](http://markets.cboe.com/us/options/regulation/rule_filings/edgx/)), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in

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

<sup>2</sup> 17 CFR 240.19b-4.

Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule applicable to its equities trading platform (“EDGX Equities”) as follows: 1) to amend the standard rebate for orders yielding fee codes DM,<sup>3</sup> HA,<sup>4</sup> MM,<sup>5</sup> or RP;<sup>6</sup> 2) to introduce a new Growth Tier, a new Non-Displayed Step-Up Volume Tier, and a new Retail Growth Tier; 3) to modify the rebate under the Non-Displayed Add Volume Tier 2, and 4) to add clarifying language to the description of fee code X.<sup>7</sup> The Exchange proposes to implement these changes effective November 1, 2022.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues that do not have similar self-regulatory responsibilities under the Securities Exchange Act of 1934 (the “Act”), to which market participants may direct their order flow. Based on publicly available information,<sup>8</sup> no single registered equities exchange

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<sup>3</sup> Fee code DM is appended on orders adding liquidity using the midpoint discretionary order within discretionary range.

<sup>4</sup> Fee code HA is appended to non-displayed orders adding liquidity.

<sup>5</sup> Fee code MM is appended to non-displayed orders adding liquidity using the mid-point peg.

<sup>6</sup> Fee code RP is appended to non-displayed orders adding liquidity using the supplemental peg.

<sup>7</sup> Fee code X is appended to routed orders.

<sup>8</sup> See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date

has more than 15% 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. 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. 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.

First, the Exchange proposes to reduce the rebate applied to certain non-displayed orders. Specifically, the Exchange proposes to reduce the rebate of \$0.0010 per share to \$0.0008 per share for orders yielding fee code DM, HA, MM, or RP.

Second, the Exchange proposes to add two new tiers to the Add/Remove Volume Tiers provided under footnote 1 of the Fee Schedule and one new tier to the Retail Volume Tiers provided under footnote 2 of the Fee Schedule. Specifically, the Exchange proposes to adopt the Growth Tier 5 and Non-Displayed Step-Up Volume Tier 3 under the footnote 1, and the Retail

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(October 24, 2022), available at [https://www.cboe.com/us/equities/market\\_statistics/](https://www.cboe.com/us/equities/market_statistics/).

Growth Tier 2 under footnote 2. The Growth Tiers, Non-Displayed Step-Up Volume Tiers, and Retail Growth Tiers each provide an enhanced rebate for Members' qualifying orders where a Member reaches certain add volume-based criteria, including "growing" its volume over a certain baseline month. The Growth Tiers are applicable to liquidity adding orders yielding fee B,<sup>9</sup> V,<sup>10</sup> Y,<sup>11</sup> 3,<sup>12</sup> and 4,<sup>13</sup> the Non-Displayed Step-Up Volume Tiers are applicable to non-displayed orders yielding DM, HA, MM and RP, and the Retail Growth Tiers are applicable to retail orders yielding fee codes ZA<sup>14</sup> and ZO.<sup>15</sup> The proposed criteria for each of the proposed tiers is as follows:

(1) Member adds a Step-Up ADAV<sup>16</sup> from October 2022  $\geq$  0.15% of the TCV<sup>17</sup> or Member adds a Step-Up ADAV from October 2022  $\geq$  15,000,000; and

(2) Member has a total remove ADV  $\geq$  0.45% of TCV or Member has a total remove ADV  $\geq$  45,000,000.

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

<sup>10</sup> Fee code V is appended to orders adding liquidity to EDGX in Tape A securities.

<sup>11</sup> Fee code Y is appended to orders adding liquidity to EDGX in Tape C securities.

<sup>12</sup> Fee code 3 is appended to orders adding liquidity to EDGX in the pre and post market in Tapes A or C securities.

<sup>13</sup> Fee code 4 is appended to orders adding liquidity to EDGX in the pre and post market in Tape B securities.

<sup>14</sup> Fee code ZA is appended liquidity adding retail orders.

<sup>15</sup> Fee code ZO is appended to liquidity adding retail orders in the pre and post market.

<sup>16</sup> ADAV means average daily added volume calculated as the number of shares added per day ADAV is calculated on a monthly basis. Step-Up ADAV means ADAV in the relevant baseline month subtracted from current ADAV.

<sup>17</sup> TCV means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

While the proposed criteria is the same for each of the proposed new tiers, the Exchange proposes the following rebates: \$0.0034 per share to Members meeting Growth Tier 5, \$0.0026 per share to Members meeting Non-Displayed Step-Up Volume Tier 3, and \$0.0037 per share to Members meeting Retail Growth Tier 2. While the criteria of each of the proposed tiers is identical, the Exchange proposes different rebates for each of the tiers based on the type of order (i.e., liquidity adding displayed orders, liquidity adding non-displayed orders, and retail orders).

The Exchange next proposes to modify the Non-Displayed Add Volume Tier 2 under footnote 1 of the Fee Schedule. Specifically, the Exchange proposes to reduce the rebate from \$0.0022 per share to \$0.0020 per share to orders meeting the required criteria. The Exchange proposes no modifications to the required criteria of the tier.

Last, the Exchange proposes to clarify that fee code X is applicable to routed orders that add or remove liquidity. When certain fee codes were deleted from the Fee Schedule, the Exchange simultaneously proposed to update fee code X to make clear that it applies to all other routed orders that are not otherwise specified under other fee codes in the Fee Schedule.<sup>18</sup> However, the Exchange did not make clear in the fee code table that fee code X is therefore also applicable to orders that both add and remove liquidity.<sup>19</sup> Therefore, the Exchange is now proposing to add such language to the description of fee code X, as well as eliminate the reference to “Removing” liquidity in the Standard Rates header for the Routing Liquidity column (which is applicable to fee code X).

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<sup>18</sup> See Securities Exchange Act No. 91002 (January 27, 2021) 86 FR 7902 (February 2, 2021) (SR-CboeEDGX-2021-006).

<sup>19</sup> Under the Transaction Fees section of the Fee Schedule, bullet four provides “[u]nless otherwise noted, all routing fees or rebates in the Fee Codes and Associated Fees table are for removing liquidity from the destination venue.”

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>20</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>21</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>22</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers as well as Section 6(b)(4)<sup>23</sup> as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

As described above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The Exchange believes that its proposal to reduce the rebates applicable to fee codes DM, HA, MM, and RP is fair, equitable, and reasonable because the proposed rebate remains consistent with pricing offered by the

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<sup>20</sup> 15 U.S.C. 78f(b).

<sup>21</sup> 15 U.S.C. 78f(b)(5).

<sup>22</sup> Id.

<sup>23</sup> 15 U.S.C. 78f(b)(4)

Exchange's affiliates and competitors and does not represent a significant departure from the Exchange's general pricing structure. Specifically, the proposed rebate applicable to fee code DM, HA, MM, and RP are in-line with the rebates provided to similar non-displayed orders offered by the Nasdaq Stock Market LLC ("Nasdaq"), which provides rebates ranging from \$0.0010 (Tape C securities) to \$0.0014 (Tape A and B securities) for similar orders.<sup>24</sup> Therefore, the Exchange believes the proposed rebates associated with fee codes DM, HA, MM, and RP remain consistent with pricing previously offered by the Exchange and other exchanges and does not represent a significant departure from such pricing.

The proposal to adopt the Growth Tier 5, Non-Displayed Step-Up Volume Tier, and Retail Growth 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. While the criteria of each of the proposed tiers is identical, the Exchange proposes different rebates for each of the tiers based on the type of order (i.e., liquidity adding displayed orders, liquidity adding non-displayed orders, and retail orders). Additionally, the Exchange notes that relative volume-based incentives and discounts have been widely adopted by exchanges,<sup>25</sup> including the Exchange,<sup>26</sup> 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

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<sup>24</sup> See "Rebate to Add Non-Displayed Midpoint Liquidity (excluding buy (sell) orders with Midpoint pegging that receive an execution price that is lower (higher) than the midpoint of the NBBO" for firms that add less than 1 million shares of midpoint liquidity on the Nasdaq fee schedule at <http://nasdaqtrader.com/Trader.aspx?id=PriceListTrading2>.

<sup>25</sup> See e.g., BZX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

<sup>26</sup> See e.g., EDGX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

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 the proposed new tiers and the proposed change to reduce the rebate for Non-Displayed Add Volume Tier 2 are reasonable because they will be available to all Members and provide all Members with an additional opportunity to receive an enhanced rebate. The Exchange further believes the proposed Growth Tier 5, Non-Displayed Step-Up Volume Tier, and Retail Growth Tier 2 as well as the existing Non-Displayed Add Volume Tier will provide a reasonable means to encourage liquidity adding displayed orders, liquidity adding non-displayed orders, and retail orders, respectively, in Members' order flow to the Exchange and to incentivize Members to continue to provide liquidity adding volume to the Exchange by offering them an additional opportunity to receive an enhanced rebate on qualifying orders. An overall increase in activity would deepen the Exchange's liquidity pool, offers additional cost savings, support the quality of price discovery, promote market transparency and improve market quality, for all investors.

The Exchange believes that the proposed changes are reasonable as it does not represent a significant departure from the criteria currently offered in the Fee Schedule. Specifically, the proposed new tiers have criteria similar to the existing Growth Tier 4, albeit with more stringent criteria that applies at the Member level rather than the MPID level. Nonetheless, the Exchange believes that the enhanced rebates under the proposed new tiers and the Non-Displayed Add Volume Tier are commensurate with the criteria and the type of order flow associated with the applicable tier by allowing for Member level activity to become eligible for the rebate instead of

only MPID level activity. The Exchange also believes that the proposal represents an equitable allocation of fees and rebates and is not unfairly discriminatory because all Members will be eligible for the proposed new tiers and have the opportunity to meet the tiers' criteria and receive the corresponding enhanced rebate if such criteria is met. Without having a view of activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would definitely result in any Members qualifying the new proposed tiers. While the Exchange has no way of predicting with certainty how the proposed changes will impact Member activity, based on the prior months volume, the Exchange anticipates that at least one Member will be able to satisfy the criteria proposed under each proposed new tier. 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.

Finally, the Exchange believes the proposal to modify fee code X to explicitly provide that it is applicable to routed orders that add and remove liquidity on the destination exchange is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Specifically, the proposal is intended only to make a clarifying change to the Fee Schedule and involves no substantive change.

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 change to the Non-Displayed Add Volume Tier 2 and the proposed new Growth Tier 5, Non-Displayed Step-Up Volume Tier, and Retail Growth Tier 2 will apply to all Members equally in that all Members are eligible for each of the Tiers, have a reasonable opportunity to meet the Tiers’ criteria and will receive the enhanced rebate on their qualifying orders if such criteria is met. The Exchange does not believe the proposed changes burdens 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 does not believe the proposal to decrease the rebate associated with fee codes DM, HA, MM, or RP represent a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange’s competitors. Members may opt to disfavor the Exchange’s pricing if they believe that alternatives offer them better value. Accordingly, the

Exchange does not believe that the proposed change will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets.

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 15% of the market share.<sup>27</sup> Therefore, no exchange possesses significant pricing power in the execution of order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>28</sup> The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and

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<sup>27</sup> Supra note 8.

<sup>28</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’....”<sup>29</sup> Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Finally, the Exchange believes its proposal to clarify that fee code X is applicable to liquidity adding and removing orders will have no impact on competition as it involves no substantive change to the existing Fee Schedule.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

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

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>30</sup> and paragraph (f) of Rule 19b-4<sup>31</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, 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.

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<sup>29</sup> NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

<sup>30</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>31</sup> 17 CFR 240.19b-4(f).

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-CboeEDGX-2022-050 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-2022-050. 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-2022-050 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.<sup>32</sup>

Sherry R. Haywood,  
Assistant Secretary.

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<sup>32</sup> 17 CFR 200.30-3(a)(12).