

OMB APPROVAL

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Page 1 of * 26

SECURITIES AND EXCHANGE COMMISSION
 WASHINGTON, D.C. 20549
 Form 19b-4

File No.* SR - 2019 - * 045

Amendment No. (req. for Amendments *)

Filing by Cboe EDGX Exchange, Inc.

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Pilot <input type="checkbox"/> Extension of Time Period for Commission Action * <input type="checkbox"/> Date Expires * <input type="text"/>			Rule <input type="checkbox"/> 19b-4(f)(1) <input type="checkbox"/> 19b-4(f)(4) <input checked="" type="checkbox"/> 19b-4(f)(2) <input type="checkbox"/> 19b-4(f)(5) <input type="checkbox"/> 19b-4(f)(3) <input type="checkbox"/> 19b-4(f)(6)		

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) *

☐

Section 806(e)(2) *

☐

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934

Section 3C(b)(2) *

☐

Exhibit 2 Sent As Paper Document



Exhibit 3 Sent As Paper Document



Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

The Exchange proposes change to amend the Exchange's fee schedule applicable to its equities trading platform ("EDGX Equities") to adopt a "Retail Volume Tier" for firms that execute a significant volume of liquidity providing retail order flow on EDGX.

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Corinne Last Name * Klott
 Title * Assistant General Counsel
 E-mail * ckloft@cboe.com
 Telephone * (312) 786-7793 Fax

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title *)

Date 07/01/2019

By Corinne Klott

(Name *)

Assistant General Counsel

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

ckloft@cboe.com

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFT website.

Form 19b-4 Information *

Add Remove View

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

Add Remove View

Exhibit Sent As Paper Document

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² Cboe EDGX Exchange, Inc. (“EDGX” or the “Exchange”) is filing with the Securities and Exchange Commission (the “Commission”) a proposed rule change to amend the Exchange’s fee schedule applicable to its equities trading platform (“EDGX Equities”) to adopt a “Retail Volume Tier” for firms that execute a significant volume of liquidity providing retail order flow on EDGX.

The text of the proposed changes to the fee schedule are attached as Exhibit 5.

The text of the proposed rule change is available on the Exchange’s website at <http://markets.cboe.com/>, at the Exchange’s principal office and at the Public Reference Room of the Commission.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

(a) The Exchange’s President (or designee) pursuant to delegated authority approved the proposed rule change on July 1, 2019.

(b) Please refer questions and comments on the proposed rule change to Patrick Sexton, Executive Vice President, General Counsel, and Corporate Secretary, (312) 786-7462, or Corinne Klott, Assistant General Counsel, (312) 786-7793.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

(a) Purpose

The purpose of the proposed rule change is to amend the EDGX Equities fee schedule to adopt a “Retail Volume Tier” for firms that execute a significant volume of liquidity providing retail order flow on EDGX, effective July 1, 2019. The Exchange believes the proposed change would encourage more liquidity and opportunities for investors to trade on the Exchange.

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 several equity venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. The competition for Retail Order flow is even more intense, particularly as it relates to exchange versus off-exchange venues. For example, the Exchange examined Rule 606 disclosures from three prominent retail brokerages: E-Trade, TD Ameritrade and Charles Schwab. For securities listed on the New York Stock Exchange LLC in the first quarter of 2019, TD Ameritrade routed 80% of its limit orders to off-exchange venues.³ Similarly, E-Trade Financial and Charles Schwab routed more than 77% and more than 90%,⁴ respectively, of its limit orders to off-exchange venues. This

³ See https://www.tdameritrade.com/retail-en_us/resources/pdf/AMTD2054.pdf.

⁴ See <https://content.etrade.com/etrade/powerpage/pdf/OrderRouting11AC6.pdf>.
See also https://www.schwab.com/public/schwab/nn/legal_compliance/important_notices/order_routing.html.

competition is particularly acute for non-marketable Retail Orders, i.e., Retail Orders that provide liquidity, and even more fiercely for non-marketable Retail Orders that provide displayed liquidity on an exchange. Accordingly, competitive forces compel the Exchange to use exchange transaction fees and credits, particularly as they relate to competing for Retail Order flow, because market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

For example, the Exchange provides special pricing for Retail Orders⁵ as an incentive for members to bring such orders to EDGX instead of another exchange or off-exchange venue. Specifically, Retail Orders priced at or above \$1.00 that add liquidity and yield fee code ZA⁶ currently benefit from an enhanced rebate of \$0.00320 per share (as compared to non-Retail Orders that add liquidity and receive a standard rebate of \$0.00170 per share). The Exchange is interested in attracting additional retail order flow, and therefore proposes to introduce a Retail Volume Tier that is designed to encourage even more retail participation. More specifically, the Retail Volume Tier would provide a further enhanced rebate to liquidity providing Retail Orders, provided that the member executes a specified average daily volume (“ADV”)⁷ in such orders on EDGX. As

⁵ See EDGX Rule 11.21(a)(1). 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 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). Retail Orders are submitted by a Retail Member Organization” or “RMO”, which is a member (or a division thereof) that has been approved by the Exchange to submit such orders.

⁶ “ZA” is associated with Retail Orders that add liquidity.

⁷ 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,

proposed, a Retail Order that adds liquidity under fee code ZA would be eligible for a rebate of \$0.0037 per share if the member's ADV in Retail Orders that add liquidity (i.e., yielding fee code ZA) is greater than or equal to 0.50% of Total Consolidated Volume ("TCV").⁸

(b) Statutory Basis

The Exchange believes that the proposed rule changes are consistent with the objectives of Section 6 of the Act,⁹ in general, and furthers the objectives of Section 6(b)(4),¹⁰ in particular, 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 and does not unfairly discriminate between customers, issuers, brokers or dealers. 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 change reflects a competitive pricing structure designed to incentivize market participants to direct their retail 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 tier is reasonable because it provides an opportunity for Members to receive an enhanced rebate for Retail Orders.

per day. ADV is calculated on a monthly basis. See Cboe EDGX U.S. Equities Exchange Fee Schedule.

⁸ 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.

⁹ 15 U.S.C. 78f.

¹⁰ 15 U.S.C. 78f(b)(4).

The Exchange notes that volume-based incentives and discounts have been widely adopted by exchanges¹¹, including the Exchange¹², 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 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. 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 and/or growth thresholds. These competing pricing schedules, moreover, are presently comparable to those that the Exchange provides.¹³

The Exchange currently provides pricing incentives to Retail Member Organizations that execute liquidity providing Retail Orders on EDGX, and desires to further enhance those incentives in order to encourage additional retail participation. The proposed Retail Volume Tier would achieve that result by providing a higher rebate to Retail Orders that provide liquidity if submitted by a member that executes a significant volume of liquidity providing Retail Orders on EDGX. The Exchange notes that NYSE

¹¹ See e.g., Cboe BZX U.S. Equities Exchange Fee Schedule, Footnote 1, Add Volume Tiers.

¹² See e.g., Cboe EDGX U.S. Equities Exchange Fee Schedule, Footnote 1, Add Volume Tiers.

¹³ See e.g., NYSE Arca Equities, Fees and Charges, Basic Rates, which assesses a standard credit of \$0.0030 per share for Retail Orders that add liquidity.

Arca, Inc. (“Arca”) also operates a similar volume-based rebate program that provides tiered rebates of up to \$0.0035 per share to attract retail order flow.¹⁴

The Exchange believes that the proposed Retail Volume Tier is reasonable and equitable as it would allow EDGX to effectively compete for retail order flow with Arca as well as other exchanges and the many off-exchange venues that execute the majority of retail order flow today. The Exchange believes that the current proposal, including the level of rebate and corresponding threshold, is appropriately designed to attract Retail Orders to EDGX given the high degree of competition for such orders in today’s market, which was discussed above. The Exchange believes that attracting liquidity in Retail Orders would incentivize other members to send order flow to EDGX to trade with such Retail Orders. In addition, the Exchange believes that this increased liquidity would potentially stimulate further price competition for Retail Orders, thereby deepening the Exchange’s liquidity pool in both and retail and other orders, supporting the quality of price discovery, and promoting market transparency.

The Exchange also believes that the proposed Retail Volume Tier is not unfairly discriminatory because it applies equally to all members that execute liquidity providing

¹⁴ See Arca Equities Fees and Charges, Trade Related Fees and Credits, Retail Order Tier and Retail Order Step-Up Tiers. Members receive an enhanced credit of \$0.0033 per share for Retail orders that provide liquidity to the books where a Member meets the criteria set forth in Retail Order Tier and Retail Order Step-Up Tier 1. Members receive an enhanced credit of \$0.0035 per share for Retail Orders that provide liquidity under Retail Order Step-Up Tier 2 where a Member meets the criteria set forth under the Tier. Specifically, the Member must (1) submit an average daily share volume per month of resting limit orders (i.e., provide liquidity) in an amount equal to or greater than 1.10% or more of US US Consolidated Average Daily Volume (“CADV”), and (2) execute during the month, Retail Orders with a time-in-force of Day that is an increase of 0.35% or more of the US CADV from the ETP Holder’s April 2018 ADV, taken as a percentage of US CADV.

Retail Orders and meet the specified volume threshold. Without having a view of Members' 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 for this tier. However, the Exchange believes the proposed tier will provide an incentive for Retail Member Organizations to increase retail order flow to EDGX. Retail Member Organizations that do not meet the proposed volume threshold would continue to earn the current rebate, which already provides a significant incentive for executing retail order flow on EDGX.

The Exchange believes that it is appropriate to limit the proposed enhanced rebate to Retail Orders as the Exchange is attempting to increase retail participation. Retail participation is more likely to reflect long-term investment intentions, and may therefore positively impact market quality. Accordingly, the presence of Retail Orders on EDGX has the potential to benefit all market participants. As explained in the purpose section of this proposed rule change, competition for retail order flow is particularly fierce, as demonstrated by the percentage of Retail Orders that are executive off-exchange also by Arca providing a high rebate to market participants that execute a significant amount of such orders on that exchange. In that context, the Exchange believes that it is appropriate to provide additional incentives to Retail Orders in order to attract that order flow.

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 intramarket or intermarket 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 change would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities 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."¹⁵

The Exchange believes the proposed rule change does impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed change applies uniformly to market participants. The Exchange believes that the proposed tier would incentivize market participants to direct providing Retail Order flow to the Exchange. 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. While the proposed tier is only available for Retail Orders, the Exchange notes it is attempting to increase retail participation and that, as noted above, retail participation is more likely to reflect long-term investment intentions, and may therefore positively impact market quality.

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 12 other equities exchanges and off-

¹⁵ Securities Exchange Act Release No. 51808, 70 FR 37495, 37498-99 (June 29, 2005) (S7-10-04) (Final Rule).

exchange venues, including 32 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 23% of the market share.¹⁶ 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. Additionally, as discussed above, the market for Retail Orders is even more stark given the amount of Retail Orders that are routed to and executed on off-exchange venues. 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.”¹⁷ 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

¹⁶ See Cboe Global Markets U.S. Equities Market Volume Summary (June 28, 2019), available at http://markets.cboe.com/us/equities/market_share/.

¹⁷ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

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'....".¹⁸ 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.

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

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁹ and Rule 19b-4(f)(2) thereunder,²⁰ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing. 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.

¹⁸ 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)).

¹⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁰ 17 CFR 240.19b-4(f)(2).

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

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

Not applicable.

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

Not applicable.

11. Exhibits

Exhibit 1 – Form of Notice of Proposed Rule Change for Federal Register

Exhibit 5 – Text of Proposed Rule Change

EXHIBIT 1**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34- ; File No. SR-CboeEDGX-2019-045]

[Insert date]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Amend the Exchange's Fee Schedule Applicable to its Equities Trading Platform ("EDGX Equities") to Adopt a "Retail Volume Tier" for Firms that Execute a Significant Volume of Liquidity Providing Retail Order Flow on EDGX

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 [insert date], 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. ("EDGX" or the "Exchange") is filing with the Securities and Exchange Commission (the "Commission") a proposed rule change to amend the Exchange's fee schedule applicable to its equities trading platform ("EDGX Equities") to adopt a "Retail Volume Tier" for firms that execute a significant volume of liquidity providing retail order flow on EDGX. The text of the proposed changes to the fee schedule are attached as Exhibit 5.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

The text of the proposed rule change is also available on the Exchange's website (http://markets.cboe.com/us/options/regulation/rule_filings/edgx/), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in 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 purpose of the proposed rule change is to amend the EDGX Equities fee schedule to adopt a "Retail Volume Tier" for firms that execute a significant volume of liquidity providing retail order flow on EDGX, effective July 1, 2019. The Exchange believes the proposed change would encourage more liquidity and opportunities for investors to trade on the Exchange.

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 several equity venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. The competition for Retail Order flow is even more intense, particularly as it relates to exchange versus off-exchange venues. For example, the Exchange

examined Rule 606 disclosures from three prominent retail brokerages: E-Trade, TD Ameritrade and Charles Schwab. For securities listed on the New York Stock Exchange LLC in the first quarter of 2019, TD Ameritrade routed 80% of its limit orders to off-exchange venues.³ Similarly, E-Trade Financial and Charles Schwab routed more than 77% and more than 90%,⁴ respectively, of its limit orders to off-exchange venues. This competition is particularly acute for non-marketable Retail Orders, i.e., Retail Orders that provide liquidity, and even more fiercely for non-marketable Retail Orders that provide displayed liquidity on an exchange. Accordingly, competitive forces compel the Exchange to use exchange transaction fees and credits, particularly as they relate to competing for Retail Order flow, because market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

For example, the Exchange provides special pricing for Retail Orders⁵ as an incentive for members to bring such orders to EDGX instead of another exchange or off-exchange venue. Specifically, Retail Orders priced at or above \$1.00 that add liquidity and yield fee code ZA⁶ currently benefit from an enhanced rebate of \$0.00320 per share

³ See https://www.tdameritrade.com/retail-en_us/resources/pdf/AMTD2054.pdf.

⁴ See <https://content.etrade.com/etrade/powerpage/pdf/OrderRouting11AC6.pdf>.
See also https://www.schwab.com/public/schwab/nn/legal_compliance/important_notices/order_routing.html.

⁵ See EDGX Rule 11.21(a)(1). 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 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). Retail Orders are submitted by a Retail Member Organization” or “RMO”, which is a member (or a division thereof) that has been approved by the Exchange to submit such orders.

⁶ “ZA” is associated with Retail Orders that add liquidity.

(as compared to non-Retail Orders that add liquidity and receive a standard rebate of \$0.00170 per share). The Exchange is interested in attracting additional retail order flow, and therefore proposes to introduce a Retail Volume Tier that is designed to encourage even more retail participation. More specifically, the Retail Volume Tier would provide a further enhanced rebate to liquidity providing Retail Orders, provided that the member executes a specified average daily volume (“ADV”)⁷ in such orders on EDGX. As proposed, a Retail Order that adds liquidity under fee code ZA would be eligible for a rebate of \$0.0037 per share if the member’s ADV in Retail Orders that add liquidity (i.e., yielding fee code ZA) is greater than or equal to 0.50% of Total Consolidated Volume (“TCV”).⁸

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with the objectives of Section 6 of the Act,⁹ in general, and furthers the objectives of Section 6(b)(4),¹⁰ in particular, 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 and does not unfairly discriminate between customers, issuers, brokers or dealers. 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

⁷ 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. See Cboe EDGX U.S. Equities Exchange Fee Schedule.

⁸ 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.

⁹ 15 U.S.C. 78f.

¹⁰ 15 U.S.C. 78f(b)(4).

particular venue to be excessive or incentives to be insufficient. The proposed rule change reflects a competitive pricing structure designed to incentivize market participants to direct their retail 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 tier is reasonable because it provides an opportunity for Members to receive an enhanced rebate for Retail Orders. The Exchange notes that volume-based incentives and discounts have been widely adopted by exchanges¹¹, including the Exchange¹², 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 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. 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 and/or growth thresholds. These competing pricing schedules, moreover, are presently comparable to those that the Exchange provides.¹³

¹¹ See e.g., Cboe BZX U.S. Equities Exchange Fee Schedule, Footnote 1, Add Volume Tiers.

¹² See e.g., Cboe EDGX U.S. Equities Exchange Fee Schedule, Footnote 1, Add Volume Tiers.

¹³ See e.g., NYSE Arca Equities, Fees and Charges, Basic Rates, which assesses a standard credit of \$0.0030 per share for Retail Orders that add liquidity.

The Exchange currently provides pricing incentives to Retail Member Organizations that execute liquidity providing Retail Orders on EDGX, and desires to further enhance those incentives in order to encourage additional retail participation. The proposed Retail Volume Tier would achieve that result by providing a higher rebate to Retail Orders that provide liquidity if submitted by a member that executes a significant volume of liquidity providing Retail Orders on EDGX. The Exchange notes that NYSE Arca, Inc. (“Arca”) also operates a similar volume-based rebate program that provides tiered rebates of up to \$0.0035 per share to attract retail order flow.¹⁴

The Exchange believes that the proposed Retail Volume Tier is reasonable and equitable as it would allow EDGX to effectively compete for retail order flow with Arca as well as other exchanges and the many off-exchange venues that execute the majority of retail order flow today. The Exchange believes that the current proposal, including the level of rebate and corresponding threshold, is appropriately designed to attract Retail Orders to EDGX given the high degree of competition for such orders in today’s market, which was discussed above. The Exchange believes that attracting liquidity in Retail Orders would incentivize other members to send order flow to EDGX to trade with such

¹⁴ See Arca Equities Fees and Charges, Trade Related Fees and Credits, Retail Order Tier and Retail Order Step-Up Tiers. Members receive an enhanced credit of \$0.0033 per share for Retail orders that provide liquidity to the books where a Member meets the criteria set forth in Retail Order Tier and Retail Order Step-Up Tier 1. Members receive an enhanced credit of \$0.0035 per share for Retail Orders that provide liquidity under Retail Order Step-Up Tier 2 where a Member meets the criteria set forth under the Tier. Specifically, the Member must (1) submit an average daily share volume per month of resting limit orders (i.e., provide liquidity) in an amount equal to or greater than 1.10% or more of US Consolidated Average Daily Volume (“CADV”), and (2) execute during the month, Retail Orders with a time-in-force of Day that is an increase of 0.35% or more of the US CADV from the ETP Holder’s April 2018 ADV, taken as a percentage of US CADV.

Retail Orders. In addition, the Exchange believes that this increased liquidity would potentially stimulate further price competition for Retail Orders, thereby deepening the Exchange's liquidity pool in both and retail and other orders, supporting the quality of price discovery, and promoting market transparency.

The Exchange also believes that the proposed Retail Volume Tier is not unfairly discriminatory because it applies equally to all members that execute liquidity providing Retail Orders and meet the specified volume threshold. Without having a view of Members' 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 for this tier. However, the Exchange believes the proposed tier will provide an incentive for Retail Member Organizations to increase retail order flow to EDGX. Retail Member Organizations that do not meet the proposed volume threshold would continue to earn the current rebate, which already provides a significant incentive for executing retail order flow on EDGX.

The Exchange believes that it is appropriate to limit the proposed enhanced rebate to Retail Orders as the Exchange is attempting to increase retail participation. Retail participation is more likely to reflect long-term investment intentions, and may therefore positively impact market quality. Accordingly, the presence of Retail Orders on EDGX has the potential to benefit all market participants. As explained in the purpose section of this proposed rule change, competition for retail order flow is particularly fierce, as demonstrated by the percentage of Retail Orders that are executive off-exchange also by Arca providing a high rebate to market participants that execute a significant amount of such orders on that exchange. In that context, the Exchange

believes that it is appropriate to provide additional incentives to Retail Orders in order to attract that order flow.

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 intramarket or intermarket 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 change would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities 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."¹⁵

The Exchange believes the proposed rule change does impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed change applies uniformly to market participants. The Exchange believes that the proposed tier would incentivize market participants to direct providing Retail Order flow to the Exchange. 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. While the proposed tier is only available for Retail Orders, the Exchange notes it is attempting to increase retail participation and

¹⁵ Securities Exchange Act Release No. 51808, 70 FR 37495, 37498-99 (June 29, 2005) (S7-10-04) (Final Rule).

that, as noted above, retail participation is more likely to reflect long-term investment intentions, and may therefore positively impact market quality.

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 12 other equities exchanges and off-exchange venues, including 32 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 23% of the market share.¹⁶ 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. Additionally, as discussed above, the market for Retail Orders is even more stark given the amount of Retail Orders that are routed to and executed on off-exchange venues. 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

¹⁶ See Cboe Global Markets U.S. Equities Market Volume Summary (June 28, 2019), available at http://markets.cboe.com/us/equities/market_share/.

and listed companies.”¹⁷ 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’”¹⁸ 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

No written comments were either solicited or received.

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 Act¹⁹ and paragraph (f) of Rule 19b-4²⁰ 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

¹⁷ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

¹⁸ *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)).

¹⁹ 15 U.S.C. 78s(b)(3)(A).

²⁰ 17 CFR 240.19b-4(f).

appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CboeEDGX-2019-045 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-2019-045. 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, D.C. 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeEDGX-2019-045 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.²¹

Secretary

²¹ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Proposed new language is underlined; proposed deletions are in [brackets].

Cboe EDGX U.S. Equities Exchange Fee Schedule

Effective [May] July 1, 2019

* * * * *

Fee Codes and Associated Fees:

Fee Code	Description	Fee/(Rebate) Securities at or above \$1.00	Fee/(Rebate) Securities below \$1.00
10 - Z	(No change).		
ZA ³	Retail Order, adds liquidity	(0.00320)	(0.00003)
ZR	(No change).		

* * * * *

³ **[Reserved.] Retail Volume Tier:**

The rebate to add Retail Orders provided by the below retail volume tier is applicable to the following fee code: ZA.

<u>Tier</u>	<u>Rebate Per Share to Add</u>	<u>Required Criteria</u>
<u>Retail Volume Tier</u>	<u>(\$0.0037)</u>	<u>Member adds a Retail Order ADV (i.e., yielding fee code ZA) ≥ 0.50% of the TCV.</u>

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