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

File No.* SR - 2020 - * 033
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) *
☑	☐	☐	☐	☑	☐

Pilot	Extension of Time Period for Commission Action *	Date Expires *
☐	☐	

Rule

☐ 19b-4(f)(1)	☐ 19b-4(f)(4)
☑ 19b-4(f)(2)	☐ 19b-4(f)(5)
☐ 19b-4(f)(3)	☐ 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 to amend to its Fees Schedule.

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 * Rebecca Last Name * Tenuta

Title * Counsel

E-mail * rtenuta@cboe.com

Telephone * (312) 786-7068 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.

Date 07/01/2020

By Laura G. Dickman

(Name *)

(Title *)

VP, Associate 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.

ldickman@cboe.com

Required fields are shown with yellow backgrounds and asterisks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS 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 * Add Remove View	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 * Add Remove View	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 ☐	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 Add Remove View Exhibit Sent As Paper Document ☐	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 Add Remove View	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 Add Remove View	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 Add Remove View	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.

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

(a) Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b-4 thereunder,[2] Cboe EDGX Exchange, Inc. (the "Exchange" or "EDGX Options") is filing with the Securities and Exchange Commission ("Commission") a proposed rule change to amend its Fees Schedule. The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

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

(a) The Exchange's President (or designee) pursuant to delegated authority approved the proposed rule change on June 29, 2020.

(b) Please refer questions and comments on the proposed rule change to Pat Sexton, Executive Vice President, General Counsel, and Corporate Secretary, (312) 786-7467, or Rebecca Tenuta, Counsel, (312) 786-7068.

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

(a) <u>Purpose</u>

The Exchange proposes to amend its Fees Schedule for its options platform (EDGX Options), specifically, certain Customer Volume Tiers and Market Maker Volume Tiers, effective July 1, 2020.

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

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

2 17 CFR 240.19b-4.

levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 options venues to which market participants may direct their order flow. Based on publicly available information, no single options exchange has more than 18% of the market share and currently the Exchange represents only approximately 4% 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 $0.21 per contract for Customer orders in both Penny and Non-Penny Securities and assesses fees ranging from $0.01 up to $0.75 per contract for Market Maker, Away Market Maker, Broker Dealer, Firm, Joint Back Office, and Professional orders in both Penny and Non-Penny Securities. The Exchange also offers tiered pricing which provides Members[4] opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Footnote 1 of the Fee Schedule currently offers

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3 See Cboe Global Markets U.S. Options Market Monthly Volume Summary (June 25, 2020), available at https://markets.cboe.com/us/options/market_statistics/.

4 See Exchange Rule 1.5(n).

four Customer Volume Tiers which provide enhanced rebates between $0.10 and $0.21 per contract for qualifying Customer orders which meet certain liquidity thresholds and yield fee code PC[5] or NC[6]. Footnote 2 of the Fee Schedule currently offers eight Market Maker Volume Tiers which provide reduced fees between $0.17 and $0.03 per contract for qualifying Market Maker orders which meet certain liquidity thresholds and yield fee code PM[7] or NM[8]. Under the current Customer Volume and Market Maker Volume Tiers, a Member may receive an enhanced rebate where the Member meets certain thresholds of ADV[9] that are greater than or equal to a percentage of average OCV[10] for respective qualifying orders. The Exchange now proposes to amend Customer Volume Tiers 1 through 4 and Market Maker Volume Tiers 7 and 8.

The Exchange proposes to amend Customer Volume Tier 1 and 2 to specify that a Member must reach an ADV in Customer orders that are Non-Crossing orders (that is,

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5 Fee code PC is appended to Customer, Penny orders and receive a standard rebate of $0.01.

6 Fee code NC is appended to Customer Non-Penny orders and receive a standard rebate of $0.01.

7 Fee code PM is appended to liquidity adding Market Maker, Penny orders and are assessed a standard fee of $0.20.

8 Fee code NM is appended to liquidity adding Market Maker, Non-Penny orders and are assessed a standard fee of $0.20.

9 "ADV" means average daily volume calculated as the number of contracts added or removed, combined, per day. ADV is calculated on a monthly basis, excluding contracts added or removed on any day that the Exchange's system experiences a disruption that lasts for more than 60 minutes during regular trading hours ("Exchange System Disruption") and on any day with a scheduled early market close.

10 "OCV" is Options Clearing Corporation ("OCC") Customer Volume which is the total equity and ETF options volume that clears in the Customer range at the OCC for the month for which the fees apply, excluding volume on any day that the Exchange experiences an Exchange System Disruption and on any day with a scheduled early market close

orders not executed in a two sided auction mechanism such as the Automated Improvement Mechanism ("AIM") or the Solicitation Auction Mechanism ("SAM") or in a crossing mechanism such as a Qualified Contingent Cross ("QCC")). Currently, both Tier 1 and Tier 2 provide that Members may achieve the respective tiers if they achieve an ADV in Customer orders as a certain percentage that is greater than or equal to average OCV. The Exchange proposes to specify that, for these two tiers, Members receive the enhanced rebates currently in place if they achieve an ADV in Customer Non-Crossing orders as a certain percentage that is greater than or equal to average OCV. The Exchange notes that the ADV thresholds of average OCV will remain the same for these tiers. The Exchange is proposing to specify that Customer Non-Crossing orders may be submitted in order to achieve Customer Volume Tier 1 and Tier 2 as the Fee Schedule already provides for opportunities for which Customer Crossing orders, specifically, may achieve enhanced rebates comparable to the enhanced rebates offered under Tiers 1 and 2.[11] In this way, the Exchange believes the proposed change will incentivize Members to submit more Non-Crossing orders into the EDGX Options Book (as opposed to submitting more Customer orders into the Exchange's crossing auctions/mechanisms to achieve the tiers' criteria, which, as stated, already receive comparable enhanced rebates and reduced fees under the Fee Schedule) in order to achieve Customer Volume Tiers 1 and 2.

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11 See Fee Schedule, Footnote 6, AIM and SAM Pricing, which provides an enhanced rebate of $0.11 (or does not assess a fee) for qualifying Customer orders executed via the Exchange's crossing auctions.; see also Footnote 7, QCC Initiator/Solicitation Rebate Tiers, which provide enhanced rebates between $0.05 and $0.11 for QCC Agency Orders or Solicitation Agency Orders.

The Exchanges next proposes to amend Customer Volume Tiers 3 and 4 by increasing, in each, a percentage of ADV into average OCV within existing criteria and adding to each tier a new, additional criteria that that a Member must meet to receive the existing enhanced rebate. The Exchange notes that the proposed changes do not alter the current enhanced rebates provided under Customer Volume Tier 3 and 4. Specifically, Tier 3 currently provides an enhanced rebate of $0.21 for Members that have an ADV in Customer orders greater than or equal to 0.75% of average OCV. Tier 4 currently also provides enhanced rebate of $0.21 for Members that have 1) an ADV in Customer orders greater than or equal 0.60% of average OCV and 2) an ADV in Customer or Market Maker orders greater than or equal to 1.00% of average OCV. The Exchange proposes to first increase the ADV in Customer orders from greater than or equal to 0.75% to 1.00% threshold of average OCV in Tier 3 and from greater than or equal to 0.60% to 0.75% threshold of average OCV in prong 1 in Tier 4. The Exchange also proposes to add an additional prong of criteria in each Tier 3 and Tier 4. As proposed, a Member may receive the existing enhanced rebate under Tier 3 if the Member meets the current criteria and, also, has an ADV in Customer Non-Crossing orders of greater than or equal to 0.40% of average OCV. Likewise, a Member may receive the existing enhanced rebate under Tier 4 if the Member meets the current (two) criteria and, as proposed, has an ADV in Customer Non-Crossing orders of greater than or equal to 0.40% of average OCV. The proposed increases in Customer order ADV as a percentage of average OCV in Tier 3 and Tier 4 are intended to incrementally increase the level of difficulty in achieving each of these tiers, thus, incentivizing Members to increase their overall Customer order flow to the Exchange by encouraging those Members to strive for the different, incrementally more difficult tier criteria under the proposed tiers to receive the enhanced rebates. The proposed additional prongs of criteria per each tier are also designed to incrementally increase the level of difficulty in achieving Tier 3 and Tier 4, while, like the proposed changes to Tier 1 and Tier 2 described above, specifically incentivizing Members to submit Non-Crossing Customer orders to the Exchange's Order Book.

Likewise, the Exchange also proposes to amend Market Maker Volume Tiers 7 and 8 by increasing, in each, certain percentages of ADV into average OCV within existing criteria. Currently, Tier 7 provides a reduced fee of $0.04 for Members that have 1) an ADV in Customer orders greater than or equal to 0.30% of average OCV, 2) an ADV in Customer or Market Maker orders greater than or equal to 0.50% of average OCV, 3) an ADV in AIM Agency Orders greater than or equal to 0.15% of average OCV, and 4) an ADV in complex Customer orders (yielding fee codes ZA, ZB, ZC, or ZD)[12] greater than or equal to 5,000 contracts. Currently, Tier 8 provides a reduced fee of $0.03 for Members that have 1) an ADV in Customer orders greater than or equal to 0.70 % of average OCV, 2) an ADV in Customer or Market Maker orders greater than or equal to 1.10% of average OCV, 3) an ADV in AIM Agency Orders greater than or equal to 0.15% of average OCV, and 4) an ADV in complex Customer orders (yielding fee codes ZA, ZB, ZC, or ZD) greater than or equal to 0.20% of average OCV. Regarding Tier 7, the Exchange proposes to increase the percentage of ADV in Customer orders from 0.30% to 0.70%,of average OCV in prong 1, to increase the percentage of ADV in

12 Fee code ZA is appended to Complex Customer (contra Non-Customer), Penny orders and receives a standard rebate of $0.45; fee code ZB is appended to Complex Customer (contra Non-Customer), Non-Penny orders and received a standard rebate of $0.80; fee code ZC is appended to Complex Customer (contra Customer) orders and is assessed no charge; and fee code ZD is appended to Complex Customer order that legs into Simple Book and is assessed no charge.

AIM Agency Orders from 0.15% to 0.30% of average OCV in prong 3, and to update prong 4 from ADV in complex Customer orders as greater than or equal to 5,000 to greater than or equal to 0.10% of average OCV. Regarding Tier 8, the Exchange proposes to increase the percentage of ADV in Customer orders from 0.70% to 1.00% in prong 1, and to increase the percentage of ADV in AIM Agency Orders from 0.15% to 0.75% in prong 3. Like the proposed changes to Customer Volume Tiers 3 and 4, the Exchange notes that the proposed changes to criteria in Market Maker Volume Tiers 7 and 8 incrementally increase the level of difficulty in achieving these tiers, thus, are designed to incentivize Members to increase their Customer and/or AIM Agency order flow to the Exchange by encouraging those Members to strive for the different, incrementally more difficult tier criteria under the proposed tiers to receive the reduced rates.

The Exchange believes that almost all of the proposed fee changes are designed to incentivize more Customer order flow and, particularly, a majority of the proposed changes are intended to direct an increase of Customer order flow to the EDGX Options Order Book. An increase in Customer order flow will create 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. Additionally, the proposed change in connection with the AIM Agency order ADV threshold in Market Maker Volume Tier 8 is intended to incentivize an increase in AIM Agency orders submitted to an AIM auction in order to achieve the proposed tier.

The Exchange believes increased AIM Agency order flow results in price improvement opportunities for customers.

(b) Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[13] in general, and furthers the objectives of Section 6(b)(4),[14] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with the objectives of Section 6(b)(5)[15] 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, and, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As described above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The proposed rule change reflects a competitive pricing structure designed to incentivize market participants to

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13 15 U.S.C. 78f.

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

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

direct their order flow to the Exchange, which the Exchange believes would enhance market quality to the benefit of all Members.

In particular, the Exchange believes the proposed tiers are reasonable because they amend existing opportunities in a manner that incentivizes increased Customer or AIM Agency order flow via incrementally more challenging criteria in order to receive the same enhanced rebates or reduced fees on a Member's qualifying orders. The Exchange notes that relative volume-based incentives and discounts have been widely adopted by exchanges[16], including the Exchange[17], 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

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16 See e.g., MIAX Options Fee Schedule, Section 1(a)(i), which provides reduced fees (ranging from $0.03 to $0.30) for Market Maker orders that reach various percentage thresholds of volume; and Section 1(a)(iii), which provides certain credits (ranging from $0.00 to $0.28) for Customer orders, including agency orders submitted to an exchange auction, that reach various percentage thresholds; and Cboe BZX U.S. Options Exchange Fee Schedule, Footnote 1, Customer Penny Pilot Add Tiers; Footnote 6, Market Maker Penny Pilot Add Volume Tiers; Footnote 7, Market Maker Non-Penny Pilot Add Volume Tiers; and Footnote 12, Customer Non-Penny Pilot Add Volume Tier, all of which provide various tier with different, incrementally more difficult criteria, many of which are based on average volumes as a percentage of average OCV.

17 See i.e., Cboe EDGX U.S. Options Exchange Fee Schedule, Footnote 1, Customer Volume Tiers; and Footnote 2, Market Maker Volume Tiers.

volume and/or growth thresholds and offer comparable pricing to members for achieving such tiers.[18]

The Exchange believes the proposed modification to specify that Non-Crossing Customer order may be submitted in achieving the existing criteria in Customer Volume Tiers 1 and 2, as well as the proposed additional criteria in Customer Volume Tiers 3 and 4 for which a Member must submit Non-Crossing Customer order ADV as a percentage of average OCV, in order to receive the current enhanced rebates under Customer Volume Tiers 1 through 4 is reasonable because it is designed to direct Customer order flow to the Exchange's Order Book, as opposed to into the Exchange's crossing auctions/mechanisms to achieve the tiers' criteria, which already receive comparable enhanced rebates and reduced fees under the Fee Schedule.[19] An increase in Customer order flow to the Order Book results in an increase of transaction opportunities within the Order Book, attracting Market Maker quotes which, in turn, facilitates tighter spreads on the Exchange and signals additional corresponding increase in order flow from other market participants. Increased overall order flow benefits all investors by deepening the Exchange's liquidity pool, potentially providing even greater execution incentives and opportunities, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. Similarly, the proposed increases in overall Customer order and AIM Agency order ADV as a percentage of OCV (as proposed within Customer Volume Tiers 3 and 4 and Market Maker Volume Tiers 7 and 8) are reasonable modifications to the existing criteria because they are designed to incrementally increase the difficulty in achieving these tiers, thereby incentivizing

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18 See supra note 16.

19 See supra note 11.

Members to increase their overall Customer order flow and/or AIM Agency order flow, which benefits customers by resulting in increased price improvement opportunities within the auctions, to receive the exiting enhanced rebates and/or reduced fees.

Further, the Exchange believes that the proposed rule changes are reasonable as they do not represent a significant departure from the current criteria offered in the Fee Schedule and represent proportional increases in difficulty per adjacent tiers. For example, the Exchange proposes to simultaneously increase the Customer order ADV thresholds of average OCV in Customer Volume Tier 3 and Tier 4 and provide the same additional criteria in each. As a result, the Exchange believes the level of difficulty in achieving Tier 3 and Tier 4 will remain approximately the same. Likewise, the Exchange proposes to simultaneously increase the ADV thresholds in the corresponding prongs between Tier 7 and Tier 8. That is, prong 1 under both Tier 7 and Tier 8, criteria of which consists of Customer order ADV as a percentage of average OCV, and prong 3 under both Tier 7 and Tier 8, criteria of which consists of AIM Agency order ADV as a percentage of average OCV, will experience incremental increases of ADV as a percentage of average OCV. Thus, the step up in difficulty from Tier 7 to Tier 8 will remain approximately the same. Additionally, the Exchange notes that the proposed change in prong 4 under Tier 7 to amend the threshold of 5,000 contracts to 0.10% of average OCV is better aligned with, and is a proportional step down from, the 0.20% of average OCV in corresponding prong 4 under Tier 8. The Exchange again notes that the proposed rule changes do not alter the amount of any of the current rebates or fees in place.

The Exchange believes that the proposal represents an equitable allocation of rebates and is not unfairly discriminatory because all Members will continue to be eligible for

Customer Volume Tiers 1 through 4 and Market Maker Volume Tiers 7 and 8, as amended. The proposed changes to the tiers' criteria are designed as an incentive to any and all Members interested in meeting the tier criteria to submit additional Customer orders (with opportunities to achieve such tiers via crossing and non-crossing orders), or AIM Agency orders to the Exchange. Each will have the opportunity to submit the requisite order flow and will receive the applicable existing enhanced rebate or reduced fee if the tier criteria are met. Without having a view of activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would definitely result in any Members qualifying for the proposed tiers. While the Exchange has no way of predicting with certainty how the proposed tiers will impact Member activity, the Exchange anticipates that approximately three or four Members will be able to compete for and achieve the amended criteria in each of Customer Volume Tier 1, 2, 3, and 4, and at least four Members will be able to compete for and achieve the amended criteria in each of Market Maker Volume Tier 7 and Tier 8. The Exchange also notes that the proposed tiers will not adversely impact any Member's pricing or their ability to qualify for other rebate tiers. Rather, should a Member not meet the proposed criteria for a tier, the Member will merely not receive the corresponding enhanced rebate or reduced fee. Furthermore, the existing rebate and fees will continue to uniformly apply to all Members that meet the required criteria, as amended, per each respective tier.

Item 4. <u>Self-Regulatory Organization's Statement on Burden on Competition</u>

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 order flow to a public exchange, thereby promoting market depth, execution incentives and enhanced execution opportunities, as well as price discovery and transparency for all Members. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."[20]

The Exchange believes the proposed rule change does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed change applies to all Members equally in that all Members are eligible to achieve the tiers' proposed criteria, have a reasonable opportunity to meet the tiers' proposed criteria and will all receive the existing enhanced rebates or reduced fees if such criteria is met. Overall, the proposed change is designed to attract additional Customer and AIM Agency order flow to the Exchange. The Exchange believes that the modified tier criteria would incentivize market participants to strive to increase such order flow to the Exchange to meet the proposed criteria and, as a result, increase trading opportunities and attract further Market-Maker activity, which would further incentivize the provision of liquidity and continued order flow and improve price transparency on the Exchange. Greater overall order flow and pricing transparency benefits all market participants on the Exchange by generally providing more trading opportunities, enhancing market quality, and continuing to encourage Members to send orders, thereby contributing towards a robust and well-balanced market ecosystem, which benefits all market participants.

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

Next, the Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including 15 other options exchanges and off-exchange venues and alternative trading systems. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single options exchange has more than 18% of the market share.[21] 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."[22] 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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21 See supra note 3.

22 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'….".[23] Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Item 5. 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.

Item 6. Extension of Time Period for Commission Action

Not applicable.

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

(a) The proposed rule change is filed for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act[24] and Rule 19b-4(f)(2)[25] thereunder.

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

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23 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)).

24 15 U.S.C. 78s(b)(3)(A).

25 17 CFR 240.19b-4(f)(2).

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

(c) Not applicable.

(d) Not applicable.

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

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

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

Not applicable.

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

Not applicable.

Item 11. Exhibits

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

Exhibit 2 – 4. Not applicable.

Exhibit 5. Proposed rule text.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34- ; File No. SR-CboeEDGX-2020-033]

[Insert date]

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on [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. (the "Exchange" or "EDGX Options") is filing with the Securities and Exchange Commission ("Commission") a proposed rule change 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.

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

2 17 CFR 240.19b-4.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to amend its Fees Schedule for its options platform (EDGX Options), specifically, certain Customer Volume Tiers and Market Maker Volume Tiers, effective July 1, 2020.

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 options venues to which market participants may direct their order flow. Based on publicly available information, no single options exchange has more than 18% of the market share and currently the Exchange represents only approximately 4% 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

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[3] See Cboe Global Markets U.S. Options Market Monthly Volume Summary (June 25, 2020), available at https://markets.cboe.com/us/options/market_statistics/.

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 $0.21 per contract for Customer orders in both Penny and Non-Penny Securities and assesses fees ranging from $0.01 up to $0.75 per contract for Market Maker, Away Market Maker, Broker Dealer, Firm, Joint Back Office, and Professional orders in both Penny and Non-Penny Securities. The Exchange also offers tiered pricing which provides Members[4] opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Footnote 1 of the Fee Schedule currently offers four Customer Volume Tiers which provide enhanced rebates between $0.10 and $0.21 per contract for qualifying Customer orders which meet certain liquidity thresholds and yield fee code PC[5] or NC[6]. Footnote 2 of the Fee Schedule currently offers eight Market Maker Volume Tiers which provide reduced fees between $0.17 and $0.03 per contract for qualifying Market Maker orders which meet certain liquidity thresholds and yield fee code PM[7] or NM[8]. Under the current Customer Volume and Market Maker Volume

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4 See Exchange Rule 1.5(n).

5 Fee code PC is appended to Customer, Penny orders and receive a standard rebate of $0.01.

6 Fee code NC is appended to Customer Non-Penny orders and receive a standard rebate of $0.01.

7 Fee code PM is appended to liquidity adding Market Maker, Penny orders and are

Tiers, a Member may receive an enhanced rebate where the Member meets certain thresholds of ADV[9] that are greater than or equal to a percentage of average OCV[10] for respective qualifying orders. The Exchange now proposes to amend Customer Volume Tiers 1 through 4 and Market Maker Volume Tiers 7 and 8.

The Exchange proposes to amend Customer Volume Tier 1 and 2 to specify that a Member must reach an ADV in Customer orders that are Non-Crossing orders (that is, orders not executed in a two sided auction mechanism such as the Automated Improvement Mechanism ("AIM") or the Solicitation Auction Mechanism ("SAM") or in a crossing mechanism such as a Qualified Contingent Cross ("QCC")). Currently, both Tier 1 and Tier 2 provide that Members may achieve the respective tiers if they achieve an ADV in Customer orders as a certain percentage that is greater than or equal to average OCV. The Exchange proposes to specify that, for these two tiers, Members receive the enhanced rebates currently in place if they achieve an ADV in Customer Non-Crossing orders as a certain percentage that is greater than or equal to average OCV. The Exchange notes that the ADV thresholds of average OCV will remain the same for these

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assessed a standard fee of $0.20.

8 Fee code NM is appended to liquidity adding Market Maker, Non-Penny orders and are assessed a standard fee of $0.20.

9 "ADV" means average daily volume calculated as the number of contracts added or removed, combined, per day. ADV is calculated on a monthly basis, excluding contracts added or removed on any day that the Exchange's system experiences a disruption that lasts for more than 60 minutes during regular trading hours ("Exchange System Disruption") and on any day with a scheduled early market close.

10 "OCV" is Options Clearing Corporation ("OCC") Customer Volume which is the total equity and ETF options volume that clears in the Customer range at the OCC for the month for which the fees apply, excluding volume on any day that the Exchange experiences an Exchange System Disruption and on any day with a scheduled early market close

tiers. The Exchange is proposing to specify that Customer Non-Crossing orders may be submitted in order to achieve Customer Volume Tier 1 and Tier 2 as the Fee Schedule already provides for opportunities for which Customer Crossing orders, specifically, may achieve enhanced rebates comparable to the enhanced rebates offered under Tiers 1 and 2.[11] In this way, the Exchange believes the proposed change will incentivize Members to submit more Non-Crossing orders into the EDGX Options Book (as opposed to submitting more Customer orders into the Exchange's crossing auctions/mechanisms to achieve the tiers' criteria, which, as stated, already receive comparable enhanced rebates and reduced fees under the Fee Schedule) in order to achieve Customer Volume Tiers 1 and 2.

The Exchanges next proposes to amend Customer Volume Tiers 3 and 4 by increasing, in each, a percentage of ADV into average OCV within existing criteria and adding to each tier a new, additional criteria that that a Member must meet to receive the existing enhanced rebate. The Exchange notes that the proposed changes do not alter the current enhanced rebates provided under Customer Volume Tier 3 and 4. Specifically, Tier 3 currently provides an enhanced rebate of $0.21 for Members that have an ADV in Customer orders greater than or equal to 0.75% of average OCV. Tier 4 currently also provides enhanced rebate of $0.21 for Members that have 1) an ADV in Customer orders greater than or equal 0.60% of average OCV and 2) an ADV in Customer or Market Maker orders greater than or equal to 1.00% of average OCV. The Exchange proposes to

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11 See Fee Schedule, Footnote 6, AIM and SAM Pricing, which provides an enhanced rebate of $0.11 (or does not assess a fee) for qualifying Customer orders executed via the Exchange's crossing auctions.; see also Footnote 7, QCC Initiator/Solicitation Rebate Tiers, which provide enhanced rebates between $0.05 and $0.11 for QCC Agency Orders or Solicitation Agency Orders.

first increase the ADV in Customer orders from greater than or equal to 0.75% to 1.00% threshold of average OCV in Tier 3 and from greater than or equal to 0.60% to 0.75% threshold of average OCV in prong 1 in Tier 4. The Exchange also proposes to add an additional prong of criteria in each Tier 3 and Tier 4. As proposed, a Member may receive the existing enhanced rebate under Tier 3 if the Member meets the current criteria and, also, has an ADV in Customer Non-Crossing orders of greater than or equal to 0.40% of average OCV. Likewise, a Member may receive the existing enhanced rebate under Tier 4 if the Member meets the current (two) criteria and, as proposed, has an ADV in Customer Non-Crossing orders of greater than or equal to 0.40% of average OCV. The proposed increases in Customer order ADV as a percentage of average OCV in Tier 3 and Tier 4 are intended to incrementally increase the level of difficulty in achieving each of these tiers, thus, incentivizing Members to increase their overall Customer order flow to the Exchange by encouraging those Members to strive for the different, incrementally more difficult tier criteria under the proposed tiers to receive the enhanced rebates. The proposed additional prongs of criteria per each tier are also designed to incrementally increase the level of difficulty in achieving Tier 3 and Tier 4, while, like the proposed changes to Tier 1 and Tier 2 described above, specifically incentivizing Members to submit Non-Crossing Customer orders to the Exchange's Order Book.

Likewise, the Exchange also proposes to amend Market Maker Volume Tiers 7 and 8 by increasing, in each, certain percentages of ADV into average OCV within existing criteria. Currently, Tier 7 provides a reduced fee of $0.04 for Members that have 1) an ADV in Customer orders greater than or equal to 0.30% of average OCV, 2) an ADV in Customer or Market Maker orders greater than or equal to 0.50% of average

OCV, 3) an ADV in AIM Agency Orders greater than or equal to 0.15% of average OCV, and 4) an ADV in complex Customer orders (yielding fee codes ZA, ZB, ZC, or ZD)[12] greater than or equal to 5,000 contracts. Currently, Tier 8 provides a reduced fee of $0.03 for Members that have 1) an ADV in Customer orders greater than or equal to 0.70 % of average OCV, 2) an ADV in Customer or Market Maker orders greater than or equal to 1.10% of average OCV, 3) an ADV in AIM Agency Orders greater than or equal to 0.15% of average OCV, and 4) an ADV in complex Customer orders (yielding fee codes ZA, ZB, ZC, or ZD) greater than or equal to 0.20% of average OCV. Regarding Tier 7, the Exchange proposes to increase the percentage of ADV in Customer orders from 0.30% to 0.70%,of average OCV in prong 1, to increase the percentage of ADV in AIM Agency Orders from 0.15% to 0.30% of average OCV in prong 3, and to update prong 4 from ADV in complex Customer orders as greater than or equal to 5,000 to greater than or equal to 0.10% of average OCV. Regarding Tier 8, the Exchange proposes to increase the percentage of ADV in Customer orders from 0.70% to 1.00% in prong 1, and to increase the percentage of ADV in AIM Agency Orders from 0.15% to 0.75% in prong 3. Like the proposed changes to Customer Volume Tiers 3 and 4, the Exchange notes that the proposed changes to criteria in Market Maker Volume Tiers 7 and 8 incrementally increase the level of difficulty in achieving these tiers, thus, are designed to incentivize Members to increase their Customer and/or AIM Agency order flow to the

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12 Fee code ZA is appended to Complex Customer (contra Non-Customer), Penny orders and receives a standard rebate of $0.45; fee code ZB is appended to Complex Customer (contra Non-Customer), Non-Penny orders and received a standard rebate of $0.80; fee code ZC is appended to Complex Customer (contra Customer) orders and is assessed no charge; and fee code ZD is appended to Complex Customer order that legs into Simple Book and is assessed no charge.

Exchange by encouraging those Members to strive for the different, incrementally more difficult tier criteria under the proposed tiers to receive the reduced rates.

The Exchange believes that almost all of the proposed fee changes are designed to incentivize more Customer order flow and, particularly, a majority of the proposed changes are intended to direct an increase of Customer order flow to the EDGX Options Order Book. An increase in Customer order flow will create 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. Additionally, the proposed change in connection with the AIM Agency order ADV threshold in Market Maker Volume Tier 8 is intended to incentivize an increase in AIM Agency orders submitted to an AIM auction in order to achieve the proposed tier. The Exchange believes increased AIM Agency order flow results in price improvement opportunities for customers.

2. Statutory Basis

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

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[13] 15 U.S.C. 78f.

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

with the objectives of Section 6(b)(5)[15] 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, and, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As described above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The proposed rule change 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.

In particular, the Exchange believes the proposed tiers are reasonable because they amend existing opportunities in a manner that incentivizes increased Customer or AIM Agency order flow via incrementally more challenging criteria in order to receive the same enhanced rebates or reduced fees on a Member's qualifying orders. The Exchange notes that relative volume-based incentives and discounts have been widely adopted by exchanges[16],

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

16 See e.g., MIAX Options Fee Schedule, Section 1(a)(i), which provides reduced fees (ranging from \$0.03 to \$0.30) for Market Maker orders that reach various percentage thresholds of volume; and Section 1(a)(iii), which provides certain credits (ranging from \$0.00 to \$0.28) for Customer orders, including agency orders submitted to an exchange auction, that reach various percentage thresholds; and Cboe BZX U.S. Options Exchange Fee Schedule, Footnote 1, Customer

including the Exchange[17], 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 and offer comparable pricing to members for achieving such tiers.[18]

The Exchange believes the proposed modification to specify that Non-Crossing Customer order may be submitted in achieving the existing criteria in Customer Volume Tiers 1 and 2, as well as the proposed additional criteria in Customer Volume Tiers 3 and 4 for which a Member must submit Non-Crossing Customer order ADV as a percentage of average OCV, in order to receive the current enhanced rebates under Customer Volume Tiers 1 through 4 is reasonable because it is designed to direct Customer order flow to the Exchange's Order Book, as opposed to into the Exchange's crossing auctions/mechanisms

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Penny Pilot Add Tiers; Footnote 6, Market Maker Penny Pilot Add Volume Tiers; Footnote 7, Market Maker Non-Penny Pilot Add Volume Tiers; and Footnote 12, Customer Non-Penny Pilot Add Volume Tier, all of which provide various tier with different, incrementally more difficult criteria, many of which are based on average volumes as a percentage of average OCV.

17 See i.e., Cboe EDGX U.S. Options Exchange Fee Schedule, Footnote 1, Customer Volume Tiers; and Footnote 2, Market Maker Volume Tiers.

18 See supra note 16.

to achieve the tiers' criteria, which already receive comparable enhanced rebates and reduced fees under the Fee Schedule.[19] An increase in Customer order flow to the Order Book results in an increase of transaction opportunities within the Order Book, attracting Market Maker quotes which, in turn, facilitates tighter spreads on the Exchange and signals additional corresponding increase in order flow from other market participants. Increased overall order flow benefits all investors by deepening the Exchange's liquidity pool, potentially providing even greater execution incentives and opportunities, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. Similarly, the proposed increases in overall Customer order and AIM Agency order ADV as a percentage of OCV (as proposed within Customer Volume Tiers 3 and 4 and Market Maker Volume Tiers 7 and 8) are reasonable modifications to the existing criteria because they are designed to incrementally increase the difficulty in achieving these tiers, thereby incentivizing Members to increase their overall Customer order flow and/or AIM Agency order flow, which benefits customers by resulting in increased price improvement opportunities within the auctions, to receive the exiting enhanced rebates and/or reduced fees.

Further, the Exchange believes that the proposed rule changes are reasonable as they do not represent a significant departure from the current criteria offered in the Fee Schedule and represent proportional increases in difficulty per adjacent tiers. For example, the Exchange proposes to simultaneously increase the Customer order ADV thresholds of average OCV in Customer Volume Tier 3 and Tier 4 and provide the same additional criteria in each. As a result, the Exchange believes the level of difficulty in achieving Tier 3

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19 See supra note 11.

and Tier 4 will remain approximately the same. Likewise, the Exchange proposes to simultaneously increase the ADV thresholds in the corresponding prongs between Tier 7 and Tier 8. That is, prong 1 under both Tier 7 and Tier 8, criteria of which consists of Customer order ADV as a percentage of average OCV, and prong 3 under both Tier 7 and Tier 8, criteria of which consists of AIM Agency order ADV as a percentage of average OCV, will experience incremental increases of ADV as a percentage of average OCV. Thus, the step up in difficulty from Tier 7 to Tier 8 will remain approximately the same. Additionally, the Exchange notes that the proposed change in prong 4 under Tier 7 to amend the threshold of 5,000 contracts to 0.10% of average OCV is better aligned with, and is a proportional step down from, the 0.20% of average OCV in corresponding prong 4 under Tier 8. The Exchange again notes that the proposed rule changes do not alter the amount of any of the current rebates or fees in place.

The Exchange believes that the proposal represents an equitable allocation of rebates and is not unfairly discriminatory because all Members will continue to be eligible for Customer Volume Tiers 1 through 4 and Market Maker Volume Tiers 7 and 8, as amended. The proposed changes to the tiers' criteria are designed as an incentive to any and all Members interested in meeting the tier criteria to submit additional Customer orders (with opportunities to achieve such tiers via crossing and non-crossing orders), or AIM Agency orders to the Exchange. Each will have the opportunity to submit the requisite order flow and will receive the applicable existing enhanced rebate or reduced fee if the tier criteria are met. Without having a view of activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would definitely result in any Members qualifying for the proposed tiers. While the Exchange has no way of predicting with certainty how the proposed tiers will impact Member activity, the Exchange anticipates that approximately three or four Members will be able to compete for and achieve the amended criteria in each of Customer Volume Tier 1, 2, 3, and 4, and at least four Members will be able to compete for and achieve the amended criteria in each of Market Maker Volume Tier 7 and Tier 8. The Exchange also notes that the proposed tiers will not adversely impact any Member's pricing or their ability to qualify for other rebate tiers. Rather, should a Member not meet the proposed criteria for a tier, the Member will merely not receive the corresponding enhanced rebate or reduced fee. Furthermore, the existing rebate and fees will continue to uniformly apply to all Members that meet the required criteria, as amended, per each respective 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 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 order flow to a public exchange, thereby promoting market depth, execution incentives and enhanced execution opportunities, as well as price discovery and transparency for all Members. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."[20]

The Exchange believes the proposed rule change does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the

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

purposes of the Act. Particularly, the proposed change applies to all Members equally in that all Members are eligible to achieve the tiers' proposed criteria, have a reasonable opportunity to meet the tiers' proposed criteria and will all receive the existing enhanced rebates or reduced fees if such criteria is met. Overall, the proposed change is designed to attract additional Customer and AIM Agency order flow to the Exchange. The Exchange believes that the modified tier criteria would incentivize market participants to strive to increase such order flow to the Exchange to meet the proposed criteria and, as a result, increase trading opportunities and attract further Market-Maker activity, which would further incentivize the provision of liquidity and continued order flow and improve price transparency on the Exchange. Greater overall order flow and pricing transparency benefits all market participants on the Exchange by generally providing more trading opportunities, enhancing market quality, and continuing to encourage Members to send orders, thereby contributing towards a robust and well-balanced market ecosystem, which benefits all market participants.

Next, the Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including 15 other options exchanges and off-exchange venues and alternative trading systems. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single options exchange has more than 18% of the market share.[21] Therefore, no

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[21] See supra note 3.

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."[22] 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'….".[23] 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.

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

23 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)).

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[24] and paragraph (f) of Rule 19b-4[25] 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.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CboeEDGX-2020-033 on the subject line.

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24 15 U.S.C. 78s(b)(3)(A).

25 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-2020-033. 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-2020-033 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.[26]

[26] 17 CFR 200.30-3(a)(12).

Secretary

EXHIBIT 5

(additions are underlined; deletions are [bracketed])

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Cboe EDGX Options Exchange Fee Schedule

Effective [May]July 1, 2020

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Footnotes:

[1] **Customer Volume Tiers**
Applicable to fee codes PC and NC.

Tier	Rebate Per Contract	Required Criteria
Tier 1	($0.10)	Member has an ADV in Customer Non-Crossing orders ≥ 0.35% of average OCV
Tier 2	($0.13)	Member has an ADV in Customer Non-Crossing orders ≥ 0.45% of average OCV
Tier 3	($0.21)	(1) Member has an ADV in Customer orders ≥ [0.75]1.00% of average OCV; and (2) Member has an ADV in Customer Non-Crossing orders of ≥ 0.40% of average OCV
Tier 4	($0.21)	(1) Member has an ADV in Customer orders ≥ 0.[60]75% of average OCV; and (2) Member has an ADV in Customer or Market Maker orders ≥ 1.00% of average OCV; and (3) Member has an ADV in Customer Non-Crossing orders of ≥ 0.40% of

		average OCV

[2] **Market Maker Volume Tiers**
Applicable to fee codes PM and NM.

Tier	Fee/Rebate Per Contract	Required Criteria
* * * * *		
Tier 7	$0.04	(1) Member has an ADV in Customer orders ≥ 0.[3]70% of average OCV; and (2) Member has an ADV in Customer or Market Maker orders ≥ 0.50% of average OCV (3) Member has an ADV in AIM Agency Orders ≥ 0.[15]30% of average OCV; and (4) Member has an ADV in complex Customer orders (yielding fee codes ZA, ZB, ZC, or ZD) ≥ [5,000 contracts]0.10% of average OCV
Tier 8	$0.03	(1) Member has an ADV in Customer orders ≥ [0.70]1.00% of average OCV; (2) Member has an ADV in Customer or Market Maker orders ≥ 1.10% of average OCV; (3) Member has an ADV in AIM Agency Orders ≥ 0.[1]75% of average OCV; and (4) Member has an ADV in complex Customer orders (yielding fee codes ZA, ZB, ZC, or ZD) ≥ 0.20% of average OCV

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