

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 44		SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4		File No. * SR 2024 - * 011 Amendment No. (req. for Amendments *)	
Filing by Cboe EDGX Exchange, Inc. Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934					
Initial * <input checked="" type="checkbox"/>		Amendment * <input type="checkbox"/>		Withdrawal <input type="checkbox"/>	
Section 19(b)(2) * <input type="checkbox"/>		Section 19(b)(3)(A) * <input checked="" type="checkbox"/>		Section 19(b)(3)(B) * <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) * <input type="checkbox"/>			Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 3C(b)(2) * <input type="checkbox"/>		
Exhibit 2 Sent As Paper Document <input type="checkbox"/>			Exhibit 3 Sent As Paper Document <input type="checkbox"/>		
Description Provide a brief description of the action (limit 250 characters, required when Initial is checked *). <div>The Exchange proposes to amend its Fee Schedule.</div>					
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 * Courtney Last Name * Smith Title * Counsel E-mail * csmith@cboe.com Telephone * (913) 815-7046 Fax					
Signature Pursuant to the requirements of the Securities Exchange of 1934, Cboe EDGX Exchange, Inc. has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized. Date 02/01/2024 (Title *) By Kyle Murray VP, Associate General Counsel (Name *) <div>NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.</div> <div>Kyle Murray Date: 2024.02.01 09:05:47 -06'00'</div>					

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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EDGX-24-011 19b-4 (February fees).c

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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EDGX-24-011 Exhibit 1 (February Fee

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 Advanced 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 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

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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.

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Exhibit Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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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.

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Exhibit Sent As Paper Document

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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EDGX-24-011 Exhibit 5 (February fees

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.

Item 1. Text of the Proposed Rule Change

(a) Cboe EDGX Exchange, Inc. (the “Exchange” or “EDGX”) proposes to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

(b) Not applicable.

(c) Not applicable.

Item 2. Procedures of the Self-Regulatory Organization

(a) The Exchange’s President (or designee) pursuant to delegated authority approved the proposed rule change on January 31, 2024.

(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 Courtney Smith, Counsel, (913) 815-7046, Cboe EDGX Exchange, Inc., 433 West Van Buren Street, Chicago, Illinois 60607.

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

(a) Purpose

The Exchange proposes to amend its Fee Schedule applicable to its equities trading platform (“EDGX Equities”) as follows: 1) by modifying the rate associated with fee code DX; 2) by introducing a new Add Volume Tier and new Non-Displayed Add Volume Tier; 3) by modifying certain Non-Displayed Add Volume Tiers; 4) by modifying the Cross Asset Tier; and 5) by discontinuing Growth Tier 5, Non-Displayed Step-Up Volume Tier 3, and Retail Growth Tier 3. The Exchange proposes to implement these changes effective February 1, 2024.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee

levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues that do not have similar self-regulatory responsibilities under the Securities Exchange Act of 1934 (the “Act”), to which market participants may direct their order flow. Based on publicly available information,¹ no single registered equities exchange has more than 14% of the market share. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. The Exchange in particular operates a “Maker-Taker” model whereby it pays rebates to members that add liquidity and assesses fees to those that remove liquidity. The Exchange’s Fee Schedule sets forth the standard rebates and rates applied per share for orders that provide and remove liquidity, respectively. Currently, for orders in securities priced at or above \$1.00, the Exchange provides a standard rebate of \$0.00160 per share for orders that add liquidity and assesses a fee of \$0.0030 per share for orders that remove liquidity.² For orders in securities priced below \$1.00, the Exchange provides a standard rebate of \$0.00003 per share for orders that add liquidity and assesses a fee of 0.30% of the total dollar value for orders that remove liquidity.³ Additionally, in response to the competitive environment, the Exchange also offers tiered pricing which provides Members opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for

¹ See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (January 24, 2024), available at https://www.cboe.com/us/equities/market_statistics/.

² See EDGX Equities Fee Schedule, Standard Rates.

³ Id.

Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

Fee Code DX

The Exchange currently offers fee code DX, which is appended to Midpoint Discretionary Orders (“MDOs”)⁴ using the Quote Depletion Protection (“QDP”)⁵ order instruction that remove liquidity from the Exchange. QDP is designed to provide enhanced protections to MDOs by tracking significant executions that constitute the best bid or offer on the EDGX Book⁶ and enabling Users⁷ to avoid potentially unfavorable executions by preventing MDOs entered with the optional QDP instruction from exercising discretion to trade at more aggressive prices when QDP has been triggered.⁸ Currently, orders appended with fee code DX are assessed a fee of \$0.00100 per share in securities at or above \$1.00 and 0.30% of dollar value for securities priced below \$1.00. The Exchange proposes to increase the fee to \$0.00150 per share in securities at or above \$1.00. There is no proposed change in the fee assessed to securities priced below \$1.00. The purpose of increasing the fee associated with fee code DX in securities priced at or above \$1.00 is for business and competitive reasons, as the Exchange believes that increasing such fee as proposed would decrease the Exchange’s expenditures with respect

⁴ See Exchange Rule 11.8(g).

⁵ See Exchange Rule 11.8(g)(10).

⁶ See Exchange Rule 1.5(d).

⁷ See Exchange Rule 1.5(ee).

⁸ See Securities Exchange Act Release No. 89007 (June 4, 2020), 85 FR 35454 (June 10, 2020) (SR-CboeEDGX-2020-010) (“Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Amend the Rule Relating to MidPoint Discretionary Orders to Allow Optional Offset or Quote Depletion Protection Instructions”).

to transaction pricing in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added liquidity.

Add Volume Tiers

Under footnote 1 of the Fee Schedule, the Exchange currently offers various Add/Remove Volume Tiers. In particular, the Exchange offers seven Add Volume Tiers that each provide an enhanced rebate for Members' qualifying orders yielding fee codes 3,⁹ 4,¹⁰ B,¹¹ V,¹² and Y¹³ where a Member reaches certain add volume-based criteria. The Exchange now proposes to introduce a new Add Volume Tier to provide Members an additional manner in which they could receive an enhanced rebate if certain criteria is met. The criteria for proposed Add Volume Tier 8 is as follows:

- Add Volume Tier 8 provides a rebate of \$0.0034 per share in securities priced at or above \$1.00 to qualifying orders (i.e., orders yielding fee codes 3, 4, B, V, or Y) where 1) Member has a total retail ADV¹⁴

⁹ Fee code 3 is appended to orders adding liquidity to EDGX in the pre and post market in Tapes A or C securities.

¹⁰ Fee code 4 is appended to orders adding liquidity to EDGX in the pre and post market in Tape B securities.

¹¹ Fee code B is appended to orders adding liquidity to EDGX in Tape B securities.

¹² Fee code V is appended to orders adding liquidity to EDGX in Tape A securities.

¹³ Fee code Y is appended to orders adding liquidity to EDGX in Tape C securities.

¹⁴ "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.

(yielding fee codes ZA,¹⁵ ZO,¹⁶ ZM,¹⁷ and ZR¹⁸) $\geq 0.80\%$ of the TCV¹⁹ or Member has a total retail ADV (yielding fee codes ZA, ZO, ZM, and ZR) $\geq 80,000,000$; and 2) Member has a total remove ADV $\geq 0.80\%$ of the TCV or Member has a total remove ADV $\geq 80,000,000$.

In addition to the Add Volume Tiers offered under footnote 1, the Exchange also offers a Cross Asset Tier, which is designed to incentivize Members to achieve certain levels of participation on both the Exchange's equities and options platform ("EDGX Options"). The Exchange now proposes to amend the criteria of the Cross Asset Tier as the tier has expired. The proposed criteria for the Cross Asset Tier is as follows:

- The Cross Asset Tier provides a rebate of \$0.0029 per share for securities priced at or above \$1.00 for qualifying orders (i.e., orders yielding fee codes 3, 4, B, V, or Y) where 1) Member has a Tape B & C ADAV $\geq 6,000,000$; and 2) Member has an Add ADV on EDGX Options $\geq 300,000$ in SPY.

The proposed Cross Asset Tier will no longer have an expiration date as it will no longer contain a component criteria requiring Members to grow their volume over a certain baseline month. In conjunction with the proposed modifications to the Cross

¹⁵ Fee code ZA is appended to Retail Orders adding liquidity to EDGX.

¹⁶ Fee code ZO is appended to Retail orders adding liquidity to EDGX in the pre and post market.

¹⁷ Fee code ZM is appended to Retail orders marked as Day/RHO or GTX that remove liquidity from EDGX upon arrival.

¹⁸ Fee code ZR is appended to Retail Orders that remove liquidity from EDGX.

¹⁹ "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.

Asset Tier, the Exchange also proposes to remove the definition of Market Maker Add²⁰ from the fee schedule as this term is no longer being utilized.

Also under footnote 1, the Exchange offers four Non-Displayed Add Volume Tiers that each provide an enhanced rebate for Members' qualifying orders yielding fee codes DM,²¹ HA,²² MM,²³ and RP,²⁴ where a Member reaches certain volume-based criteria offered in each tier. The Exchange now proposes to introduce a new Non-Displayed Add Volume Tier to provide Members an additional manner in which they could receive an enhanced rebate if certain criteria is met. The criteria for proposed Non-Displayed Add Volume Tier 5 is as follows:

- Non-Displayed Add Volume Tier 5 provides a rebate of \$0.0026 per share for securities priced at or above \$1.00 for qualifying orders (i.e., orders yielding fee codes DM, HA, MM, or RP) where 1) Member has a total retail ADV (yielding fee codes ZA, ZO, ZM, and ZR) $\geq 0.80\%$ of the TCV or Member has a total retail ADV (yielding fee codes ZA, ZO, ZM, and ZR) $\geq 80,000,000$; and 2) Member has a total remove ADV $\geq 0.80\%$ of the TCV or Member has a total remove ADV $\geq 80,000,000$.

In addition to introducing proposed Non-Displayed Add Volume Tier 5, the Exchange also proposes to amend Non-Displayed Add Volume Tiers 1 – 3 by removing

²⁰ “Market Maker Add” means any order for the account of a registered Market Maker on EDGX Options appended with fee code NM or PM.

²¹ Fee code DM is appended to orders that add liquidity using MidPoint Discretionary Order within discretionary range.

²² Fee code HA is appended to non-displayed orders that add liquidity.

²³ Fee code MM is appended to non-displayed orders that add liquidity using Mid-Point Peg.

²⁴ Fee code RP is appended to non-displayed orders that add liquidity using Supplemental Peg.

the second prong of criteria from each of the three tiers and modifying the TCV requirement for Non-Displayed Add Volume Tiers 2 and 3. Currently, the criteria for Non-Displayed Add Volume Tiers 1 – 3 is as follows:

- Non-Displayed Add Volume Tier 1 provides a rebate of \$0.0015 per share for securities priced at or above \$1.00 for qualifying orders (i.e., orders yielding fee codes DM, HA, MM, or RP) where Member has an $ADAV \geq 0.05\%$ of TCV for Non-Displayed orders that yield fee codes DM, HA, HI,²⁵ MM or RP; or Member has an $ADAV \geq 5,000,000$ for Non-Displayed orders that yield fee codes DM, HA, HI, MM or RP.
- Non-Displayed Add Volume Tier 2 provides a rebate of \$0.0020 per share for securities priced at or above \$1.00 for qualifying orders (i.e., orders yielding fee codes DM, HA, MM, or RP) where Member has an $ADAV \geq 0.08\%$ of TCV for Non-Displayed orders that yield fee codes DM, HA, HI, MM or RP; or Member has an $ADAV \geq 8,000,000$ for Non-Displayed orders that yield fee codes DM, HA, HI, MM or RP.
- Non-Displayed Add Volume Tier 3 provides a rebate of \$0.0025 per share for securities priced at or above \$1.00 for qualifying orders (i.e., orders yielding fee codes DM, HA, MM, or RP) where Member has an $ADAV \geq 0.10\%$ of TCV for Non-Displayed orders that yield fee codes DM, HA, HI, MM or RP; or Member has an $ADAV \geq 10,000,000$ for Non-Displayed orders that yield fee codes DM, HA, HI, MM or RP.

²⁵ Fee code HI is appended to non-displayed orders that receive price improvement and add liquidity to EDGX.

The proposed criteria for Non-Displayed Add Volume Tiers 1 – 3 is as follows:

- Non-Displayed Add Volume Tier 1 provides a rebate of \$0.0015 per share for securities priced at or above \$1.00 for qualifying orders (i.e., orders yielding fee codes DM, HA, MM, or RP) where Member has an $ADAV \geq 0.05\%$ of TCV for Non-Displayed orders that yield fee codes DM, HA, HI, MM or RP.
- Non-Displayed Add Volume Tier 2 provides a rebate of \$0.0020 per share for securities priced at or above \$1.00 for qualifying orders (i.e., orders yielding fee codes DM, HA, MM, or RP) where Member has an $ADAV \geq 0.10\%$ of TCV for Non-Displayed orders that yield fee codes DM, HA, HI, MM or RP.
- Non-Displayed Add Volume Tier 3 provides a rebate of \$0.0025 per share for securities priced at or above \$1.00 for qualifying orders (i.e., orders yielding fee codes DM, HA, MM, or RP) where Member has an $ADAV \geq 0.12\%$ of TCV for Non-Displayed orders that yield fee codes DM, HA, HI, MM or RP.

Together, the proposed addition of Add Volume Tier 8 and Non-Displayed Add Volume Tier 5, proposed amendment to the Cross Asset Tier, and proposed amendments to Non-Displayed Add Volume Tiers 1 – 3 are each intended to provide Members an opportunity to earn an enhanced rebate by increasing their order flow to the Exchange, which further contributes to a deeper, more liquid market and provides even more execution opportunities for active market participants. Incentivizing an increase in liquidity adding volume through enhanced rebate opportunities encourages liquidity

adding Members on the Exchange to contribute to a deeper, more liquid market, providing for overall enhanced price discovery and price improvement opportunities on the Exchange. As such, increased overall order flow benefits all Members by contributing towards a robust and well-balanced market ecosystem.

In addition to the proposed additions and modifications to footnote 1 discussed above, the Exchange now proposes to discontinue Growth Tier 5 and Non-Displayed Step-Up Volume Tier 3 as the Exchange no longer wishes to, nor is required to, maintain such tiers. More specifically, the proposed change removes these tiers as the Exchange would rather redirect future resources and funding into other programs and tiers intended to incentivize increased order flow.

Retail Volume Tiers

Under footnote 2 of the Fee Schedule, the Exchange currently offers various Retail Volume Tiers which provide an enhanced rebate for Retail Member Organizations (“RMOs”)²⁶ an opportunity to receive an enhanced rebate from the standard rebate for Retail Orders²⁷ that add liquidity (i.e., yielding fee code ZA or ZO). Currently, the Exchange offers one Retail Growth Tiers where an RMO is eligible for an enhanced rebate for qualifying orders (i.e., yielding fee code ZA or ZO) meeting certain add volume-based criteria, including “growing” its volume over a certain baseline month. The Exchange now proposes to discontinue Retail Growth Tier 3 as the Exchange no longer

²⁶ See EDGX Rule 11.21(a)(1). A “Retail Member Organization” or “RMO” is a Member (or a division thereof) that has been approved by the Exchange under this Rule to submit Retail Orders.

²⁷ See EDGX Rule 11.21(a)(2). 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 the market and the order does not originate from a trading algorithm or any other computerized methodology.

wishes to, nor is required to, maintain such tier. More specifically, the proposed change removes this tier as the Exchange would rather redirect future resources and funding into other programs and tiers intended to incentivize increased order flow.

(b) Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.²⁸ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)²⁹ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)³⁰ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers as well as Section 6(b)(4)³¹ 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.

²⁸ 15 U.S.C. 78f(b).

²⁹ 15 U.S.C. 78f(b)(5).

³⁰ Id.

³¹ 15 U.S.C. 78f(b)(4)

As described above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The Exchange believes that its proposal to: 1) introduce a new Add Volume Tier and new Non-Displayed Add Volume Tier; 2) modify certain Non-Displayed Add Volume Tiers; and 3) modify the Cross Asset Tier 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. Additionally, the Exchange notes that relative volume-based incentives and discounts have been widely adopted by exchanges,³² including the Exchange,³³ 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. Competing equity exchanges offer similar tiered pricing structures, including schedules of rebates and fees that apply based upon members achieving certain volume and/or growth thresholds, as well as assess similar fees or rebates for similar types of orders, to that of the Exchange.

In particular, the Exchange believes its proposal to: 1) introduce a new Add Volume Tier and new Non-Displayed Add Volume Tier; 2) modify certain Non-Displayed Add Volume Tiers; and 3) modify the Cross Asset Tier is reasonable because the new and revised tiers will be available to all Members and provide all Members with

³² See, e.g., BZX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

³³ See, e.g., EDGX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

an opportunity to receive an enhanced rebate, including additional opportunities to receive an enhanced rebate with the addition of proposed Add Volume Tier 8 and proposed Non-Displayed Add Volume Tier 5. The Exchange further believes its proposal to: 1) introduce a new Add Volume Tier and new Non-Displayed Add Volume Tier; 2) modify certain Non-Displayed Add Volume Tiers; and 3) modify the Cross Asset Tier will provide a reasonable means to encourage liquidity adding displayed orders in Members' order flow to the Exchange and to incentivize Members to continue to provide liquidity adding volume to the Exchange by offering them an opportunity to receive an enhanced rebate on qualifying orders. While the modified criteria in proposed Non-Displayed Add Volume Tiers 1 – 3 and the Cross Asset Tier is slightly more difficult than the current criteria found in those respective tiers, the proposed criteria is not a significant departure from existing criteria, is reasonably correlated to the enhanced rebate offered by the Exchange, and will continue to incentivize Members to submit order flow to the Exchange. An overall increase in activity would deepen the Exchange's liquidity pool, offers additional cost savings, support the quality of price discovery, promote market transparency and improve market quality, for all investors.

The Exchange believes that its proposal to eliminate current Growth Tier 5, Non-Displayed Step-Up Volume Tier 3, and Retail Growth Tier 3 is reasonable because the Exchange is not required to maintain these tiers, nor is it required to provide Members an opportunity to receive enhanced rebates. The Exchange believes its proposal to eliminate these tiers is also equitable and not unfairly discriminatory because it applies to all Members (i.e., the tiers will not be available for any Member). The Exchange also notes that the proposed rule change to remove these tiers merely results in Members not

receiving an enhanced rebate, which, as noted above, the Exchange is not required to offer or maintain. Furthermore, the proposed rule change to eliminate current Growth Tier 5, Non-Displayed Step-Up Volume Tier 3, and Retail Growth Tier 3 enables the Exchange to redirect resources and funding into other programs and tiers intended to incentivize increased order flow.

Further, the Exchange believes that its proposal to modify the fee associated with fee code DX is reasonable, equitable, and consistent with the Act because such change is designed to decrease the Exchange's expenditures with respect to transaction pricing in order to offset some of the costs associated with the Exchange's current pricing structure, which provides various rebates for liquidity-adding orders, and the Exchange's operations generally, in a manner that is consistent with the Exchange's overall pricing philosophy of encouraging added liquidity. The proposed increased fee of \$0.0015 per share is reasonable and appropriate because while it is slightly higher than the existing fee, it remains lower than other fees assessed by the Exchange in order to remove liquidity.³⁴ The Exchange further believes that the proposed increase to the fee associated with fee code DX is not unfairly discriminatory because it applies to all Members equally, in that all Members will be assessed the higher fee upon submitting orders appended with fee codes DX.

Without having a view of activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would definitely result in any Members qualifying the new proposed tiers. While the Exchange has no way

³⁴ See e.g., EDGX Equity Fee Schedule, Fee Codes and Associated Fees. For example, orders with a fee code of BB, N, or W are assessed a fee of \$0.00300.

of predicting with certainty how the proposed changes will impact Member activity, based on the prior months volume, the Exchange anticipates that at least one Member will be able to satisfy proposed Add Volume Tier 8, at least one Member will be able to satisfy the proposed Cross Asset Tier, at least one Member will be able to satisfy proposed Non-Displayed Tier 1, at least two Members will be able to satisfy proposed Non-Displayed Tier 2, at least one Member will be able to satisfy proposed Non-Displayed Tier 3, and at least one Member will be able to satisfy proposed Non-Displayed Add Volume Tier 5. The Exchange also notes that proposed changes will not adversely impact any Member's ability to qualify for enhanced rebates offered under other tiers. Should a Member not meet the proposed new criteria, the Member will merely not receive that corresponding enhanced rebate.

Item 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 competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional order flow to a public exchange, thereby promoting market depth, execution incentives and enhanced execution opportunities, as well as price discovery and transparency for all Members. As a result, the Exchange believes that the proposed changes further the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."

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

purposes of the Act. Particularly, the proposed changes to: 1) introduce a new Add Volume Tier and new Non-Displayed Add Volume Tier; 2) modify certain Non-Displayed Add Volume Tiers; and 3) modify the Cross Asset Tier will apply to all Members equally in that all Members are eligible for the proposed new and revised tiers, have a reasonable opportunity to meet the proposed new and revised tiers' criteria and will receive the enhanced rebate on their qualifying orders if such criteria is met. Further, the proposed change to the fee associated with fee code DX do not impose an unnecessary burden as all Members will be subject to the higher fee assessed to orders appended with fee code DX. The Exchange does not believe the proposed changes burden competition, but rather, enhances competition as it is intended to increase the competitiveness of EDGX by amending existing pricing incentives and adopting new pricing incentives in order to attract order flow and incentivize participants to increase their participation on the Exchange, providing for additional execution opportunities for market participants and improved price transparency. Greater overall order flow, trading opportunities, and pricing transparency benefits all market participants on the Exchange by enhancing market quality and continuing to encourage Members to send orders, thereby contributing towards a robust and well-balanced market ecosystem.

The Exchange believes the proposed elimination of Growth Tier 5, Non-Displayed Step-Up Volume Tier 3, and Retail Growth Tier 3 do not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed changes to eliminate Growth Tier 5, Non-Displayed Step-Up Volume Tier 3, and Retail Growth Tier 3 will not impose any burden

on intramarket competition because the changes apply to all Members uniformly, as in, the tiers will no longer be available to any Member.

Next, the Exchange believes the proposed rule changes does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including other equities exchanges, off-exchange venues, and alternative trading systems. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single equities exchange has more than 14% of the market share.³⁵ 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.”³⁶ 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

³⁵ Supra note 1.

³⁶ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

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’”.³⁷ 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 Act³⁸ and Rule 19b-4(f)(2)³⁹ 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

³⁷ 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)).

³⁸ 15 U.S.C. 78s(b)(3)(A).

³⁹ 17 CFR 240.19b-4(f)(2).

rule change effective upon filing with the Securities and Exchange Commission (the “Commission”). At any time within 60 days of the filing of this 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.

(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.

Exhibits 2-4. Not applicable.

Exhibit 5. Proposed rule text.

EXHIBIT 1**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34- ; File No. SR-CboeEDGX-2024-011]

[Insert date]

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (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”) proposes to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

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

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

1. Purpose

The Exchange proposes to amend its Fee Schedule applicable to its equities trading platform ("EDGX Equities") as follows: 1) by modifying the rate associated with fee code DX; 2) by introducing a new Add Volume Tier and new Non-Displayed Add Volume Tier; 3) by modifying certain Non-Displayed Add Volume Tiers; 4) by modifying the Cross Asset Tier; and 5) by discontinuing Growth Tier 5, Non-Displayed Step-Up Volume Tier 3, and Retail Growth Tier 3. The Exchange proposes to implement these changes effective February 1, 2024.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues that do not have similar self-regulatory responsibilities under the Securities Exchange Act of 1934 (the "Act"), to which market participants may direct their order flow. Based on publicly

available information,³ no single registered equities exchange has more than 14% of the market share. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. The Exchange in particular operates a “Maker-Taker” model whereby it pays rebates to members that add liquidity and assesses fees to those that remove liquidity. The Exchange’s Fee Schedule sets forth the standard rebates and rates applied per share for orders that provide and remove liquidity, respectively. Currently, for orders in securities priced at or above \$1.00, the Exchange provides a standard rebate of \$0.00160 per share for orders that add liquidity and assesses a fee of \$0.0030 per share for orders that remove liquidity.⁴ For orders in securities priced below \$1.00, the Exchange provides a standard rebate of \$0.00003 per share for orders that add liquidity and assesses a fee of 0.30% of the total dollar value for orders that remove liquidity.⁵ Additionally, in response to the competitive environment, the Exchange also offers tiered pricing which provides Members opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

³ See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (January 24, 2024), available at https://www.cboe.com/us/equities/market_statistics/.

⁴ See EDGX Equities Fee Schedule, Standard Rates.

⁵ Id.

Fee Code DX

The Exchange currently offers fee code DX, which is appended to Midpoint Discretionary Orders (“MDOs”)⁶ using the Quote Depletion Protection (“QDP”)⁷ order instruction that remove liquidity from the Exchange. QDP is designed to provide enhanced protections to MDOs by tracking significant executions that constitute the best bid or offer on the EDGX Book⁸ and enabling Users⁹ to avoid potentially unfavorable executions by preventing MDOs entered with the optional QDP instruction from exercising discretion to trade at more aggressive prices when QDP has been triggered.¹⁰ Currently, orders appended with fee code DX are assessed a fee of \$0.00100 per share in securities at or above \$1.00 and 0.30% of dollar value for securities priced below \$1.00. The Exchange proposes to increase the fee to \$0.00150 per share in securities at or above \$1.00. There is no proposed change in the fee assessed to securities priced below \$1.00. The purpose of increasing the fee associated with fee code DX in securities priced at or above \$1.00 is for business and competitive reasons, as the Exchange believes that increasing such fee as proposed would decrease the Exchange’s expenditures with respect to transaction pricing in a manner that is still consistent with the Exchange’s overall pricing philosophy of encouraging added liquidity.

⁶ See Exchange Rule 11.8(g).

⁷ See Exchange Rule 11.8(g)(10).

⁸ See Exchange Rule 1.5(d).

⁹ See Exchange Rule 1.5(ee).

¹⁰ See Securities Exchange Act Release No. 89007 (June 4, 2020), 85 FR 35454 (June 10, 2020) (SR-CboeEDGX-2020-010) (“Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Amend the Rule Relating to MidPoint Discretionary Orders to Allow Optional Offset or Quote Depletion Protection Instructions”).

Add Volume Tiers

Under footnote 1 of the Fee Schedule, the Exchange currently offers various Add/Remove Volume Tiers. In particular, the Exchange offers seven Add Volume Tiers that each provide an enhanced rebate for Members' qualifying orders yielding fee codes 3,¹¹ 4,¹² B,¹³ V,¹⁴ and Y¹⁵ where a Member reaches certain add volume-based criteria. The Exchange now proposes to introduce a new Add Volume Tier to provide Members an additional manner in which they could receive an enhanced rebate if certain criteria is met. The criteria for proposed Add Volume Tier 8 is as follows:

- Add Volume Tier 8 provides a rebate of \$0.0034 per share in securities priced at or above \$1.00 to qualifying orders (i.e., orders yielding fee codes 3, 4, B, V, or Y) where 1) Member has a total retail ADV¹⁶ (yielding fee codes ZA,¹⁷ ZO,¹⁸ ZM,¹⁹ and ZR²⁰) $\geq 0.80\%$ of the TCV²¹

¹¹ Fee code 3 is appended to orders adding liquidity to EDGX in the pre and post market in Tapes A or C securities.

¹² Fee code 4 is appended to orders adding liquidity to EDGX in the pre and post market in Tape B securities.

¹³ Fee code B is appended to orders adding liquidity to EDGX in Tape B securities.

¹⁴ Fee code V is appended to orders adding liquidity to EDGX in Tape A securities.

¹⁵ Fee code Y is appended to orders adding liquidity to EDGX in Tape C securities.

¹⁶ "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.

¹⁷ Fee code ZA is appended to Retail Orders adding liquidity to EDGX.

¹⁸ Fee code ZO is appended to Retail orders adding liquidity to EDGX in the pre and post market.

¹⁹ Fee code ZM is appended to Retail orders marked as Day/RHO or GTX that remove liquidity from EDGX upon arrival.

²⁰ Fee code ZR is appended to Retail Orders that remove liquidity from EDGX.

²¹ "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.

or Member has a total retail ADV (yielding fee codes ZA, ZO, ZM, and ZR) $\geq 80,000,000$; and 2) Member has a total remove ADV $\geq 0.80\%$ of the TCV or Member has a total remove ADV $\geq 80,000,000$.

In addition to the Add Volume Tiers offered under footnote 1, the Exchange also offers a Cross Asset Tier, which is designed to incentivize Members to achieve certain levels of participation on both the Exchange's equities and options platform ("EDGX Options"). The Exchange now proposes to amend the criteria of the Cross Asset Tier as the tier has expired. The proposed criteria for the Cross Asset Tier is as follows:

- The Cross Asset Tier provides a rebate of \$0.0029 per share for securities priced at or above \$1.00 for qualifying orders (i.e., orders yielding fee codes 3, 4, B, V, or Y) where 1) Member has a Tape B & C ADAV $\geq 6,000,000$; and 2) Member has an Add ADV on EDGX Options $\geq 300,000$ in SPY.

The proposed Cross Asset Tier will no longer have an expiration date as it will no longer contain a component criteria requiring Members to grow their volume over a certain baseline month. In conjunction with the proposed modifications to the Cross Asset Tier, the Exchange also proposes to remove the definition of Market Maker Add²² from the fee schedule as this term is no longer being utilized.

Also under footnote 1, the Exchange offers four Non-Displayed Add Volume Tiers that each provide an enhanced rebate for Members' qualifying orders yielding fee

²²

"Market Maker Add" means any order for the account of a registered Market Maker on EDGX Options appended with fee code NM or PM.

codes DM,²³ HA,²⁴ MM,²⁵ and RP,²⁶ where a Member reaches certain volume-based criteria offered in each tier. The Exchange now proposes to introduce a new Non-Displayed Add Volume Tier to provide Members an additional manner in which they could receive an enhanced rebate if certain criteria is met. The criteria for proposed Non-Displayed Add Volume Tier 5 is as follows:

- Non-Displayed Add Volume Tier 5 provides a rebate of \$0.0026 per share for securities priced at or above \$1.00 for qualifying orders (i.e., orders yielding fee codes DM, HA, MM, or RP) where 1) Member has a total retail ADV (yielding fee codes ZA, ZO, ZM, and ZR) $\geq 0.80\%$ of the TCV or Member has a total retail ADV (yielding fee codes ZA, ZO, ZM, and ZR) $\geq 80,000,000$; and 2) Member has a total remove ADV $\geq 0.80\%$ of the TCV or Member has a total remove ADV $\geq 80,000,000$.

In addition to introducing proposed Non-Displayed Add Volume Tier 5, the Exchange also proposes to amend Non-Displayed Add Volume Tiers 1 – 3 by removing the second prong of criteria from each of the three tiers and modifying the TCV requirement for Non-Displayed Add Volume Tiers 2 and 3. Currently, the criteria for Non-Displayed Add Volume Tiers 1 – 3 is as follows:

- Non-Displayed Add Volume Tier 1 provides a rebate of \$0.0015 per share for securities priced at or above \$1.00 for qualifying orders (i.e.,

²³ Fee code DM is appended to orders that add liquidity using MidPoint Discretionary Order within discretionary range.

²⁴ Fee code HA is appended to non-displayed orders that add liquidity.

²⁵ Fee code MM is appended to non-displayed orders that add liquidity using Mid-Point Peg.

²⁶ Fee code RP is appended to non-displayed orders that add liquidity using Supplemental Peg.

orders yielding fee codes DM, HA, MM, or RP) where Member has an $ADAV \geq 0.05\%$ of TCV for Non-Displayed orders that yield fee codes DM, HA, HI,²⁷ MM or RP; or Member has an $ADAV \geq 5,000,000$ for Non-Displayed orders that yield fee codes DM, HA, HI, MM or RP.

- Non-Displayed Add Volume Tier 2 provides a rebate of \$0.0020 per share for securities priced at or above \$1.00 for qualifying orders (i.e., orders yielding fee codes DM, HA, MM, or RP) where Member has an $ADAV \geq 0.08\%$ of TCV for Non-Displayed orders that yield fee codes DM, HA, HI, MM or RP; or Member has an $ADAV \geq 8,000,000$ for Non-Displayed orders that yield fee codes DM, HA, HI, MM or RP.
- Non-Displayed Add Volume Tier 3 provides a rebate of \$0.0025 per share for securities priced at or above \$1.00 for qualifying orders (i.e., orders yielding fee codes DM, HA, MM, or RP) where Member has an $ADAV \geq 0.10\%$ of TCV for Non-Displayed orders that yield fee codes DM, HA, HI, MM or RP; or Member has an $ADAV \geq 10,000,000$ for Non-Displayed orders that yield fee codes DM, HA, HI, MM or RP.

The proposed criteria for Non-Displayed Add Volume Tiers 1 – 3 is as follows:

- Non-Displayed Add Volume Tier 1 provides a rebate of \$0.0015 per share for securities priced at or above \$1.00 for qualifying orders (i.e., orders yielding fee codes DM, HA, MM, or RP) where Member has an

²⁷ Fee code HI is appended to non-displayed orders that receive price improvement and add liquidity to EDGX.

$ADAV \geq 0.05\%$ of TCV for Non-Displayed orders that yield fee codes DM, HA, HI, MM or RP.

- Non-Displayed Add Volume Tier 2 provides a rebate of \$0.0020 per share for securities priced at or above \$1.00 for qualifying orders (i.e., orders yielding fee codes DM, HA, MM, or RP) where Member has an $ADAV \geq 0.10\%$ of TCV for Non-Displayed orders that yield fee codes DM, HA, HI, MM or RP.
- Non-Displayed Add Volume Tier 3 provides a rebate of \$0.0025 per share for securities priced at or above \$1.00 for qualifying orders (i.e., orders yielding fee codes DM, HA, MM, or RP) where Member has an $ADAV \geq 0.12\%$ of TCV for Non-Displayed orders that yield fee codes DM, HA, HI, MM or RP.

Together, the proposed addition of Add Volume Tier 8 and Non-Displayed Add Volume Tier 5, proposed amendment to the Cross Asset Tier, and proposed amendments to Non-Displayed Add Volume Tiers 1 – 3 are each intended to provide Members an opportunity to earn an enhanced rebate by increasing their order flow to the Exchange, which further contributes to a deeper, more liquid market and provides even more execution opportunities for active market participants. Incentivizing an increase in liquidity adding volume through enhanced rebate opportunities encourages liquidity adding Members on the Exchange to contribute to a deeper, more liquid market, providing for overall enhanced price discovery and price improvement opportunities on the Exchange. As such, increased overall order flow benefits all Members by contributing towards a robust and well-balanced market ecosystem.

In addition to the proposed additions and modifications to footnote 1 discussed above, the Exchange now proposes to discontinue Growth Tier 5 and Non-Displayed Step-Up Volume Tier 3 as the Exchange no longer wishes to, nor is required to, maintain such tiers. More specifically, the proposed change removes these tiers as the Exchange would rather redirect future resources and funding into other programs and tiers intended to incentivize increased order flow.

Retail Volume Tiers

Under footnote 2 of the Fee Schedule, the Exchange currently offers various Retail Volume Tiers which provide an enhanced rebate for Retail Member Organizations (“RMOs”)²⁸ an opportunity to receive an enhanced rebate from the standard rebate for Retail Orders²⁹ that add liquidity (i.e., yielding fee code ZA or ZO). Currently, the Exchange offers one Retail Growth Tiers where an RMO is eligible for an enhanced rebate for qualifying orders (i.e., yielding fee code ZA or ZO) meeting certain add volume-based criteria, including “growing” its volume over a certain baseline month. The Exchange now proposes to discontinue Retail Growth Tier 3 as the Exchange no longer wishes to, nor is required to, maintain such tier. More specifically, the proposed change removes this tier as the Exchange would rather redirect future resources and funding into other programs and tiers intended to incentivize increased order flow.

²⁸ See EDGX Rule 11.21(a)(1). A “Retail Member Organization” or “RMO” is a Member (or a division thereof) that has been approved by the Exchange under this Rule to submit Retail Orders.

²⁹ See EDGX Rule 11.21(a)(2). 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 the market and the order does not originate from a trading algorithm or any other computerized methodology.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.³⁰ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)³¹ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)³² requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers as well as Section 6(b)(4)³³ as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

As described above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The Exchange believes that its proposal to: 1) introduce a new Add Volume Tier and new

³⁰ 15 U.S.C. 78f(b).

³¹ 15 U.S.C. 78f(b)(5).

³² Id.

³³ 15 U.S.C. 78f(b)(4)

Non-Displayed Add Volume Tier; 2) modify certain Non-Displayed Add Volume Tiers; and 3) modify the Cross Asset Tier 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.

Additionally, the Exchange notes that relative volume-based incentives and discounts have been widely adopted by exchanges,³⁴ including the Exchange,³⁵ 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. Competing equity exchanges offer similar tiered pricing structures, including schedules of rebates and fees that apply based upon members achieving certain volume and/or growth thresholds, as well as assess similar fees or rebates for similar types of orders, to that of the Exchange.

In particular, the Exchange believes its proposal to: 1) introduce a new Add Volume Tier and new Non-Displayed Add Volume Tier; 2) modify certain Non-Displayed Add Volume Tiers; and 3) modify the Cross Asset Tier is reasonable because the new and revised tiers will be available to all Members and provide all Members with an opportunity to receive an enhanced rebate, including additional opportunities to receive an enhanced rebate with the addition of proposed Add Volume Tier 8 and proposed Non-Displayed Add Volume Tier 5. The Exchange further believes its proposal to: 1) introduce a new Add Volume Tier and new Non-Displayed Add Volume Tier; 2)

³⁴ See, e.g., BZX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

³⁵ See, e.g., EDGX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

modify certain Non-Displayed Add Volume Tiers; and 3) modify the Cross Asset Tier will provide a reasonable means to encourage liquidity adding displayed orders in Members' order flow to the Exchange and to incentivize Members to continue to provide liquidity adding volume to the Exchange by offering them an opportunity to receive an enhanced rebate on qualifying orders. While the modified criteria in proposed Non-Displayed Add Volume Tiers 1 – 3 and the Cross Asset Tier is slightly more difficult than the current criteria found in those respective tiers, the proposed criteria is not a significant departure from existing criteria, is reasonably correlated to the enhanced rebate offered by the Exchange, and will continue to incentivize Members to submit order flow to the Exchange. An overall increase in activity would deepen the Exchange's liquidity pool, offers additional cost savings, support the quality of price discovery, promote market transparency and improve market quality, for all investors.

The Exchange believes that its proposal to eliminate current Growth Tier 5, Non-Displayed Step-Up Volume Tier 3, and Retail Growth Tier 3 is reasonable because the Exchange is not required to maintain these tiers, nor is it required to provide Members an opportunity to receive enhanced rebates. The Exchange believes its proposal to eliminate these tiers is also equitable and not unfairly discriminatory because it applies to all Members (i.e., the tiers will not be available for any Member). The Exchange also notes that the proposed rule change to remove these tiers merely results in Members not receiving an enhanced rebate, which, as noted above, the Exchange is not required to offer or maintain. Furthermore, the proposed rule change to eliminate current Growth Tier 5, Non-Displayed Step-Up Volume Tier 3, and Retail Growth Tier 3 enables the

Exchange to redirect resources and funding into other programs and tiers intended to incentivize increased order flow.

Further, the Exchange believes that its proposal to modify the fee associated with fee code DX is reasonable, equitable, and consistent with the Act because such change is designed to decrease the Exchange's expenditures with respect to transaction pricing in order to offset some of the costs associated with the Exchange's current pricing structure, which provides various rebates for liquidity-adding orders, and the Exchange's operations generally, in a manner that is consistent with the Exchange's overall pricing philosophy of encouraging added liquidity. The proposed increased fee of \$0.0015 per share is reasonable and appropriate because while it is slightly higher than the existing fee, it remains lower than other fees assessed by the Exchange in order to remove liquidity.³⁶ The Exchange further believes that the proposed increase to the fee associated with fee code DX is not unfairly discriminatory because it applies to all Members equally, in that all Members will be assessed the higher fee upon submitting orders appended with fee codes DX.

Without having a view of activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would definitely result in any Members qualifying the new proposed tiers. While the Exchange has no way of predicting with certainty how the proposed changes will impact Member activity, based on the prior months volume, the Exchange anticipates that at least one Member will be able to satisfy proposed Add Volume Tier 8, at least one Member will be able to

³⁶ See e.g., EDGX Equity Fee Schedule, Fee Codes and Associated Fees. For example, orders with a fee code of BB, N, or W are assessed a fee of \$0.00300.

satisfy the proposed Cross Asset Tier, at least one Member will be able to satisfy proposed Non-Displayed Tier 1, at least two Members will be able to satisfy proposed Non-Displayed Tier 2, at least one Member will be able to satisfy proposed Non-Displayed Tier 3, and at least one Member will be able to satisfy proposed Non-Displayed Add Volume Tier 5. The Exchange also notes that proposed changes will not adversely impact any Member's ability to qualify for enhanced rebates offered under other tiers. Should a Member not meet the proposed new criteria, the Member will merely not receive that corresponding enhanced rebate.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional order flow to a public exchange, thereby promoting market depth, execution incentives and enhanced execution opportunities, as well as price discovery and transparency for all Members. As a result, the Exchange believes that the proposed changes further the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."

The Exchange believes the proposed rule changes do not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed changes to: 1) introduce a new Add Volume Tier and new Non-Displayed Add Volume Tier; 2) modify certain Non-Displayed Add Volume Tiers; and 3) modify the Cross Asset Tier will apply to all Members equally in that all Members are eligible for the proposed new and revised tiers,

have a reasonable opportunity to meet the proposed new and revised tiers' criteria and will receive the enhanced rebate on their qualifying orders if such criteria is met. Further, the proposed change to the fee associated with fee code DX do not impose an unnecessary burden as all Members will be subject to the higher fee assessed to orders appended with fee code DX. The Exchange does not believe the proposed changes burden competition, but rather, enhances competition as it is intended to increase the competitiveness of EDGX by amending existing pricing incentives and adopting new pricing incentives in order to attract order flow and incentivize participants to increase their participation on the Exchange, providing for additional execution opportunities for market participants and improved price transparency. Greater overall order flow, trading opportunities, and pricing transparency benefits all market participants on the Exchange by enhancing market quality and continuing to encourage Members to send orders, thereby contributing towards a robust and well-balanced market ecosystem.

The Exchange believes the proposed elimination of Growth Tier 5, Non-Displayed Step-Up Volume Tier 3, and Retail Growth Tier 3 do not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed changes to eliminate Growth Tier 5, Non-Displayed Step-Up Volume Tier 3, and Retail Growth Tier 3 will not impose any burden on intramarket competition because the changes apply to all Members uniformly, as in, the tiers will no longer be available to any Member.

Next, the Exchange believes the proposed rule changes does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly

competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including other equities exchanges, off-exchange venues, and alternative trading systems. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single equities exchange has more than 14% of the market share.³⁷ 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.”³⁸ 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

³⁷ Supra note 3.

³⁸ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

otherwise, in the execution of order flow from broker dealers'....".³⁹ Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

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

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁴⁰ and paragraph (f) of Rule 19b-4⁴¹ 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:

³⁹ 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)).

⁴⁰ 15 U.S.C. 78s(b)(3)(A).

⁴¹ 17 CFR 240.19b-4(f).

Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeEDGX-2024-011 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-2024-011. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or

subject to copyright protection. All submissions should refer to file number SR-CboeEDGX-2024-011 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴²

Sherry R. Haywood,

Assistant Secretary.

⁴² 17 CFR 200.30-3(a)(12).

EXHIBIT 5

(additions are underlined; deletions are [bracketed])

* * * * *

Cboe U.S. Equities Fee Schedules

EDGX Equities

Effective [January 2]February 1, 2024

* * * * *

Fee Codes and Associated Fees:

Fee Code	Description	Fee/(Rebate) Securities At or Above \$1.00	Fee/(Rebate) Securities Below \$1.00
* * * * *			
DX	QDP Usage, removes liquidity	0.001[0] <u>50</u>	0.30000% of Dollar Value
* * * * *			

* * * * *

Definitions:

* * * * *

- [Market Maker Add means any order for the account of a registered Market Maker on EDGX Options appended with fee code NM or PM.]

* * * * *

Footnotes:

1. Add/Remove Volume Tiers:

The rebates to add provided by the below add volume tiers are applicable to the following fee codes: B, V, Y, 3 and 4.

Tier	Rebate Per Share to Add	Required Criteria
* * * * *		
<u>Tier 8</u>	<u>(\$0.0034)</u>	<u>(1) Member has a total retail ADV (yielding fee codes ZA, ZO, ZM, & ZR) \geq 0.80% of the TCV or Member has a total retail ADV (yielding fee codes ZA, ZO, ZM, & ZR) \geq 80,000,000; and (2) Member has a total remove ADV \geq 0.80% of the TCV or Member has a total remove ADV \geq 80,000,000.</u>
[Growth Tier 5]	[(\$0.0034)]	[(1) Member adds a Step-Up ADAV from October 2022 \geq 0.15% of the TCV or Member adds a Step-Up ADAV from October 2022 \geq 15,000,000; and (2) Member has a total remove ADV \geq 0.45% of TCV or Member has a total remove ADV \geq 45,000,000.]
* * * * *		
Cross Asset Tier[*]	(\$0.0029)	(1) Member has a [Step-Up]Tape B & C ADAV [from July 2023] \geq [4]6,000,000; and (2) Member has [a Market Maker Add]an Add ADV on EDGX Options \geq [2,0]300,000 in SPY.

[* This tier will expire no later than January 31, 2024.]

The rebates to add provided by the below volume tiers are applicable to the following fee codes: DM, HA, MM and RP.

Tier	Rebate Per Share to Add	Required Criteria
Non-Displayed Add Volume Tier 1	(\$0.0015)	Member has an ADAV $\geq 0.05\%$ of TCV for Non-Displayed orders that yield fee codes DM, HA, HI, MM or RP[; or Member has an ADAV $\geq 5,000,000$ for Non-Displayed orders that yield fee codes DM, HA, HI, MM or RP]
Non-Displayed Add Volume Tier 2	(\$0.0020)	Member has an ADAV $\geq 0.[08]10\%$ of TCV for Non-Displayed orders that yield fee codes DM, HA, HI, MM, or RP[; or Member has an ADAV $\geq 8,000,000$ for Non-Displayed orders that yield fee codes DM, HA, HI, MM or RP]
Non-Displayed Add Volume Tier 3	(\$0.0025)	Member has an ADAV $\geq 0.1[0]2\%$ of TCV for Non-Displayed orders that yield fee codes DM, HA, HI, MM, or RP[; or Member has an ADAV $\geq 10,000,000$ for Non-Displayed orders that yield fee codes DM, HA, HI, MM or RP]
* * * * *		
[Non-Displayed Step-Up Volume Tier 3]	[((\$0.0026)]	[(1) Member adds a Step-Up ADAV from October 2022 $\geq 0.15\%$ of the TCV or Member adds a Step-Up ADAV from October 2022 $\geq 15,000,000$; and (2) Member has a total remove ADV $\geq 0.45\%$ of TCV or Member has a total remove ADV $\geq 45,000,000$.]
<u>Non-Displayed Add Volume Tier 5</u>	<u>(\$0.0026)</u>	<u>(1) Member has a total retail ADV (yielding fee codes ZA, ZO, ZM, & ZR) $\geq 0.80\%$ of the TCV or Member has a total retail ADV (yielding fee codes ZA, ZO, ZM, & ZR) $\geq 80,000,000$; and (2) Member has a total remove ADV $\geq 0.80\%$ of the TCV or Member has a total remove ADV $\geq 80,000,000$.</u>

* * * * *

2. Retail Volume Tiers

The rebate to add Retail Orders provided by the below retail volume tiers are applicable to the following fee codes: ZA and ZO.

Tier	Rebate Per Share to Add	Required Criteria
* * * * *		
[Retail Growth Tier 3]	[\$0.0037]	[(1) Member adds a Step-Up ADAV from October 2022 \geq 0.15% of the TCV or Member adds a Step-Up ADAV from October 2022 \geq 15,000,000; and (2) Member has a total remove ADV \geq 0.45% of TCV or Member has a total remove ADV \geq 45,000,000.]

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