

proposal, the Exchange represented that:¹²⁴

(1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Rule 8.200–E.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) Trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws, and these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to the Exchange.

(4) Prior to the commencement of trading, the Exchange will inform its ETP Holders in an information bulletin (“Information Bulletin”) of the special characteristics and risks associated with trading in the Shares. Specifically, the Information Bulletin will discuss the following: (a) The risks involved in trading the Shares during the Early and Late Trading Sessions when an updated IFV will not be calculated or publicly disseminated; (b) the procedures for purchases and redemptions of Shares in Creation Baskets and Redemption Baskets (and that Shares are not individually redeemable); (c) NYSE Arca Rule 9.2–E(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (d) how information regarding the IFV is disseminated; (e) how information regarding portfolio holdings is disseminated; (f) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (g) trading information.

(5) For initial and continued listing, the Fund will be in compliance with Rule 10A–3 under the Exchange Act,¹²⁵ and the Trust will rely on the exception contained in Rule 10A–3(c)(7).

(6) Under no circumstances will the Fund hold and/or invest in any assets other than BTC Contracts and MBT Contracts, cash and cash equivalents. The Fund will not invest in or hold spot bitcoin. Cash equivalents only include short-term Treasury bills, money market funds, demand deposit accounts and commercial paper.

(7) The Fund’s investments will be consistent with the Fund’s investment objective and will not be used to enhance leverage, and therefore the Fund’s investments will not be used to seek performance that is the multiple or inverse multiple (e.g., 2Xs, 3Xs, –2Xs, and –3Xs) of the Fund’s Benchmark.

(8) The Fund will only hold Bitcoin Futures Contracts that are listed on an exchange that is a member of the ISG or is a market with which the Exchange has a CSSA.

(9) A minimum of 50,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange.

(10) The Exchange represents that all statements and representations made in the filing regarding (a) the description of the Benchmark, portfolio, or reference asset; (b) limitations on Benchmark or portfolio holdings or reference assets; or (c) applicability of Exchange listing rules specified in the filing will constitute continued listing requirements for the Shares. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will monitor for compliance with the continued listing requirements.¹²⁶ If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

IV. Conclusion

This approval order is based on all of the Exchange’s representations and description of the Fund, including those set forth above and in Amendment No. 2. The Commission notes that the Shares must comply with the requirements of NYSE Arca Rule 8.200–E and Commentary .02 thereto to be listed and traded on the Exchange on an initial and continuing basis.

¹²⁶ The Commission notes that certain other proposals for the listing and trading of exchange-traded products include a representation that the exchange will “surveil” for compliance with the continued listing requirements. *See, e.g.*, Securities Exchange Act Release No. 77499 (Apr. 1, 2016), 81 FR 20428 (Apr. 7, 2016) (Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, to List and Trade Shares of the SPDR DoubleLine Short Duration Total Return Tactical ETF of the SSgA Active Trust). In the context of this representation, it is the Commission’s view that “monitor” and “surveil” both mean ongoing oversight of the Fund’s compliance with the continued listing requirements. Therefore, the Commission does not view “monitor” as a more or less stringent obligation than “surveil” with respect to the continued listing requirements.

For the reasons set forth above, the Commission finds, pursuant to Section 19(b)(2) of the Exchange Act,¹²⁷ that the proposed rule change, as modified by Amendment No. 2, is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with Section 6(b)(5) and Section 11A(a)(1)(C)(iii) of the Exchange Act.¹²⁸

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,¹²⁹ that proposed rule change SR–NYSEArca–2021–53, as modified by Amendment No. 2, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³⁰

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94617; File No. SR–CboeEDGX–2022–022]

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

April 6, 2022.

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 April 1, 2022, Cboe EDGX Exchange, Inc. (the “Exchange” or “EDGX”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II 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.

¹²⁷ 15 U.S.C. 78f(b)(2).

¹²⁸ 15 U.S.C. 78f(b)(5); 15 U.S.C. 78k–1(a)(1)(C)(iii).

¹²⁹ 15 U.S.C. 78f(b)(2).

¹³⁰ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

¹²⁴ *See id.* at 44075–76 and Amendment No. 2.

¹²⁵ 17 CFR 240.10A–3.

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

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

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

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

1. Purpose

The Exchange proposes to amend its Fee Schedule applicable to its equities trading platform ("EDGX Equity") to modify the criteria of Growth Tier 4. The Exchange proposes to implement this change effective April 1, 2022.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues that do not have similar self-regulatory responsibilities under the Exchange Act, to which market participants may direct their order flow. Based on publicly available information,³ no single registered equities exchange has more than 17% of the market share. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. The Exchange in particular operates a "Maker-Taker" model whereby it pays rebates to members that add liquidity and assesses fees to those that remove liquidity. The Exchange's Fee Schedule sets forth the standard rebates and rates

applied per share for orders that provide and remove liquidity, respectively. Currently, for orders in securities priced at or above \$1.00, the Exchange provides a standard rebate of \$0.00160 per share for orders that add liquidity and assesses a fee of \$0.0030 per share for orders that remove liquidity. For orders in securities priced below \$1.00, the Exchange provides a standard rebate of \$0.00009 per share for orders that add liquidity and assesses a fee of 0.30% of the total dollar value for orders that remove liquidity. Additionally, in response to the competitive environment, the Exchange also offers tiered pricing which provides Members opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

Modification to Growth Volume Tier 4

Under footnote 1 of the Fee Schedule, the Exchange currently offers various Add/Remove Volume Tiers. In particular, the Exchange offers four Growth Tiers that each provide an enhanced rebate for Members' qualifying orders yielding fee codes B,⁴ V,⁵ Y,⁶ 3⁷ or 4,⁸ where a Member reaches certain add volume-based criteria, including "growing" its volume over a certain baseline month. Currently, Growth Tier 4 provides an enhanced rebate of \$0.0034 per share to MPIDs that (1) add a Step-Up ADAV⁹ from October 2021 equal to or greater than 0.10% of the TCV¹⁰ or MPIDs that add a Step-Up ADAV from October 2021 equal to or greater than 15 million shares; and (2) MPIDs that add an ADV¹¹ equal to or greater than 0.30% of

⁴ Orders yielding Fee Code "B" are orders adding liquidity to EDGX (Tape B).

⁵ Orders yielding Fee Code "V" are orders adding liquidity to EDGX (Tape A).

⁶ Orders yielding Fee Code "Y" are orders adding liquidity to EDGX (Tape C).

⁷ Orders yielding Fee Code "3" are orders adding liquidity to EXGX in the pre and post market (Tapes A or C).

⁸ Orders yielding Fee Code "4" are orders adding liquidity to EDGX in the pre and post market (Tape B).

⁹ "Step-Up ADAV" means ADAV in the relevant baseline month subtracted from current ADAV. "ADAV" means average daily volume calculated as the number of shares added per day. ADAV is calculated on a monthly basis.

¹⁰ "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.

¹¹ "ADV" means average daily volume calculated as the number of shares added to, removed from,

TCV or MPIDs that add an ADV equal to or greater than 30 million shares. The Exchange now proposes to amend the criteria of Growth Tier 4 to provide the rebate to MPIDs that (1) add a Step-Up ADAV from October 2021 equal to or greater than 0.10% of the TCV or MPIDs that add a Step-Up ADAV from October 2021 equal to or greater than 16 million shares (instead of 15 million shares); and (2) and MPID that adds an ADV equal to or greater than 0.30% of TCV or MPIDs that add an ADV equal to order great than 30 million shares.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the objectives of Section 6 of the Securities and Exchange Act of 1933 [sic] (the "Act"),¹² in general, and furthers the objectives of Section 6(b)(4),¹³ 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)¹⁴ 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.

The Exchange believes that its proposed change to Growth Tier 4 is reasonable, equitable and not unfairly

or routed by, the Exchange, or any combination or subset thereof, per day. ADV is calculated on a monthly basis.

¹² 15 U.S.C. 78f.

¹³ 15 U.S.C. 78f(b)(4).

¹⁴ 15 U.S.C. 78f(b)(5).

³ See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (March 25, 2022), available at https://www.cboe.com/us/equities/market_statistics/.

discriminatory. The Exchange's proposal to amend Growth Tier 4 is reasonable because the tier will continue to be available to all MPIDs and will continue to provide MPIDs an opportunity to receive an enhanced rebate. The Exchange notes that relative volume-based incentives and discounts have been widely adopted by exchanges,¹⁵ including the Exchange,¹⁶ 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 or liquidity provision and/or growth thresholds, as well as assess similar fees or rebates for similar types of orders, to that of the Exchange. The Exchange also believes that the existing rebate under Growth Tier 4 continues to be commensurate with the existing and proposed criteria. That is, the rebate reasonably reflects the difficulty in achieving the corresponding criteria as amended.

The Exchange believes that the change to Growth Tier 4 will benefit all market participants by incentivizing continuous liquidity and, thus, deeper more liquid markets as well as increased execution opportunities. Particularly, the proposal is designed to incentivize liquidity, which further contributes to a deeper, more liquid market and provide even more execution opportunities for active market participants at improved prices. This overall increase in activity deepens the Exchange's liquidity pool, offers additional cost savings, supports the quality of price discovery, promotes market transparency and improves market quality, for all investors.

The Exchange also believes that the proposed amendment to Growth Tier 4 represents an equitable allocation of rebates and is not unfairly discriminatory because all MPIDs are eligible for the tier and would have the opportunity to meet the tier's criteria and would receive the proposed rebate if such criteria is met. Without having a view of activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would definitely result in any MPIDs qualifying for the proposed tiers. While the Exchange has no way of predicting with certainty how the proposed tier will impact MPID activity, the Exchange anticipates that at

least one MPID will be able to compete for and reach the proposed criteria in Growth Tier 4. The Exchange also notes all MPIDs are eligible to satisfy the revised criteria of Growth Tier 4 and further believes the proposed change will provide a reasonable means to encourage future overall growth in Members' order flow to the Exchange by offering an enhanced rebate on qualifying orders. Moreover the proposed criteria will not adversely impact any MPID or Member's ability to qualify for other reduced fee or enhanced rebate tiers. Should any MPID not meet the proposed criteria under Growth Tier 4, the MPID will merely not receive the corresponding enhanced rebate.

As noted above, the Exchange operates in a highly competitive market. The Exchange in only one of 16 equity venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. It is also only one of several maker-taker exchanges. Competing equity exchanges offer similar rates and tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume thresholds.

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 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 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 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 to Growth Tier 4 will apply to all Members equally in that all Members are eligible for the tier, have a reasonable opportunity to meet the tier's criteria and will receive the enhanced rebate on their qualifying orders if such criteria is met. The

Exchange does not believe the proposed changes burdens competition, but rather, enhances competition as it is intended to increase the competitiveness of EDGX by amending an existing pricing incentive 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.

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 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 17% of the market share.¹⁷ 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."¹⁸ 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

¹⁵ See BZX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

¹⁶ See EDGX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

¹⁷ *Supra* note 3.

¹⁸ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

‘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’ . . .’.¹⁹

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)(ii) of the Act.²⁰

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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 email to rule-comments@sec.gov. Please include File Number SR-CboeEDGX-2022-022 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CboeEDGX-2022-022. 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 (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission’s Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeEDGX-2022-022, and should be submitted on or before May 3, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-94616; File No. SR-ICC-2022-003]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to the ICC Governance Playbook

April 6, 2022.

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 April 4,

2022, ICE Clear Credit LLC (“ICC”) 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 primarily by ICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed rule change is to revise the ICC Governance Playbook. These revisions do not require any changes to the ICC Clearing Rules (the “Rules”).

II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change, security-based swap submission, or advance notice and discussed any comments it received on the proposed rule change, security-based swap submission, or advance notice. The text of these statements may be examined at the places specified in Item IV below. ICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

ICC proposes revisions to the Governance Playbook, which consolidates governance arrangements set forth in ICC’s Rules, operating agreement, and other ICC policies and procedures. The Governance Playbook contains information regarding the governance structure at ICC, which includes the Board, committees, and management. ICC believes the proposed changes will facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it is responsible. ICC proposes to make such changes following Commission approval of the proposed rule change. The proposed rule change is described in detail as follows.

The proposed changes consist of clarifications and updates regarding the roles and responsibilities of the ICC Legal Department (“Legal”) and internal committees involved in the governance process. ICC proposes to amend Section I, which describes the purpose of the

¹⁹ *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)).

²⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

²¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.