

Moreover, as described above, another Exchange similarly charges External Distributors higher fees as compared to Internal Distributors for a similar data product.<sup>20</sup>

#### *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 because the Report will be available equally to all Members and non-Members that choose to subscribe to the report. As stated, the Report is optional and Members and non-Members may choose to subscribe to such report, or not, based on their view of the additional benefits and added value provided by utilizing the Report. As such, the Exchange believes the proposed rule change imposes no burden on intramarket competition. 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, similar products offered by Nasdaq and the NYSE Group are priced equally or comparable to the Report. 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." The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: "[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .". Accordingly, the Exchange does not believe its proposal 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 Act<sup>21</sup> and paragraph (f) of Rule 19b-4<sup>22</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

#### **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](mailto:rule-comments@sec.gov). Please include File Number SR-CboeBZX-2023-027 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-CboeBZX-2023-027. 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. 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-CboeBZX-2023-027, and should be submitted on or before May 31, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>23</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2023-09902 Filed 5-9-23; 8:45 am]

**BILLING CODE 8011-01-P**

#### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-97437; File No. SR-CboeBZX-2023-020]

#### **Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Change To Amend the BZX Equities Fee Schedule To Add and Modify Certain Step-Up Tiers, Add a Non-Displayed Step-Up Tier and Modify Certain Fee Codes**

May 4, 2023.

#### **I. Introduction**

On March 6, 2023, Cboe BZX Exchange, Inc. (the "Exchange" or "EDGX") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule

<sup>23</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>20</sup> See Nasdaq Rule 7 Section 152.

<sup>21</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>22</sup> 17 CFR 240.19b-4(f).

change (File Number SR-CboeBZX-2023-020) to amend the BZX Equities Fee Schedule ("Fee Schedule") to add and modify certain Step-Up Tiers, add a Non-Displayed Step-Up Tier and to modify Fee Codes HB, HV and HY.<sup>3</sup> The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.<sup>4</sup> The proposed rule change was published for comment in the **Federal Register** on March 16, 2023.<sup>5</sup> The Commission has received no comment letters on the proposed rule change. Under Section 19(b)(3)(C) of the Act,<sup>6</sup> the Commission is hereby: (i) temporarily suspending File Number SR-CboeBZX-2023-020; and (ii) instituting proceedings to determine whether to approve or disapprove File Number SR-CboeBZX-2023-020.

## II. Description of the Proposed Rule Change

The Exchange operates a "Maker-Taker" model whereby it pays credits to Members<sup>7</sup> that add liquidity and assesses fees to those that remove liquidity.<sup>8</sup> 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.<sup>9</sup> According to the Exchange, 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.<sup>10</sup>

The Exchange proposes to amend its Fee Schedule to add and modify certain Step-Up Tiers, add a Non-Displayed Step-Up Tier and to modify Fee Codes

HB, HV and HY, which fee changes became effective on March 6, 2023.<sup>11</sup> With respect to the Exchange's Step-Up Tiers, the Exchange currently offers Step-Up Tiers (tiers 1 through 3) that provide Members an opportunity to receive an enhanced rebate from the standard rebate for liquidity adding orders that yield fee codes B, V, and Y where they increase their relative liquidity each month over a predetermined baseline.<sup>12</sup> The Exchange now proposes to add a new Tier 1 and renumber existing Tiers 1 through 3 (existing Step-Up Tiers 1, 2 and 3 would be renumbered to Tiers 2, 3 and 4 respectively, and will be referred to herein as "proposed Step-Up Tier" 2, 3 or 4, as applicable).<sup>13</sup> Specifically, proposed Tier 1 would provide for the following:

- Proposed Tier 1 would offer an enhanced rebate of \$0.0031 per share for qualifying orders (*i.e.*, orders yielding fee codes B, V, or Y) where (1) Member has a Step-Up ADAV<sup>14</sup> from January 2023  $\geq 10,000,000$  or Member has a Step-Up Add TCV<sup>15</sup> from January 2023  $\geq 0.10\%$ ; and (2) Member has an ADV<sup>16</sup>  $\geq 0.60\%$  of the TCV.<sup>17</sup>

Proposed Tiers 2 through 4 would have the same criteria and provide the same enhanced rebate as existing Tiers 1 through 3, respectively.<sup>18</sup>

The Exchange also proposes to amend footnote 2 to add a Non-Displayed Step-Up Tier, which will provide Members an opportunity to receive an enhanced rebate from the standard rebate for liquidity adding non-displayed orders

that yield fee codes HB,<sup>19</sup> HV,<sup>20</sup> and HY<sup>21</sup> and meet certain required volume-based criteria.<sup>22</sup> The proposed criteria for the Non-Displayed Step-Up Tier is as follows:

- The proposed Non-Displayed Step-Up Tier would offer an enhanced rebate of \$0.0025 per share for qualifying orders (*i.e.*, orders yielding fee codes HB, HV, or HY) where (1) Member has a Step-Up ADAV from January 2023  $\geq 10,000,000$  or Member has a Step-Up Add TCV from January 2023  $\geq 0.10\%$ ; and (2) Member has an ADV  $\geq 0.60\%$  of the TCV.

## III. Suspension of the Proposed Rule Change

Pursuant to Section 19(b)(3)(C) of the Act,<sup>23</sup> at any time within 60 days of the date of filing of an immediately effective proposed rule change pursuant to Section 19(b)(1) of the Act,<sup>24</sup> the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization ("SRO") 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. As discussed below, the Commission believes a temporary suspension of the proposed rule change is necessary and appropriate to allow for additional analysis of the proposed rule change's consistency with the Act and the rules thereunder.

In support of the proposal, the Exchange argues 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.<sup>25</sup> The Exchange believes that its specific proposal reflects a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would

<sup>3</sup> See Notice, *infra* note 5, at 16285.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as "establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization." 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>5</sup> See Securities Exchange Act Release No. 97108 (March 10, 2023), 88 FR 16285 ("Notice"). The Exchange initially filed the proposed fee changes on March 1, 2023 (SR-CboeBZX-2023-017). However, on March 6, 2023, the Exchange withdrew that filing and submitted SR-CboeBZX-2023-020.

<sup>6</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>7</sup> See BZX Rule 1.5(n). The term "Member" shall mean any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a "member" of the Exchange as that term is defined in Section 3(a)(3) of the Act. Membership may be granted to a sole proprietor, partnership, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to Section 15 of the Act, and which has been approved by the Exchange.

<sup>8</sup> See Notice, *supra* note 5, at 16286.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* See also Fee Schedule, Footnotes 2, Step-Up Tiers.

<sup>13</sup> *Id.*

<sup>14</sup> "Step-Up ADAV" means ADAV in the relevant baseline month subtracted from current ADAV. See Notice, *supra* note 5, at 16286.

<sup>15</sup> "Step-Up Add TCV" means ADAV as a percentage of TCV in the relevant baseline month subtracted from current ADAV as a percentage of TCV. ADAV means average daily added volume calculated as the number of shares added per day. ADAV is calculated on a monthly basis. 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. *Id.*

<sup>16</sup> "ADV" means average daily volume calculated as the number of shares added or removed, combined, per day. ADV is calculated on a monthly basis. *Id.*

<sup>17</sup> "TCV" means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply. The Exchange excludes from its calculation of TCV volume on any day that the Exchange experiences an Exchange System Disruption, on any day with a scheduled early market close and the Russell Reconstitution Day. See Fee Schedule, Definitions.

<sup>18</sup> See Notice, *supra* note 5, at 16286.

<sup>19</sup> Orders yielding Fee Code "HB" are non-displayed orders adding liquidity to BZX (Tape B). See Fee Schedule, Fee Codes and Associated Fees. To reflect eligibility for the Non-Displayed Step-Up Tier for Fee Code HB, the Exchange added footnote 2 to Fee Code HB.

<sup>20</sup> Orders yielding Fee Code "HV" are non-displayed orders adding liquidity to BZX (Tape A). *Id.* To reflect eligibility for the Non-Displayed Step-Up Tier for Fee Code HV, the Exchange added footnote 2 to Fee Code HV.

<sup>21</sup> Orders yielding Fee Code "HY" are non-displayed orders adding liquidity to BZX (Tape C). *Id.* To reflect eligibility for the Non-Displayed Step-Up Tier for Fee Code HY, the Exchange added footnote 2 to Fee Code HY.

<sup>22</sup> See Notice, *supra* note 5, at 16286.

<sup>23</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>24</sup> 15 U.S.C. 78s(b)(1).

<sup>25</sup> See Notice, *supra* note 5, at 16287.

enhance market quality to the benefit of all Members.<sup>26</sup> The Exchange states that the Step-Up Tiers in general are designed to provide Members with additional opportunities to receive enhanced rebates 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.<sup>27</sup> According to the Exchange, like other Step-Up Tiers, the proposed Step-Up Tier 1 is designed to give members an additional opportunity to receive an enhanced rebate for orders meeting the applicable criteria.<sup>28</sup> Furthermore, the Exchange states that the proposed Non-Displayed Step-Up Tier is designed to increase the Members' provision of liquidity to the Exchange, which increases execution opportunities and provides for overall enhanced price discovery and price improvement opportunities on the Exchange.<sup>29</sup> The Exchange believes that increased overall order flow benefits all Members by contributing towards a robust and well-balanced market ecosystem.<sup>30</sup>

Additionally, the Exchange believes the proposed Step-Up Tier 1 and Non-Displayed Step-Up Tier are reasonable as they serve to incentivize Members to increase their liquidity-adding, displayed volume (Step-Up Tier 1) and liquidity-adding, non-displayed volume (Non-Displayed Step-Up Tier), which benefit all market participants by incentivizing continuous liquidity and thus, deeper, more liquid markets as well as increased execution opportunities.<sup>31</sup> The Exchange states that the proposed incentives to provide displayed liquidity are designed to incentivize continuous displayed liquidity, which signals other market participants to take the additional execution opportunities provided by such liquidity, while the proposed incentives to provide non-displayed liquidity will further contribute to a deeper, more liquid market and provide even more execution opportunities for active market participants at improved prices.<sup>32</sup> According to the Exchange, 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.<sup>33</sup>

The Exchange also believes the proposed Step-Up Tier 1 and Non-Displayed Step-Up Tier represent an equitable allocation of rebates and are not unfairly discriminatory because all Members are eligible for those tiers and would have the opportunity to meet a tier's criteria and would receive the proposed rebate if such criteria is met.<sup>34</sup> Further, according to the Exchange, the proposed rebates are commensurate with the proposed criteria.<sup>35</sup> The Exchange states that the rebates reasonably reflect the difficulty in achieving the applicable criteria as proposed.<sup>36</sup> The Exchange also states that the proposed tier/rebate will not adversely impact any Member's ability to qualify for other reduced fee or enhanced rebate tiers.<sup>37</sup> Should a Member not meet the proposed criteria under the modified tier, the Member will merely not receive that corresponding enhanced rebate.<sup>38</sup>

Additionally, the Exchange states that relative volume-based incentives and discounts have been widely adopted by exchanges, including the Exchange, 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.<sup>39</sup> According to the Exchange, 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.<sup>40</sup>

When exchanges file their proposed rule changes with the Commission, including fee filings like the Exchange's present proposal, they are required to provide a statement supporting the proposal's basis under the Act and the rules and regulations thereunder applicable to the exchange.<sup>41</sup> The instructions to Form 19b-4, on which

exchanges file their proposed rule changes, specify that such statement "should be sufficiently detailed and specific to support a finding that the proposed rule change is consistent with [those] requirements."<sup>42</sup>

Section 6 of the Act, including Sections 6(b)(4), (5), and (8), requires the rules of an exchange to (1) provide for the equitable allocation of reasonable fees among members, issuers, and other persons using the exchange's facilities;<sup>43</sup> (2) perfect the mechanism of a free and open market and a national market system, protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers;<sup>44</sup> and (3) not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.<sup>45</sup>

In temporarily suspending the Exchange's fee change, the Commission intends to further consider whether the proposal, in particular the proposed modifications to add and modify certain Step-Up Tiers and add a Non-Displayed Step-Up Tier, is consistent with the statutory requirements applicable to a national securities exchange under the Act. The Commission will consider whether the proposed rule change satisfies the standards under the Act and the rules thereunder requiring, among other things, that an exchange's rules provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; not permit unfair discrimination between customers, issuers, brokers or dealers; and do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.<sup>46</sup>

Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to temporarily suspend the proposed rule change.<sup>47</sup>

#### IV. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

In addition to temporarily suspending the proposal, the Commission also hereby institutes proceedings pursuant

<sup>26</sup> *Id.*

<sup>27</sup> See Notice, *supra* note 5, at 16286.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> See Notice, *supra* note 5, at 16287.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> See 17 CFR 240.19b-4 (Item 3 entitled "Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change").

<sup>42</sup> *Id.*

<sup>43</sup> 15 U.S.C. 78f(b)(4).

<sup>44</sup> 15 U.S.C. 78f(b)(5).

<sup>45</sup> 15 U.S.C. 78f(b)(8).

<sup>46</sup> See 15 U.S.C. 78f(b)(4), (5), and (8), respectively.

<sup>47</sup> For purposes of temporarily suspending the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

to Sections 19(b)(3)(C)<sup>48</sup> and 19(b)(2)(B) of the Act<sup>49</sup> to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,<sup>50</sup> the Commission is providing notice of the grounds for possible disapproval under consideration:

- Whether the Exchange has demonstrated how the proposal is consistent with Section 6(b)(4) of the Act, which requires that the rules of a national securities exchange "provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities;"<sup>51</sup>

- Whether the Exchange has demonstrated how the proposal is consistent with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be "designed to perfect the operation of a free and open market and a national market system" and "protect investors and the public interest," and not be "designed to permit unfair discrimination between customers, issuers, brokers, or dealers;"<sup>52</sup> and

- Whether the Exchange has demonstrated how the proposal is consistent with Section 6(b)(8) of the Act, which requires that the rules of a national securities exchange "not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act]." <sup>53</sup>

As discussed in Section III above, the Exchange argues that all Members will

be eligible for the proposed new tiers and have the opportunity to meet the tiers' criteria. The Exchange further states the proposal provides a reasonable means to incentivize Members to continue to send certain types of order flow to the Exchange. Because the proposed Step-Up Tier and Non-Displayed Step-Up Tier are designed to provide more favorable pricing to Members with volume increases over specified baseline months, questions are raised as to whether the Exchange has satisfied its burden to demonstrate that such tiers will, as the Exchange argues, continue to provide a reasonable means to incentivize Members to send certain types of order flow to the Exchange, in a manner consistent with the Act and the rules thereunder when the specified baseline months remain the same and may continue indefinitely.

Under the Commission's Rules of Practice, the "burden to demonstrate that a proposed rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change."<sup>54</sup> The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,<sup>55</sup> and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.<sup>56</sup>

The Commission is instituting proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposal is consistent with the Act, specifically, with its requirements that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers, and other persons using its facilities; are designed to perfect the operation of a free and open market and a national market system, and to protect investors and the public interest; are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers; and do not impose any burden on competition that is not necessary or appropriate in furtherance of the

purposes of the Act;<sup>57</sup> as well as any other provision of the Act, or the rules and regulations thereunder.

## V. Commission's Solicitation of Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above as well as any other relevant concerns. Such comments should be submitted by May 31, 2023. Rebuttal comments should be submitted by June 14, 2023. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.<sup>58</sup>

The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change.

Interested persons are invited to submit written data, views, and arguments concerning the proposed rule change, including whether the proposal 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](mailto:rule-comments@sec.gov). Please include File No. SR-ChoeBZX-2023-020 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-ChoeBZX-2023-020. 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

<sup>48</sup> 15 U.S.C. 78s(b)(3)(C). Once the Commission temporarily suspends a proposed rule change, Section 19(b)(3)(C) of the Act requires that the Commission institute proceedings under Section 19(b)(2)(B) to determine whether a proposed rule change should be approved or disapproved.

<sup>49</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>50</sup> 15 U.S.C. 78s(b)(2)(B). Section 19(b)(2)(B) of the Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. *See id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding, or if the exchange consents to the longer period. *See id.*

<sup>51</sup> 15 U.S.C. 78f(b)(4).

<sup>52</sup> 15 U.S.C. 78f(b)(5).

<sup>53</sup> 15 U.S.C. 78f(b)(8).

<sup>54</sup> 17 CFR 201.700(b)(3).

<sup>55</sup> *See id.*

<sup>56</sup> *See id.*

<sup>57</sup> *See* 15 U.S.C. 78f(b)(4), (5), and (8).

<sup>58</sup> 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by an SRO. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

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. 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-CboeBZX-2023-020 and should be submitted on or before May 31, 2023. Rebuttal comments should be submitted by June 14, 2023.

## VI. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(3)(C) of the Act,<sup>59</sup> that File Number SR-CboeBZX-2023-020 be and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule change should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>60</sup>

**Sherry R. Haywood,**  
*Assistant Secretary.*

[FR Doc. 2023-09904 Filed 5-9-23; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97432; File No. SR-CboeEDGA-2023-007]

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

May 4, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup>

notice is hereby given that on May 1, 2023, Cboe EDGA Exchange, Inc. (the "Exchange" or "EDGA") 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 EDGA Exchange, Inc. (the "Exchange" or "EDGA") 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/equities/regulation/rule\\_filings/edga/](http://markets.cboe.com/us/equities/regulation/rule_filings/edga/)), 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 ("EDGA Equities") by introducing new fee code DX and modifying the description of existing fee code DQ. The Exchange proposes to implement these changes effective May 1, 2023.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading

systems and other off-exchange venues that do not have similar self-regulatory responsibilities under the Securities Exchange Act of 1934 (the "Act"), to which market participants may direct their order flow. Based on publicly available information,<sup>3</sup> no single registered equities exchange has more than 16% 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 "Taker-Maker" model whereby it pays credits to members that remove liquidity and assesses fees to those that add liquidity. The Exchange's Fee Schedule sets forth the standard rebates and rates applied per share for orders that remove and provide liquidity, respectively. Currently, for orders in securities priced at or above \$1.00, the Exchange provides a standard rebate of \$0.00180 [sic] per share for orders that remove liquidity and assesses a fee of \$0.0030 per share for orders that add liquidity.<sup>4</sup> For orders in securities priced below \$1.00, the Exchange does not assess any fees or provide any rebates for orders that add or remove liquidity.<sup>5</sup> 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.

##### Fee Codes DQ and DX

The Exchange currently offers fee code DQ, which is appended to Midpoint Discretionary Orders ("MDOs")<sup>6</sup> using the Quote Depletion Protection ("QDP")<sup>7</sup> order instruction. QDP is designed to provide enhanced protections to MDOs by tracking significant executions that constitute the best bid or offer on the EDGA Book<sup>8</sup> and enabling Users to avoid potentially unfavorable executions by preventing MDOs entered with the optional QDP instruction from exercising discretion to trade at more aggressive prices when

<sup>3</sup> See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (April 21, 2023), available at [https://www.cboe.com/us/equities/market\\_statistics/](https://www.cboe.com/us/equities/market_statistics/).

<sup>4</sup> See EDGA Equities Fee Schedule, Standard Rates.

<sup>5</sup> *Id.*

<sup>6</sup> See Exchange Rule 11.8(e).

<sup>7</sup> See Exchange Rule 11.8(e)(10).

<sup>8</sup> See Exchange Rule 1.5(d).

<sup>59</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>60</sup> 17 CFR 200.30-3(a)(57) and (58).

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

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