

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97404; File No. SR-CBOE-2023-021]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Cboe Options Rule 3.34

April 28, 2023.

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 20, 2023, Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ 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 Exchange, Inc. (the “Exchange” or “Cboe Options”) proposes to amend Cboe Options Rule 3.34. The text of the proposed rule change is provided in error 5.

The text of the proposed rule change is also available on the Exchange’s website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), 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 proposed rule change amends Cboe Options Rule 3.34. Specifically, the Exchange proposes to amend Cboe Options Rule 3.34 to reinsert requirements related to filing of an electronic Uniform Termination Notice for Securities Industry Registration (“Form U5”).

In 2021, following the approval of Financial Industry Regulatory Authority, Inc. (“FINRA”) rule changes, which, among other things, consolidated FINRA registration rules,⁵ the Exchange amended, reorganized, and enhanced its rules regarding registration, qualification examinations, and continuing education, in order to conform the Exchange’s rules more closely to those of its affiliated exchanges and non-affiliated exchanges in the interest of uniformity and to facilitate compliance with membership, registration and qualification regulatory requirements by members of multiple exchanges.⁶

As part of the rule change, the Exchange adopted new Cboe Options Rule 3.34, Electronic Filing Requirements for Uniform Forms, which, among other things, consolidated various Form U5 electronic filing requirements in a single location and also imposed certain new requirements. In consolidating the electronic filing requirements, the Exchange inadvertently removed requirements for the submission of Form U5 and related amendments, previously contained in Cboe Options Rule 3.37. Specifically, Cboe Options Rule 3.37(b) previously contained a requirement that a Form U5 must be electronically submitted by a Trading Permit Holder (“TPH”) organization immediately following the date of termination of any registered person, but in no event later than 30 days following termination. Further, the Exchange inadvertently removed the requirement for a copy of the Form U5

to be provided concurrently to the person whose association has been terminated, also previously contained in Cboe Options Rule 3.37(b). Finally, the Exchange inadvertently removed the requirement, previously set forth in Cboe Options Rule 3.37(c), that a TPH submit an amendment to the Form U5 in the event that the TPH learns of facts or circumstances causing any information set forth in the Form U5 to become inaccurate or incomplete, and that such amendment shall be provided concurrently to the person whose association has been terminated no later than 30 days after the TPH learns of the facts or circumstances giving rise to the need for the amendment.

The Exchange now proposes to amend Cboe Options Rule 3.34(e) to insert these provisions that were previously inadvertently deleted from Cboe Options Rule 3.37. Specifically, the Exchange proposes to amend Cboe Options Rule 3.34(e) to state that a Form U5 is required to be electronically submitted by a TPH organization immediately following the date of termination, but in no event later than 30 days following termination, and to state that a copy of the Form U4 [sic] shall be provided concurrently to the person whose association has been terminated. Further, the Exchange proposes to amend Cboe Options 3.34(e) to state that a TPH shall submit an amendment to the Form U5, in the event that the TPH organization learns of facts or circumstances causing any information set forth in the Form U5 to become inaccurate or incomplete, and that such amendment shall be provided concurrently to the person whose association has been terminated no later than 30 days after the TPH organization learns of the facts or circumstances giving rise to the need for the amendment.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of section 6(b) of the Act.⁷ Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)⁸ 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,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ See Exchange Act Release No. 81098 (July 7, 2017), 82 FR 32419 (July 13, 2017) (Order Approving File No. SR-FINRA-2017-007). See also FINRA Regulatory Notice 17-30 (SEC Approves Consolidated FINRA Registration Rules, Restructured Representative-Level Qualification Examinations and Changes to Continuing Education Requirements) (October 2017).

⁶ See Exchange Act Release 34-91576 (April 15, 2021), 86 FR 20760 (April 21, 2021) (SR-CBOE-2021-022).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

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)⁹ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, will protect investors and the public interest by correcting errors and clarifying text within the Cboe Options Rules. Specifically, by adding language that was inadvertently removed regarding requirements for Form U5 submissions and amendments, the proposed rule change is designed to make the Rulebook more accurate and add clarity to the Cboe Options Rules, thereby mitigating any potential confusion for TPHs, particularly those who are also FINRA members. The Exchange believes the amendments reduce the possibility of a significant regulatory gap between Exchange and FINRA rules, providing more uniform standards across the securities industry. Further, the Exchange believes that the alignment of rules regarding Form U5 submissions and amendments immediately and expeditiously would serve to avoid potential confusion for those members registered at both the Exchange and FINRA, prevent unnecessary regulatory burdens, and promote the efficient administration of the rules.

The proposed rule change will have no impact on trading on the Exchange. As the Exchange did not intend to delete these requirements and did not provide specific notice to TPHs of any changes specifically regarding such requirements following the inadvertent deletion, the Exchange believes the proposed clarifying rule amendments will not result in any practical changes to the Form U5 submission and amendment process from an Exchange or TPH standpoint. The proposed requirements are merely being added back to the Rulebook for purposes of clarity and accuracy.

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. The proposed rule change merely reinserts language that was inadvertently removed regarding requirements for Form U5 submissions and related amendments. As the Exchange did not intend to delete these requirements and did not provide notice to TPHs of any changes specifically regarding such requirements following the inadvertent deletion, the Exchange believes the proposed clarifying rule amendments will not result in any practical changes to the Form U5 submission and amendment process from an Exchange or TPH standpoint. Further, other Self-Regulatory Organizations ("SROs"), including FINRA, have continued to maintain these requirements for the submission of Form U5 and related amendments in their rules.¹⁰

The proposed rule change makes no substantive changes to the Cboe Options Rules, and thus will have no impact on trading on the Exchange. The proposed rule change is not intended to have any impact on competition.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹²

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that this proposed rule change may become operative immediately upon filing.¹³

¹⁰ See FINRA By-Laws, Article V, Section 3.

¹¹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹² 17 CFR 240.19b-4(f)(6).

¹³ In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission

Waiver of the 30-day operative delay would allow the Exchange to reinsert language that the Exchange states was inadvertently removed regarding requirements for Form U5 submissions and related amendments. As the Exchange states it did not intend to delete these requirements, did not provide notice to TPHs of any changes specifically regarding such requirements following the inadvertent deletion, and the other SROs, including FINRA, still have continued to maintain these requirements for the submission of Form U5 and related amendments in their rules, allowing a waiver will eliminating the regulatory gap between the FINRA and Exchange rules, providing more uniform standards across the securities industry, and helping to avoid confusion for registered persons of the Exchange that are also FINRA members. For this reason, the Commission believes that waiver of the 30-day operative delay for this proposal is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.¹⁴

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 shall 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 (<https://www.sec.gov/rules/sro.shtml>); or

written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. 17 CFR 240.19b-4(f)(6)(iii). The Exchange has provided such notice.

¹⁴ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁹ *Id.*

• Send an email to rule-comments@sec.gov. Please include File Number SR–CBOE–2023–021 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–CBOE–2023–021. 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 10:00 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–CBOE–2023–021 and should be submitted on or before May 25, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Sherry R. Haywood,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97406; File No. SR–CboeEDGX–2023–016]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Change To Amend the EDGX Equities Fee Schedule To Eliminate and Modify Certain Growth Tiers and Non-Displayed Step-Up Volume Tiers, Modify a Retail Growth Tier, Introduce New Fee Code DX and Modify Fee Code DQ

April 28, 2023.

I. Introduction

On March 1, 2023, Cboe EDGX 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”),¹ and Rule 19b–4 thereunder,² a proposed rule change (File Number SR–CboeEDGX–2023–016) to amend the EDGX Equities Fee Schedule (“Fee Schedule”) to eliminate and modify certain Growth Tiers and Non-Displayed Step-Up Volume Tiers, modify a Retail Growth Tier, introduce new fee code DX and modify fee code DQ.³ The proposed rule change was immediately effective upon filing with the Commission pursuant to section 19(b)(3)(A) of the Act.⁴ The proposed rule change was published for comment in the **Federal Register** on March 9, 2023.⁵ The Commission has received no comment letters on the proposed rule change. Under section 19(b)(3)(C) of the Act,⁶ the Commission is hereby: (i) temporarily suspending File Number SR–CboeEDGX–2023–016; and (ii) instituting proceedings to determine whether to approve or disapprove File Number SR–CboeEDGX–2023–016.

II. Description of the Proposed Rule Change

The Exchange operates a “Maker-Taker” model whereby it pays rebates to

Members⁷ that add liquidity and assesses fees to those that remove liquidity.⁸ 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.⁹ 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.¹⁰

The Exchange proposes to amend its Fee Schedule to eliminate and modify certain Growth Tiers and Non-Displayed Step-Up Volume Tiers, modify a Retail Growth Tier, introduce new fee code DX and modify fee code DQ, which fee changes became effective on March 1, 2023.¹¹ With respect to the Exchange's Growth Tiers, the Exchange offers five Growth Tiers that each provide an enhanced rebate for Members' qualifying orders yielding fee codes B, V, Y, 3, and 4, where a Member reaches certain add volume-based criteria, including “growing” its volume over a certain baseline month.¹² The Exchange proposes to discontinue Growth Tiers 1–3 and to modify the criteria of Growth Tier 4 and Growth Tier 5 (renumbered to Growth Tier 1 and Growth Tier 2, respectively and referred to herein as “proposed Growth Tier 1” and “proposed Growth Tier 2”).¹³ Specifically, the Exchange proposes to add a third prong to the Required Criteria for proposed Growth Tier 1. As

⁷ See EDGX 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.

⁸ See Notice, *supra* note 5, at 14658.

⁹ *Id.*

¹⁰ *Id.*

¹¹ See Notice, *supra* note 5, at 14658. Under footnotes 1 and 2 of the Exchange's Fee Schedule, the tiered pricing fee table lists the tier, the “rebate per share to add” or the “fee per share to remove,” as applicable, and the “Required Criteria”—sometimes referred to as “prongs”—that must be met by a Member in order to qualify for the applicable tiered pricing fee.

¹² See Notice, *supra* note 5, at 14658. See also Fee Schedule, Footnotes, 1, Add/Remove Volume Tiers.

¹³ The Exchange states it is eliminating Growth Tiers 1–3 because no Members have satisfied those Growth Tier criteria within the past six months and the Exchange no longer wishes to, nor is required to, maintain such tiers. The Exchange states that it would rather redirect future resources and funding into other programs and tiers intended to incentivize increased order flow. See Notice, *supra* note 5, at 14658.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ See Notice, *infra* note 5, at 14658.

⁴ 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).

⁵ See Securities Exchange Act Release No. 97042 (March 3, 2023), 88 FR 14657 (“Notice”).

⁶ 15 U.S.C. 78s(b)(3)(C).

¹⁵ 17 CFR 200.30–3(a)(12).