

disapprove, the proposed rule change (File No. SR-NYSENAT-2020-01).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88328 File No. SR-CboeEDGX-2020-011]

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

March 5, 2020.

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 March 2, 2020, Cboe EDGX Exchange, Inc. (the “Exchange”) 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 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” or “EDGX Equities”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change 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.

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 in connection with its standard removing liquidity fees. The Exchange proposes to implement the proposed change to its fee schedule on March 2, 2020.

The Exchange first notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 13 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 credits 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. Particularly, for securities at or above \$1.00, the Exchange provides a standard rebate of \$0.00170 per share for orders that add liquidity and assesses a fee of \$0.00265 per share for orders that remove liquidity. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive

forces constrain the Exchange’s transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

As stated above, the Exchange currently provides a standard fee of \$0.00265 per share for liquidity removing orders (*i.e.*, those yielding fee codes N, W, 6, BB, and ZR) in securities priced at or above \$1.00. Orders in securities priced below \$1.00 that remove liquidity are assessed a fee of 0.30% of the dollar value. The Exchange now proposes to increase the current standard fee of \$0.00265 per share to \$0.00270 per share for orders that remove liquidity for securities priced at or above \$1.00. Orders that remove liquidity in securities priced below \$1.00 would continue to be assessed a fee of 0.30% of the dollar value. Although this proposed standard fee for liquidity removing orders is higher than the current base rate for such orders, the proposed fee is in line with similar fees for liquidity removing orders in place on other exchanges.⁴

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,⁵ in general, and furthers the requirements of Section 6(b)(4),⁶ in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. 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.

In particular, the Exchange believes that the proposed amendment is reasonable, equitable and non-discriminatory because the proposed change represents a modest fee increase and such fee is equally applicable to all liquidity removing orders and thus is also equally applicable to all Members of the Exchange. Additionally, as noted above, the Exchange operates in highly competitive market. The Exchange is only one of several equity venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. Moreover, the proposed standard fee for

⁴ *E.g.*, the Nasdaq base fee rate of \$0.0030 for liquidity removing orders in securities priced at or above \$1.00. See <https://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2>.

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78b(4).

³ See Cboe Global Markets, U.S. Equities Market Volume Summary (February 21, 2020), available at https://markets.cboe.com/us/equities/market_statistics/. This market share percentage is based on a Month-to-Date volume summary.

⁶ 17 CFR 200.30-3(a)(31).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

liquidity removing orders is still lower than that offered at other exchanges for similar transactions.⁷

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 Exchange believes the proposed rule change does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed change applies to all liquidity removing orders equally, and thus applies to all Members equally. Additionally, 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 purpose 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 12 other equities exchanges and off-exchange venues and alternative trading systems. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single equities exchange has more than 17% of the market share.⁸ 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.”⁹ 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’. . . .”¹⁰ 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 is effective upon filing pursuant to Section 19(b)(3)(A)¹¹ of the Act and subparagraph (f)(2) of Rule 19b-4¹² thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such 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 under Section 19(b)(2)(B)¹³ of the Act 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. Please include File No. SR-CboeEDGX-2020-011 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 No. SR-CboeEDGX-2020-011. 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 (<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 No. SR-CboeEDGX-2020-011, and should be submitted on or before April 1, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

J. Matthew DeLesDernier,
Assistant Secretary.

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¹⁰ *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)).

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(2).

¹³ 15 U.S.C. 78s(b)(2)(B).

¹⁴ 17 CFR 200.30b-3(a)(12).

⁷ See supra note 4.

⁸ See supra note 3.

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