

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 15 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%<sup>26</sup> of the market share. 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.”<sup>27</sup> 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’ . . . .”<sup>28</sup> Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or

appropriate in furtherance of the purposes of the Act.

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

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

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

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act<sup>29</sup> and paragraph (f) of Rule 19b-4<sup>30</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 (<https://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-2023-026 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-2023-026. 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-CboeBZX-2023-026, and should be submitted on or before May 24, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>31</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-97393; File No. SR-CboeEDGX-2023-030

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

April 27, 2023.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 17, 2023, Cboe EDGX Exchange, Inc. (“Exchange” or “EDGX”) filed with the Securities and Exchange Commission (“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.

<sup>31</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>26</sup> *Supra* note 3.

<sup>27</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

<sup>28</sup> *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)).

<sup>29</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>30</sup> 17 CFR 240.19b-4(f).

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

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

The text of the proposed rule change is also available on the Exchange's website ([http://markets.cboe.com/us/options/regulation/rule\\_filings/edgx/](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 Equities") as follows: (1) by modifying and introducing certain Growth Tiers; (2) by modifying the criteria of Non-Displayed Step-Up Volume Tier 1; (3) by modifying and introducing certain Remove Volume Tiers; (4) by modifying the criteria of Retail Growth Tier 3; and (5) by modifying the rates associated with certain fee codes. The Exchange proposes to implement these changes effective April 3, 2023.<sup>3</sup>

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>4</sup> 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.<sup>5</sup> 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.<sup>6</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.

#### Growth Tiers

Under footnote 1 of the Fee Schedule, the Exchange currently offers various Add/Remove Volume Tiers. In particular, the Exchange offers two Growth Tiers that each provide an enhanced rebate for Members' qualifying orders yielding fee codes B,<sup>7</sup>

V,<sup>8</sup> Y,<sup>9</sup> 3,<sup>10</sup> and 4,<sup>11</sup> where a Member reaches certain add volume-based criteria, including "growing" its volume over a certain baseline month. First, the Exchange is proposing to introduce new Growth Tier 1 to provide Members an additional manner in which they could receive an enhanced rebate if certain criteria is met. The proposed criteria for proposed Growth Tier 1 is as follows:

- Growth Tier 1 provides a rebate of \$0.0020 per share for securities priced above \$1.00 to qualifying orders (*i.e.*, orders yielding fee B, V, Y, 3, or 4) where Member adds a Step-Up ADAV<sup>12</sup> from January 2023  $\geq 0.10\%$  of the TCV<sup>13</sup> or Member adds a Step-Up ADAV from January 2023  $\geq 10,000,000$ .

Proposed Growth Tier 1 will provide a lower rebate than other existing Growth Tiers, but this lower rebate is commensurate with the difficulty of meeting the less stringent criteria associated with proposed Growth Tier 1.

Second, the Exchange proposes to renumber current Growth Tiers 1 and 2 and modify the criteria of proposed Growth Tier 3 (current Growth Tier 2). Currently, Growth Tier 2 (proposed Growth Tier 3) reads as follows:

- Growth Tier 2 provides a rebate of \$0.0034 per share to qualifying orders (*i.e.*, orders yielding fee codes B, V, Y, 3, or 4) where (1) Member adds a Step-Up ADAV from October 2022  $\geq 0.15\%$  of the TCV or Member adds a Step-Up ADAV from October 2022  $\geq 15,000,000$ ; and (2) Member has a total remove ADV<sup>14</sup>  $\geq 0.45\%$  of TCV or Member has a total remove ADV  $\geq 45,000,000$ ; and (3) Member adds a Retail Step-Up ADV<sup>15</sup>

<sup>3</sup> Fee code V is appended to orders adding liquidity to EDGX in Tape A securities.

<sup>4</sup> Fee code Y is appended to orders adding liquidity to EDGX in Tape C securities.

<sup>5</sup> Fee code 3 is appended to orders adding liquidity to EDGX in the pre and post market in Tapes A or C securities.

<sup>6</sup> Fee code 4 is appended to orders adding liquidity to EDGX in the pre and post market in Tape B securities.

<sup>7</sup> "Step-Up ADAV" means ADAV in the relevant baseline month subtracted from current ADAV. ADAV means average daily added volume calculated as the number of shares added per day. ADAV is calculated on a monthly basis.

<sup>8</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.

<sup>9</sup> "ADV" means average daily volume calculated as the number of shares added to, removed from, or routed by, the Exchange, or any combination or subset thereof, per day. ADV is calculated on a monthly basis.

<sup>10</sup> "Step-Up ADV" means ADV in the relevant baseline month subtracted from current day ADV.

<sup>4</sup> See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (March 24, 2023), available at <https://www.cboe.com/us/equities/statistics/>.

<sup>5</sup> See EDGX Equities Fee Schedule, Standard Rates.

<sup>6</sup> *Id.*

<sup>7</sup> Fee code B is appended to orders adding liquidity to EDGX in Tape B securities.

<sup>3</sup> The Exchange initially filed the proposed fee changes on April 3, 2023 (SR-CboeEDGX-2023-024). On April 17, 2023, the Exchange withdrew that filing and submitted SR-CboeEDGX-2023-029. On April 17, 2023, the Exchange withdrew SR-CboeEDGX-2023-029 and submitted this proposal.

(i.e., yielding fee codes ZA<sup>16</sup> or ZO<sup>17</sup>) from August 2022  $\geq 0.10\%$  of TCV.

Now, the Exchange proposes to remove the third prong of criteria. The proposed criteria for current Growth Tier 2 (proposed Growth Tier 3) is as follows:

- Proposed Growth Tier 3 provides a rebate of \$0.0034 per share to qualifying orders (i.e., orders yielding fee codes B, V, Y, 3, or 4) where (1) Member adds a Step-Up ADAV from October 2022  $\geq 0.15\%$  of the TCV or Member adds a Step-Up ADAV from October 2022  $\geq 15,000,000$ ; and (2) Member has a total remove ADV  $\geq 0.45\%$  of TCV or Member has a total remove ADV  $\geq 45,000,000$ .

The proposed modification to proposed Growth Tier 3 removes a criteria designed to encourage Members to grow their volume in retail orders on the Exchange. By removing a criteria while keeping the enhanced rebate the same, the proposed criteria slightly decreases the difficulty required for Members to meet the applicable tier threshold. By introducing proposed Growth Tier 1 and decreasing the difficulty required under proposed Growth Tier 3, Members are still incentivized to grow their volume on the Exchange, thereby contributing to a deeper and more liquid market, which benefits all market participants and provides greater execution opportunities on the Exchange.

#### Non-Displayed Add Volume Tiers

In addition to the Growth Tiers offered under footnote 1, the Exchange also offers Non-Displayed Add Volume Tiers that each provide an enhanced rebate for Members' qualifying orders yielding fee codes DM,<sup>18</sup> HA,<sup>19</sup> MM,<sup>20</sup> and RP,<sup>21</sup> where a Member reaches certain volume-based criteria offered in each tier. The Exchange now proposes to amend the criteria of current Non-Displayed Step-Up Volume Tier 1. Currently, the criteria for Non-Displayed Step-Up Volume Tier 1 is as follows:

- Non-Displayed Step-Up Volume Tier 1 provides a rebate of \$0.0026 per share to qualifying orders (i.e., orders yielding fee code DM, HA, MM, or RP) where (1) Member adds a Step-Up ADAV from October 2022  $\geq 0.15\%$  of the

TCV or Member adds a Step-Up ADAV from October 2022  $\geq 15,000,000$ ; and (2) Member has a total remove ADV  $\geq 0.45\%$  of TCV or Member has a total remove ADV  $\geq 45,000,000$ ; and (3) Member adds a Retail Step-Up ADV (i.e., yielding fee codes ZA or ZO) from August 2022  $\geq 0.10\%$  of TCV.

Now, the Exchange proposes to remove the third prong of criteria. The proposed criteria for Non-Displayed Step-Up Volume Tier 1 is as follows:

- Non-Displayed Step-Up Volume Tier 1 provides a rebate of \$0.0026 per share to qualifying orders (i.e., orders yielding fee code DM, HA, MM, or RP) where (1) Member adds a Step-Up ADAV from October 2022  $\geq 0.15\%$  of the TCV or Member adds a Step-Up ADAV from October 2022  $\geq 15,000,000$ ; and (2) Member has a total remove ADV  $\geq 0.45\%$  of TCV or Member has a total remove ADV  $\geq 45,000,000$ .

The proposed modification to Non-Displayed Step-Up Volume Tier 1 is intended to remove criteria designed to incentivize Members to add non-displayed retail volume on the Exchange. By removing a criteria while keeping the enhanced rebate the same, the proposed criteria slightly decreases the difficulty required for Members to meet the applicable tier threshold while continuing to encourage Members to add non-displayed liquidity to the Exchange, thereby contributing to a deeper and more liquid market, which benefits all market participants and provides greater execution opportunities on the Exchange.

#### Remove Volume Tiers

In addition to the Growth Tiers and Non-Displayed Add Volume Tiers offered under footnote 1, the Exchange also offers two Remove Volume Tiers that each assess a reduced fee for Members' qualifying orders yielding fee codes BB,<sup>22</sup> N,<sup>23</sup> and W<sup>24</sup> where a Member reaches certain add or remove volume-based criteria. The Exchange first proposes to amend the criteria in Remove Volume Tiers 1 and 2. Currently, the criteria for these tiers is as follows:

- Remove Volume Tier 1 provides a reduced fee of \$0.00275 per share for securities priced above \$1.00 or 0.28% of the total dollar value in securities priced below \$1.00 to qualifying orders (i.e., orders yielding fee codes BB, N, or W) where (1) Member adds a Step-Up ADAV from June 2021  $\geq 0.10\%$  of the

TCV or Member adds a Step-Up ADAV from June 2021  $\geq 8,000,000$ ; and (2) Member has a total remove ADV  $\geq 0.60\%$  of the TCV or Member has a total remove ADV  $\geq 45,000,000$ .

- Remove Volume Tier 2 assesses a reduced fee of \$0.00275 per share for securities priced above \$1.00 or 0.28% of the total dollar value in securities priced below \$1.00 to qualifying orders (i.e., orders yielding fee codes BB, N, or W) where (1) Member has an ADAV  $\geq 0.25\%$  TCV with displayed orders that yield fee codes B, V, or Y; or (2) Member adds Retail Order ADV (i.e., yielding fee codes ZA or ZO)  $\geq 0.45\%$  of the TCV.

Now, the Exchange proposes to replace the existing criteria with a single prong of criteria for each tier and slightly increase the reduced fee assessed by Remove Volume Tier 1. The proposed criteria is as follows:

- Remove Volume Tier 1 assesses a reduced fee of \$0.00285 per share for securities priced above \$1.00 or 0.28% of the total dollar value in securities priced below \$1.00 to qualifying orders (i.e., orders yielding fee codes BB, N, or W) where Member has an ADAV  $\geq 0.25\%$  TCV with displayed orders that yield fee codes B, V, or Y.

- Remove Volume Tier 2 assesses a reduced fee of \$0.00275 per share for securities priced above \$1.00 or 0.28% of the total dollar value in securities priced below \$1.00 to qualifying orders (i.e., orders yielding fee codes BB, N, or W) where Member adds Retail Order ADV (i.e., yielding fee codes ZA or ZO)  $\geq 0.45\%$  of the TCV.

The proposed change to Remove Volume Tier 1 will provide a slightly lower reduced fee in exchange for less difficult criteria that continues to encourage Members to strive to meet the criteria by removing liquidity on the Exchange. Similarly, the proposed change to Remove Volume Tier 2 will assess the current reduced fee while lessening the difficulty of meeting the criteria in Remove Volume Tier 2.

Second, the Exchange proposes to introduce Remove Volume Tier 3. The proposed criteria in proposed Remove Volume Tier 3 is as follows:

- Proposed Remove Volume Tier 3 assesses a reduced fee of \$0.00275 per share in securities priced above \$1.00 or 0.28% of the total dollar value in securities priced below \$1.00 for qualifying orders (i.e., orders yielding fee codes BB, N, or W) where (1) Member adds a Step-Up ADAV from June 2021  $\geq 0.10\%$  of the TCV or Member adds a Step-Up ADAV from June 2021  $\geq 8,000,000$ ; and (2) Member has a total remove ADV  $\geq 0.60\%$  of the TCV or Members has a total remove ADV  $\geq 45,000,000$ ; and (3) Member adds

<sup>16</sup> Fee code ZA is appended to Retail Orders that add liquidity.

<sup>17</sup> Fee code ZO is appended to Retail orders that add liquidity during the pre- and post-market.

<sup>18</sup> Fee code DM is appended to orders that add liquidity using MidPoint Discretionary Order within discretionary range.

<sup>19</sup> Fee code HA is appended to non-displayed orders that add liquidity.

<sup>20</sup> Fee code MM is appended to non-displayed orders that add liquidity using Mid-Point Peg.

<sup>21</sup> Fee code RP is appended to non-displayed orders that add liquidity using Supplemental Peg.

<sup>22</sup> Fee code BB is appended to orders that remove liquidity from EDGX in Tape B securities.

<sup>23</sup> Fee code N is appended to orders that remove liquidity from EDGX in Tape C securities.

<sup>24</sup> Fee code W is appended to orders that remove liquidity from EDGX in Tape A securities.

Retail Order ADV (*i.e.*, yielding fee codes ZA or ZO)  $\geq 0.10\%$  of the TCV.

The addition of proposed Remove Volume Tier 3 is designed to provide Members an alternative opportunity to earn a reduced fee where Members achieve certain add or remove volume-based criteria. The Exchange believes assessing an identical fee as Remove Volume Tier 2 albeit using slightly more difficult criteria will encourage Members to strive to meet the criteria by removing liquidity on the Exchange. The proposed changes to the Remove Volume Tiers are designed to incentivize Members to provide additional volume to the Exchange. An increase in remove liquidity on the Exchange signals an overall increase in activity from other market participants, contributes to a deeper, more liquid market, and provides additional execution opportunities for active market participants, which benefits the entire market system.

#### Retail Growth Tiers

Pursuant to footnote 2 of the Fee Schedule, the Exchange offers Retail Volume Tiers which provide Retail Member Organizations (“RMOs”)<sup>25</sup> an opportunity to receive an enhanced rebate from the standard rebate for Retail Orders<sup>26</sup> that add liquidity (*i.e.*, yielding fee code ZA or ZO). Currently, the Retail Volume Tiers offer three Retail Growth Tiers, where a Member is eligible for an enhanced rebate for qualifying orders (*i.e.*, yielding fee code ZA or ZO) meeting certain add volume-based criteria, including “growing” its volume over a certain baseline month. The Exchange now proposes to amend the criteria of Retail Growth Tier 3. Currently, the criteria for Retail Growth Tier 3 is as follows:

- Retail Growth Tier 3 provides a rebate of \$0.0037 per share to qualifying orders (*i.e.*, orders yielding fee code ZA or ZO) where (1) Member adds a Step-Up ADAV from October 2022  $\geq 0.15\%$  of the TCV or Member adds a Step-Up ADAV from October 2022  $\geq 15,000,000$ ; (2) Member has a total remove ADV  $\geq 0.45\%$  of TCV or Member has a total remove ADV  $\geq 45,000,000$ ; and (3) Members adds a Retail Step-Up ADV

(*i.e.*, yielding fee code ZA or ZO) from August 2022  $\geq 0.10\%$  of TCV.

Now, the Exchange proposes to delete the third prong of criteria. The proposed criteria for Retail Growth Tier 3 is as follows:

- Retail Growth Tier 3 provides a rebate of \$0.0037 per share to qualifying orders (*i.e.*, orders yielding fee code ZA or ZO) where (1) Member adds a Step-Up ADAV from October 2022  $\geq 0.15\%$  of the TCV or Member adds a Step-Up ADAV from October 2022  $\geq 15,000,000$ ; and (2) Member has a total remove ADV  $\geq 0.45\%$  of TCV or Member has a total remove ADV  $\geq 45,000,000$ .

The proposed modification to Retail Growth Tier 3 removes a criteria designed to encourage RMOs to grow their volume in retail orders on the Exchange. By removing a criteria while keeping the enhanced rebate the same, the proposed criteria slightly decreases the difficulty required for Members to meet the applicable tier threshold while continuing to encourage RMOs to grow their volume in retail orders.

Furthermore, the Growth Tiers, Non-Displayed Add Volume Tiers, Remove Volume Tiers, and Retail Volume Tiers are intended to provide Members an opportunity to receive an enhanced rebate or reduced fee by increasing their order flow to the Exchange, which further contributes to a deeper, more liquid market and provides even more execution opportunities for active market participants. Incentivizing an increase in liquidity adding or removing volume, through enhanced rebate or reduced fee opportunities, encourages liquidity adding Members on the Exchange to contribute to a deeper, more liquid market, and liquidity executing Members on the Exchange to increase transactions and take execution opportunities provided by such increased liquidity, together providing for overall enhanced price discovery and price improvement opportunities on the Exchange. As such, increased overall order flow benefits all Members by contributing towards a robust and well-balanced market ecosystem.

#### Fee Code Changes

The Exchange currently offers fee code DX, which is appended to Midpoint Discretionary Orders (“MDOs”)<sup>27</sup> using the Quote Depletion Protection (“QDP”)<sup>28</sup> order instruction that remove liquidity from the Exchange. QDP is designed to provide enhanced protections to MDOs by tracking significant executions that constitute the best bid or offer on the

EDGX Book<sup>29</sup> and enabling Users<sup>30</sup> to avoid potentially unfavorable executions by preventing MDOs entered with the optional QDP instruction from exercising discretion to trade at more aggressive prices when QDP has been triggered.<sup>31</sup> Currently, orders appended with fee code DX are assessed a fee of \$0.00060 per share in securities at or above \$1.00 and 0.30% of dollar value for securities priced below \$1.00. The Exchange proposes to increase the fee to \$0.0010 per share in securities at or above \$1.00. There is no proposed change in the fee assessed to securities priced below \$1.00.

The Exchange also offers various fee codes for orders routed away from the Exchange. The Exchange is proposing to modify the routing fees associated with fee codes RZ,<sup>32</sup> I,<sup>33</sup> BY,<sup>34</sup> AA,<sup>35</sup> AY,<sup>36</sup> RR,<sup>37</sup> and RY<sup>38</sup> to match the base add or remove rate for the associated market center to which the order is routed. The rebates for fee codes RZ, I, AA, and RR will be revised to \$0.0016 per share in securities priced above \$1.00.<sup>39</sup> The rebates for fee codes BY and AY will be revised to \$0.0002 per share in securities priced above \$1.00.<sup>40</sup> The fee for fee code RY will be revised to \$0.0020 per share in securities priced above \$1.00.<sup>41</sup> There are no changes to the fees or rebates associated with securities priced below \$1.00.

#### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of

<sup>29</sup> See Exchange Rule 1.5(d).

<sup>30</sup> See Exchange Rule 1.5(ee).

<sup>31</sup> See Securities Exchange Act Release No. 89007 (June 4, 2020), 85 FR 35454 (June 10, 2020) (SR-CboeEDGX-2020-010) (“Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Amend the Rule Relating to MidPoint Discretionary Orders to Allow Optional Offset or Quote Depletion Protection Instructions”).

<sup>32</sup> Fee code RZ is appended to orders routed to BZX that add liquidity.

<sup>33</sup> Fee code I is appended to orders routed to EDGA using the ROUC routing strategy.

<sup>34</sup> Fee code BY is appended to orders routed to BYX using Destination Specific (“DIRC”) or ROUC routing strategy.

<sup>35</sup> Fee code AA is appended to orders routed to EDGA using the ALLB routing strategy.

<sup>36</sup> Fee code AY is appended to orders routed to BYX using the ALLB routing strategy.

<sup>37</sup> Fee code RR is appended to orders routed to EDGA using the DIRC routing strategy.

<sup>38</sup> Fee code RY is appended to orders routed to BYX that add liquidity.

<sup>39</sup> See BZX Equities Fee Schedule, Standard Rates; EDGA Equities Fee Schedule, Standard Rates.

<sup>40</sup> See BYX Equities Fee Schedule, Standard Rates.

<sup>41</sup> *Id.*

<sup>25</sup> See EDGX Rule 11.21(a)(1). A “Retail Member Organization” or “RMO” is a Member (or a division thereof) that has been approved by the Exchange under this Rule to submit Retail Orders.

<sup>26</sup> See EDGX Rule 11.21(a)(2). A “Retail Order” is an agency or riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person and is submitted to the Exchange by a Retail Member Organization, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology.

<sup>27</sup> See Exchange Rule 11.8(g).

<sup>28</sup> See Exchange Rule 11.8(g)(10).

section 6(b) of the Act.<sup>42</sup> Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)<sup>43</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)<sup>44</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers as well as section 6(b)(4)<sup>45</sup> as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

As described above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The Exchange believes that its proposal to: (1) introduce a new Growth Tier and modify current Growth Tiers 1 and 2; (2) modify Non-Displayed Step-Up Volume Tier 1; (3) introduce a new Remove Volume Tier and modify current Remove Volume Tiers 1 and 2; and (4) modify Retail Growth Tier 3 reflects a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance market quality to the benefit of all Members. Additionally, the Exchange notes that relative volume-based incentives and discounts have been widely adopted by exchanges,<sup>46</sup> including the Exchange,<sup>47</sup> and are reasonable, equitable and non-discriminatory because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to (i) the value to an exchange's market quality and (ii) associated higher levels of market activity, such as higher levels of

liquidity provision and/or growth patterns. Competing equity exchanges offer similar tiered pricing structures, including schedules of rebates and fees that apply based upon members achieving certain volume and/or growth thresholds, as well as assess similar fees or rebates for similar types of orders, to that of the Exchange.

In particular, the Exchange believes its proposal to: (1) introduce a new Growth Tier and modify current Growth Tiers 1 and 2; (2) modify Non-Displayed Step-Up Volume Tier 1; (3) introduce a new Remove Volume Tier and modify current Remove Volume Tiers 1 and 2; and (4) modify Retail Growth Tier 3 is reasonable because the revised tiers will be available to all Members and provide all Members with an additional opportunity to receive an enhanced rebate or a reduced fee. The Exchange further believes the proposed modifications to its Growth Tiers, Non-Displayed Step-Up Volume Tier 1, Remove Volume Tiers, and Retail Growth Tier 3 will provide a reasonable means to encourage liquidity adding displayed orders, liquidity adding non-displayed orders, and retail orders, respectively, in Members' order flow to the Exchange and to incentivize Members to continue to provide liquidity adding volume to the Exchange by offering them an additional opportunity to receive an enhanced rebate or reduced fee on qualifying orders. An overall increase in activity would deepen the Exchange's liquidity pool, offers additional cost savings, support the quality of price discovery, promote market transparency and improve market quality, for all investors.

The Exchange believes that the proposed changes to its Growth Tiers, Non-Displayed Step-Up Volume Tier 1, Remove Volume Tiers, and Retail Growth Tier 3 are reasonable as they do not represent a significant departure from the criteria currently offered in the Fee Schedule. Further, the Exchange believes its proposed changes to the routing fee codes and to fee code DX are reasonable as these changes do not represent a significant departure from the Exchange's general pricing structure. The Exchange notes that the proposed changes to fee code DX are a modest increase over existing prices and yet the proposed fee is lower than other similar fees to remove volume on the Exchange.<sup>48</sup> Indeed, the proposed changes to fee codes RZ, I, BY, AA, AY, RR, and RY are intended to match the base add or remove rates on the

Exchange's affiliates.<sup>49</sup> The Exchange also believes that the proposal represents an equitable allocation of fees and rebates and is not unfairly discriminatory because all Members will be eligible for the proposed new tiers and have the opportunity to meet the tiers' criteria and receive the corresponding enhanced 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 Members qualifying the new proposed tiers. While the Exchange has no way of predicting with certainty how the proposed changes will impact Member activity, based on the prior months volume, the Exchange anticipates that at least one Member will be able to satisfy proposed Growth Tier 1, at least two Members will be able to satisfy proposed Growth Tier 3, at least two Members will be able to satisfy proposed Non-Displayed Step-Up Volume Tier 1, at least two Members will be able to satisfy proposed Remove Volume Tier 1, at least two Members will be able to satisfy proposed Remove Volume Tier 2, at least one Member will be able to satisfy proposed Remove Volume Tier 3, and at least two Members will be able to satisfy proposed Retail Growth Tier 3. The Exchange also notes that proposed changes will not adversely impact any Member's ability to qualify for enhanced rebates offered under other tiers. Should a Member not meet the proposed new criteria, the Member will merely not receive that corresponding enhanced rebate.

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

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

<sup>42</sup> 15 U.S.C. 78f(b).

<sup>43</sup> 15 U.S.C. 78f(b)(5).

<sup>44</sup> *Id.*

<sup>45</sup> 15 U.S.C. 78f(b)(4).

<sup>46</sup> See e.g., BZX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

<sup>47</sup> See e.g., EDGX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

<sup>48</sup> See, Choe EDGX Equities Fee Schedule, Fee Codes and Associated Fees.

<sup>49</sup> *Supra* notes 38–39.

The Exchange believes the proposed rule changes do not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed changes to the Exchange's Growth Tiers, Non-Displayed Step-Up Volume Tier 1, Remove Volume Tiers, and Retail Growth Tier 3 will apply to all Members equally in that all Members are eligible for each of the Tiers, have a reasonable opportunity to meet the Tiers' 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 and adopting pricing incentives in order to attract order flow and incentivize participants to increase their participation on the Exchange, providing for additional execution opportunities for market participants and improved price transparency. Greater overall order flow, trading opportunities, and pricing transparency benefits all market participants on the Exchange by enhancing market quality and continuing to encourage Members to send orders, thereby contributing towards a robust and well-balanced market ecosystem.

The Exchange does not believe the proposal to revise the applicable fee or rebate associated with the Exchange's routing fee codes or fee code DX does not impose a burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed fee associated with fee code DX would apply to all Members equally in that all Members would be subject to the same flat fee for the execution of an MDO with a QDP instruction that removes liquidity from the Exchange. Both MDO and the associated QDP instruction are available to all Members on an equal and non-discriminatory basis. As a result, any Member can decide to use (or not use) the QDP instruction based on the benefits provided by that instruction in potentially avoiding unfavorable executions, and the associated charge that the Exchange proposes to amend. In addition, the fees and rebates associated with routing orders away from the Exchange similarly apply to all Members on an equal and non-discriminatory basis and Members can choose to use (or not use) the Exchange's routing functionality as part of their decision to submit order flow to the Exchange.

Next, the Exchange believes the proposed rule changes does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including other equities exchanges, off-exchange venues, and alternative trading systems. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single equities exchange has more than 17% of the market share.<sup>50</sup> 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."<sup>51</sup> 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'. . . ."<sup>52</sup> Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or

<sup>50</sup> *Supra* note 3.

<sup>51</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

<sup>52</sup> *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)).

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>53</sup> and paragraph (f) of Rule 19b–4<sup>54</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 (<https://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–CboeEDGX–2023–030 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–2023–030. 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

<sup>53</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>54</sup> 17 CFR 240.19b–4(f).

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-CboeEDGX-2023-030, and should be submitted on or before May 24, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>55</sup>

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

[FR Doc. 2023-09335 Filed 5-2-23; 8:45 am]  
BILLING CODE 8011-01-P

## DEPARTMENT OF STATE

[Public Notice: 12064]

### Notice of Determinations; Culturally Significant Object Being Imported for Exhibition—Determinations: “The Artist’s Mother: Whistler and Philadelphia” Exhibition

**SUMMARY:** Notice is hereby given of the following determinations: I hereby determine that a certain object being imported from abroad pursuant to an agreement with its foreign owner or custodian for temporary display in the exhibition “The Artist’s Mother: Whistler and Philadelphia” at the Philadelphia Museum of Art, Philadelphia, Pennsylvania, and at possible additional exhibitions or venues yet to be determined, is of cultural significance, and, further, that its temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public

Notice of these determinations be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Elliot Chiu, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202-632-6471; email: [section2459@state.gov](mailto:section2459@state.gov)). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA-5), Suite 5H03, Washington, DC 20522-0505.

**SUPPLEMENTARY INFORMATION:** The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236-3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

**Scott Weinhold,**

*Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. 2023-09413 Filed 5-2-23; 8:45 am]

BILLING CODE 4710-05-P

## SURFACE TRANSPORTATION BOARD

[Docket No. FD 36693]

### BNSF Railway Company—Trackage Rights Exemption—Montana Rail Link, Inc.

BNSF Railway Company (BNSF) has filed a verified notice of exemption under 49 CFR 1180.2(d)(7), for acquisition of local and overhead trackage rights over approximately 65.7 miles of non-contiguous rail line owned by Montana Rail Link, Inc. (MRL), as follows: (1) from milepost 0.00 at Sappington, Mont., to milepost 9.84 at Harrison, Mont.; (2) from milepost 0.00 at East Helena, Mont., to milepost 4.86 at Montana City, Mont.; and (3) from milepost 0.00 at Logan, Mont., to milepost 51.00 at Spire Rock, Mont. (the Branch Lines).

BNSF and MRL have entered into a written trackage rights agreement<sup>1</sup> that grants BNSF exclusive local and overhead trackage rights over the Branch Lines. This agreement is related to a recent Board decision in which MRL obtained authority to discontinue service over approximately 656.47 miles

of rail line and to discontinue trackage rights service over approximately 66.47 miles of rail line in Montana, Idaho, and Washington, thereby allowing BNSF to resume operations along this corridor.<sup>2</sup> According to the verified notice, MRL has agreed to grant BNSF trackage rights over the Branch Lines in order to facilitate that restored BNSF service. While MRL will continue to own the Branch Lines, BNSF states that it has agreed with MRL that BNSF will fulfill any and all common carrier obligations and responsibilities relating to the Branch Lines in connection with BNSF's trackage rights operations.

The transaction may be consummated on or after May 17, 2023, the effective date of the exemption.

As a condition to this exemption, any employees affected by the acquisition of the trackage rights will be protected by the conditions imposed in *Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc.*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway—Lease & Operate—California Western Railroad*, 360 I.C.C. 653 (1980).

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than May 10, 2023 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36693, must be filed with the Surface Transportation Board via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423-0001. In addition, a copy of each pleading must be served on BNSF's representative, Peter W. Denton, Steptoe & Johnson LLP, 1330 Connecticut Ave. NW, Washington, DC 20036.

According to BNSF, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at [www.stb.gov](http://www.stb.gov).

Decided: April 27, 2023.

<sup>1</sup> A redacted version of the trackage rights agreement between BNSF and MRL was filed with the verified notice. An unredacted version of the agreement was submitted to the Board under seal concurrently with a motion for protective order, which is addressed in a separate decision.

<sup>2</sup> *Mont. Rail Link, Inc.—Discontinuance of Service Exemption—in Yellowstone, Stillwater, Sweet Grass, Park, Gallatin, Broadwater, Jefferson, Lewis & Clark, Powell, Deer Lodge, Granite, Missoula, Lake, Mineral, & Sanders Cntys., Mont.; Bonner & Kootenai Cntyss, Idaho; & Spokane Cnty., Wash., AB 575 (Sub-No. 2X) (STB served Mar. 8, 2023).*

<sup>55</sup> 17 CFR 200.30-3(a)(12).