

• 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).

a result, the Required Criteria for proposed Growth Tier 1 is as follows:

- Proposed Growth Tier 1 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) MPID adds a Step-Up ADAV¹⁴ from October 2021 \geq 0.12% of the TCV¹⁵ or MPID adds a Step-Up ADAV from October 2021 \geq 16,000,000; and 2) MPID adds an ADV \geq 0.30% of TCV or MPID adds an ADV \geq 35,000,000; and 3) MPID adds an ADAV \geq 0.30% of TCV with displayed orders that yield fee codes B, V, or Y.

In addition, the Exchange proposes to modify proposed Growth Tier 2 by adding a third prong to the Required Criteria. As a result, the Required Criteria for proposed Growth Tier 2 is as follows:

- Proposed 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 \geq 0.45% of TCV or Member has a total remove ADV \geq 45,000,000; and (3) Member adds a Retail Step-Up ADV¹⁷ (*i.e.*, yielding fee codes ZA or ZO) from August 2022 \geq 0.10% of TCV.

The Exchange also offers Non-Displayed Step-Up Volume Tiers under footnote 1 of the Fee Schedule that each provide an enhanced rebate for Members' qualifying orders yielding fee codes DM, HA, MM, and RP, where a Member reaches certain volume-based criteria offered in each tier.¹⁸ The Exchange proposes to discontinue the use of Non-Displayed Step-Up Volume Tiers 1 and 2, and to amend the criteria of current Non-Displayed Step-Up Volume Tier 3 (renumbered to proposed Non-Displayed Step-Up Volume Tier

1).¹⁹ Specifically, the Exchange proposes to add a third prong to the Required Criteria for proposed Non-Displayed Step-Up Volume Tier 1. As a result, the Required Criteria for proposed 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) Members 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) Member adds a Retail Step-Up ADV (*i.e.*, yielding fee codes ZA or ZO) from August 2022 \geq 0.10% of TCV.

Pursuant to footnote 2 of the Fee Schedule, the Exchange also offers Retail Volume Tiers which provide Retail Member Organizations ("RMOs")²⁰ an opportunity to receive an enhanced rebate from the standard rebate for Retail Orders²¹ that add liquidity (*i.e.*, yielding fee code ZA or ZO).²² 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.²³ The Exchange proposes to amend the Required Criteria for Retail Growth Tier 3 to add a third prong. As a result, the Required 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%

¹⁹ Similar to the elimination of Growth Tiers 1 and 2, the Exchange states that it is eliminating Non-Displayed Step-Up Volume Tiers 1 and 2 because no Members have satisfied the 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 14659.

²⁰ 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.

²¹ 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.

²² See Notice, *supra* note 5, at 14659. See also Fee Schedule, Footnotes, 2, Retail Volume Tiers.

²³ See Notice, *supra* note 5, at 14659.

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.

Finally, the Exchange offers fee code DQ, which is appended to Midpoint Discretionary Orders ("MDOs")²⁴ using the Quote Depletion Protection ("QDP")²⁵ order instruction.²⁶ According to 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 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 QDP has been triggered.²⁷ MDOs entered with the QDP instruction are appended fee code DQ and assessed a flat fee of \$0.00040 per share in securities at or above \$1.00 and 0.30% of dollar value for securities priced below \$1.00.²⁸ The Exchange proposes to amend fee code DQ to be appended to MDOs entered with a QDP instruction that add liquidity to the Exchange.²⁹ The Exchange also proposes to introduce fee code DX, which would be appended to MDOs with a QDP instruction that remove liquidity from the Exchange.³⁰ Orders appended with fee code DX would be 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 \$1.00.³¹

III. Suspension of the Proposed Rule Change

Pursuant to section 19(b)(3)(C) of the Act,³² 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,³³ 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

²⁴ See Exchange Rule 11.8(g).

²⁵ See Exchange Rule 11.8(g)(10).

²⁶ See Notice, *supra* note 5, at 14659. See also Fee Schedule, Footnotes, 1, Add/Remove Volume Tiers.

²⁷ See Notice, *supra* note 5, at 14659.

²⁸ See Notice, *supra* note 5, at 14659. See also Fee Schedule, Footnotes, 1, Add/Remove Volume Tiers.

²⁹ See Notice, *supra* note 5, at 14659. There would be no change to the fee associated with fee code DQ.

³⁰ See Notice, *supra* note 5, at 14659.

³¹ *Id.*

³² 15 U.S.C. 78s(b)(3)(C).

³³ 15 U.S.C. 78s(b)(1).

¹⁴ ADAV means average daily added volume calculated as the number of shares added per day ADAV is calculated on a monthly basis. Step-Up ADAV means ADAV in the relevant baseline month subtracted from current ADAV. See Notice, *supra* note 5, at 14658, n. 9.

¹⁵ 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. See Notice, *supra* note 5, at 14658, n. 10.

¹⁶ 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. See Fee Schedule, Definitions.

¹⁷ Step-Up ADV means ADV in the relevant baseline month subtracted from current day ADV. See Fee Schedule, Definitions.

¹⁸ See Notice, *supra* note 5, at 14659. See also Fee Schedule, Footnotes, 1, Add/Remove Volume Tiers.

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.³⁴ 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 enhance market quality to the benefit of all Members.³⁵ The Exchange states that the Growth Tiers, Non-Displayed Step-Up Volume Tiers, and Retail Volume Tiers are intended to provide Members an opportunity to receive an enhanced rebate 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.³⁶ As such, increased overall order flow benefits all Members by contributing towards a robust and well-balanced market ecosystem, according to the Exchange.³⁷

Additionally, the Exchange notes 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.³⁸ The Exchange states that 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.³⁹

With respect to the proposed amendments to proposed Growth Tiers

1 and 2, proposed Non-Displayed Step-Up Volume Tier 1, and Retail Growth Tier 3 in particular, the Exchange states that such modifications are reasonable because they will be available to all Members and will provide all Members with an additional opportunity to receive an enhanced rebate.⁴⁰ The Exchange further believes that these specific modifications also 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 on qualifying orders.⁴¹ According to the Exchange, 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.⁴²

The Exchange believes that the proposed changes to proposed Growth Tiers 1 and 2, proposed Non-Displayed Step-Up Volume Tier 1, and Retail Growth Tier 3 are reasonable as they do not represent a significant departure from the criteria currently offered in the Fee Schedule.⁴³ 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.⁴⁴ 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.⁴⁵

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.⁴⁶ 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."⁴⁷

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;⁴⁸ (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;⁴⁹ and (3) not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.⁵⁰

In temporarily suspending the Exchange's fee change, the Commission intends to further consider whether the proposal, in particular the proposed modifications to certain Growth Tiers, Non-Displayed Step-Up Volume Tiers, and a Retail Growth 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.⁵¹

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.⁵²

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

In addition to temporarily suspending the proposal, the Commission also

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ 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").

⁴⁷ *Id.*

⁴⁸ 15 U.S.C. 78f(b)(4).

⁴⁹ 15 U.S.C. 78f(b)(5).

⁵⁰ 15 U.S.C. 78f(b)(8).

⁵¹ See 15 U.S.C. 78f(b)(4), (5), and (8), respectively.

⁵² 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).

³⁴ See Notice, *supra* note 5, at 14660.

³⁵ *Id.*

³⁶ See Notice, *supra* note 5, at 14659.

³⁷ *Id.*

³⁸ See Notice, *supra* note 5, at 14660.

³⁹ *Id.*

hereby institutes proceedings pursuant to sections 19(b)(3)(C)⁵³ and 19(b)(2)(B) of the Act⁵⁴ 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,⁵⁵ 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;"⁵⁶

- 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;"⁵⁷ 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]."⁵⁸

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 growth and step-up tiers 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."⁵⁹ 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,⁶⁰ 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.⁶¹

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;⁶² 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 25, 2023. Rebuttal comments should be submitted by June 8, 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.⁶³

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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File No. SR-CboeEDGX-2023-016 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-2023-016. 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

⁵³ 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.

⁵⁴ 15 U.S.C. 78s(b)(2)(B).

⁵⁵ 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.*

⁵⁶ 15 U.S.C. 78f(b)(4).

⁵⁷ 15 U.S.C. 78f(b)(5).

⁵⁸ 15 U.S.C. 78f(b)(8).

⁵⁹ 17 CFR 201.700(b)(3).

⁶⁰ *See id.*

⁶¹ *See id.*

⁶² *See* 15 U.S.C. 78f(b)(4), (5), and (8).

⁶³ 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-CboeEDGX-2023-016 and should be submitted on or before May 25, 2023. Rebuttal comments should be submitted by June 8, 2023.

VI. Conclusion

It is therefore ordered, pursuant to section 19(b)(3)(C) of the Act,⁶⁴ that File Number SR-CboeEDGX-2023-016 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.⁶⁵

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2023-09448 Filed 5-3-23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97403; File No. SR-FINRA-2023-008]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Amend FINRA Rules 1015, 9261, 9341, 9524, 9830 and Funding Portal Rule 900 (Code of Procedure) To Permit Hearings Under Those Rules To Be Conducted by Video Conference

April 28, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 26, 2023, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. 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

FINRA is proposing to amend FINRA Rules 1015, 9261, 9341, 9524 and 9830 and Funding Portal Rule 900 to allow for video conference hearings before the Office of Hearing Officers ("OHO") and the National Adjudicatory Council ("NAC") under specified conditions.

The text of the proposed rule change is available on FINRA's website at <http://www.finra.org>, at the principal office of FINRA 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, FINRA 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. FINRA 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

Due to the COVID-19 global health crisis, FINRA administratively postponed in-person hearings for over six months beginning in March of 2020, which resulted in an expanding backlog of cases that could have compromised FINRA's ability to provide timely adjudicatory processes and fulfill its statutory obligations to protect investors and maintain fair and orderly markets. To address that backlog and mitigate the consequences of a stalled adjudicatory system, FINRA adopted temporary rules that allow OHO and the NAC to order, without a motion, hearings to proceed by video conference based on public health risks related to COVID-19.³ These were extended several times due to the continuing public health risks and logistical challenges related to COVID-19, including whether hearing participants could safely travel and abide by state or local quarantine requirements.⁴

FINRA is proposing to make the temporary amendments regarding video conference hearings permanent, with some modifications that would allow for the use of video conference for reasons in addition to COVID-19.⁵ The use of

³ See Securities Exchange Act Release No. 88917 (May 20, 2020), 85 FR 31832 (May 27, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2020-015) and Securities Exchange Act Release No. 89737 (September 2, 2020), 85 FR 55712 (September 9, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2020-027).

⁴ See Securities Exchange Act Release No. 90619 (December 9, 2020), 85 FR 81250 (December 15, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2020-042); Securities Exchange Act Release No. 91495 (April 7, 2021), 86 FR 19306 (April 13, 2021) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2021-006); Securities Exchange Act Release No. 92685 (August 17, 2021), 86 FR 47169 (August 23, 2021) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2021-019); Securities Exchange Act Release No. 93758 (December 13, 2021), 86 FR 71695 (December 17, 2021) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2021-031); Securities Exchange Act Release No. 94430 (March 16, 2022), 87 FR 16262 (March 22, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2022-004); Securities Exchange Act Release No. 95281 (July 14, 2022), 87 FR 43335 (July 20, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2022-018); Securities Exchange Act Release No. 96107 (October 19, 2022), 87 FR 64526 (October 25, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2022-029); and Securities Exchange Act Release No. 96746 (January 25, 2023), 88 FR 6346 (January 31, 2023) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2023-001); see also *supra* note 3.

⁵ For ease of reference in this filing, FINRA refers to the pre-pandemic rules as "original rules" and

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⁶⁴ 15 U.S.C. 78s(b)(3)(C).

⁶⁵ 17 CFR 200.30-3(a)(57) and (58).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.