

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Sherry R. Haywood,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98910; File No. SR-CboeEDGX–2023–068]

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

November 13, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on November 1, 2023, Cboe EDGX Exchange, Inc. (the “Exchange” or “EDGX”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Cboe 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 (https://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, effective November 1, 2023. The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 17 options venues to which market participants may direct their order flow. Based on publicly available information, no single options exchange has more than 17% of the market share.³ Thus, in such a low-concentrated and highly competitive market, no single options exchange, including the Exchange, possesses significant pricing power in the execution of option order flow. 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 to 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.

The Exchange’s Fees Schedule sets forth standard rebates and rates applied per contract. For example, the Exchange provides standard rebates ranging from \$0.01 up to \$0.21 per contract for Customer orders in both Penny and Non-Penny Securities. The Fee Codes and Associated Fees section of the Fees Schedule also provides for certain fee codes associated with certain order types and market participants that provide for various other fees or rebates. For example, the Exchange assesses a fee of \$0.05 per contract for AIM⁴ Contra orders, yielding fee code BB; assesses a fee of \$1.05 per contract for AIM Responder orders in Non-Penny Securities, yielding fee code BE; and provides a rebate of \$0.06 for AIM

Agency Customer orders, yielding fee code BC.

The Exchange proposes to amend the Fee Codes and Associated Fees table of the Fee Schedule to adopt new fee codes for AIM Contra and AIM Agency Customer orders in Non-Penny Securities. Specifically, the Exchange proposes to adopt new fee codes, BF and BG, to apply to AIM Contra⁵ orders in Non-Penny Securities and AIM Agency⁶ Customer orders in Non-Penny Securities, respectively. The Exchange proposes to assess a fee of \$0.02 per contract for AIM Contra orders in Non-Penny Securities yielding fee code BF and to assess no fee per contract for AIM Agency Customer orders in Non-Penny Securities yielding fee code BG.

The Exchange also proposes to amend the description of current fee code BB to provide it applies to AIM Contra orders in Penny Securities, and to amend the current description of current fee code BC to provide it applies to AIM Agency Customer orders in Penny Securities. The Exchange also proposes to increase the standard fee for AIM Responder orders in Non-Penny Securities (*i.e.*, yield fee code BE) from \$1.05 per contract to \$1.15 per contract.

The proposed rule change also amends Footnote 6 of the Fee Schedule to include new fee codes BF and BG, and to reflect the proposed change in fees for orders yielding fee code BE.⁷ Further, AIM Agency Customer order in Non-Penny Securities yielding fee code BG will not be eligible for rebates under the Automated Improvement “AIM” Tiers set forth in Footnote 9 of the Fee Schedule. As such, the Exchange proposes to rename Footnote 9 as Automated Improvement Mechanism (“AIM”) Penny Tiers, and revise the definition of Interaction Rate set forth in Footnote 9 to state that the Interaction Rate is the percentage of the Penny Agency Order that trades against the Initiating Order.

⁵ The term “AIM Contra Order” refers to an order submitted by a Member entering a AIM Agency Order for execution within AIM that will potentially execute against the AIM Agency Order pursuant to Rules 21.19 and 21.22.

⁶ The term “AIM Agency Order” refers to an order represented as agent by a Member on behalf of another party and submitted to AIM for potential price improvement pursuant to Rules 21.19 and 21.22.

⁷ As part of the proposed rule change, the Exchange proposes to delete duplicative information in the chart in Footnote 6 related to Customer AIM and SAM Auction fees. Further, the Exchange proposes to delete headers in the table referring to issues and consolidate all fee code and rate information on an order type basis. The Exchange also proposes to amend Footnote 6 to remove an inadvertent reference to XB, as such fee code was previously removed from the Exchange Fee Schedule.

¹⁹ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ See Cboe Global Markets U.S. Options Market Monthly Volume Summary (October 30, 2023), available at https://markets.cboe.com/us/options/market_statistics/.

⁴ The term “AIM” refers to Automated Improvement Mechanism.

In addition, the Exchange also proposes to amend certain Break-Up Credits located under the AIM and SAM Pricing table in Footnote 6. The Break-Up Credits provision applies to agency orders submitted in either the AIM or SAM auction that trades with a response order in the respective auction. Specifically, the Exchange will apply a Break-Up Credit to the Member that submitted an Agency Order (*i.e.*, either an AIM or SAM Agency Order), including a Member who routed an order to the Exchange with a Designated Give Up, when the Agency Order trades with a Response Order (*i.e.*, an AIM or SAM Response Order, as applicable). The Exchange proposes to amend the Break-Up Credit for qualifying AIM Agency Orders in Non-Penny Securities, from \$0.60 per contract to \$1.06 per contract.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁸ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁹ 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)¹⁰ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,¹¹ which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders 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 proposed rule change 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 market participants. The Exchange is only one of several options venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. The proposed fee changes reflect a competitive pricing structure designed to incentivize market participants to direct their order flow, which the Exchange believes would enhance market quality to the benefit of all Members.

Overall, the Exchange believes that its proposed adoption of new fee codes for AIM Contra and AIM Agency Customer orders in Non-Penny Securities (and related changes for AIM Contra and AIM Agency Customer orders in Penny Securities) is consistent with Section 6(b)(4) of the Act in that the proposed fees are reasonable, equitable and not unfairly discriminatory. The Exchange believes that the proposed fees are reasonable, equitable, and not unfairly discriminatory in that competing options exchanges offer a similar distinction between order types in connection with similar price improvement auctions,¹² as the Exchange now proposes. Further, competing exchanges charge different rates for transactions in their price improvement mechanisms, for orders in Penny or Non-Penny Securities, in a manner similar to the proposal. The Exchange believes the fee and rebate schedule as proposed continues to reflect differentiation among different product classes typically found in options fee and rebate schedules.

The proposed fees in relation to AIM orders are designed to promote order flow through AIM and, in particular, to attract liquidity, which benefits all market participants by providing additional trading opportunities at improved prices. This, in turn, attracts increased large-order flow from liquidity providers which facilitates

⁸ See Box Options Fee Schedule, Section IV(B), “PIP and COPIP Transactions”, which, for certain fees, provides varying rates for orders in Penny Interval Classes and Non-Penny Interval Classes submitted into its PIP and COPIP auction mechanism. *See also* MIAX Options Fee Schedule, Section 1(a)(v), “MIAX Price Improvement Mechanism (“PRIME”) Fees”, which, for certain fees, provides for varying rates for orders in Non-Penny Classes and Penny Classes submitted into its PRIME auctions.

tighter spreads and potentially triggers a corresponding increase in order flow originating from other market participants.

Also, the Exchange believes that the proposed fee for AIM Contra and AIM Agency Customer orders in Non-Penny Securities (\$0.02 per contract and no charge, respectively) is reasonable because it encourages participation in AIM by offering a rate that is equivalent to or better than most other price improvement auctions offered by other options exchanges as well as the Exchange itself.¹³

Further, the Exchange believes the proposed change to the standard fee for AIM Responder orders in Non-Penny Securities (*i.e.*, yield fee code BE) from \$1.05 per contract to \$1.15 per contract is reasonable as the rate is equivalent to fees at competing exchanges.¹⁴

Finally, the Exchange believes its proposal to amend the AIM-related Break-Up Credit for qualifying orders in Non-Penny Securities is reasonable because it encourages use of AIM. Specifically, the Exchange believes that the proposed Break-Up Credit for AIM Agency Orders in Non-Penny Securities will encourage increased Agency Order flow to AIM Auctions, thereby potentially increasing the initiation of and volume executed through AIM Auctions. Additional auction order flow provides market participants with additional trading opportunities at improved prices. The Exchange also believes that the proposed AIM Break-Up Credit of \$1.06 for Non-Penny Securities is reasonable and equitable as this credit is in-line with, albeit slightly higher than, corresponding break-up fee for a price improvement auction offered by other options exchanges.¹⁵ Also, the proposed AIM Break-Up Credits, as amended, are not unreasonably discriminatory because such credits are

¹³ See MIAX Options Fee Schedule, Section 1(a)(v), “MIAX Price Improvement Mechanism (“PRIME”) Fees”, which provides for a fee of no charge to \$0.30 per contract for PRIME Agency orders, depending on market participant; and provides for a fee of no charge to \$0.05 per contract for PRIME Contra-side orders, depending on market participant.

¹⁴ See Box Options Fee Schedule, Section IV(B), “PIP and COPIP Transactions”, which provides for a fee of \$1.15 for Professional Customer or Broker Dealer or Market Maker Improvement Orders in Non-Penny Interval Classes. Footnote 21 to the Fee Schedule states that an Improvement Order is a response to a PIP or COPIP auction.

¹⁵ See Box Options Fee Schedule, Section IV(B), “PIP and COPIP Transactions”, which provides for PIP and COPIP Break-Up Credits of \$0.81 per contract for Non-Penny Interval Classes. *See also* “MIAX Options Fee Schedule, Section 1(a)(v), “MIAX Price Improvement Mechanism (“PRIME”) Fees”, which provides for PRIME Break-Up Credits ranging from \$0.60 to \$0.73 per contract for Non-Penny Classes.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ *Id.*

¹¹ 15 U.S.C. 78f(b)(4).

equally available to all Members submitting AIM Agency Orders to the Exchange.

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. First, the Exchange believes that 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. The Exchange notes that the proposed changes apply uniformly to similarly situated Members. The Exchange believes that the proposed changes related to AIM transactions would not impose any burden on intramarket competition, but rather, serves to increase intramarket competition by incentivizing members to direct their AIM orders to the Exchange, in turn providing for more opportunities to compete at improved prices.

The Exchange also 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 they may participate on and direct their order flow, including 17 other options exchanges. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single options exchange has more than 17% 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 exchanges 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." The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: "[n]o one disputes

that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .". Accordingly, the Exchange does not believe its 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 Act¹⁶ and paragraph (f) of Rule 19b-4¹⁷ 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. Please include file number SR-CboeEDGX-2023-068 on the subject line.

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f).

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-2023-068. 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 a.m. and 3 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-2023-068 and should be submitted on or before December 8, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Sherry R. Haywood,

Assistant Secretary.

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Proposed Collection; Comment Request; Extension: Rule 11a-2

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services,

¹⁸ 17 CFR 200.30-3(a)(12).