

All submissions should refer to File Number SR-CboeEDGX-2020-034. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeEDGX-2020-034 and should be submitted on or before August 5, 2020.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁷ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁸ which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also believes that the proposal is consistent with Sections

¹⁷ In approving this 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).

¹⁸ 15 U.S.C. 78f(b)(5).

6(b)(1) and 6(b)(6) of the Act¹⁹ which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of Commission and Exchange rules. Finally, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d-1(c)(2) under the Act,²⁰ which governs minor rule violation plans.

As stated above, the Exchange proposes to add the CAT Compliance Rules to the list of minor rule violations in Rules 8.15 and 25.3 to be consistent with the approach FINRA has taken for minor violations of its corresponding CAT Compliance Rules.²¹ The Commission has already approved FINRA's treatment of CAT Compliance Rules violations when it approved the addition of CAT Compliance Rules to FINRA's MRVP.²² As noted in that order, and similarly herein, the Commission believes that Exchange's treatment of CAT Compliance Rules violations as part of its MRVP provides a reasonable means of addressing violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. However, the Commission expects that, as with FINRA, the Exchange will continue to conduct surveillance with due diligence and make determinations based on its findings, on a case-by-case basis, regarding whether a sanction under the rule is appropriate, or whether a violation requires formal disciplinary action. Accordingly, the Commission believes the proposal raises no novel or significant issues.

For the same reasons discussed above, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,²³ for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of the filing thereof in the **Federal Register**. The proposal merely adds the CAT Compliance Rules to the

¹⁹ 15 U.S.C. 78f(b)(1) and 78f(b)(6).

²⁰ 17 CFR 240.19d-1(c)(2).

²¹ As discussed above, the Exchange has entered into a Rule 17d-2 Plan and an RSA with FINRA with respect to the CAT Compliance Rules. The Commission notes that, unless relieved by the Commission of its responsibility, as may be the case under the Rule 17d-2 Plan, the Exchange continues to bear the responsibility for self-regulatory conduct and liability for self-regulatory failures, not the self-regulatory organization retained to perform regulatory functions on the Exchange's behalf pursuant to an RSA. See Securities Exchange Release No. 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (SR-BATS-2009-031), note 93 and accompanying text.

²² See *supra* note 7.

²³ 15 U.S.C. 78s(b)(2).

Exchange's MRVP and harmonizes its application with FINRA's application of CAT Compliance Rules under its own MRVP. Accordingly, the Commission believes that a full notice-and-comment period is not necessary before approving the proposal.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act²⁴ and Rule 19d-1(c)(2) thereunder,²⁵ that the proposed rule change (SR-CboeEDGX-2020-034) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁶

J. Matthew DeLesDernier,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-89282; File No. SR-CboeEDGX-2020-033]

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

July 9, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 1, 2020, 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 the Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the "Exchange" or "EDGX Options") is filing with the Securities and Exchange Commission ("Commission") a proposed rule change to amend its Fees 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

²⁴ 15 U.S.C. 78s(b)(2).

²⁵ 17 CFR 240.19d-1(c)(2).

²⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

website (http://markets.cboe.com/us/options/regulation/rule_filings/edgx/), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule for its options platform (EDGX Options), specifically, certain Customer Volume Tiers and Market Maker Volume Tiers, effective July 1, 2020.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 options venues to which market participants may direct their order flow. Based on publicly available information, no single options exchange has more than 18% of the market share and currently the Exchange represents only approximately 4% 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 and assesses fees ranging from \$0.01 up to \$0.75 per contract for Market Maker, Away Market Maker, Broker Dealer, Firm, Joint Back Office, and Professional orders in both Penny and Non-Penny Securities. The Exchange also offers tiered pricing which provides Members⁴ opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Footnote 1 of the Fee Schedule currently offers four Customer Volume Tiers which provide enhanced rebates between \$0.10 and \$0.21 per contract for qualifying Customer orders which meet certain liquidity thresholds and yield fee code PC⁵ or NC.⁶ Footnote 2 of the Fee Schedule currently offers eight Market Maker Volume Tiers which provide reduced fees between \$0.17 and \$0.03 per contract for qualifying Market Maker orders which meet certain liquidity thresholds and yield fee code PM⁷ or NM.⁸ Under the current Customer Volume and Market Maker Volume Tiers, a Member may receive an enhanced rebate where the Member meets certain thresholds of ADV⁹ that are greater than or equal to a percentage of average OCV¹⁰ for respective qualifying orders. The Exchange now proposes to amend Customer Volume Tiers 1 through 4 and Market Maker Volume Tiers 7 and 8.

⁴ See Exchange Rule 1.5(n).

⁵ Fee code PC is appended to Customer, Penny orders and receive a standard rebate of \$0.01.

⁶ Fee code NC is appended to Customer Non-Penny orders and receive a standard rebate of \$0.01.

⁷ Fee code PM is appended to liquidity adding Market Maker, Penny orders and are assessed a standard fee of \$0.20.

⁸ Fee code NM is appended to liquidity adding Market Maker, Non-Penny orders and are assessed a standard fee of \$0.20.

⁹ "ADV" means average daily volume calculated as the number of contracts added or removed, combined, per day. ADV is calculated on a monthly basis, excluding contracts added or removed on any day that the Exchange's system experiences a disruption that lasts for more than 60 minutes during regular trading hours ("Exchange System Disruption") and on any day with a scheduled early market close.

¹⁰ "OCV" is Options Clearing Corporation ("OCC") Customer Volume which is the total equity and ETF options volume that clears in the Customer range at the OCC for the month for which the fees apply, excluding volume on any day that the Exchange experiences an Exchange System Disruption and on any day with a scheduled early market close.

The Exchange proposes to amend Customer Volume Tier 1 and 2 to specify that a Member must reach an ADV in Customer orders that are Non-Crossing orders (that is, orders not executed in a two sided auction mechanism such as the Automated Improvement Mechanism ("AIM") or the Solicitation Auction Mechanism ("SAM") or in a crossing mechanism such as a Qualified Contingent Cross ("QCC")). Currently, both Tier 1 and Tier 2 provide that Members may achieve the respective tiers if they achieve an ADV in Customer orders as a certain percentage that is greater than or equal to average OCV. The Exchange proposes to specify that, for these two tiers, Members receive the enhanced rebates currently in place if they achieve an ADV in Customer Non-Crossing orders as a certain percentage that is greater than or equal to average OCV. The Exchange notes that the ADV thresholds of average OCV will remain the same for these tiers. The Exchange is proposing to specify that Customer Non-Crossing orders may be submitted in order to achieve Customer Volume Tier 1 and Tier 2 as the Fee Schedule already provides for opportunities for which Customer Crossing orders, specifically, may achieve enhanced rebates comparable to the enhanced rebates offered under Tiers 1 and 2.¹¹ In this way, the Exchange believes the proposed change will incentivize Members to submit more Non-Crossing orders into the EDGX Options Book (as opposed to submitting more Customer orders into the Exchange's crossing auctions/mechanisms to achieve the tiers' criteria, which, as stated, already receive comparable enhanced rebates and reduced fees under the Fee Schedule) in order to achieve Customer Volume Tiers 1 and 2.

The Exchanges next proposes to amend Customer Volume Tiers 3 and 4 by increasing, in each, a percentage of ADV into average OCV within existing criteria and adding to each tier a new, additional criteria that a Member must meet to receive the existing enhanced rebate. The Exchange notes that the proposed changes do not alter the current enhanced rebates provided under Customer Volume Tier 3 and 4. Specifically, Tier 3 currently provides an enhanced rebate of \$0.21 for Members that have an ADV in Customer

¹¹ See Fee Schedule, Footnote 6, AIM and SAM Pricing, which provides an enhanced rebate of \$0.11 (or does not assess a fee) for qualifying Customer orders executed via the Exchange's crossing auctions.; see also Footnote 7, QCC Initiator/Solicitation Rebate Tiers, which provide enhanced rebates between \$0.05 and \$0.11 for QCC Agency Orders or Solicitation Agency Orders.

³ See Cboe Global Markets U.S. Options Market Monthly Volume Summary (June 25, 2020), available at https://markets.cboe.com/us/options/market_statistics/.

orders greater than or equal to 0.75% of average OCV. Tier 4 currently also provides enhanced rebate of \$0.21 for Members that have (1) an ADV in Customer orders greater than or equal to 0.60% of average OCV and (2) an ADV in Customer or Market Maker orders greater than or equal to 1.00% of average OCV. The Exchange proposes to first increase the ADV in Customer orders from greater than or equal to 0.75% to 1.00% threshold of average OCV in Tier 3 and from greater than or equal to 0.60% to 0.75% threshold of average OCV in prong 1 in Tier 4. The Exchange also proposes to add an additional prong of criteria in each Tier 3 and Tier 4. As proposed, a Member may receive the existing enhanced rebate under Tier 3 if the Member meets the current criteria and, also, has an ADV in Customer Non-Crossing orders of greater than or equal to 0.40% of average OCV. Likewise, a Member may receive the existing enhanced rebate under Tier 4 if the Member meets the current (two) criteria and, as proposed, has an ADV in Customer Non-Crossing orders of greater than or equal to 0.40% of average OCV. The proposed increases in Customer order ADV as a percentage of average OCV in Tier 3 and Tier 4 are intended to incrementally increase the level of difficulty in achieving each of these tiers, thus, incentivizing Members to increase their overall Customer order flow to the Exchange by encouraging those Members to strive for the different, incrementally more difficult tier criteria under the proposed tiers to receive the enhanced rebates. The proposed additional prongs of criteria per each tier are also designed to incrementally increase the level of difficulty in achieving Tier 3 and Tier 4, while, like the proposed changes to Tier 1 and Tier 2 described above, specifically incentivizing Members to submit Non-Crossing Customer orders to the Exchange's Order Book.

Likewise, the Exchange also proposes to amend Market Maker Volume Tiers 7 and 8 by increasing, in each, certain percentages of ADV into average OCV within existing criteria. Currently, Tier 7 provides a reduced fee of \$0.04 for Members that have (1) an ADV in Customer orders greater than or equal to 0.30% of average OCV, (2) an ADV in Customer or Market Maker orders greater than or equal to 0.50% of average OCV, (3) an ADV in AIM Agency Orders greater than or equal to 0.15% of average OCV, and (4) an ADV in complex Customer orders (yielding fee codes ZA, ZB, ZC, or ZD)¹² greater

than or equal to 5,000 contracts. Currently, Tier 8 provides a reduced fee of \$0.03 for Members that have (1) an ADV in Customer orders greater than or equal to 0.70% of average OCV, (2) an ADV in Customer or Market Maker orders greater than or equal to 1.10% of average OCV, (3) an ADV in AIM Agency Orders greater than or equal to 0.15% of average OCV, and (4) an ADV in complex Customer orders (yielding fee codes ZA, ZB, ZC, or ZD) greater than or equal to 0.20% of average OCV. Regarding Tier 7, the Exchange proposes to increase the percentage of ADV in Customer orders from 0.30% to 0.70% of average OCV in prong 1, to increase the percentage of ADV in AIM Agency Orders from 0.15% to 0.30% of average OCV in prong 3, and to update prong 4 from ADV in complex Customer orders as greater than or equal to 5,000 to greater than or equal to 0.10% of average OCV. Regarding Tier 8, the Exchange proposes to increase the percentage of ADV in Customer orders from 0.70% to 1.00% in prong 1, and to increase the percentage of ADV in AIM Agency Orders from 0.15% to 0.75% in prong 3. Like the proposed changes to Customer Volume Tiers 3 and 4, the Exchange notes that the proposed changes to criteria in Market Maker Volume Tiers 7 and 8 incrementally increase the level of difficulty in achieving these tiers, thus, are designed to incentivize Members to increase their Customer and/or AIM Agency order flow to the Exchange by encouraging those Members to strive for the different, incrementally more difficult tier criteria under the proposed tiers to receive the reduced rates.

The Exchange believes that almost all of the proposed fee changes are designed to incentivize more Customer order flow and, particularly, a majority of the proposed changes are intended to direct an increase of Customer order flow to the EDGX Options Order Book. An increase in Customer order flow will create more trading opportunities, which, in turn attracts Market-Makers. A resulting increase in Market-Maker activity may facilitate tighter spreads, which may lead to an additional increase of order flow from other market participants, further contributing to a deeper, more liquid market to the benefit of all market participants by creating a more robust and well-

a standard rebate of \$0.45; fee code ZB is appended to Complex Customer (contra Non-Customer), Non-Penny orders and received a standard rebate of \$0.80; fee code ZC is appended to Complex Customer (contra Customer) orders and is assessed no charge; and fee code ZD is appended to Complex Customer order that legs into Simple Book and is assessed no charge.

balanced market ecosystem. Additionally, the proposed change in connection with the AIM Agency order ADV threshold in Market Maker Volume Tier 8 is intended to incentivize an increase in AIM Agency orders submitted to an AIM auction in order to achieve the proposed tier. The Exchange believes increased AIM Agency order flow results in price improvement opportunities for customers.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,¹³ in general, and furthers the objectives of Section 6(b)(4),¹⁴ in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with the objectives of Section 6(b)(5)¹⁵ 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, and, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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 Members.

In particular, the Exchange believes the proposed tiers are reasonable because they amend existing opportunities in a manner that incentivizes increased Customer or AIM Agency order flow via incrementally more challenging criteria in order to receive the same enhanced rebates or reduced fees on a Member's qualifying

¹³ 15 U.S.C. 78f.

¹⁴ 15 U.S.C. 78f(b)(4).

¹⁵ 15 U.S.C. 78f(b)(5).

¹² Fee code ZA is appended to Complex Customer (contra Non-Customer), Penny orders and receives

orders. The Exchange notes that relative volume-based incentives and discounts have been widely adopted by exchanges,¹⁶ including the Exchange,¹⁷ 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. Additionally, as noted above, the Exchange operates in a highly competitive market. 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. Competing options exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume and/or growth thresholds and offer comparable pricing to members for achieving such tiers.¹⁸

The Exchange believes the proposed modification to specify that Non-Crossing Customer order may be submitted in achieving the existing criteria in Customer Volume Tiers 1 and 2, as well as the proposed additional criteria in Customer Volume Tiers 3 and 4 for which a Member must submit Non-Crossing Customer order ADV as a percentage of average OCV, in order to receive the current enhanced rebates under Customer Volume Tiers 1 through 4 is reasonable because it is designed to direct Customer order flow to the Exchange's Order Book, as opposed to into the Exchange's crossing auctions/mechanisms to achieve the tiers' criteria, which already receive comparable enhanced rebates and reduced fees under the Fee Schedule.¹⁹ An increase in Customer order flow to

the Order Book results in an increase of transaction opportunities within the Order Book, attracting Market Maker quotes which, in turn, facilitates tighter spreads on the Exchange and signals additional corresponding increase in order flow from other market participants. Increased overall order flow benefits all investors by deepening the Exchange's liquidity pool, potentially providing even greater execution incentives and opportunities, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. Similarly, the proposed increases in overall Customer order and AIM Agency order ADV as a percentage of OCV (as proposed within Customer Volume Tiers 3 and 4 and Market Maker Volume Tiers 7 and 8) are reasonable modifications to the existing criteria because they are designed to incrementally increase the difficulty in achieving these tiers, thereby incentivizing Members to increase their overall Customer order flow and/or AIM Agency order flow, which benefits customers by resulting in increased price improvement opportunities within the auctions, to receive the exiting enhanced rebates and/or reduced fees.

Further, the Exchange believes that the proposed rule changes are reasonable as they do not represent a significant departure from the current criteria offered in the Fee Schedule and represent proportional increases in difficulty per adjacent tiers. For example, the Exchange proposes to simultaneously increase the Customer order ADV thresholds of average OCV in Customer Volume Tier 3 and Tier 4 and provide the same additional criteria in each. As a result, the Exchange believes the level of difficulty in achieving Tier 3 and Tier 4 will remain approximately the same. Likewise, the Exchange proposes to simultaneously increase the ADV thresholds in the corresponding prongs between Tier 7 and Tier 8. That is, prong 1 under both Tier 7 and Tier 8, criteria of which consists of Customer order ADV as a percentage of average OCV, and prong 3 under both Tier 7 and Tier 8, criteria of which consists of AIM Agency order ADV as a percentage of average OCV, will experience incremental increases of ADV as a percentage of average OCV. Thus, the step up in difficulty from Tier 7 to Tier 8 will remain approximately the same. Additionally, the Exchange notes that the proposed change in prong 4 under Tier 7 to amend the threshold of 5,000 contracts to 0.10% of average OCV is

better aligned with, and is a proportional step down from, the 0.20% of average OCV in corresponding prong 4 under Tier 8. The Exchange again notes that the proposed rule changes do not alter the amount of any of the current rebates or fees in place.

The Exchange believes that the proposal represents an equitable allocation of rebates and is not unfairly discriminatory because all Members will continue to be eligible for Customer Volume Tiers 1 through 4 and Market Maker Volume Tiers 7 and 8, as amended. The proposed changes to the tiers' criteria are designed as an incentive to any and all Members interested in meeting the tier criteria to submit additional Customer orders (with opportunities to achieve such tiers via crossing and non-crossing orders), or AIM Agency orders to the Exchange. Each will have the opportunity to submit the requisite order flow and will receive the applicable existing enhanced rebate or reduced fee if the tier criteria are 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 for the proposed tiers. While the Exchange has no way of predicting with certainty how the proposed tiers will impact Member activity, the Exchange anticipates that approximately three or four Members will be able to compete for and achieve the amended criteria in each of Customer Volume Tier 1, 2, 3, and 4, and at least four Members will be able to compete for and achieve the amended criteria in each of Market Maker Volume Tier 7 and Tier 8. The Exchange also notes that the proposed tiers will not adversely impact any Member's pricing or their ability to qualify for other rebate tiers. Rather, should a Member not meet the proposed criteria for a tier, the Member will merely not receive the corresponding enhanced rebate or reduced fee. Furthermore, the existing rebate and fees will continue to uniformly apply to all Members that meet the required criteria, as amended, per each respective tier.

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 intramarket or intermarket 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 change would encourage the submission of additional order flow to a public exchange, thereby

¹⁶ See e.g., MIAX Options Fee Schedule, Section 1(a)(i), which provides reduced fees (ranging from \$0.03 to \$0.30) for Market Maker orders that reach various percentage thresholds of volume; and Section 1(a)(iii), which provides certain credits (ranging from \$0.00 to \$0.28) for Customer orders, including agency orders submitted to an exchange auction, that reach various percentage thresholds; and Cboe BZX U.S. Options Exchange Fee Schedule, Footnote 1, Customer Penny Pilot Add Tiers; Footnote 6, Market Maker Penny Pilot Add Volume Tiers; Footnote 7, Market Maker Non-Penny Pilot Add Volume Tiers; and Footnote 12, Customer Non-Penny Pilot Add Volume Tier, all of which provide various tier with different, incrementally more difficult criteria, many of which are based on average volumes as a percentage of average OCV.

¹⁷ See i.e., Cboe EDGX U.S. Options Exchange Fee Schedule, Footnote 1, Customer Volume Tiers; and Footnote 2, Market Maker Volume Tiers.

¹⁸ See *supra* note 16.

¹⁹ See *supra* note 11.

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 change furthers 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."²⁰

The Exchange believes the proposed rule change does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed change applies to all Members equally in that all Members are eligible to achieve the tiers' proposed criteria, have a reasonable opportunity to meet the tiers' proposed criteria and will all receive the existing enhanced rebates or reduced fees if such criteria is met. Overall, the proposed change is designed to attract additional Customer and AIM Agency order flow to the Exchange. The Exchange believes that the modified tier criteria would incentivize market participants to strive to increase such order flow to the Exchange to meet the proposed criteria and, as a result, increase trading opportunities and attract further Market-Maker activity, which would further incentivize the provision of liquidity and continued order flow and improve price transparency on the Exchange. Greater overall order flow and pricing transparency benefits all market participants on the Exchange by generally providing more trading opportunities, enhancing market quality, and continuing to encourage Members to send orders, thereby contributing towards a robust and well-balanced market ecosystem, which benefits all market participants.

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 options 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 options exchange has more than 18% of the

market share.²¹ 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."²² 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'"²³ 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 Act²⁴ and paragraph (f) of Rule

19b-4²⁵ 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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-CboeEDGX-2020-033 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-2020-033. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal

²¹ See *supra* note 3.

²² See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

²³ *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)).

²⁴ 15 U.S.C. 78s(b)(3)(A).

²⁵ 17 CFR 240.19b-4(f).

²⁰ Securities Exchange Act Release No. 51808, 70 FR 37495, 37498-99 (June 29, 2005) (S7-10-04) (Final Rule).

office of the Exchange. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeEDGX-2020-033, and should be submitted on or before August 5, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁶

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-89273; File No. SR-CboeBZX-2020-056]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change To Add the Consolidated Audit Trail Industry Member Compliance Rules to the List of Minor Rule Violations in Rules 8.15 and 25.3

July 9, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 8, 2020, Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and approving the proposal on an accelerated basis.

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

Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) proposes to add the Consolidated Audit Trail (“CAT”) industry member compliance rules (“CAT Compliance Rules”) to the list of minor rule violations in Rules 8.15 and 25.3. 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/equities/regulation/rule_filings/bzx/), 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

In order to implement the National Market System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan” or “Plan”) the Exchange codified the CAT Compliance Rules in Rules 4.5 through 4.16.³ The CAT NMS Plan was filed by the Plan Participants to comply with Rule 613 of Regulation NMS under the Exchange Act,⁴ and each Plan Participant accordingly has adopted the same compliance rules as the Exchange’s Rules 4.5 through 4.16. The common compliance rules adopted by each Plan Participant are designed to require industry members to comply with the provisions of the CAT NMS Plan, which broadly calls for industry members to record and report timely and accurate customer, order, and trade information relating to activity in NMS Securities and OTC Equity Securities.

Rule 8.15 provides for disposition of certain violations through assessment of fines in lieu of conducting a formal disciplinary proceeding. Rule 8.15.01, specifically, sets forth the list of specific BZX Equities Rules under which any Member, associated person of a Member, or registered or non-registered employee of a Member may be subject to a fine for violations of such Rules. Rule 25.3 provides the same for BZX Options Rule violations, under which an Options Member, associated person of an Options Member, or registered or non-registered employee of an Options

Member may be subject to a fine for violations of such Rules. The Exchange proposes to amend Rule 8.15.01 and Rule 25.3 to add the CAT Compliance Rules in Rules 4.5 through 4.16 to the list of rules in Rule 8.15.01 and Rule 25.3 eligible for disposition pursuant to a minor fine; specifically, under proposed Rule 8.15.01(i) and proposed Rule 25.3(g).⁵ Proposed Rule 8.15.01(i) and proposed Rule 25.3(g) each provide that for failures to comply with the Consolidated Audit Trail Compliance Rule requirements of Rules 4.5 through 4.16, the Exchange may impose a minor rule violation fine of up to \$2,500. The Exchange may seek other disciplinary action for more serious violations.

The Exchange is coordinating with the Financial Industry Regulatory Authority, Inc. (“FINRA”) and other Plan Participants to promote harmonized and consistent enforcement of all the Plan Participants’ CAT Compliance Rules. The Commission recently approved a Rule 17d-2 Plan under which the regulation of CAT Compliance Rules will be allocated among Plan Participants to reduce regulatory duplication for industry members that are members of more than one Participant (“common members”).⁶ Under the Rule 17d-2 Plan, the regulation of CAT Compliance Rules with respect to common members that are members of FINRA is allocated to FINRA. Similarly, under the Rule 17d-2 Plan, responsibility for common members of multiple other Plan Participants and not a member of FINRA will be allocated among those other Plan Participants, including to the Exchange. For those non-common members who are allocated to BZX pursuant to the Rule 17d-2 Plan, the Exchange and FINRA have entered into a Regulatory Services Agreement (“RSA”) pursuant to which FINRA will assist the Exchange with conducting surveillance, investigation, examination, and enforcement activity in connection with

⁵ FINRA’s maximum fine for minor rule violations under FINRA Rule 9216(b) is \$2,500. The Exchange will apply an identical maximum fine amount for eligible violations of Rules 4.5 through 4.16 to achieve consistency with FINRA and also amend its minor rule violation plan (“MRVP”) to include such fines. Like FINRA, the Exchange would be able to pursue a fine greater than \$2,500 for violations of Rules 4.5 through 4.16 in a regular disciplinary proceeding or a letter of consent under Chapter 8 as appropriate. Any fine imposed in excess of \$2,500 or not otherwise covered by Rule 19d-1(c)(2) of the Act would be subject to prompt notice to the Commission pursuant to Rule 19d-1 under the Act. As noted below, in assessing the appropriateness of a minor rule fine with respect to CAT Compliance Rules, the Exchange will be guided by the same factors that FINRA utilizes. See text accompanying notes 7-8 [sic], *infra*.

⁶ See Securities Exchange Act Release No. 88366 (March 12, 2020), 85 FR 15238 (March 17, 2020).

³ See Securities Exchange Act Release Nos. 79927 (February 2, 2017), 82 FR 9874 (February 8, 2017) (SR-BatsBZX-2017-08); and 80256 (March 15, 2017), 82 FR 14526 (March 21, 2017) (Order Approving Proposed Rule Changes To Adopt Consolidated Audit Trail Compliance Rules).

⁴ 17 CFR 242.613.

²⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.