

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-99177; File No. SR-CboeEDGX-2023-075]

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

December 14, 2023.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 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 ([http://markets.cboe.com/us/options/regulation/rule\\_filings/edgx/](http://markets.cboe.com/us/options/regulation/rule_filings/edgx/)), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

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

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

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

##### 1. Purpose

The Exchange proposes to amend its Fee Schedule.<sup>3</sup> The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 17 options venues to which market participants may direct their order flow. Based on publicly available information, no single options exchange has more than 16% of the market share.<sup>4</sup> 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 Fee 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 \$0.24 per contract for Market Maker orders that remove liquidity in Non-Penny Securities, yielding fee code NT; provides a rebate of \$0.01 per contract for Customer-to-Non-Customer (*i.e.*, “Customer (contra Non-Customer)”) orders (that both add and remove liquidity) and Customer-to-Customer (*i.e.*, “Customer (contra Customer)”) orders that remove

liquidity, in Non-Penny Securities, yielding fee code NC; and provides a rebate of \$0.01 per contract for Customer (contra Non-Customer) orders and Customer (contra Customer) orders that remove liquidity, in Penny Securities, yielding fee code PC. Customer (contra Customer) orders that add liquidity receive no rebate.

##### Fee Codes

The Exchange proposes to amend its Fee Schedule to adopt new fee code CA, which will apply to Customer (contra Non-Customer) orders that add liquidity; the proposed fee code provides a rebate of \$0.01 per contract.<sup>5</sup> This is the same rebate these orders currently receive pursuant to fee codes NC and PC.

The Exchange also proposes to amend the definition of current fee code NC to provide that such fee code (and corresponding standard rebate of \$0.01 per contract) applies to all Simple Customer (*i.e.*, Customer (contra Non-Customer) and Customer (contra Customer)) orders that remove liquidity in Non-Penny Securities. Similarly, the Exchange proposes to amend the definition of current fee code PC to provide that such fee code (and corresponding standard rebate of \$0.01 per contract) applies to all Simple Customer (*i.e.*, Customer (contra Non-Customer) and Customer (contra Customer)) orders that remove liquidity in Penny Securities. These rebates currently apply to these orders today; the proposed amendments to these definitions merely reflect the removal of Customer (contra Non-Customer) orders that add liquidity from fee codes NC and PC (and moving such orders to proposed fee code CA). The Exchange also proposes to increase the standard fee for Market Maker orders that remove liquidity in Non-Penny Securities (*i.e.*, yield fee code NT) from \$0.24 to \$0.70.

##### Customer Volume Tiers

The Exchange proposes to amend Footnote 1 (Customer Volume Tiers), applicable to orders yielding fee codes PC and NC. Pursuant to Footnote 1 of the Fee Schedule, the Exchange currently offers four Customer Volume Tiers that provide rebates between \$0.10 and \$0.21 per contract for qualifying customer orders yielding fee codes PC and NC where a Member meets required criteria. The Exchange proposes to amend this Customer Volume Tier program to add orders yielding fee code CA to the list of qualifying customer

<sup>3</sup> The Exchange initially filed the proposed fee changes on December 1, 2023 (SR-CboeEDGX-2023-073). On December 1, 2023, the Exchange withdrew that filing and submitted SR-CboeEDGX-2023-075.

<sup>4</sup> See Cboe Global Markets U.S. Options Market Monthly Volume Summary (November 29, 2023), available at [https://markets.cboe.com/us/options/market\\_statistics/](https://markets.cboe.com/us/options/market_statistics/).

<sup>5</sup> The Exchange proposes to amend Footnote 5 (Orders Submitted with a Designated Give Up) to include orders yielding fee code CA.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

orders that may be eligible for the Customer Volume Tier program.

The Exchange also proposes to amend the required criteria for Tiers 3 and 4. Currently, to qualify for Tier 3, a Member must have (1) an ADV<sup>6</sup> in Customer orders greater than or equal to 1.00% of average OCV;<sup>7</sup> and (2) an ADV in Customer Non-Crossing orders of greater than or equal to 0.40% of average OCV. To qualify for Tier 4, a Member must have (1) an ADV in Customer orders greater than or equal to 0.75% of average OCV; (2) an ADV in Customer or Market Maker orders greater than or equal to 1.50% of average OCV; (3) an ADV in Customer Non-Crossing orders greater than or equal to 0.50% of average OCV; and (4) an ADAV<sup>8</sup> in Customer Non-Crossing orders greater than or equal to 0.40% of average OCV.

The Exchange proposes to amend Tier 3 required criteria to state that a Member must have (1) an ADV in Customer orders greater than or equal to 1.00% of average OCV; (2) an ADV in Customer Non-Crossing orders of greater than or equal to 0.75% of average OCV; and (3) an ADAV in Simple Customer Non-Crossing orders (*i.e.*, yielding fee code CA) greater than or equal to 0.45% of average OCV. The Exchange proposes to amend Tier 4 required criteria to state that a Member must have (1) an ADV in Customer orders greater than or equal to 1.50% of average OCV; and (2) an ADAV in Simple Customer Non-Crossing orders (*i.e.*, yielding fee code CA) greater than or equal to 0.65% of average OCV.

Additionally, the Exchange proposes to change the rebate for Tier 4. Specifically, the Exchange proposes to amend the Tier 4 rebate from \$0.21 per contract to \$0.18 per contract.<sup>9</sup> The rebates for Tiers 1, 2, and 4 remain unchanged.

Finally, the Exchange proposes to add new Customer Volume Tier 5 to provide a rebate of \$0.22 per contract if a Member has (1) an ADV in Customer orders of greater than or equal to 2.00% of average OCV; (2) an ADAV in Simple

Customer Non-Crossing orders (*i.e.*, yielding fee code CA) greater than or equal to 1.25% of average OCV; and (3) a QCC agency Volume of greater than or equal to 2,000,000 contracts per month, with both sides of each transaction being Non-Customer, Non-Professional.<sup>10</sup>

The Exchange believes that the proposed changes to the Customer Volume Tier program are designed overall to incentivize more Customer order flow and to direct an increase of order flow to the EDGX Options Order Book. The Exchange believes that an increase in Customer order flow and overall order flow to the Exchange's Book creates 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-balanced market ecosystem.

#### Supplemental AIM Tiers

The Exchange proposes to amend the Supplemental AIM<sup>11</sup> Tiers set forth in Footnote 9 (Automated Improvement Mechanism ("AIM") Penny Tiers). The Exchange currently offers two tiers related to Customer volume under Footnote 9 applicable to orders yielding fee code "BC", which fee code is appended to Customer Agency orders executed in AIM. The AIM Tiers currently provide enhanced rebates of \$0.09 and \$0.10 per contract for qualifying orders that yield fee code BC where a Member meets the respective tier's volume threshold.

The Exchange also offers two Supplemental AIM Tiers under Footnote 9 which provide additional rebates (*i.e.*, in addition to the standard rebate or enhanced rebates Members may receive for Customer Agency orders executed in AIM). The tiers are applicable to fee code BC and applied on an order-by-order basis.

Supplemental AIM Tier 1 provides an additional rebate of \$0.02 per contract where (i) a Member has an ADV in Customer Orders greater than or equal to 0.50% of average OCV and (ii) the order has an Interaction Rate greater than or equal to 51% and less than 80%. Supplemental AIM Tier 2 provides an additional rebate of \$0.05 per contract where (i) a Member has an ADV in

Customer Orders greater than or equal to 0.50% of average OCV and (ii) the order has an Interaction Rate greater than or equal to 0% and less than 51%. The "Interaction Rate" of an order refers to the percentage of the Agency Order that traded against the Initiating Order.<sup>12</sup>

The Exchange proposes to amend Supplemental AIM Tier 1 criteria to require that (1) Member has an ADV in Customer Orders greater than or equal to 0.50% of average OCV; and (2) the order has an Interaction Rate greater than or equal to 51% and less than 70%. The Exchange also proposes to amend Supplemental AIM Tier 2 criteria to require that (1) Member has an ADV in Customer Orders greater than or equal to 0.50% of average OCV; and (2) the order has an Interaction Rate greater than or equal to 30% and less than 51%. The Exchange also proposes to reduce the current rebate for Supplemental AIM Tier 2 from \$0.05 per contract to \$0.03 per contract.

Finally, the Exchange proposes to add new Supplemental AIM Tier 3, which would provide an additional rebate of \$0.05 per contract where (i) Member has an ADV in Customer Orders greater than or equal to 0.50% of average OCV; and (ii) the order has an Interaction Rate greater than or equal to 0% and less than 30%.

The proposed changes to the Supplemental AIM Tiers are designed to incentivize order flow providers to continue to route AIM orders to the Exchange, notwithstanding the potential for such orders to be broken up.

#### 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.<sup>13</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>14</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in

<sup>6</sup> "ADV" means average daily volume calculated as the number of contracts added or removed, combined, per day.

<sup>7</sup> "OCV" means the total equity and ETF options volume that clears in the Customer range at the Options Clearing Corporation ("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.

<sup>8</sup> "ADAV" means average daily added volume calculated as the number of contracts added, per day.

<sup>9</sup> The Exchange proposes to amend this tier rebate as described in the table in Footnote 1 and amend the amounts of the rebates in the Standard Rates table.

<sup>10</sup> The Exchange proposes to add this tier rebate as described in the table in Footnote 1 and add to the rebates in the Standard Rates table.

<sup>11</sup> The term "AIM" refers to Automated Improvement Mechanism.

<sup>12</sup> An Options Member may electronically submit for execution in AIM an order it represents as agent ("Agency Order") against principal interest or a solicited order(s) (except for an order for the account of any Options Market Maker registered in the applicable series on the Exchange) (an "Initiating Order"). See EDGX Options Rule 21.19.

<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>15</sup> 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,<sup>16</sup> which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities.

As described above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The 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.

#### Fee Codes

The Exchange believes its proposed adoption of new fee code CA, which applies to Customer (contra Non-Customer) orders that add liquidity and which provides a rebate of \$0.01 per contract, and its proposal to amend the definition of current fee code NC and PC is consistent with Section 6(b)(4) of the Act in that the proposed changes are reasonable, equitable and not unfairly discriminatory. Previously, Customer (contra Non-Customer) orders that add liquidity were assigned fee code PC or NC, depending on whether the order was in Penny Securities or Non-Penny Securities, respectively, and received a rebate of \$0.01 per contract. Under the proposed changes, Customers executing an order in Penny and Non-Penny Securities with a Non-Customer on the

liquidity adding side of orders executed in Penny and Non-Penny Securities will still be eligible for a rebate of \$0.01 per contract, merely using a different fee code. Thus, the Exchange believes that the proposed change will continue to incentivize Customer order flow in Penny and Non-Penny Securities, which may lead to an increase in liquidity on the Exchange. An overall increase in liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in Market Maker activity in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. The Exchange believes the proposed changes are equitable and not unfairly discriminatory because they will apply equally to all liquidity adding sides of Customer-to-Non-Customer transactions in Penny and Non-Penny Securities, *i.e.* all Customers will continue to receive a \$0.01 rebate for these transactions. Further, the changes to fee codes NC and PC are reasonable, as the Exchange will, under the proposed rule changes, still offer a rebate of \$0.01 for Simple Customer orders (including both Customer (contra Non-Customer) and Customer (contra-Customer), as is currently the case) that remove liquidity in Non-Penny and Penny Securities, respectively.<sup>17</sup>

The Exchange also believes the proposed change to increase the standard fee for Market Maker orders that remove liquidity in Non-Penny Securities (*i.e.*, yield fee code NT) from \$0.24 to \$0.70 is reasonable, equitable, and not unfairly discriminatory. The Exchange believes the proposed rate change is reasonable because, as stated above, in order to operate in the highly competitive options markets, the Exchange and its competing exchanges seek to offer similar pricing structures, including assessing comparable rates for various types of orders. Thus, the Exchange believes the proposed rates are reasonable as they are generally aligned with and competitive with the amounts assessed for similar Market Maker orders on other options exchanges.<sup>18</sup> The Exchange also believes that amending the standard fee amount associated with fee code NT represents an equitable allocation of fees

and is not unfairly discriminatory because the fee will continue to automatically and uniformly apply to all Members' respective qualifying Market Maker orders.

#### Customer Volume Tiers

The Exchange believes the proposed changes to the Customer Volume Tier program are reasonable because they continue to provide opportunities for Members to receive higher rebates by providing for incrementally increasing volume-based criteria they can reach for. The Exchange believes the tiers, as modified, continue to serve as a reasonable means to encourage Members to increase their liquidity on the Exchange, particularly in connection with additional Customer Order flow to the Exchange in order to benefit from the proposed enhanced rebates. The Exchange also notes that any overall increased liquidity that may result from the proposed tier incentives benefits all investors by offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection.

The Exchange believes that the proposed changes to the Customer Volume Tier program represent an equitable allocation of fees and is not unfairly discriminatory because Members will be eligible for these tiers and the corresponding enhanced rebates will apply uniformly to all Members that reach the proposed tier criteria. The Exchange believes that a number of market participants have a reasonable opportunity to satisfy the tiers' criteria as modified. While the Exchange has no way of knowing whether this proposed rule change would definitively result in any particular Member qualifying for the tiers as amended, the Exchange anticipates at least one Member meeting, or being reasonably able to meet, the revised Tier 1 criteria; approximately three Members being reasonably able to meet the revised Tier 2 criteria; approximately one Member being reasonably able to meet the revised Tier 3 criteria; approximately two Members being reasonably able to meet the revised Tier 4 criteria; and currently no Members meeting the revised Tier 5 criteria. However, the proposed tiers, as amended, are open to any Member that satisfies the tier's criteria. The Exchange also notes that the proposed changes 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, the Member will

<sup>15</sup> *Id.*

<sup>16</sup> 15 U.S.C. 78f(b)(4).

<sup>17</sup> Customer (contra Customer) trades that add liquidity in Penny and Non-Penny Securities will continue to not be subject to fees. *See* EDGX Options Fee Schedule, Fee Codes and Associated Fees, Fee Codes TP and TN.

<sup>18</sup> *See e.g.*, MEMX Options Exchange Fee Schedule, Transactions Fees, which assesses a charge of \$1.10 for Market Maker orders that remove liquidity in Non-Penny Securities.

merely not receive the corresponding enhanced rebates.

#### Supplemental AIM Tiers

The Exchange believes its proposed changes related to the Supplemental AIM Tiers are reasonable, equitable and not unfairly discriminatory. The Exchange believes the proposed changes to Supplemental AIM Tiers 1 and 2 for orders yielding fee code BC are reasonable because the tiers continue to provide an enhanced rebate opportunity (albeit at a lower amount in the case of Supplemental AIM Tier 2), which the Exchange believes is still commensurate with the amended criteria. The Exchange also believes the proposed rule change to adopt new Supplemental AIM Tier 3 is reasonable because it provides an additional opportunity for Members to receive enhanced rebates for meeting certain thresholds, based on the Interaction Rate of the AIM order. The Exchange also believes the proposed enhanced rebate is commensurate with the proposed criteria. The proposed rule change is equitable and unfairly discriminatory as the amended criteria for Supplemental AIM Tiers 1 and 2, the amended rebate amount for Supplemental AIM Tier 2, and new Supplemental AIM Tier 3 apply uniformly to all Members submitting AIM Agency Orders to the Exchange. While the Exchange has no way of knowing whether this proposed rule change would definitively result in any particular Member qualifying for the tiers, as amended, the Exchange anticipates at least six Members meeting, or being reasonably able to meet, the revised Tier 1 criteria; at least six Members meeting, or being reasonably able to meet, the revised Tier 2 criteria; and at least six Members meeting, or being reasonably able to meet, new Tier 3 criteria. However, the proposed tiers are open to any Member that satisfies the tiers' criteria.

Overall, the Exchange believes the proposal encourages the use of AIM. As noted, the Exchange believes that the proposed changes would incentivize Agency Order flow to AIM Auctions, notwithstanding the potential for such orders to be broken up. Additional auction order flow provides market participants with additional trading opportunities at improved prices.

#### 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. Particularly, the proposed fee code changes apply

uniformly and automatically to all Members' respective qualifying orders. As noted above, under the proposed changes, Customers executing an order in Penny and Non-Penny Securities with a Non-Customer on the liquidity adding side of orders executed in Penny and Non-Penny Securities will still be eligible for a rebate of \$0.01 per contract, merely using a different fee code. Further, the Exchange will, under the proposed rule changes, still offer a rebate of \$0.01 for Simple Customer orders (including both Customer (contra Non-Customer) and Customer (contra-Customer), as is currently the case) that remove liquidity in Non-Penny and Penny Securities, respectively. Thus, orders assigned to current fee code NC and PC will continue to receive the same rebate of \$0.01, under fee codes CA, NC, and PC. Additionally, the proposed Customer Volume Tier and Supplemental AIM Tier changes apply 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 corresponding enhanced rebates (existing and as amended) if such criteria is met. Overall, the proposed change is designed to attract additional Customer order flow to the Exchange and overall order flow directly to the Exchange's Book. The Exchange believes that the modified and new tier criteria will incentivize market participants to strive to increase such order flow to the Exchange to receive the corresponding enhanced rebates and, as a result, increase trading opportunities, attract further Market Maker activity, further incentivize the provision of liquidity and continued order flow to the Book, and improve price transparency on the Exchange. Greater overall order flow and pricing transparency benefits all market participants on the Exchange by generally providing a cycle of more trading opportunities, enhancing market quality, and continuing to encourage Members to submit order flow and continue to contribute towards a robust and well-balanced market ecosystem to the benefit of 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 16 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 16% of the market share.<sup>19</sup> Therefore, no exchange possesses significant pricing power in the execution of order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."<sup>20</sup> The fact that this market is competitive has also long been recognized by the courts. *In NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: "[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . ."<sup>21</sup> Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

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

<sup>19</sup> See *supra* note 3.

<sup>20</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

<sup>21</sup> *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>22</sup> and paragraph (f) of Rule 19b-4<sup>23</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-CboeEDGX-2023-075 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-2023-075. 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-2023-075 and should be submitted on or before January 10, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>24</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-99169; File No. SR-OCC-2023-008]

### Self-Regulatory Organizations; the Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Concerning Amendments to the Options Clearing Corporation's Collateral Risk Management Policy and Margin Policy

December 14, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 4, 2023, The Options Clearing Corporation ("OCC" or "Corporation") 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 primarily by OCC. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(i)<sup>3</sup> of the Act and Rule 19b-4(f)(1)<sup>4</sup> thereunder, such that the proposed rule change was immediately effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>24</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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

<sup>4</sup> 17 CFR 240.19b-4(f)(1).

### I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

This proposed rule change would amend OCC's Collateral Risk Management Policy ("CRM Policy") and Margin Policy (collectively, "OCC Policies"). The proposed changes are designed to update the OCC Policies to better align the descriptions therein with OCC's current practices, delete extraneous information, and make other non-substantive clarifying, conforming and administrative changes.

The proposed changes to the OCC Policies are included in confidential Exhibits 5A and 5B to File No. SR-OCC-2023-008. Material proposed to be added to the OCC Policies as currently in effect is underlined and material proposed to be deleted is marked in strikethrough text. All capitalized terms not defined herein have the same meaning as set forth in the OCC By-Laws and Rules.<sup>5</sup>

### II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

#### (A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

As the sole clearing agency for standardized equity options listed on national securities exchanges registered with the Commission ("listed options"), OCC is exposed to certain risks, including credit risk arising from its relationships with the Clearing Members for which OCC becomes the buyer to every seller and the seller to every buyer with respect to listed options. In order to manage counterparty credit risk and mitigate related systemic risks, OCC requires Clearing Members to collateralize financial obligations that result from maintaining options, futures and stock loan positions at OCC.

OCC maintains policies filed with the Commission as OCC rules that are designed to address such credit risk,

<sup>5</sup> OCC's By-Laws and Rules can be found on OCC's public website: <https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules>.

<sup>22</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>23</sup> 17 CFR 240.19b-4(f).