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 shall 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–2021–019 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–2021–019. 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–2021–019 and should be submitted on or before May 11, 2021.

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

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–08035 Filed 4–19–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91559; File No. SR–CboeEDGX–2021–020]

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

April 14, 2021.

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 April 7, 2021, 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 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 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'') by updating certain Customer-related fee codes, amending certain Customer-related volume tiers, and amending the Fees Schedule to reflect the adoption of the Penny Program on a permanent basis.[3]

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 15% of the market share and currently the Exchange represents only approximately 4% of the market share.[4] 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

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[26] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange initially filed the proposed fee changes on April 1, 2021 (SR–CboeEDGX–2021–017). On April 7, 2021, the Exchange withdrew that filing and submitted this proposal.

[4] *See* Cboe Global Markets U.S. Options Market Monthly Volume Summary (March 24, 2021), available at *https://markets.cboe.com/us/options/market_statistics/.*

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. Fee code ZA, for example, is appended to Customer complex orders which execute against a contra non-Customer order in Penny Securities and currently offers a rebate of $0.45 per contract. Similarly, fee code ZB is appended to Customer complex orders which execute against a contra non-Customer order in non-Penny Securities and currently offers a rebate of $0.80 per contract. Fee code BC is appended to Customer Agency orders executed in the Automated Improvement Mechanism (''AIM'' or ''AIM Auction'') and currently offers a rebate of $0.11 per contract. Additionally, the Fee Schedule offers tiered pricing which provides Members [5] 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 three Complex Customer Penny Tiers which provide enhanced rebates between $0.47 and $0.49 per contract for qualifying Customer orders that yield fee code ZA where a Member meets certain liquidity thresholds, and three Complex Customer Non-Penny Tiers which provide enhanced rebates between $0.85 and $0.95 per contract for qualifying Customer orders that yield fee code ZB for Members that meet certain liquidity thresholds. Footnote 9 of the Fee Schedule currently also offers an AIM Volume Tier which provides an enhanced rebate of $0.14 for qualifying Customer orders that yield fee code BC where a Member meets the tier's volume threshold.

The Exchange proposes to amend the rebate amounts provided to orders yielding fee codes ZA, ZB, and BC, the Customer Complex Penny and Non-Penny Tiers, and the AIM Volume Tier. As described above, qualifying Customer orders yielding fee codes ZA, ZB, and BC are currently provided a rebate in the amount of $0.45, $0.80, and $0.11 per contract, respectively. The proposed rule change proposes to incrementally decrease each of these amounts to a rebate of $0.39 per contract for orders yielding fee code ZA, $0.75 per contract for orders yielding fee code ZB, and $0.06 for orders yielding fee code BC. The proposed rule change also reflects the change in these amounts in the Fee Codes and Associated Fees section of the Fee Schedule, as well as in Footnote 6 (AIM and SAM Pricing) and Footnote 8 (Complex Order Types) of the Fee Schedule. The Exchange notes that these rates for Customer orders are in line with, yet also competitive with, rates assessed by other options exchanges, which offer lower rates for Customer orders but more volume incentive opportunities for enhanced pricing (which the Exchange also proposes to incorporate for Customer orders herein this proposal).[6]

The proposed rule change amends the Customer Complex Penny Tiers. Currently, Tier 1 offers an enhanced rebate of $0.47 per contract for a Member's qualifying orders (*i.e.,* yielding fee code ZA) if a Member has an ADV [7] in Customer orders greater than or equal to 0.40% of average OCV.[8] Tier 2 currently offers an enhanced rebate of $0.48 per contract for qualifying orders if a Member has an ADV in Customer orders greater than or equal to 0.55% of average OCV. Tier 3 currently offers an enhanced rebate of $0.49 per contract for qualifying orders if a Member has an ADV in Customer orders greater than or equal to 0.75% of average OCV. The proposed rule change amends the Customer Complex Penny Tiers by modestly reducing the enhanced rebate amount offered per each tier, modestly reducing the percentage of average OCV that a Member's ADV in Customer orders must reach in Tier 1 and Tier 2, adding an alternative prong of criteria in each tier, and adopting two new tiers, Tier 4 and Tier 5. The proposed rule change reduces the enhanced rebate offered by Tier 1 from $0.47 to $0.40, by Tier 2 from $0.48 to $0.45, and by Tier 3 from $0.49 to $0.47. The proposed rule change reduces the percentage of average OCV that a Member's ADV in Customer orders must meet in Tier 1 from 0.40% to 0.25% and in Tier 2 from 0.55% to 0.50%. The proposed rule change adds an alternative prong of criteria regarding a Member's ADV in complex non-crossing orders (that is, orders not executed in a two sided auction mechanism such as AIM or the Solicitation Auction Mechanism (''SAM'') or in a crossing mechanism such as a Qualified Contingent Cross (''QCC'')) as a percentage of average OCV in each tier that a Member may choose to meet in lieu of the existing criteria (Customer order ADV as a percentage of average OCV) to receive the corresponding enhanced rebate. Specifically, a Member may reach the proposed alternative criteria in Tier 1 if the Member has an ADV in complex non-crossing orders that is greater than or equal to 0.10% of average OCV, the proposed alternative criteria in Tier 2 if the Member has an ADV in complex non-crossing orders that is greater than or equal to 0.25% of average OCV, and the proposed alternative criteria in Tier 3 if the Member has an ADV in complex non-crossing orders that is greater than or equal to 0.45% of average OCV. Finally, the proposed rule change adopts Tier 4, which provides an enhanced rebate of $0.49 per contract for qualifying orders if a Member has an ADV in complex non-crossing orders greater than or equal to 0.60% of average OCV or if a Member has an ADV in Customer orders greater than or equal to 1.00% of average OCV, and adopts Tier 5, which provides an enhanced rebate of $0.50 per contract for qualifying orders if a Member has an ADV in complex non-crossing orders greater than or equal to 1.00% of average OCV or Member has an ADV in Customer orders greater than or equal to 2.00% of average OCV.

The proposed rule change amends the Customer Complex Non-Penny Tiers. Currently, Tier 1 offers an enhanced rebate of $0.85 per contract for a Member's qualifying orders (*i.e.,* yielding fee code ZB) if a Member has an ADV in Customer orders greater than or equal to 0.40% of average OCV. Tier 2 currently offers an enhanced rebate of $0.87 per contract for qualifying orders if a Member has an ADV in Customer orders greater than or equal to 0.55% of average OCV. Tier 3 currently offers an enhanced rebate of $0.95 per contract

[5] *See* Exchange Rule 1.5(n).

[6] *See e.g.,* MIAX Emerald Options Exchange Fee Schedule, Section 1(a)(i). Section 1(a)(i) provides a range of base rebates for customer Penny and Non-Penny transactions depending on meeting various volume tiers (Section 1(a)(ii)). For example, base rebates for Customer complex transactions in Penny classes range from $0.25 to $0.50 and for Customer complex transaction in non-Penny classes range from $0.40 to $0.87; *see also* MIAX Options Fee Schedule, Section 1(a)(v) which offers a base rate of $0.00 for Customer transactions in MIAX's auction mechanism (''PRIME''), and Section 1(a)(iii), which then offers a rebate of $0.10 or $0.11 for Customer transactions in PRIME if a member meets certain volume thresholds.

[7] ''ADV'' means average daily volume calculated as the number of contracts added or removed, combined, per day.

[8] ''OCC Customer Volume or ''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.

for qualifying orders if a Member has an ADV in Customer orders that is greater than or equal to 0.75% of average OCV. In particular, the proposed rule change amends the Customer Complex Non-Penny Tiers by modestly reducing the enhanced rebate amount offered in Tier 1 and Tier 2, modestly increasing the percentage of average OCV that a Member's ADV in Customer orders must reach in each tier, adding an alternative prong of criteria in each tier, and adopting new Tier 4. The proposed rule change reduces the enhanced rebate offered by Tier 1 from $0.85 to $0.80 and by Tier 2 from $0.87 to $0.85. The proposed rule change increases the percentage of average OCV that a Member's ADV in Customer orders must meet in Tier 1 from 0.40% to 0.50%, in Tier 2 from 0.55% to 0.75%, and in Tier 3 from 0.75% to 1.00%. The proposed rule change adds an alternative prong of criteria regarding a Member's ADV in complex non-crossing orders as a percentage of average OCV in each tier that a Member may choose to meet in lieu of the existing criteria (Customer order ADV as a percentage of average OCV) to receive a corresponding enhanced rebate. Specifically, a Member may reach the proposed alternative criteria in Tier 1 if the Member has an ADV in complex non-crossing orders that is greater than or equal to 0.25% of average OCV, the proposed alternative criteria in Tier 2 if the Member has an ADV in complex non-crossing orders that is greater than or equal to 0.45% of average OCV, and the proposed alternative criteria in Tier 3 if the Member has an ADV in complex non-crossing orders that is greater than or equal to 0.60% of average OCV. Finally, the proposed rule change adopts Tier 4, which provides an enhanced rebate of $1.00 per contract for qualifying orders if a Member has an ADV in complex non-crossing orders greater than or equal to 1.00% of average OCV or if a Member has an ADV in Customer orders greater than or equal to 2.00% of average OCV.

The proposed rule change to the existing Customer Complex Penny/Non-Penny Tiers eases the overall difficulty in reaching the tiers' criteria by adding an alternative criteria option that Members may choose to meet in lieu of the existing criteria and amends the enhanced rebates to correspond with the ease in criteria. While the proposed change incrementally increases the ADV as a percentage of average OCV in the existing Customer Complex Non-Penny Tiers' criteria, the Exchange notes that the overall difficulty of meeting the criteria in these existing tiers is eased by the opportunity to meet alternative criteria. Also, as a result of the increase in the percentage of Customer order ADV in the existing Customer Complex Non-Penny Tiers, the proposed corresponding enhanced rebates are not as reduced as the proposed enhanced rebates that correspond to the less difficult criteria (due to the addition of the alternative criteria plus the decrease in ADV as a percentage of average OCV) proposed in the existing Customer Complex Penny Tiers. The proposed overall ease in criteria and new tiers offered under the Customer Complex Penny/Non-Penny Tiers provide Members an additional opportunity to receive a rebate on their qualifying Customer complex orders (*i.e.,* yielding fee code ZA and ZB), which, in turn, provides Members with increased incentives to increase their Customer order flow and their overall complex non-crossing order flow in order to achieve the proposed eased and/or additional criteria and receive enhanced rebates on their qualifying Customer complex orders.

The proposed rule change also amends the AIM Volume Tier. Currently, Tier 1 offers an enhanced rebate of $0.14 per contract for a Member's qualifying orders (*i.e.* yielding fee code BC) if a Member has an ADV in Customer Orders greater than or equal to 0.35% of average OCV. The proposed rule change adopts a new Tier 1 (and, as a result, updates current Tier 1 to Tier 2),[9] which offers an enhanced rebate of $0.11 per contract for qualifying orders if a Member has an ADV in Customer Orders greater than or equal to 0.30% of average OCV. The proposed rule change also incrementally increases the percentage of a Member's Customer Order ADV into average OCV from 0.35% to 0.50% in Tier 2 (current Tier 1). The corresponding enhanced rebate remains the same Like the proposed additional Customer Complex Penny/Non-Penny Tiers, the proposed new AIM Volume Tier provide Members with an additional opportunity to achieve tier criteria and receive an enhanced rebate, thus providing further incentive to submit Customer order flow to the Exchange.

The Exchange believes that the proposed changes to the Customer Complex Penny/Non-Penny Tiers and AIM Volume Tiers 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.

Finally, the proposed rule change updates the term ''Penny Pilot'' throughout the Fee Schedule to reflect the 2020 adoption of the pilot program on a permanent basis.[10] More specifically, on April 1, 2020 the Commission approved an amendment the Plan for the Purpose of Developing and Implementing Procedures Designed to Facilitate the Listing and Trading of Standardized Options (the ''OLPP'') to make permanent the Penny Pilot Program, and the Exchange accordingly conformed its Rules to the OLPP Program by deleting Interpretation and Policy .01 to Rule 21.5 (the ''Penny Pilot Rule''), replacing it with Rule 21.5(e) (Requirements for Penny Interval Program). As a result, the proposed rule change now updates the Fee Schedule to reflect the permanent Penny Program, as follows:

- Removes the term ''Pilot'' from the descriptions of fee codes PB, PC, PF, PM, PN, PO, PP, PT, RN, and RQ in the Fees Codes and Associated Fees section;[11]
- replaces ''Pilot'' with ''Program'' where applicable in the Standard Rates table, Footnote 4, Footnote 6, Footnote 8, and Marketing Fees table; and
- amends the term ''Penny Pilot Securities'' to reflect the definition of ''Penny Program Securities'' in the Definition section and updates the definition to reflect Rule 21.5(e), which now governs the Penny Program.

The Exchange believes that the proposed rule change will provide additional clarity in the Fee Schedule by updating references to the current permanent Penny Program and the corresponding Rule that now governs the program. The Exchange notes that the proposed rule change does not alter the securities eligible for the Penny Program nor any of the rates currently assessed for Penny Program Securities.

[9] As a result of the proposed additional tier, the proposed rule change also updates the heading of Footnote 9 from singular to plural ''Tiers.''

[10] *See* Securities Exchange Act Release No. 89080 (June 17, 2020), 85 FR 37722 (June 23, 2020) (SR–CboeEDGX–2020–028).

[11] The Exchange notes that this update harmonizes these fee code descriptions with existing fee code descriptions that currently refer to just ''Penny''.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[12] in general, and furthers the objectives of Section 6(b)(4),[13] 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) [14] 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.

The Exchange believes the proposed reduction in rebate amounts for orders yielding fee codes ZA, ZB, and BC is reasonable, equitable, and not unfairly discriminatory. The Exchange believes that amending the rebates for Customer orders yielding fee code ZA, ZB, or BC is reasonable because, as stated above, in order to operate in the highly competitive equities markets, the Exchange and its competing exchanges seek to offer similar pricing structures, including assessing comparable rates and offering multiple enhanced pricing opportunities for various types of orders. Thus, the Exchange believes the proposed rate changes (along with the proposed offering of additional tiered pricing opportunities) are reasonable as they are generally aligned with and competitive with the amounts assessed for similar Customer orders on other options exchanges.[15] The Exchange also believes that amending the rebate amounts associated with fee codes ZA, ZB, and BC represents an equitable allocation of fees and is not unfairly discriminatory because they will continue to automatically and uniformly apply to all Members' respective qualifying Customer orders.

The Exchange believes the proposed changes to the Customer Complex Penny/Non-Penny Tiers and AIM Volume Tier are reasonable overall because they amend the tiers in a manner that incentivizes increased Customer order flow and/or overall order flow to the EDGX Book by providing Members with additional opportunities to meet criteria, both via reduction in difficulty and additional tiers, in order to receive enhanced rebates a Member's qualifying 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]

Specifically, the Exchange believes that the proposed changes to the Customer Complex Penny/Non-Penny Tiers and the AIM Volume Tier are reasonable, equitable, and not unfairly discriminatory. The Exchange believes that the additional, alternative criteria and modification of existing criteria in the Customer Complex Penny/Non-Penny Tiers are reasonable because they amend existing opportunities to receive enhanced rebates by easing the level of difficulty in each set of the three existing tiers and maintain the current structure of step-up in difficulty in achieving each ascending tier. The proposed new Customer Complex Penny/Non-Penny Tiers are reasonable because they provide Members with additional, also incrementally more challenging, opportunities to receive enhanced rebates. Likewise, the proposed new AIM Volume Tier 1 provides Members with an additional opportunity to achieve easier tier criteria (than that of current Tier 1) and receive an enhanced rebate, while slightly increasing the difficulty in reaching the criteria in the existing AIM Volume Tier (current Tier 1) to also reflect an incremental step-up in difficulty in the AIM Volume Tiers. The Exchange believes that the proposed additional opportunities in the Customer Penny/Non-Penny Tiers and AIM Volume Tiers for Members to receive enhanced rebates on their qualifying orders via new tiers and an overall ease in tier difficulty (while still maintaining the current structure of step-up in difficulty through ascending tiers) are reasonably designed to provide further incentive to Members to increase Customer order flow to the Exchange overall order flow directly to the Exchange's Book. As described above, 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. 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.

The Exchange further believes that the proposed changes to the enhanced rebate amounts and new enhanced rebates in the Customer Complex Penny/Non-Penny Tiers and AIM Volume Tiers are reasonable as they represent the proposed proportional decreases in difficulty per adjacent tiers. The Exchange believes that providing reduced enhanced rebates per tier is

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(4).

[14] 15 U.S.C. 78f.(b)(5).

[15] *See supra* note 6.

[16] *See e.g.,* Cboe BZX U.S. Options Exchange Fee Schedule, Footnote 1, Customer Penny Add Volume Tiers; and Footnote 12, Customer Non-Penny Add Volume Tiers, both of which provide for various tiers with different, incrementally more difficult criteria, many of which are based on average volumes as a percentage of average OCV and offer enhanced rebates ranging from $0.35 to $1.06 per contract.

[17] *See i.e.,* Cboe EDGX U.S. Options Exchange Fee Schedule, Footnote 1, Customer Volume Tiers.

[18] *See supra* note 16.

reasonable as they are commensurate with the proposed criteria, in that, they are line with the easing the level of difficulty or the proposed new relative levels of difficulty in the Customer Complex Penny/Non-Penny Tiers and AIM Volume Tiers. Also, as noted above, while the proposed criteria changes to the existing Customer Complex Non-Penny Tiers decrease the overall difficulty in meeting the tiers' criteria, the difficulty in reaching the modified criteria in these tiers is incrementally greater than the difficulty in reaching the modified criteria in the proposed Customer Complex Penny Tiers. Therefore, Exchange believes it is reasonable to offer, as proposed, a slightly less reduced enhanced rebate per corresponding Customer Complex Non-Penny Tier. Also, the proposed reduced enhanced rebates and/or proposed additional enhanced rebates in the Customer Complex Penny/Non-Penny Tiers and AIM Volume Tiers, as applicable, do not represent a significant departure from the enhanced rebates currently offered under the tiers as the proposed rate changes merely incrementally shift the range of enhanced rebates offered to most appropriately align with the corresponding shift in criteria difficulty per each tier (existing and new).

The Exchange believes that the proposed changes to the Customer Complex Penny/Non-Penny Tiers and AIM Volume Tier represent an equitable allocation of rebates and are not unfairly discriminatory. All Members will continue to be eligible for the existing Customer Complex Penny/Non-Penny Tiers and AIM Volume Tier, as amended, and will be eligible for the proposed tiers by submitting the requisite order flow. The proposed changes to the tiers' criteria are designed as an incentive to any and all Members interested in meeting modified and new tier criteria to submit additional Customer orders and/or overall order flow directly to the Exchange's Book. Each Member will have the same opportunity to submit the requisite order flow and the corresponding enhanced rebates (existing and as amended) will apply uniformly to all Members that meet the modified or new tier criteria. 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 at least one to three Members will be able to compete for and potentially achieve the amended criteria in each of the existing Customer Complex Penny Tiers and Customer Complex Non-Penny Tiers. The Exchange also anticipates at least one or two Members will be able to compete for and potentially achieve the two new Customer Complex Penny Tiers and new Customer Non-Penny Tier. The Exchange anticipates that approximately two to three Members will be able to compete for and potentially achieve each of the AIM Volume Tiers, as proposed. 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.

Finally, the Exchange believes the proposed update to the Penny Program language and Rule reference in the Fee Schedule is reasonable, equitable and not unfairly discriminatory because it is intended to provide additional clarity in the Fee Schedule by updating references to the current permanent Penny Program and the corresponding Rule that now governs the program and does not alter the securities eligible for the Penny Program nor any of the rates currently assessed for Penny Program Securities.

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 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.'' [19]

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 to the rebate amounts associated with fee codes ZA, ZB, and BC will continue to apply uniformly and automatically to all Members' respective qualifying orders. The proposed 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. The Exchange additionally notes that the proposed rule change to reflect the current Penny Program is noncompetitive, nonsubstantive and merely clarifying in nature.

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 15% of the market share.[20] Therefore, no exchange possesses significant pricing power in the execution of order flow. Indeed, participants can readily choose to send

[19] Securities Exchange Act Release No. 51808, 70 FR 37495, 37498–99 (June 29, 2005) (S7–10–04) (Final Rule).

[20] *See supra* note 3.

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.'' [21] 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'. . . .''.[22] Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

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

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [23] and paragraph (f) of Rule 19b–4 [24] 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–2021–020 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–2021–020. 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–2021–020 and should be submitted on or before May 11, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–08033 Filed 4–19–21; 8:45 am]

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

[22] *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)).

[23] 15 U.S.C. 78s(b)(3)(A).

[24] 17 CFR 240.19b–4(f).

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91563; File No. SR–NYSENAT–2021–07]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 7.37

April 14, 2021.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on April 1, 2021, NYSE National, Inc. (''NYSE National'' or the ''Exchange'') 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 self-regulatory organization. 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

The Exchange proposes to amend Rule 7.37 to specify when the Exchange may adjust its calculation of the PBBO. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, 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 self-regulatory organization 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 those statements may be examined at

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.