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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88264; File No. SR-CboeEDGX-2020-009]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Regarding Solicitation Auction Mechanism (SAM) Fees, Qualified Contingent Cross (QCC) Order Rebates, and Automated Improvement Mechanism (AIM) Fees

February 21, 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 February 11, 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 Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the “Exchange” or “EDGX Options”) proposes to amend its Fee Schedule in connection with its recently adopted Solicitation Auction Mechanism (“SAM” or “SAM Auction”) and with Qualified Contingent Cross (“QCC”) orders, as well as make

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

certain clarifications in connection with AIM fees. 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 modify the Fee Schedule to adopt fees for its recently adopted SAM Auction and tiered pricing in connection with certain QCC and SAM orders, effective February 3, 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 22% of the market

share.³ Thus, in such a low-concentrated and highly competitive market, no single options 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 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. In response to the competitive environment, the Exchange offers specific rates and credits in its fees schedule, like that of other options exchanges' fees schedules, which the Exchange believes provide incentive to Members to increase order flow of certain qualifying orders.

SAM Overview

SAM is the Exchange's recently adopted solicited order mechanism for larger-sized orders.⁴ By way of background, SAM will provide an additional method for market participants to effect orders in a price improvement auction for larger-sized orders. SAM includes functionality in which a Member (an "Initiating Member") may electronically submit for execution an order it represents as agent on behalf of a customer,⁵ broker dealer, or any other

³ See Cboe Global Markets U.S. Options Market Monthly Volume Summary (January 22, 2020), available at https://markets.cboe.com/us/options/market_statistics/.

⁴ See Securities Exchange Act Release No. 87692 (December 9, 2019), 84 FR 68231 (December 13, 2019) (Order Approving a Proposed Rule Change To Adopt Rule 21.23 (Complex Solicitation Auction Mechanism)) (SR-CboeEDGX-2019-064).

⁵ The term "Priority Customer" means any person or entity that is not: (A) A broker or dealer in securities; or (B) a Professional. The term "Priority Customer Order" means an order for the account of a Priority Customer. See Rule 16.1(a)(45). A "Professional" is any person or entity that: (A) Is not a broker or dealer in securities; and (B) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). All Professional orders shall be appropriately marked by Options Members. See Rule 16.1(a)(46).

person or entity (“Agency Order”)⁶ against any other order it represents as agent (an “Initiating Order”, or “Contra Order”), provided it submits the Agency Order for electronic execution into the SAM Auction pursuant to Rule 21.21 (SAM Auction for simple orders) or Rule 21.22 (SAM Auction for complex orders). The Exchange may designate any class of options traded on EDGX Options as eligible for SAM. The Exchange notes that all Users, other than the Initiating Member, may submit responses to a SAM Auction (“Response Orders”). SAM Auctions take into account SAM Responses as well as contra interest resting on the EDGX Options Book at the conclusion of the SAM Auction (“unrelated orders”), regardless of whether such unrelated orders were already present on the Book when the Agency Order was received by the Exchange or were received after the Exchange commenced the SAM Auction. If contracts remain from one or more unrelated orders at the time the Auction ends, they are considered for participation in the SAM order allocation process.

SAM Definitions

In connection with the proposed SAM-related fees, the Exchange proposes to adopt definitions necessary for SAM pricing. First, the Exchange proposes to adopt the terms “SAM” and “SAM Auction” to refer to the Solicitation Auction Mechanism. Second, the Exchange proposes to adopt the term “SAM Agency Order”, defined as an order represented as agent by a Member on behalf of another party and submitted to SAM for potential price improvement pursuant to Rule 21.21 and Rule 21.23. Third, the Exchange proposes to adopt the terms “SAM Contra Order” or “Initiating Order”, defined as an order submitted by a Member entering a SAM Agency Order for execution within SAM that will potentially execute against the SAM Agency

⁶ The Agency Order must be for at least the minimum size designated by the Exchange (which may not be less than 500 standard option contracts or 5,000 mini-option contracts). The Initiating Member must designate each Agency Order as all-or-none (“AON”). See Rule 21.21(a)(3).

Order pursuant to Rule 21.21 and 21.23. Finally, the Exchange proposes to adopt the term “SAM Response Order”, to include any order submitted in response to and specifically designated to participate in a SAM Auction as well as unrelated orders that are received by the Exchange after a SAM Auction has begun.

AIM Clarifications

The Exchange also proposes to update the term “AIM Responder” order throughout in the Fee Schedule to provide instead for “AIM Response” orders, as this is more consistent with the term used in Rule 5.37(c)(5), which governs Automatic Improvement Mechanism (“AIM” [sic] or “AIM Auction”) Responses, as well as add “Rule 21.22” (Complex AIM) under the definitions of “AIM Agency Order” and “AIM Contra Order” or “Initiating Order”, in order to clarify that these currently include orders submitted into Complex AIM.

SAM Pricing

The Exchange proposes to adopt six new fee codes in connection with SAM into the Fee Codes and Associated Fees table of the Fee Schedule. The Exchange proposes to adopt two fee codes for SAM Agency Orders, fee code SA and fee code SC, which will apply to Non-Customer and Customer Agency orders, respectively. As proposed, fee code SA will apply to Non-Customer SAM Agency Orders that are executed in a SAM Auction and will be assessed a fee of \$0.20 per contract. Fee code SC will apply to Customer SAM Agency Orders that are executed in a SAM Auction and will be assessed no charge. Next, the Exchange proposes to adopt two fee codes for SAM Contra Orders, fee code SF and fee code SB, which will apply to Non-Customer and Customer Contra orders, respectively. Fee code SF will apply to Non-Customer SAM Contra Orders executed in an SAM Auction and will be assessed a fee of \$0.20. Fee code SB will apply to Customer SAM Agency Orders executed in a SAM Auction and will

be assessed no charge. The Exchange also proposes to adopt fee codes SD and SE, which will apply to SAM Response Orders in Penny Pilot securities and Non-Penny Pilot securities, respectively. As proposed, fee code SD will apply to a SAM Response Order that is executed in a SAM Auction in a Penny Pilot security, and will be assessed a fee of \$0.50. Likewise, fee code SE will apply to a SAM Response Order that is executed in a SAM Auction in a Non-Penny Pilot security, and will be assessed a fee of \$1.05.

In addition, the Exchange proposes to amend footnote 6, which currently summarizes pricing for another Exchange auction mechanism, AIM, which is substantially similar to that of the SAM Auction. Particularly, the Exchange proposes to rename footnote 6 from “Automated Improvement Mechanism (“AIM”) Pricing” to “AIM and SAM Mechanism Pricing” and incorporate a summary of SAM fees and rebates into the existing structure of the table that currently summarizes AIM fees and rebates for the same types of auction-related orders. This pricing table is intended to provide clarity to Members by summarizing in table form the different types of orders submitted into an auction and their corresponding fee codes and rates. The Exchange also proposes to amend the table footnote appended to the single asterisk, which currently states that when an AIM Agency Order executes against one or more resting orders that were already on the Exchange’s order book when the AIM Agency Order was received by the Exchange, the AIM Agency Order and the resting order(s) will receive the Standard Fee Rates. The proposed change would remove specific references to AIM, thereby amending it to refer to only “Agency Order”, as this footnote is applicable in the same manner to both AIM and SAM Agency Orders⁷ and makes it clear that for SAM, like AIM currently, the fee structure for such an execution would not be altered and instead the Exchange would charge a fee or provide a

⁷ The Exchange notes that Customer-to-Customer Immediate Cross is not applicable to SAM Auctions.

rebate to each side of the transaction as if it were a transaction occurring on the Exchange's order book pursuant to the Exchange's normal order handling methodology and not in an auction. This is distinguished from SAM Response Orders (like current AIM Response Orders), which, as defined, include unrelated orders that are received by the Exchange after a SAM Auction has begun and which would be charged or provided rebates based specifically on SAM pricing.

SAM Agency Orders and Designated Give Up

Footnote 5 of the Fee Schedule currently specifies that when an order is submitted with a Designated Give Up, as defined in Rule 21.12(b)(1), the applicable rebates for such orders when executed on the Exchange (yielding fee code BC, NC, PC, QA or QM) are provided to the Member who routed the order to the Exchange. Pursuant to Rule 21.12, which specifies the process to submit an order with a Designated Give Up, a Member acting as an options routing firm on behalf of one or more other Exchange Members (a "Routing Firm") is able to route orders to the Exchange and to immediately give up the party (a party other than the Routing Firm itself or the Routing Firm's own clearing firm) who accepts and clears any resulting transaction. Because the Routing Firm is responsible for the decision to route the order to the Exchange, the Exchange currently provides such Member with the rebate when orders that yield fee code BC, NC, PC, QA or CM are executed. In connection with the adoption of SAM-related fees, the Exchange proposes to add new fee code SC (SAM Agency Customer Order) to the lead-in sentence of footnote 5 and to append footnote 5 to fee code SC in the Fee Codes and Associated Fees table of the Fee Schedule.

SAM Agency Orders and Break-Up Credits

In addition, the Exchange also proposes to amend the provision regarding Break-Up Credits located under the AIM and SAM Pricing table in footnote 6. Specifically, it proposes to

rename this provision from “AIM Break-Up Credits” to “AIM and SAM Break-Up Credits” and remove references to “AIM” within the provision as it will apply to agency orders submitted in either the AIM (as it does currently) or SAM auction that trades with a response order in the respective auction. As proposed, the Break-Up Credits will apply to the Member that submitted an Agency Order (i.e., either an AIM or SAM Agency Order), including a Member who routed an order to the Exchange with a Designated Give Up, when the Agency Order trades with a Response Order (i.e. an AIM or SAM Response Order, as applicable). The Exchange proposes to adopt a Break-Up Credit for qualifying SAM Agency Order of \$0.15 per contract in both Penny Pilot and Non-Penny Pilot securities.

Marketing Fees and SAM Pricing

The Fee Schedule currently contains a section entitled “Marketing Fees”, which specifies that marketing fees are charged to all Market Makers who are counterparties to a trade with a Customer, with certain exceptions, including the exclusion of AIM Pricing set forth in footnote 6. The Exchange proposes to extend the marketing exclusion to orders subject to SAM Pricing set forth in footnote 6.

QCC Initiator Rebate Overview

The Exchange currently provides functionality that allows for participants on the Exchange to submit QCC orders to the Exchange and its Fee Schedule correspondingly provides for various fee codes and rates in connection with different types of QCC orders. Specifically, footnote 7 currently provides for the QCC Initiator Rebate and provides a rebate of \$0.05 to a Member that submits a QCC Agency Order to the Exchange when at least one side of the transaction is of Non-Customer capacity. The QCC Initiator Rebate is currently provided to all

Members submitting QCC Agency Orders, yielding either fee code QA⁸ or fee code QM⁹, to the Exchange, including a Member who routed an order to the Exchange with a Designated Give Up (as discussed above). Also as discussed in detail above, the Exchange operates in a highly-competitive market by which 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. In response to the competitive environment, the Exchange offers, among other things, tiered pricing which provides Members opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria. For example, the Exchange currently offers various Customer volume tiers under footnote 1 which provide enhanced rebates for qualifying Customer orders that meet certain add liquidity thresholds, as well as eight Market Maker volume tiers under footnote 2 which provide reduced fees for qualifying Market Maker order that meet certain add liquidity thresholds.

QCC Initiator/Solicitation Rebate Tiers

The Exchange proposes to modify the QCC Initiator Rebate, as well as provide a "Solicitation" Rebate, to apply per tier of incrementally increasing volume thresholds. First, the Exchange notes that it proposes to add the fee codes appended to SAM Agency orders, SA and SC, to the list of fee codes (i.e. QA and QM¹⁰) currently eligible for the rebate provided under footnote 7. Accordingly, it also proposes to update the name of the table under footnote 7 and

⁸ Appended to QCC Customer Agency orders and assessed no charge.

⁹ Appended to QCC non-Customer Agency orders and assessed a standard fee of \$0.08.

¹⁰ QA is appended to a QCC Customer Agency Order and assessed no charge and QM is appended to a QCC Non-Customer Agency order and assessed a fee of \$0.08.

the description therein to refer to the “QCC Initiator/Solicitation Rebate”. Next, the Exchange proposes to remove the single rebate rate of \$0.05 per contract in all securities and replace it with six new tiers that correspond to increasingly higher volume thresholds and increasingly higher rebates. Particularly, the Exchange proposes to add: Tier 1, which will provide no rebates for Members that submit qualifying orders (i.e., QA, QM, SA and SC) totaling 0 to 99,999 contracts per month; Tier 2, which will provide a rebate of \$0.05 per contract for Members that submit qualifying orders totaling 100,000 to 199,999 contracts per month; Tier 3, which will provide a rebate of \$0.07 per contract for Members that submit qualifying orders totaling 200,000 to 499,999 contracts per month; Tier 4, which will provide a rebate of \$0.09 per contract for Members that submit qualifying orders totaling 500,000 to 749,999 contracts per month; Tier 5, which will provide a rebate of \$0.10 per contract for Members that submit qualifying orders totaling 750,000 to 999,999 contracts per month; and Tier 6, which will provide a rebate of \$0.11 per contract for Members that submit qualifying orders totaling 1,000,000 or more contracts per month.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,¹¹ in general, and furthers the requirements of Section 6(b)(4),¹² in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

As stated 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 Exchange is only one of

¹¹ 15 U.S.C. 78f.

¹² 15 U.S.C. 78f(b)(4).

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 to the Exchange's price improvement auction and/or their QCC order flow, which the Exchange believes would enhance market quality to the benefit of all Members. Overall, the Exchange believes that its proposed adoption of fees in connection with the SAM Auction, and volume-based tiers for QCC and SAM Agency Orders is consistent with Section 6(b)(4) of the Act in that the proposed fees are reasonable, equitable and not unfairly discriminatory. The Exchange believes that the proposed fees are reasonable, equitable, and not unfairly discriminatory in that competing options exchanges, including the Exchange's affiliated options exchanges or the Exchange itself, offer substantially the same fees and credits in connection with similar price improvement auctions,¹³ as well as volume-based incentives in connection with QCC and/or Solicitation orders,¹⁴ as the Exchange now proposes.

¹³ See MIAAX Options Fee Schedule, Section 1(a)(v), "MIAAX Price Improvement Mechanism ("PRIME") Fees, which provides for comparable rates for similar response, contra, and agency type orders submitted into its PRIME auctions. For example, it assesses a fee of \$0.50 (Penny Classes) and \$0.99 (non-Penny Classes) for PRIME responses, and offers a break-up credit of \$0.25 (Penny Classes) and \$0.60 (non-Penny Classes) for PRIME Agency orders; NYSE American Options Fee Schedule, Section I(G), "CUBE Auction Fees and Credits", which assesses a fee of \$0.50 (Penny Classes) and \$0.99 (non-Penny Classes) for CUBE (its Customer Best Execution Auction) responses, and offers a break-up credit of \$0.25 (Penny Classes) and \$0.60 (non-Penny Classes) for PRIME Agency orders, and an Initiating Participant Credit (akin to an Agency Order) of \$0.30 (Penny Pilot) and \$0.70 (non-Penny Pilot); and Nasdaq ISE Rules, Options 7 Pricing Schedule, Section 3, which provides a Facilitation and Solicitation Break-Up Rebate of \$0.15, the same as proposed herein. See generally EDGX Options Exchange Fee Schedule, "Fee Codes and Associated Fees", which provide the same or comparable rates for corresponding response, contra, and agency orders in AIM; see also "AIM Break-Up Credits", which offers a credit of \$0.25 for AIM Agency Orders in Penny Pilot securities and \$0.60 for such orders in non-Penny Pilot securities.

¹⁴ See Nasdaq ISE Rules, Options 7 Pricing Schedule, Section 6A, "QCC and Solicitation

SAM Definitions and AIM Clarifications

The Exchange believes that the proposed SAM-related definitions are reasonable and equitable as they are consistent with the corresponding Exchange Rules that govern the SAM Auction as well as consistent, to the extent possible, with the corresponding AIM-related definitions currently in the Fee Schedule. Also, the proposed update to “AIM Response” orders is reasonably designed to be more consistent with the term used in Rule 21.19(c)(5), which governs AIM Auction Responses.

SAM Pricing

The Exchange’s proposal establishes fees and rebates regarding SAM, which promotes price improvement to the benefit of market participants. The Exchange believes that the adoption of the SAM Auction on the Exchange will encourage market participants, and in particular liquidity providers on the Exchange, to compete to provide opportunities for price improvement for large-sized orders in a competitive auction process. The Exchange believes that its proposal is reasonable designed to allow the Exchange to recoup the costs associated with implementing and maintaining SAM while also incentivizing its use, which benefits all market participants. The Exchange notes that the proposed SAM fees and pricing structure is reasonable and equitable as it is comparable to the fees and structure currently in place for the same type of orders submitted into the Exchange’s AIM Auction (i.e., Response, Contra, and Agency, distinguished between Customer and Non-Customer and Penny Pilot and Non-Penny Pilot

Rebate”, which currently assesses the same rebate amounts for the same increasing increments of contracts, as proposed herein, for qualified QCC and/or other solicited crossing orders; and Nasdaq Phlx Rules, Options 7 Pricing Schedule, Section 4, “QCC Rebate Schedule”, which currently assesses the same rebate amounts for the same increasing increments of contracts, as proposed herein, for qualified QCC orders. See also Cboe Options Fees Schedule, “QCC Rate Table”, which assesses a flat credit of \$0.10 per contract (which is on the higher-end of the range of tiered rebates proposed herein) for QCC Initiators.

securities). In particular, the proposed fees and rebate structure in relation to SAM orders are designed to promote order flow through SAM and, in particular, to attract Customer liquidity, which benefits all market participants by providing additional trading opportunities at improved prices. This, in turn, attracts increased large-order flow from liquidity providers which facilitates tighter spreads and potentially triggers a corresponding increase in order flow originating from other market participants.

The Exchange further notes that, generally, the proposed fee and rebate schedule is reasonably designed because it is within the range of fees and rebates assessed by other exchanges employing similar fee structures for price improvement mechanisms.¹⁵ Other competing exchanges offer different fees and rebates for agency orders, contra-side orders, and responder orders to the auction in a manner similar to the proposal. Other competing exchanges also charge different rates for transactions in their price improvement mechanisms for customers versus their non-customers in a manner similar to the proposal. The Exchange believes the fee and rebate schedule as proposed continues to reflect differentiation among different market participants typically found in options fee and rebate schedules.

In particular, the Exchange believes that charging market participants, other than Customers, a higher effective rate for certain SAM transactions is reasonable, equitable, and not unfairly discriminatory because these types of market participants are more sophisticated and have higher levels of order flow activity and system usage. Facilitating this level of trading activity requires a greater amount of Exchange system resources than that of Customers, and thus, generates greater ongoing operational costs for the Exchange. Therefore, the Exchange believes that the proposed fees for SAM Non-Customer Agency and Contra Orders are

¹⁵ See supra note 12.

reasonably designed to provide associated revenue to allow the Exchange to promote and maintain SAM and continue to enhance its services, which is beneficial to all market participants. Also, the Exchange believes that the proposed fee for SAM Non-Customer Agency and Contra orders (\$0.20 per contract) is reasonable because it encourages participation in SAM by offering a rate that is equivalent to or better than most other price improvement auctions offered by other options exchanges as well as the Exchange itself.¹⁶

The Exchange believes that the SAM Customer Agency and Contra Orders are reasonable because Customer volume is important as it attracts continuous liquidity, including from Market Makers to the Exchange, which benefits all market participants by providing more trading opportunities. An increase in Market Maker activity, in turn, may facilitate tighter spreads, which may cause an additional corresponding increase in order flow from other market participants, contributing to increased price discovery and a more robust marketplace. The Exchange also notes that the options industry has a long history of providing preferential pricing to Customer orders in order to incentivize increased, and important, Customer order flow through a fee and rebate schedule in order to attract professional liquidity providers. The Exchange's current Fee Schedule currently does so in many places, particularly in relation to its similar auction, AIM, as do the fees structures in relation to auctions of multiple other

¹⁶ See e.g. MIAX Options Fee Schedule, Section 1(a)(v), "MIAX Price Improvement Mechanism ("PRIME") Fees, which provides that PRIME Customer Agency orders are also free of charge and PRIME Non-Customer Agency orders are assessed a higher fee of \$0.30, see also Cboe Options Fees Schedule, "Rate Table - All Products Excluding Underlying Symbol List A (34)(13)", which also assesses a fee of \$0.20 for Non-Customer Agency orders submitted into its AIM and SAM auctions; and EDGX Options Fee Schedule, "Fee Codes and Associated Fees", which also assesses a fee of \$0.20 for Non-Customer Contra orders submitted into its AIM auction, which is substantially similar to the SAM auction.

exchanges.¹⁷ Indeed, the proposed new fees and rebates for SAM are generally intended to encourage greater Customer trade volume to the Exchange in line with industry practice.

Moreover, the Exchange believes that assessing no charge on SAM Customer Agency and Contra Orders and assessing a fee of \$0.20 for SAM Non-Customer Agency and Contra Orders is equitable and not unfairly discriminatory. First, the Exchange notes that the respective fees will apply the same to all similarly situated participants. Second, the Exchange again notes that not assessing a fee on SAM Customer orders while assessing a fee on SAM Non-Customer orders is in line with an industry practice intended to increase in Customer order flow in order to attract greater volume and liquidity and provide for tighter spreads and more trading opportunities at improve prices to the benefit of all market participants.

Regarding the proposed fees for SAM Response Orders, the Exchange believes that assessing a fee of \$0.50 per contract for orders in Penny Pilot Securities and a fee of \$1.05 per contract for orders in Non-Penny Pilot Securities is reasonable because this associated revenue will also contribute to the Exchange's maintenance and enhancement of SAM. Similar to that described above, the proposed fees in connection with SAM Response Orders are also reasonable as they are similar to, or within the range of, fees and rebates assessed by other exchanges employing similar fee structures for price improvement mechanisms, and are identical to the fees currently assessed by the Exchange for comparable AIM Response Orders.¹⁸ Other competing exchanges offer different fees and rebates for agency orders, contra-side order, and responders to the auction in a manner similar to the proposal. Further, the proposed fee for such orders is equitable and not unfairly discriminatory because it will apply the same rates to all participants' SAM Response orders and will vary only based on whether the security is a Penny Pilot Security

¹⁷ See supra note 12.

¹⁸ See supra note 12.

or a Non-Penny Pilot Security.

The Exchange further believes its proposal represents a reasonable and equitable allocation of dues and fees in that the proposal would treat an unrelated order, as well as a SAM Agency Order that executes against such order, differently depending on whether the unrelated order was already resting on the Exchange's order book at the time the SAM Agency Order was received or was received after the SAM Auction had begun. The Exchange believes that this proposal is reasonable, equitable, and not unfairly discriminatory as the Fee Schedule currently provides that unrelated orders and Agency Orders in the AIM Auction (which, as noted, is substantially similar to the SAM Auction) will be treated in the same manner that is being proposed for unrelated and Agency Orders in a SAM Auction. As proposed, an unrelated order would be considered a SAM Responder Order if received after the SAM Auction had commenced. As a result, both the SAM Agency Order executing against such order and such order itself would be assessed fees and provided rebates according to the proposed SAM pricing. The Exchange believes this is a reasonable and equitable allocation of dues and fees, and is not unreasonably discriminatory, because it ensures that market participants are treated similarly with respect to their executions against SAM Agency Orders. To do otherwise, to the extent fees are higher pursuant to SAM pricing than under the Exchange's Standard Fee Rates, would potentially incentivize a market participant that wished to participate in an auction to nonetheless avoid sending orders to the Exchange that are not targeted towards the auction and instead send orders to the Exchange's order book generally, knowing that such orders would still be considered in the auction. In contrast, as proposed, to the extent an unrelated order was already present on the Exchange's order book when a SAM Agency Order is received, such unrelated order, if executed in an Auction, as well as the SAM Agency Order against which it trades would

be charged a fee or provided a rebate as if the transaction occurred on the Exchange's order book pursuant to the Exchange's normal order handling methodology and not in SAM. The Exchange similarly believes this is a reasonable and equitable allocation of dues and fees, and is not unreasonably discriminatory, because it will ensure that the participant that had established position on the Exchange's order book first, the unrelated order, is not impacted with respect to applicable fees or rebates despite the later arrival of a SAM Agency Order that commences an Auction.

SAM Agency Orders and Designated Give Up

The Exchange believes that the proposal to add new fee code SC to the lead-in sentence of footnote 5 and to append footnote 5 to fee code SC is a reasonable and equitable allocation of fees and dues and is not unreasonably discriminatory because, as is currently the case pursuant to footnote 5 and Rule 21.12(b)(1), the proposal simply makes clear that a firm acting as a Routing Firm that routes SAM Agency Orders to the Exchange will be provided applicable rebates, including any SAM Break-Up Credits, based on the Routing Firm's decision to route the order to the Exchange.

SAM Agency Orders and Break-Up Credits

With respect to the proposal to adopt SAM-related Break-Up Credits under footnote 6, the Exchange believes this is reasonable because it encourages use of SAM and because Break-Up Credits are currently applied in the same manner to similar AIM Agency Orders. Specifically, the Exchange believes that the proposed Break-Up Credits for SAM Agency Orders would encourage increased Agency Order flow to SAM Auctions, thereby potentially increasing the initiation of and volume executed through SAM Auctions. Additional auction order flow provides market participants with additional trading opportunities at improved prices. The

Exchange also believes that the proposed SAM Break-Up Credits of \$0.15 for both a Penny Pilot Security and a Non-Penny Pilot Security are reasonable and equitable as this credit is in line with a corresponding break-up fee for a price improvement auction offered by another options exchange.¹⁹ Also, the proposed SAM Break-Up Credits are not unreasonably discriminatory because such credits are equally available to all Members submitting SAM Agency Orders to the Exchange. In addition, the Exchange believes that it is reasonable and equitable to update the language in the Break-Up Credit section of footnote 6, to make clear that a Routing Firm will be provided any applicable SAM or AIM Break-Up Credits.

Marketing Fees and SAM Pricing

The Exchange believes its proposal to expand the exclusions listed in the marketing fees section to also exclude orders subject to SAM Pricing set forth in footnote 6 is reasonable and equitable because the rates for Market Makers for orders subject to SAM Pricing are allocated as an all-inclusive rate (i.e. the same SAM “Non-Customer” rate applies to Market Makers as it would a proprietary firm or other liquidity provider) but would increase such rates to a level higher than that paid by other Non-Customer participants if Marketing Fees were also assessed on Market Makers’ SAM transactions. The Exchange believes that it is reasonable and equitable to waive the marketing fee as it applies to Market Maker orders subject to SAM pricing, and consequently assess the same fees for Market Maker and all other Non-Customer orders in SAM, because the application of marketing fees to Market Maker orders in SAM may discourage Market Maker participation in the SAM Auction. The Exchange recognizes that Market Makers are the primary liquidity providers in the options markets, and particularly, during auctions. Thus, the Exchange believes Market Makers provide the most accurate prices reflective of the

¹⁹ See supra note 12, Nasdaq ISE Facilitation and Solicitation Break-Up Rebate.

true state of the market and are primarily responsible for encouraging more aggressive quoting and superior price improvement during an auction. By waiving the marketing fees for such orders the Exchange aims to incentivize Market Maker participation in SAM. The Exchange does not believe that this proposal is unfairly discriminatory as the marketing fees currently apply only to Market Makers and the proposed change is uniformly excluding Market Maker orders subject to SAM pricing from the marketing fees, thus, uniformly applying the proposed SAM rates for Non-Customer orders to all Non-Customers. Also, the Exchange notes that Market Maker executions subject to the similar AIM price improvement auction are currently excluded from marketing fees, as are market makers on another options exchange that provides for similar marketing fees and auction pricing.²⁰

QCC Initiator/Solicitation Rebate Tiers

The Exchange believes the proposed adoption of a Solicitation Rebate, and modification of the QCC Initiator Rebate, to apply by tiers are reasonable because they provide opportunities for Members to receive higher rebates by providing for incrementally increasing volume-based criteria they can reach for. The Exchange again notes that volume-based incentives and discounts have been widely adopted by other exchanges,²¹ and believes that the proposed tiers are reasonable, equitable and non-discriminatory because they are open to all Members on an equal basis.

The Exchange believes the proposed QCC Initiator/Solicitation Rebate tiers are reasonable means to encourage Members to increase their liquidity on the Exchange, particularly in connection with additional QCC and/or Solicitation Agency Order flow to the Exchange in

²⁰ See MIAX Options Fee Schedule, Section 1(b), “Marketing Fees”, which provides that the exchange will not assess a marketing fee to market makers for agency orders, as well as other orders, executed in the exchange’s PRIME auction.

²¹ See supra note 13.

order to benefit from the proposed enhanced rebates. The Exchange believes that the proposed tiers are reasonable in that they provide an ample number of opportunities for a Member to receive an enhanced rebate for qualifying orders. The proposed tiers provide an incremental incentive for Members to strive for the highest tier levels, which provide increasingly higher rebates for incrementally more QCC Initiator/Solicitation volume achieved, which the Exchange believes is a reasonably designed incentive for Members to grow their QCC Initiator and/or Solicitation order flow to receive the enhanced rebates. The Exchange notes that it currently experiences little to no QCC volume on the Exchange, and therefore believes that all Members are similarly situated and incentivized to achieve the proposed tiers upon the implementation of such tiers. The Exchange additionally notes that, if a Member does not reach a tier between Tiers 2 and 6, the Member will still receive no charge on qualifying orders submitted (per Tier 1). The Exchange believes that incentivizing greater QCC Initiator and/or Solicitation order flow would provide more opportunities for participation in QCC trades or in the SAM Auction, thus increasing opportunities for price improvement. 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 also believes that proposed enhanced rebates are reasonable based on the difficulty of satisfying each proposed tiers' volume criteria and ensures the proposed rebates and thresholds appropriately reflect the incremental difficulty to achieve each ascending tier. The proposed enhanced rebate and volume amounts are the same on other options exchanges that provide tiered rebates or credits for QCC and/or solicitation orders.²² The Exchange believes that the

²² See supra note 13, Nasdaq ISE QCC and Solicitation Rebate; and Nasdaq Phlx QCC

proposal represents an equitable allocation of fees and is not unfairly discriminatory because it applies uniformly to all Members that chose to submit QCC Agency Orders or a SAM Agency Orders, and each has a reasonable opportunity to satisfy any of the proposed tiers' criteria, which, as stated, the Exchange believes is reasonably designed to be incrementally more difficult per ascending 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 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."

The Exchange believes that the proposed rule change does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed change to adopt SAM pricing would not impose any burden on intramarket competition, but rather, serves to increase intramarket competition by incentivizing members to direct their orders, and, in particular, Customer orders, to the Exchange's SAM Auction, in turn providing for more opportunities to compete at improved prices. The proposed SAM-related fees and Break-Up Credits will apply uniformly to all

Members that submit such qualifying orders (e.g. all Members have the opportunity to choose to submit a SAM Response order and all Members' SAM Response orders will be assessed the same fee according to the proposed rates). To the extent that there is a differentiation between proposed fees assessed to Customers as opposed to other market participants, the Exchange believes that this is appropriate because preferential pricing to Customers is a long-standing options industry practice to incentivize increased Customer order flow through a fee and rebate schedule in order to attract professional liquidity providers. Indeed, the proposed fee changes serve to enhance Customer volume on the Exchange because Customer volume continues to attract liquidity, including Market Maker activity, by providing more trading opportunities. As stated, increased Market Maker activity may facilitate tighter spreads potentially triggering an additional corresponding increase in order flow from other market participants and contributing to increased price discovery and overall enhancing quality of the market. The Exchange also notes that the options industry has a long history of providing preferential pricing to Customers orders in order. The Exchange's current Fee Schedule currently provides preferential pricing to Customer orders in many places, particularly in relation to its similar auction, AIM, as do the fees structures in relation to auctions of multiple other exchanges.²³

Further, the Exchange believes that the proposed fees and rebates generally for participation in the SAM Auction will not impose a burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rates are based on the total cost for participants to transact as respondents to the Auction as compared to the cost for participants to engage in non-Auction electronic transactions on the Exchange.

²³ See supra note 12.

In addition to this, the Exchange notes that the proposed exclusion of marketing fees for orders subject to SAM pricing will not impose a burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the waiver of the marketing fee as it applies to Market Maker orders subject to SAM pricing will ensure that pricing for all Non-Customer SAM orders will be the same for Market Makers and all other Non-Customers, thus, encouraging Market Maker participation in the SAM Auction, an important source of price discovery and price improvement during an auction.

Finally, the Exchange believes that the proposed QCC Initiator/Solicitation Rebate does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act as it applies uniformly to all market participants that choose to submit qualifying orders. As stated, the tiers represent a reasonable ascension of criteria difficulty and greater rebates, and at the very least, if a Member submits a qualifying order they will still be assessed no charge (per Tier 1).

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 they may participate on and direct their order flow, including 15 other options exchanges. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single options exchange has more than 22% of the market share.²⁴ Therefore, no exchange possesses significant pricing power in the execution of order flow. Indeed, participants can readily choose to send their orders to other exchanges and off-exchange venues if they deem fee levels at those other venues to be more

²⁴ See supra note 3.

favorable. As noted above, the Exchange believes that the proposed pricing for the SAM Auction is comparable to that of other exchanges offering similar electronic price improvement mechanisms, and the Exchange believes that, based on general industry practice and experience, the price-improving benefits offered by an auction justify and offset the transaction costs associated with such auction [sic] The Exchange again notes that the proposed pricing and volume ranges are identical to that of other options exchanges for QCC initiator orders and/or solicitation orders.²⁵ Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.” The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”. Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

²⁵ See supra note 13.

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 Act²⁶ and paragraph (f) of Rule 19b-4²⁷ 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 e-mail to rule-comments@sec.gov. Please include File Number SR-CboeEDGX-2020-009 on the subject line.

²⁶ 15 U.S.C. 78s(b)(3)(A).

²⁷ 17 CFR 240.19b-4(f).

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CboeEDGX-2020-009. This file number should be included on the subject line if e-mail 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-2020-009 and should be submitted on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁸

Jill M. Peterson,
Assistant Secretary.

²⁸ 17 CFR 200.30-3(a)(12).

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