

November 30, 2018.<sup>1</sup> The Commission plans to submit this existing collection of information to the Office of Management and Budget (“OMB”) for extension and approval.

As directed by the Fair Access to Investment Research Act of 2017 (Pub. L. 115–66, 131 Stat. 1196 (2017) (the “FAIR Act”), the Commission adopted rule 139b under the Securities Act to extend the safe harbor under rule 139 to a “covered investment fund research report.” Specifically, rule 139b provides a safe harbor to a broker-dealer who publishes or distributes in the regular course of its business research reports concerning one or more “covered investment fund(s)” while participating in the distribution of a covered investment fund’s securities.

In the Adopting Release, the Commission adopted the provision that rule 139b include a standardized performance disclosure requirement. The Commission believes that standardized performance presentation is an appropriate requirement because investors tend to consider fund performance a significant factor in evaluating or comparing investment companies, and the requirement addresses potential investor confusion if a communication were not easily recognizable as research as opposed to an advertising prospectus or supplemental sales literature. Rule 139b requires that research reports about open-end funds that include performance information must present it in accordance with paragraphs (d), (e), and (g) of rule 482. Rule 139b also requires that research reports about closed-end funds that include performance information must present it in accordance with instructions to item 4.1(g) of Form N–2. Performance measures calculated by broker-dealers are not required to be kept confidential and there is no mandatory retention period. The Commission anticipates that compliance with these performance measures for each fund discussed in a research report, and for which the performance measures apply, would increase compliance costs for broker-dealers seeking to publish or distribute a covered investment fund research report.

It is difficult to provide estimates of the burdens and costs for those broker-dealers that will include performance information in a rule 139b research report. As discussed in the Adopting Release, this is difficult to estimate because current data collected does not

reflect the affiliate exclusion, does not include the entire universe of covered investment funds, and it is uncertain what percentage of communications currently filed as rule 482 advertising prospectuses (or rule 34b-1 supplemental sales materials) will instead be published in reliance of rule 139b, as covered investment fund research reports.<sup>2</sup> For purposes of the PRA, we estimate that 10% of the rule 482 and rule 34b–1 communications currently filed by broker-dealers with FINRA (approximately 48,341) could be considered as rule 139b covered investment fund research reports. We estimate that broker-dealers will publish annually 4,834 (10% of 48,341) covered investment fund research reports. Moreover, we assume for purposes of the PRA that all estimated rule 139b research reports will include fund performance information. We further estimate that 1,169 broker-dealers would likely be respondents to the collection of information with a frequency of 4.1 responses per year.<sup>3</sup> Additionally, we estimate that each research report will require 3 hours of ongoing internal burden hours by a broker-dealers’ personnel to comply with the rule 139b collection of information requirements, which for each broker-dealer is estimated to be 12.3 internal burden hours.<sup>4</sup> Accordingly, we estimate that the standardized performance presentation requirements will result in an average 12.3 annual hour burden per broker-dealer.

In sum, we estimate that rule 139b’s requirements will impose a total annual internal hour burden of 14,379 hours on broker-dealers.<sup>5</sup> We do not think there is an external cost burden associated with this collection of information.

This information collection is subject to the PRA and responses to this collection of information requirement would not be mandatory for broker-dealers seeking to rely upon rule 139b, but would be necessary for those broker-dealers that would like to provide performance information in their

<sup>2</sup> See Adopting Release, supra note 1, n. 413 and accompanying paragraph.

<sup>3</sup> From information provided by FINRA, for the period January 1, 2021 through December 31, 2021, there were an aggregate of 48,341 filings that were coded either as Rule 482 or Rule 34b1 filings. Furthermore, for the period January 1, 2021 through December 31, 2021, the Commission estimates that there were 4,834 covered investment fund research reports/1,169 broker-dealers = 4.1 annual responses per broker-dealer.

<sup>4</sup> 4.1 annual responses per broker-dealer × 3 internal burden hours = 12.3 annual internal burden hours per broker-dealer.

<sup>5</sup> 12.3 annual internal burden hours × 1,169 broker-dealers.

covered investment fund research reports. Responses to the information collections will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission’s estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by September 12, 2022.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549 or send an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: July 6, 2022.

**J. Matthew DeLesDernier,**  
*Assistant Secretary.*

[FR Doc. 2022–14745 Filed 7–11–22; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95203; File No. SR–CboeEDGX–2022–030]

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

July 6, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that on July 1, 2022, Cboe EDGX Exchange, Inc. (the “Exchange” or “EDGX”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule

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

<sup>2</sup> 17 CFR 240.19b–4.

<sup>1</sup> See Release No. 33–10580 (Nov. 30, 2018) [83 FR 64180 (Dec. 13, 2018)] (“Adopting Release”). Rule 139b became effective on January 14, 2019.

change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Cboe EDGX Exchange, Inc. (the "Exchange" or "EDGX") proposes to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website ([http://markets.cboe.com/us/options/regulation/rule\\_filings/edgx/](http://markets.cboe.com/us/options/regulation/rule_filings/edgx/)) [sic], at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

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

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

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

##### 1. Purpose

The Exchange proposes to amend its Fee Schedule applicable to its equities trading platform ("EDGX Equity") to modify the criteria of Add Volume Tier 2. The Exchange proposes to implement these changes effective July 1, 2022.

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 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues that do not have similar self-regulatory responsibilities under the Exchange Act, to which market participants may direct their order flow. Based on publicly

available information,<sup>3</sup> no single registered equities exchange has more than 16% of the market share. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. The Exchange in particular operates a "Maker-Taker" model whereby it pays rebates to members that add liquidity and assesses fees to those that remove liquidity. The Exchange's Fee Schedule sets forth the standard rebates and rates applied per share for orders that provide and remove liquidity, respectively. Currently, for orders in securities priced at or above \$1.00, the Exchange provides a standard rebate of \$0.00160 per share for orders that add liquidity and assesses a fee of \$0.0030 per share for orders that remove liquidity. For orders in securities priced below \$1.00, the Exchange provides a standard rebate of \$0.00009 per share for orders that add liquidity and assesses a fee of 0.30% of the total dollar value for orders that remove liquidity. Additionally, in response to the competitive environment, the Exchange also offers 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.

##### Add Volume Tier 2

Under footnote 1 of the Fee Schedule, the Exchange currently offers various Add/Remove Volume Tiers. In particular, the Exchange offers four [sic] Add Volume Tiers that each provide an enhanced rebate for Members' qualifying orders yielding fee codes B,<sup>4</sup> V,<sup>5</sup> Y,<sup>6</sup> 3<sup>7</sup> or 4,<sup>8</sup> where a Member reaches certain add volume-based criteria. Specifically, Add Volume Tier 2 offers an enhanced rebate of \$0.0027 per share for qualifying orders (*i.e.*, yielding fee codes B, V, Y, 3 or 4) where

<sup>3</sup> See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (June 27, 2022), available at [https://www.cboe.com/us/equities/market\\_statistics/](https://www.cboe.com/us/equities/market_statistics/).

<sup>4</sup> Orders yielding Fee Code "B" are orders adding liquidity to EDGX (Tape B).

<sup>5</sup> Orders yielding Fee Code "V" are orders adding liquidity to EDGX (Tape A).

<sup>6</sup> Orders yielding Fee Code "Y" are orders adding liquidity to EDGX (Tape C).

<sup>7</sup> Orders yielding Fee Code "3" are orders adding liquidity to EXGX [sic] in the pre and post market (Tapes A or C).

<sup>8</sup> Orders yielding Fee Code "4" are orders adding liquidity to EDGX in the pre and post market (Tape B).

a Member (i) adds an ADV<sup>9</sup> greater than or equal to 0.28% of the TCV;<sup>10</sup> or (ii) a Member adds and ADV greater than or equal to 30,000,000 shares. The Exchange proposes to amend the criteria of Add Volume Tier 2 to offer an enhanced rebate of \$0.0027 per share for qualifying orders (*i.e.*, yielding fee codes B, V, Y, 3 or 4) where a Member (i) adds an ADV greater than or equal to 0.22% (instead of 0.28%) of the TCV; or (ii) a Member adds an ADV greater than or equal to 25,000,000 shares (instead of 30,000,000 shares).

The Exchange believes that the proposed lower thresholds in Add Volume Tier 2 will incentivize market participants to provide additional displayed liquidity on the Exchange, thereby contributing to a deeper and more liquid market, which benefits all market participants and provides greater execution opportunities on the Exchange. The Exchange is not proposing any changes to Add Volume Tier 1 or Add Volume Tier 3.

##### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>11</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>12</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>13</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

<sup>9</sup> "ADV" means average daily volume calculated as the number of shares added to, removed from, or routed by, the Exchange, or any combination or subset thereof, per day. ADV is calculated on a monthly basis.

<sup>10</sup> "TCV" means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> *Id.*

As described above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The proposed rule change reflects a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance market quality to the benefit of all Members.

In particular, the Exchange believes that the proposed changes to Add Volume Tier 2 are reasonable, equitable and not unfairly discriminatory because the tier, as modified, continues to be available to all Members and provide Members an opportunity to receive an enhanced rebate. As noted above, the Exchange operates in a highly competitive market. The Exchange is only one of 16 equity venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. It is also only one of several maker-taker exchanges. Competing equity exchanges offer similar rates and tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume thresholds. Specifically, the Exchange notes that relative volume-based incentives and discounts have been widely adopted by exchanges,<sup>14</sup> including the Exchange,<sup>15</sup> 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 or liquidity provision and/or growth thresholds, as well as assess similar fees or rebates for similar types of orders, to that of the Exchange.

Specifically, the Exchange believes the proposed criteria changes for Add Volume Tier 2 are reasonable because the tier will continue to provide Members with an opportunity to receive an enhanced rebate or reduced fee by encouraging Members to increase their order flow to the Exchange. In particular, the Exchange believes that the changes to Add Volume Tier 2 will provide reasonable means for Members to receive an enhanced rebate for adding liquidity on the Exchange. The

Exchange also believes that the current enhanced rebate for Add Volume Tier 2 continues to be commensurate with the proposed criteria. That is, the rebate reasonably reflects the difficulty in achieving the applicable criteria as amended. Furthermore, the Exchange believes that the proposed lower thresholds in Add Volume Tier 2 will incentivize market participants to provide additional displayed liquidity on the Exchange, thereby contributing to a deeper and more liquid market, which benefits all market participants and provides greater execution opportunities on the Exchange.

The Exchange believes the proposed changes to Add Volume Tier 2 represent an equitable allocation of rebates and fees and are not unfairly discriminatory because all Members are eligible for those tiers and would have the opportunity to meet a tier's criteria and would receive the proposed enhanced rebate or reduced fee if such criteria is met. Without having a view of activity on other market 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 two Members will be able to satisfy the criteria proposed for Add Volume Tier 2. The Exchange also notes that the proposed changes will not adversely impact any Member's ability to qualify for other reduced fee or enhanced rebated tiers. Should a Member not meet the proposed criteria under the modified tier, the Member will merely not receive that corresponding enhanced rebate or reduced fee. The Exchange believes that the proposed changes to Add Volume Tier 2 will benefit all market participants by incentivizing continuous liquidity and, thus, deeper more liquid markets as well as increased execution opportunities. Particularly, the proposal is designed to incentivize liquidity, which further contributes to a deeper, more liquid market and provide even more execution opportunities for active market participants at improved prices. This overall increase in activity deepens the Exchange's liquidity pool, offers additional cost savings, supports the quality of price discovery, promotes market transparency and improves market quality, for all investors.

#### *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 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 tier changes will apply to all Members equally in that all Members will continue to be eligible for Add Volume Tier 2, have a reasonable opportunity to meet the tier's criteria and will receive the enhanced rebate on their qualifying orders if such criteria are met.

The Exchange does not believe the proposed changes burden competition, but rather, enhance competition as they are intended to increase the competitiveness of EDGX by amending existing pricing incentives in order to attract order flow and incentivize participants to increase their participation on the Exchange, providing for additional execution opportunities for market participants and improved price transparency. Greater overall order flow, trading opportunities, and pricing transparency benefit all market participants on the Exchange by enhancing market quality and continuing to encourage Members to send orders, thereby contributing towards a robust and well-balanced market ecosystem.

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 other equities exchanges, 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 equities exchange has more

<sup>14</sup> See BZX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

<sup>15</sup> See EDGX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

than 16% of the market share.<sup>16</sup> Therefore, no exchange possesses significant pricing power in the execution of order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>17</sup> The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’ . . .”<sup>18</sup>

### 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<sup>19</sup> and paragraph (f) of Rule 19b-4<sup>20</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if

it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

### IV. Solicitation of Comments

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

#### Electronic Comments

- Use the Commission’s internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CboeEDGX-2022-030 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-2022-030. 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. 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-2022-030, and should be submitted on or before August 2, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>21</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2022-14750 Filed 7-11-22; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-95202; File No. SR-MEMX-2022-13]

### Self-Regulatory Organizations; MEMX LLC; Notice of Withdrawal of a Proposed Rule Change To Amend Its Fee Schedule To Adopt Connectivity Fees

July 6, 2022.

On May 6, 2022, MEMX LLC (“MEMX”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend its Fee Schedule to adopt Connectivity Fees. The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.<sup>3</sup> The proposed rule change was published for comment in the **Federal Register** on May 20, 2022.<sup>4</sup> On July 1, 2022, MEMX withdrew the proposed rule change (SR-MEMX-2022-13).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>5</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meetings

**TIME AND DATE:** 2 p.m. on Thursday, July 14, 2022.

<sup>21</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as “establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.” 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>4</sup> See Securities Exchange Act Release No. 94924 (May 16, 2022), 87 FR 31026

<sup>5</sup> 17 CFR 200.30-3(a)(12).

<sup>16</sup> *Supra* note 3.

<sup>17</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

<sup>18</sup> *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

<sup>19</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>20</sup> 17 CFR 240.19b-4(f).