Item 1. **Text of the Proposed Rule Change**

(a) Cboe EDGA Exchange, Inc. (the "Exchange" or "EDGA") proposes to amend its Fee Schedule by modifying the rates to add and remove liquidity associated with securities priced below $1.00. The text of the proposed rule change is provided in Exhibit 5.

(b) Not applicable.

(c) Not applicable.

Item 2. **Procedures of the Self-Regulatory Organization**

(a) The Exchange's President (or designee) pursuant to delegated authority approved the proposed rule change on January 30, 2025.

(b) Please refer questions and comments on the proposed rule change to Pat Sexton, Executive Vice President, General Counsel, and Corporate Secretary, (312) 786-7467, or Courtney Smith, Senior Counsel, (913) 815-7046, Cboe EDGA Exchange, Inc., 433 West Van Buren Street, Chicago, Illinois 60607.

Item 3. **Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

(a) Purpose

The Exchange proposes to amend its Fee Schedule applicable to its equities trading platform ("EDGA Equities") by modifying the rates to add and remove liquidity associated with securities priced below $1.00. The Exchange proposes to implement these changes effective February 3, 2025.

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 Securities Exchange Act of 1934 (the "Act"), to which market participants may direct their order flow. Based on publicly available information,[1] no single registered equities exchange has more than 14% 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 $0.00270 per share for orders that add liquidity and assesses a fee of $0.0030 per share for orders that remove liquidity.[2] For orders in securities priced below $1.00, the Exchange does not provide a rebate or assess a fee.[3]

Fee Codes and Associated Rates

The Exchange offers various fee codes applicable to orders in securities priced below $1.00. Currently, for securities priced below $1.00, the Exchange does not provide a standard rebate for Members adding liquidity nor does the Exchange charge a standard fee for Members removing liquidity from the Exchange. The Exchange is proposing to

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1 See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (January 22, 2025), available at https://www.cboe.com/us/equities/market_statistics/.

2 See EDGA Equities Fee Schedule, Standard Rates.

3 Id.

modify the standard rebate provided to securities priced below $1.00 appended with fee codes 3,[4] 4,[5] B,[6] V,[7] and Y[8] from $0.0000 to 0.15% of the dollar value of the transaction. The Exchange is also proposing to modify the standard fee charged to securities priced below $1.00 appended with fee codes 6,[9] BB,[10] N,[11] and W[12] from $0.0000 to 0.15% of the dollar value of the transaction.

In addition, the Exchange offers various fee codes applicable to different order types that add and remove liquidity from EDGA. In order to provide continuity in pricing in securities priced below $1.00, the Exchange proposes to modify the rebate provided to securities priced below $1.00 appended with fee codes DD,[13] DM,[14] DN,[15] HA,[16] MM,[17]

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4 Fee code 3 is appended to orders that add liquidity to EDGA in Tape A or C securities during the pre and post market.

5 Fee code 4 is appended to orders that add liquidity to EDGA in Tape B securities during the pre and post market.

6 Fee code B is appended to orders that add liquidity to EDGA in Tape B securities.

7 Fee code V is appended to orders that add liquidity to EDGA in Tape A securities.

8 Fee code Y is appended to orders that add liquidity to EDGA in Tape C securities.

9 Fee code 6 is appended to orders that remove liquidity from EDGA in the pre and post market.

10 Fee code BB is appended to orders that remove liquidity from EDGA in Tape B securities.

11 Fee code N is appended to orders that remove liquidity from EDGA in Tape C securities.

12 Fee code W is appended to orders that remove liquidity from EDGA in Tape A securities.

13 Fee code DD is appended to orders that add liquidity to EDGA using MidPoint Discretionary order not within the discretionary range.

14 Fee code DM is appended to orders that add liquidity to EDGA using MidPoint Discretionary order within the discretionary range.

15 Fee code DN is appended to orders that add liquidity to EDGA using non-displayed MidPoint Discretionary order not within the discretionary range.

16 Fee code HA is appended to non-displayed orders that add liquidity to EDGA.

17 Fee code MM is appended to non-displayed orders that add liquidity to EDGA using Mid-Point Peg.

and RP.[18] The Exchange also proposes to modify the standard fee charged to securities priced below $1.00 appended with fee codes HR[19] and MT.[20]

The purpose of introducing a rebate for liquidity-adding orders in securities priced below $1.00 and introducing a fee for liquidity-removing orders in securities priced below $1.00 is for business and competitive reasons, as the Exchange believes that introducing such rebates and fees is consistent with the Exchange's overall pricing philosophy of encouraging added liquidity. The Exchange notes that the standard rebate for securities priced below $1.00 proposed by the Exchange is greater than the standard rebate available on competing exchanges.[21] In addition, the standard fee to remove liquidity for securities priced below $1.00 proposed by the Exchange is lower than the standard fee to remove liquidity for securities priced below $1.00 on competing exchanges.[22] Despite the introduction of a fee for liquidity-removing orders in securities priced below $1.00, the Exchange believes that its proposed rates to add and remove

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18 Fee code RP is appended to non-displayed orders that add liquidity to EDGA using Supplemental Peg.

19 Fee code HR is appended to non-displayed orders that remove liquidity from EDGA.

20 Fee code MT is appended to orders that remove liquidity from EDGA using Mid-Point Peg.

21 See e.g., Nasdaq Price List; Add and Remove Rates; Rebates and Fees, Shares Executed Below $1.00, available at https://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2; see also NYSE Arca Equities Fees and Charges; Standard Rates – Transactions, available at https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf. Nasdaq and NYSE Arca do not provide a standard rebate to liquidity-adding orders in securities priced below $1.00.

22 Id. Nasdaq and NYSE Arca each assess a standard fee of 0.30% of total dollar volume in liquidity-removing orders in securities priced below $1.00.

liquidity for securities priced below $1.00 remain competitive and continues to be more favorable for Members than the standard rates provided by competing exchanges.[23,24]

(b) Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[25] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[26] 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)[27] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers as well as Section 6(b)(4)[28] as it is designed to provide for the

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23 Nasdaq does not offer any the ability to earn an enhanced rebate or lower fee in securities priced below $1.00. See Nasdaq Price List; Add and Remove Rates; Rebates and Fees, Shares Executed Below $1.00, available at https://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2

24 NYSE Arca offers the ability to receive a lower fee through its Sub-Dollar Adding Tiers. See NYSE Arca Equities Fees and Charges; Tier Rates – Round Lots and Odd Lots (per Share Price Below $1.00), available at https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf.

25 15 U.S.C. 78f(b).

26 15 U.S.C. 78f(b)(5).

27 Id.

28 15 U.S.C. 78f(b)(4)

equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

As described above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The Exchange believes that its proposal to modify the rates associated with liquidity-adding and liquidity-removing orders in securities priced below $1.00 is reasonable, equitable, and consistent with the Act because such change is designed in a manner that is consistent with the Exchange's overall pricing philosophy of encouraging added liquidity. The proposed rates are reasonable and appropriate because they remain competitive with the rebates and fees offered by other exchanges in securities priced below $1.00. In particular, the standard rebate and standard fee proposed by the Exchange are greater (lower) than the corresponding standard rebates and fees at the Exchange's competitors, NYSE Arca and Nasdaq, neither of whom provide a standard rebate and who each assess a standard fee of 0.30% of dollar value in securities priced below $1.00.[29] Additionally, the proposed rebates for liquidity-adding orders are higher than the corresponding rebates provided by NYSE Arca and Nasdaq, neither of whom offer rebates for securities priced below $1.00.[30] Further, the proposed fees for liquidity-removing orders are lower than the fees assessed by Nasdaq, which charges a fee of 0.30% of total dollar volume.[31] While NYSE Arca provides the ability to earn lower fees

29 Supra notes 21 – 22.

30 Supra note 21.

31 Supra note 23.

through tiered pricing ranging from 0.05% - 0.20% of dollar value,[32] which is potentially less than the Exchange proposes to offer, the Exchange notes that its fee of 0.15% of dollar value is known at the time of execution and is competitive with NYSE Arca's tiered remove fees in securities priced below $1.00. The Exchange further believes that the proposed rates are not unfairly discriminatory because they apply to all Members equally, in that all Members will receive the rebate or be assessed the fee upon submitting orders in securities priced below $1.00 appended with fee codes B, V, Y, 3, 4, DD, DM, DN, HA, MM, RP, 6, BB, N, W, HR, and MT.

Item 4. 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 changes 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 changes further 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 changes do not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed introduction of rebates and fees for liquidity-adding and liquidity-removing orders in securities priced below $1.00 does not

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[32] Supra note 24.

impose an unnecessary burden as all Members will be subject to the proposed rates. The Exchange does not believe the proposed changes burden competition, but rather, enhance competition as they are intended to increase the competitiveness of EDGA by amending existing pricing incentives in order to attract order flow and incentivize participants to increase their participation on the Exchange. Greater overall order flow, trading opportunities, and pricing transparency benefits 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 changes 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 than 14% of the market share.[33] 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

[33] Supra note 1.

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."[34] 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'….".[35] 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.

Item 5. <u>Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others</u>

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

Item 6. <u>Extension of Time Period for Commission Action</u>

Not applicable.

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

35 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)).

Item 7. **Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)**

(a) The proposed rule change is filed for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act[36] and Rule 19b-4(f)(2)[37] thereunder.

(b) The Exchange designates that the proposed rule change establishes or changes a due, fee, or other charge imposed by the Exchange, which renders the proposed rule change effective upon filing with the Securities and Exchange Commission (the "Commission"). At any time within 60 days of the filing of this 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.

(c) Not applicable.

(d) Not applicable.

Item 8. **Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

The proposed rule change is not based on a rule either of another self-regulatory organization or of the Commission.

Item 9. **Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act**

Not applicable.

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[36] 15 U.S.C. 78s(b)(3)(A).

[37] 17 CFR 240.19b-4(f)(2).

Item 10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

Item 11. Exhibits

Exhibit 1. Completed Notice of Proposed Rule Change for publication in the Federal Register.

Exhibits 2-4. Not applicable.

Exhibit 5. Proposed rule text.