SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-102842; File No. SR-CboeEDGA-2025-009]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend its Fee Schedule by Introducing an NBBO Setter Program Under Proposed New Fee Code SS and Introducing a Definitions Section to the Fee Schedule

April 11, 2025.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on April 9, 2025, Cboe EDGA Exchange, Inc. (the "Exchange" or "EDGA") filed with the Securities and Exchange Commission ("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 EDGA Exchange, Inc. (the "Exchange" or "EDGA") proposes to amend its Fee Schedule by introducing an NBBO Setter Program under proposed new fee code SS and introducing a Definitions section to the Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

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

2 17 CFR 240.19b-4.

The text of the proposed rule change is also available on the Exchange's website (http://markets.cboe.com/us/equities/regulation/rule_filings/edga/), 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule applicable to its equities trading platform ("EDGA Equities") by introducing an NBBO Setter Program under proposed new fee code SS and introducing a Definitions section to the Fee Schedule. The Exchange proposes to implement these changes effective April 1, 2025.[3]

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 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

[3] The Exchange originally proposed to amend its Fee Schedule on April 1, 2025 (SR-CboeEDGA-2025-008). On April 9, 2025, the Exchange withdrew that filing and submitted this proposal.

under the Securities Exchange Act of 1934 (the "Act"), to which market participants may direct their order flow. Based on publicly available information,[4] no single registered equities exchange has more than 15% 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.[5] For orders in securities priced below $1.00, the Exchange provides a standard rebate of 0.15% of the dollar value and assesses a fee of 0.15% of the dollar value.[6]

Fee Codes and Associated Rates

The Exchange offers various fee codes applicable to orders that add or remove liquidity on EDGA. The Exchange now proposes to introduce a new incentive program, referred to by the Exchange as the NBBO Setter Program (the "Program") under new proposed fee code SS, which is designed to improve market quality in illiquid securities on the Exchange. As proposed, the Program would provide a rebate of $0.00300 in securities priced at or above $1.00 and a rebate of 0.15000% of the dollar value in securities priced below $1.00 for orders that set the Setter NBBO[7] in securities *not included* in the NBBO Setter Excluded Securities List ("NBBO Setter

---

4 See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (March 20, 2025), available at https://www.cboe.com/us/equities/market_statistics/.

5 See EDGA Equities Fee Schedule, Standard Rates.

6 Id.

7 As proposed, "Setter NBBO" means a quotation of at least 100 shares that is better than the NBBO or a

Securities"). As proposed, the NBBO Setter Excluded Securities List means a list of securities *not eligible* for the rebate provided under proposed fee code SS. The securities included in the NBBO Setter Excluded Securities List will be determined by the Exchange on a quarterly basis and published in a Notice distributed to Members and on the Exchange's website. At the outset, the NBBO Setter Excluded Securities List will include those securities included in the S&P 500 Index, the Nasdaq 100 Index, and certain ETPs that the Exchange believes have high levels of liquidity. The initial NBBO Setter Excluded Securities List will be comprised of approximately 550 securities, leaving approximately 9,700 NBBO Setter Securities in which Members may earn a rebate under proposed fee code SS. The Exchange also proposes to introduce a Definitions section to the Fee Schedule in order to codify the terms "NBBO Setter Securities" and "Setter NBBO." The Exchange believes that providing a Definitions section will provide Members additional clarity on the terms applicable to the proposed NBBO Setter Program available under proposed fee code SS.

The Exchange notes that there are no volume requirements for the proposed NBBO Setter Program and the Program will be available to all Members and will provide Members an opportunity to earn a higher rebate than what is currently provided under the Exchange's standard rebate. Moreover, the Program is designed to encourage Members that provide displayed liquidity on the Exchange to increase overall volume and order flow in illiquid names, which would benefit all Members by providing greater execution opportunities on the Exchange and contribute to a deeper, more liquid market, benefiting all investors.

---

quotation of a notional size of at least $10,000.00 that is better than the NBBO. A quotation of at least 100 shares or a quotation of at least $10,000.00 that merely joins the NBBO (i.e., is "at the NBBO") will not qualify as a Setter NBBO.

2. 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.[8] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[9] 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)[10] 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)[11] as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

In particular, the Exchange believes that the proposed fee code SS and corresponding NBBO Setter Program is reasonable, equitable, and not unfairly discriminatory. The proposed fee code and Program reflects a competitive pricing structure designed to incentivize participants to direct their order flow to the Exchange and enhance market quality in NBBO Setter Securities. The Exchange believes the proposed Program, which provides a higher rebate to Members that

8 15 U.S.C. 78f(b).

9 15 U.S.C. 78f(b)(5).

10 Id.

11 15 U.S.C. 78f(b)(4)

set the Setter NBBO in NBBO Setter Securities, provides a reasonable means to encourage overall growth in order flow that establishes a Setter NBBO in the approximately 9,700 securities traded on EDGA that the Exchange believes are illiquid. An overall increase in activity would deepen the Exchange's liquidity pool, offer more narrow spreads, support the quality of price discovery, promote market transparency, and improve market quality for all investors.

The Exchange believes that limiting its Program to NBBO Setter Securities is reasonable, equitable, and not unfairly discriminatory because the Exchange has identified such securities as securities for which it would like to inject additional quoting competition, which it believes will generally act to narrow spreads, increase size at the inside, and increase liquidity depth in such securities. The Exchange also believes that the proposed definition of Setter NBBO is reasonable in that it provides Members alternative ways to qualify for the rebate under the Program and encourages Members to quote the NBBO in higher-priced securities in which Members might not otherwise quote at least 100 shares due to the higher notional value associated with securities priced over $100.00. For example, if a Member wanted to set the NBBO in hypothetical symbol XYZ, the Member would, under the Exchange's standard definition of NBBO,[12] have to provide a round lot quotation priced better than the hypothetical price of $967.99, which equates to a notional value of $96,799. Under the Exchange's proposed Setter NBBO definition, however, the Member could qualify for the rebate under proposed fee code SS by providing an odd lot quotation in hypothetical symbol XYZ with a notional value of at least $10,000.00 that "sets" (i.e., is better than) the NBBO. The Exchange believes that by allowing Members to qualify for the rebate under the Program by satisfying the definition of Setter NBBO with either a quotation of at least 100 shares better than the NBBO or an odd lot quotation better than the NBBO with a

12 See Exchange Rule 1.5(o) ("NBB, NBO, and NBBO").

notional value of at least $10,000.00 will promote price discovery and market quality in NBBO Setter Securities and, further, that the tightened spreads and increased liquidity from the Program will benefit all investors by deepening the Exchange's liquidity pool, offering the potential for executions at more aggressive prices, supporting the quality of price discovery, enhancing quoting competition across exchanges, promoting market transparency, and improving investor protection.

Additionally, the Exchange's introduction of a Definitions section to the Fee Schedule is reasonable, equitable, and not unfairly discriminatory because it serves to provide all Members additional clarity surrounding proposed fee code SS. Particularly, the proposed Definitions section will contain the relevant terms that will enable Members to potentially earn the proposed higher rebate under proposed fee code SS. The Definitions section will be available on the Fee Schedule to all Members, equally.

The Exchange notes that the proposed NBBO Setter Program is not dissimilar from other programs incentivizing quoting at the NBBO offered by other exchanges.[13] The Exchange's proposed Program differs from the MEMX NBBO Program and MIAX NBBO Program in that the Exchange's proposed Program is not a volume-based tier, but rather an incentive earned simply by setting the Setter NBBO in NBBO Setter Securities. Additionally, the Exchange's proposed NBBO Setter Program will pay a rebate of 0.15000% of the dollar value in securities priced below $1.00, while the MEMX NBBO Program and MIAX NBBO Program are both limited to securities priced at or above $1.00. The Exchange's proposed NBBO Setter Program also includes an alternative method for "setting" the NBBO through its Setter NBBO definition,

---

[13] See, e.g., MEMX Equities Fee Schedule, NBBO Setter Tier ("MEMX NBBO Program"). See also, MIAX Pearl Equities Fee Schedule, NBBO Setter Plus Program ("MIAX NBBO Program").

which is not offered under the MEMX NBBO Program or the MIAX NBBO Program. Under the Setter NBBO, a Member may "set" the NBBO by providing an odd lot quotation with a notional value of at least $10,000.00, which the Exchange believes will assist Members in "setting" the NBBO in securities with prices greater than $100.00. Further, the Exchange's proposed Program is equitable and not unfairly discriminatory because it is open to all Members on an equal basis and provides a higher rebate reasonably related to the value of the Exchange's market quality. In fact, the Exchange believes its program is less discriminatory than those offered by other exchanges in that there is no minimum volume requirement in order to qualify for the higher rebate offered under proposed fee code SS, whereas both the MEMX NBBO Program and MIAX NBBO Program each require a minimum amount of volume in addition to setting the NBBO in order to earn an additive rebate. Much like volume-based tiers are generally designed to incentivize higher levels of liquidity provision and/or growth patterns on exchanges, the proposed NBBO Setter Program is designed to incentivize enhanced market quality on the Exchange through tighter spreads, greater size at the inside, and greater quoting depth in NBBO Setter Securities by offering a higher rebate under fee code SS. As such, the Exchange believes the proposed higher rebate will act to enhance liquidity and competition across exchanges in NBBO Setter Securities by providing a rebate reasonably related to such enhanced market quality to the benefit of all investors, thereby promoting the principles discussed in Section 6(b)(5) of the Act.[14]

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.

---

14 Supra note 8.

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 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 introduction of an NBBO Setter Program does not impose an unnecessary burden as all Members will be eligible to earn the rebate offered under proposed fee code SS should they set the Setter NBBO in NBBO Setter Securities. Additionally, the proposed introduction of a Definitions section does not impose an unnecessary burden upon Members as all Members will be able to view the relevant definitions applicable to the Program. The Exchange does not believe the proposed change burdens competition, but rather, enhances competition as it is 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 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 than 15% of the market share.[15] 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."[16] 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'….".[17] Accordingly, the Exchange does not believe

---

15 Supra note 4.

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

17 NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No.

its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

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

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[18] and paragraph (f) of Rule 19b-4[19] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's internet comment form (https://www.sec.gov/rules/sro.shtml); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeEDGA-2025-009 on the subject line.

59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

18 15 U.S.C. 78s(b)(3)(A).

19 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-CboeEDGA-2025-009. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (https://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CboeEDGA-2025-009 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.[20]

Sherry R. Haywood,

Assistant Secretary.

[20] 17 CFR 200.30-3(a)(12).