

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-91000; File No. SR-CboeEDGA-2021-003)

January 27, 2021

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Fee Schedule

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”),² and Rule 19b-4 thereunder,³ notice is hereby given that on January 13, 2021, Cboe EDGA Exchange, Inc. (the “Exchange” or “EDGA”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Cboe EDGA Exchange, Inc. (the “Exchange” or “EDGA”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend the fee schedule applicable to Members and non-Members of the Exchange pursuant to EDGA Rules 15.1(a) and (c). Changes to the fee schedule pursuant to this proposal are effective upon filing. 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/equities/regulation/rule_filings/edga/), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at 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 parts 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 by 1) eliminating certain routing fee codes and 2) amending an Add/Remove Volume Tier.⁴

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,⁵ 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

⁴ The Exchange initially filed the proposed fee changes January 4, 2021 (SR-CboeEDGA-2021-001). On January 13, 2021, the Exchange withdrew that filing and submitted this proposal.

⁵ See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (December 29, 2020), available at https://markets.cboe.com/us/equities/market_statistics/.

believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

Proposal to Remove Certain Routing Fee Codes

The Exchange assesses fees in connection with orders routed away to various exchanges. As a result of minimal use in the last months, the Exchange proposes to eliminate the following routing fee codes currently under the Fee Codes and Associated Fees section of the Fee Schedule:

- Fee code 8, which is appended to Members' orders routed to NYSE American that adds liquidity and assesses a charge of \$0.00020 per contract for orders in securities priced at or above \$1.00 and assesses no charge for orders in securities priced below \$1.00;
- Fee code K, which is appended to Members' orders routed to PSX using the ROUC⁶ routing strategy and assesses a charge of \$0.00290 per contract for orders in securities priced at or above \$1.00 and assesses a charge of 30% of the dollar value per contract for orders in securities priced below \$1.00; and
- Fee code MX, which is appended to Members' orders routed to NYSE American using the ROBB, ROCO⁷ or ROUC routing strategy and assesses a charge of \$0.00020 per

⁶ The ROUC routing strategy is a routing strategy under which an order checks the System for available shares and then is sent to destinations on the System routing table, Nasdaq OMX BX, and NYSE. See Rule 11.11(g)(1); see also Cboe Routing Strategies, FIX/BOE Routing Tags and Instructions, available at: https://cdn.cboe.com/resources/features/Cboe_USE_RoutingStrategies.pdf.

⁷ The ROBB and ROCO routing strategies are routing strategies which check the System for available shares and then are sent to destinations on the System routing table. See

contract for orders in securities priced at or above \$1.00 and assesses no charge for orders in securities priced below \$1.00.

The Exchange has observed a minimal amount of volume in recent months in orders yielding fee codes 8, K or MX. In particular, over the last six months the Exchange observed that orders yielding fee code MX accounted for approximately only 0.80% of all routed order volume, orders yielding fee code K accounted for approximately only 0.01% of all routed order volume, and there was only one contract executed from an order yielding fee code 8. The Exchange believes that, because so few Users elect to route their orders with specifications to which fee codes 8, K or MX, the current demand does not warrant the infrastructure and ongoing Systems maintenance required to support these separate fee codes. Therefore, the Exchange now proposes to delete fee codes 8, K and MX in the Fee Schedule. The Exchange notes that Users will continue to be able to choose to route their orders with the same specifications to which fee codes 8, K and MX currently apply —such orders will simply be assessed the fees currently in place for routed orders generally.⁸ That is, if any of the routed orders to which fee code K or MX currently apply are submitted in the pre- or post-market sessions that remove liquidity⁹, then fee code 7 will apply, which is appended to Members' routed orders in the pre- or post-market

Rule 11.11(g)(3); see also Cboe Routing Strategies, FIX/BOE Routing Tags and Instructions, available at:
https://cdn.cboe.com/resources/features/Cboe_USE_RoutingStrategies.pdf.

⁸ The Exchange notes that there are other fee codes that apply to certain other routing specifications, however, those routed orders not otherwise specified in such other routing fee code descriptions yield the general routing fee codes 7 or X.

⁹ Fee code 7 is currently appended to all routed orders in the pre- or post-market session that remove liquidity. The proposed rule change updates the description associated with fee code 7 to clarify in the description that such orders remove liquidity. This update does not alter the orders to which fee code 7 currently applies but merely makes it clear in the Fee Schedule that fee code 7 applies to qualifying routed orders that remove liquidity.

sessions and assesses a charge of \$0.00300 per contract for orders in securities priced at or above \$1.00 and assesses a charge of 30% of the dollar value per contract for orders in securities priced below \$1.00. Fee code X will be appended to routed orders not submitted during the pre- or post-market sessions to which fee code K or MX currently apply and to routed orders to which fee code 8 currently applies. Fee code X currently assesses a charge of \$0.00300 per contract for orders in securities priced at or above \$1.00 and assesses a charge of 30% of the dollar value per contract for orders in securities priced below \$1.00. The Exchange notes that rates applicable to orders yielding fee codes 7 and X are the standard routing fees pursuant to the Standard Rates section of the Fee Schedule.

Proposal to Amend Add/Remove Volume Tier

In response to the competitive environment described above, the Exchange 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 incremental incentives for Members to strive for higher or different tier levels by offering increasingly higher discounts or enhanced benefits for satisfying increasingly more stringent criteria or different criteria. Competing equity exchanges offer similar tiered pricing structures, including schedules of rebates and fees that apply based upon members achieving certain volume and/or growth thresholds, as well as assess similar fees or rebates for similar types of orders, to that of the Exchange. These competing pricing schedules, moreover, are presently comparable to those that the Exchange provides.

The Exchange currently provides for such tiers pursuant to footnote 7 of the fee schedule, which currently offers various different Add/Remove Volume Tiers. Specifically, Tier 2 provides an opportunity for Members to receive reduced fee of \$0.0016 per contract for

qualifying liquidity adding orders (i.e., yielding fee codes 3¹⁰, 4¹¹, B¹², V¹³, and Y¹⁴), where a Member adds or removes an ADV¹⁵ of greater than or equal to 65% of TCV.¹⁶ The Exchange proposes to amend Add/Remove Volume Tier 2 to reduce the ADV percentage of TCV from 65% to 60%. By reducing the percentage of ADV over TCV that a Member must meet to receive a reduced fee under Tier 2, the proposed change eases the difficulty of the tier's criteria by a modest amount, which, the Exchange believes will incentive Members to increase their overall order flow, both adding and removing orders, in order to achieve the criteria under Tier 2 and receive the current reduced fee, which is remaining unchanged. The Exchange believes this may further incentivize liquidity adding Members on the Exchange to contribute to a deeper, more liquid market, and liquidity executing Members on the Exchange to increase transactions and take execution opportunities provided by such increased liquidity. The Exchange believes that this, in turn, benefits all Members by contributing towards a robust and well-balanced market ecosystem. The Exchange notes the proposed tier continues to be available to all Members and is

¹⁰ Appended to orders that add liquidity to EDGA, pre and post market (Tapes A or C) and assesses a standard fee of \$0.00300.

¹¹ Appended to orders that add liquidity to EDGA, pre and post market (Tape B) and assesses a standard fee of \$0.00300.

¹² Appended to orders that add liquidity to EDGA (Tape B) and assesses a standard fee of \$0.00300.

¹³ Appended to orders that add liquidity to EDGA (Tape A) and assesses a standard fee of \$0.00300.

¹⁴ Appended to orders that add liquidity to EDGA (Tape C) and assesses a standard fee of \$0.00300.

¹⁵ ADV means 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.

¹⁶ 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.

competitively achievable for all Members that submit add and/or remove order flow, in that, all firms that submit the requisite order flow may compete to meet the tier.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,¹⁷ in general, and furthers the objectives of Section 6(b)(4),¹⁸ in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with the objectives of Section 6(b)(5)¹⁹ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange again 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. The proposed rule change reflects a competitive pricing structure designed to incentivize market participants to direct their

¹⁷ 15 U.S.C. 78f.

¹⁸ 15 U.S.C. 78f(b)(4).

¹⁹ 15 U.S.C. 78f.(b)(5).

order flow to the Exchange, which the Exchange believes would enhance market quality to the benefit of all Members.

In particular, the Exchange believes the proposed rule change to remove fee codes 8, K and MX is reasonable as the Exchange has observed a minimal amount of volume in orders yielding these fee codes and, therefore, the continuation of these fee codes does not warrant the infrastructure and ongoing Systems maintenance required to support separate fee codes for specific routed orders. As such, the Exchange also believes that it is reasonable and equitable to assess routed orders which meet the specifications to which fee codes 8, K and MX are currently applicable the slightly higher standard routing fee currently in place for all other routed orders — via fee codes 7 or X, as applicable. The Exchange believes that the proposed rule change is equitable and not unfairly discriminatory because Members will continue to have the option to elect to route their orders in the same manner (i.e., routed to NYSE American that add liquidity, routed to PSX using the ROUC routing strategy, routed to NYSE American using the ROBB, ROCO or ROUC routing strategy) will be automatically and uniformly assessed the applicable standard rates in place for generally all other routed orders.²⁰ Further, if members do not favor the Exchange's pricing for routed orders, they can send their routable orders directly to away markets instead of using routing functionality provided by the Exchange. Routing through the Exchange is optional, and the Exchange operates in a competitive environment where market participants can readily direct order flow to competing venues or providers of routing services if they deem fee levels to be excessive.

The Exchange believes the proposed rule change to amend the criteria in Add/Remove Volume Tier 2 is reasonable, equitable and not unfairly discriminatory. The Exchange believes

²⁰ See supra note 8.

that easing the difficulty in reaching the criteria by a modest amount is reasonably designed to provide further incentive for Members to submit both adding and removing order flow to the Exchange in order to receive the reduced fee currently offered under Tier 2. The Exchange notes that the amount of the reduced fee offered is not changing. The Exchange believes the slight decrease in criteria difficulty under Tier 2 may further incentivize liquidity adding Members on the Exchange to contribute to a deeper, more liquid market, and liquidity executing Members on the Exchange to increase transactions and take execution opportunities provided by such increased liquidity. The Exchange believes that this, in turn, benefits all Members by contributing towards a robust and well-balanced market ecosystem. The Exchange believes that the proposed rule change is equitable and not unfairly discriminatory because all Members will continue to be eligible for the Add/Remove Volume Tier 2 and will continue to have the opportunity to meet the tier's criteria and receive the current reduced fee if such criteria is met. Without having a view of activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would definitely result in any Members qualifying for Add/Remove Volume Tier 2, as amended. While the Exchange has no way of predicting with certainty how the proposed tier will impact Member activity, the Exchange does not anticipate that the proposed criteria would impact any of the Members that are currently able to compete for and reach Tier 2 and would merely provide the opportunity for additional Members to be able to compete for and reach the proposed tier. The Exchange also notes that proposed Add/Remove Volume Tier 2 will not adversely impact any Member's pricing or their ability to qualify for other reduced fee or enhanced rebate tiers. Should a Member not meet the proposed criteria under the proposed tier, the Member will merely not receive that reduced fee.

As stated, the reduced fee offered under Tier 2 remains unchanged and it will continue to uniformly apply to all Members that meet the required criteria, as amended, under Tier 2.

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. The Exchange does not believe the proposed rule change to remove fee codes 8, K or MX will impose any burden on intramarket competition because all Members orders that would yield current fee codes 8, K or MX, will automatically and uniformly be assessed the fees already in place for routed orders generally,²¹ as applicable (i.e., fee codes 7 or X). Further, the Exchange does not believe that the proposed rule change to amend Add/Remove Volume Tier 2 will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed change applies to all Members equally in that all Members will continue to be eligible for the proposed Add/Remove Volume Tier 2, have a reasonable opportunity to meet the tier's criteria, as amended, and will all receive the current reduced fee if such criteria is met. As describe above, the proposed Tier 2 criteria is designed to attract additional order flow to the Exchange, incentivizing market participants to direct liquidity and executing order flow to the Exchange, bringing with it improved price transparency and more trading opportunities to the benefit of all market participants on the Exchange.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange again notes that orders that meet the specifications to which fee codes 8, K or MX would currently apply, will yield the same fee codes and be assessed the same

²¹ See supra note 8.

corresponding rates that are already in place in the Fee Schedule for routed orders generally, as previously filed with the Commission. In addition to this, the Exchange also notes again that competing equity exchanges offer similar tiered pricing structures, including schedules of rebates and fees that apply based upon members achieving certain volume and/or growth thresholds, as well as assess similar fees or rebates for similar types of orders, to that of the Exchange. Also, as previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including 15 other options exchanges and off-exchange venues. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single options exchange has more than 16% of the market share.²² Therefore, no exchange possesses significant pricing power in the execution of option 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.”²³ 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,

²² See supra note 5.

²³ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

‘[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’....’²⁴ Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

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

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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)²⁵ of the Act and subparagraph (f)(2) of Rule 19b-4²⁶ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such 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

²⁴ 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)).

²⁵ 15 U.S.C. 78s(b)(3)(A).

²⁶ 17 CFR 240.19b-4(f)(2).

Commission shall institute proceedings under Section 19(b)(2)(B)²⁷ of the Act 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-CboeEDGA-2021-003 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-CboeEDGA-2021-003. 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

²⁷ 15 U.S.C. 78s(b)(2)(B).

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-CboeEDGA-2021-003, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

J. Matthew DeLesDernier
Assistant Secretary

²⁸ 17 CFR 200.30-3(a)(12).