

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

In accordance with Section 6(b)(8) of the Act,<sup>17</sup> the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for member organizations. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."<sup>18</sup>

*Intramarket Competition.* The proposed changes are designed to attract additional order flow to the Exchange. The Exchange believes that the proposed changes would continue to incentivize market participants to direct displayed and non-displayed order flow to the Exchange. Greater liquidity benefits all market participants on the Exchange by providing more trading opportunities and encourages member organizations to send orders, thereby contributing to robust levels of liquidity, which benefits all market participants on the Exchange. The current and proposed fees and credits would be available to all similarly situated market participants, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange. As noted, the proposal would apply to all similarly situated member organizations on the same and equal terms, who would benefit from the changes on the same basis. Accordingly, the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

*Intermarket Competition.* The Exchange operates in a highly competitive market in which market 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. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with off-exchange venues. Because competitors

are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

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

No written comments were solicited or received with respect to 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)<sup>19</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>20</sup> 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 Commission shall institute proceedings under Section 19(b)(2)(B)<sup>21</sup> 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2021-35 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-NYSE-2021-35. 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. 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-NYSE-2021-35, and should be submitted on or before July 8, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-92152; File No. SR-CboeEDGA-2021-015]

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

June 11, 2021.

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 June 9, 2021, Cboe EDGA Exchange, Inc. (the

<sup>17</sup> 15 U.S.C. 78f(b)(8).

<sup>18</sup> Regulation NMS, 70 FR at 37498-99.

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

<sup>20</sup> 17 CFR 240.19b-4(f)(2).

<sup>21</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>22</sup> 17 CFR 200.30-3(a)(12), (59).

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

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

“Exchange” or “EDGA”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Cboe 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. 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/](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 Statutory Basis for, the Proposed Rule Change**

##### **1. Purpose**

The Exchange proposes to amend its fee schedule as follows: (1) Decrease the standard liquidity adding rebate, (2) define the term “Step-Up ADV”, and (3) rename the existing Remove Volume Tier 1 to Remove Volume Tier 2 and add new Remove Volume Tiers 1 and 3.<sup>3</sup>

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>4</sup> 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 “Taker-Maker” model whereby it pays credits to Members that remove liquidity and assesses fees to those that add liquidity. The Exchange’s fee schedule sets forth the standard rebates and rates applied per share for orders that remove and provide liquidity, respectively. Particularly, for securities at or above \$1.00, the Exchange provides a standard rebate of \$0.0018 per share for orders that remove liquidity and assesses a fee of \$0.0030 per share for orders that add liquidity. For order priced below \$1.00, the Exchange does not assess any fees or provide any rebates for orders that add or remove liquidity. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue 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.

Additionally, in response to the competitive environment, 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 an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

##### **Standard Liquidity Rebate**

As stated above, the Exchange currently provides a standard rebate of \$0.0018 per share for liquidity removing

orders (*i.e.*, those yielding fee codes N,<sup>5</sup> W,<sup>6</sup> 6,<sup>7</sup> and BB<sup>8</sup>) in securities priced at or above \$1.00. Orders in securities priced below \$1.00 that remove liquidity are provided no rebate and assessed no fee. The Exchange now proposes to reduce the standard rebate for liquidity removing orders to \$0.0016 per share. Although this proposed standard rebate for liquidity removing orders is lower than the current base rebate for such orders, the proposed rebate is in line with or superior to similar rebates for liquidity removing orders in place on other “Taker-Maker” exchanges.<sup>9</sup>

##### **Definition and Remove Volume Tiers**

The Exchange proposes to adopt a new definition for the term “Step-Up ADV”. Specifically, as proposed “Step-up ADV” means ADV<sup>10</sup> in the relevant baseline month subtracted from current ADV. Such definition would be referenced in the proposed Remove Volume Tier 3, as discussed below.

Pursuant to footnote 7 of the fee schedule, the Exchange currently offers a Remove Volume Tier that provides a rebate to Members meeting a certain volume threshold. Specifically, Tier 1 currently provides an opportunity for Members to receive an enhanced rebate of \$0.0022 per share for qualifying liquidity removing orders (*i.e.*, yielding fee codes N, W, 6, and BB), where a Member adds or removes an ADV greater than or equal to 0.05% of the TCV.<sup>11</sup> Now, the Exchange proposes to rename existing Tier 1 of the Remove Volume Tiers to Tier 2, and add additional Tiers 1 and 3. Specifically, proposed Tier 1 would provide a rebate of \$0.0018 per share to Members that add or remove an ADV of greater than or equal to 0.02% of the TCV. Proposed Tier 3 would provide a rebate of \$0.0024 to Members that (1) add or remove a Step-Up ADV from May 2021 greater

<sup>5</sup> Orders yielding Fee Code “N” are removing liquidity from EDGA (Tape C).

<sup>6</sup> Orders yielding Fee Code “W” are removing liquidity from EDGA (Tape A).

<sup>7</sup> Orders yielding Fee Code “6” are removing liquidity from EDGA (All Tapes).

<sup>8</sup> Orders yielding Fee Code “BB” are removing liquidity from EDGA (Tape B).

<sup>9</sup> *E.g.*, Nasdaq BX, Inc. (“BX”), which operates a “Taker-Maker” model, charges a standard fee of \$0.0007 for liquidity removing orders unless certain volume criteria is met, in which case BX provides a rebate ranging from \$0.0004 up to \$0.0018.

<sup>10</sup> 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.

<sup>11</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>3</sup> The Exchange initially filed the proposed fee changes June 1, 2021 (SR-CboeEDGA-2021-014). On June 9, 2021 the Exchange withdrew that filing and submitted this proposal.

<sup>4</sup> See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (May 24, 2021), available at [https://markets.cboe.com/us/equities/market\\_statistics/](https://markets.cboe.com/us/equities/market_statistics/).

than or equal to 0.05% of the TCV or add or remove a Step-Up ADV from May 2021 greater than or equal to 3,000,000 shares; and (2) add an ADV greater than or equal to 0.05% or add an ADV of greater than or equal to 3,000,000 shares.

The Exchange notes that the Remove Volume Tiers, as modified, will continue to be available to all Members and provide Members an opportunity to receive enhanced rebates. Moreover, the proposed changes are designed to encourage Members to increase both adding and removing liquidity on the Exchange, which further contributes to a deeper, more liquid market and provides even more execution opportunities for active market participants.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>12</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>13</sup> 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)<sup>14</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, and, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. 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 amendment to reduce the standard liquidity removing rebate is reasonable because the proposed change represents a modest rebate decrease and Members will continue to receive a rebate on all liquidity removing orders, albeit at a lower amount. The proposed change is also equitable and non-discriminatory as such rebates are equally applicable to all Members of the Exchange. Additionally, the proposed rebates for liquidity removing orders are in-line with rebates offered at other exchanges for similar transactions.<sup>15</sup>

The Exchange also believes the proposal to define the term “Step-Up ADV” is reasonable as it will clarify terminology used in the fee schedule, to the benefit of all Members. Further, the Exchange believes the proposed changes to the Remove Volume Tiers are reasonable because each tier, as modified, will be available to all Members and provide Members an opportunity to receive an enhanced rebate. The Exchange next notes that relative volume-based incentives and discounts have been widely adopted by exchanges, including the Exchange, and are reasonable, equitable, and non-discriminatory because they are open to all Members on an equal basis and provide additional discounts that are reasonably related to (i) the value to an exchange’s market quality and (ii) associated with higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns. The Exchange also believes that the proposed and existing rebates under the Remove Volume Tiers are commensurate with the respective proposed and existing criteria. That is, the rebates reasonably reflect the difficulty in achieving the corresponding criteria.

The Exchange believes that the changes to the Remove Volume Tiers, will benefit all market participants by incentivizing continuous liquidity and, thus, deeper more liquid markets as well as increased execution opportunities. Particularly, the proposed changes to the Remove Volume Tiers are designed to incentivize both adding and removing 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.

The Exchange also believes that the proposed amendments to the Remove Volume Tiers represent an equitable allocation of rebates and are not unfairly discriminatory because all Members are eligible for the Remove Volume Tiers and would have the opportunity to meet the tiers’ criteria and would receive the proposed rebate if such criteria is met. The Exchange also notes that the proposed changes will not adversely impact any Member’s ability to qualify for other reduced fee or enhanced rebate tiers. Should a Member not meet the proposed criteria under any of the proposed tiers, the Member will merely not receive that corresponding enhanced rebate. A number of Members have a reasonable opportunity to satisfy proposed Remove Volume Tiers 1 and 3, which the Exchange believes are less and more stringent than existing Tier 1, respectively. While the Exchange has no way of knowing whether this proposed rule change would definitively result in any particular Member qualifying for the proposed tiers, the Exchange anticipates at least seven Members to compete for and reasonably achieve proposed tier 1 and five Members to compete for and reasonably achieve proposed tier 3. However, the proposed tiers are open to any Member that satisfies the applicable tier’s criteria. The Exchange believes the proposed tiers could provide an incentive for other Members to submit additional liquidity on the Exchange to qualify for the proposed 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 taker-maker 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.

## *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. Particularly, the proposed standard rebate reduction applies to all liquidity removing orders equally, and thus applies to all Members equally. Similarly, all Members have the opportunity to meet the tiers’ criteria and would receive the proposed rebate

<sup>12</sup> 15 U.S.C. 78f.

<sup>13</sup> 15 U.S.C. 78f(b)(4).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

<sup>15</sup> *Supra* note 8.

if such criteria is met. 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 purpose 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.<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> Accordingly, the Exchange does not believe its proposed fee changes 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<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**

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#### *Paper Comments*

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amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeEDGA-2021-015 and should be submitted on or before July 8, 2021.

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

**Jill M. Peterson,**  
Assistant Secretary.

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-92154; File No. SR-NYSE-2020-96]

### **Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend Its Rules Establishing Maximum Fee Rates To Be Charged by Member Organizations for Forwarding Proxy and Other Materials to Beneficial Owners**

June 11, 2021.

On December 2, 2020, New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4

<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).

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

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