February 7, 2020

Vanessa Countryman, Secretary
Securities and Exchange Commission
100 F Street NE
Washington DC

Re: Release 34-86168; File Number SR-CboeEDGA-2019-012; Cboe EDGA Exchange, Inc.; Notice of Filing of a Proposed Rule Change to Introduce a Liquidity Provider Protection on EDGA ("Filing")

Dear Ms. Countryman:

Thank you for the chance to comment again on the Filing. Faithful to my reputation as a dogged D-list personality[1] in these discussions, I'd like to respond to Cboe's most recent letter[2] with a few points.

Put it in the rulebook

Cboe believes its proposal is not unfairly discriminatory and is similar to other market rules that treat "orders differently from others in some manner based on one or more identifiable characteristics."[3] Cboe then lists several examples of these, including trade priorities and retail preferences. But these differences are genuinely available to everyone. Mrs. Betty Johanssen of Red Lake, Minnesota can enter her order in the morning and get time priority at a price over every participant after her. She is also a retail participant, and that classification is readily available to nearly every natural person (and quite a few other entities).

What Mrs. Johanssen *can't* do is compete on millisecond time frames, as Cboe somewhat remarkably admits further on in its letter, writing "Only a very small minority of market participants are capable of targeting millisecond or microsecond level price changes..."[4] Exactly right, and that's what makes the Filing unfairly discriminatory, because only a very small minority of market participants are certain to directly benefit from the Filing.

Cboe disputes that, claiming that the discriminatory subsidy Cboe wants to give its market makers will benefit Mrs. Johanssen through tighter spreads and larger quotes. Cboe lacks enough confidence in that claim, however, to *require* its subsidized market makers to improve their quotes. Cboe market makers are free to pocket the subsidy, or to pocket some or most of it, as they see fit. And while I've tried to estimate just how much this subsidy is,[5] Cboe hasn't provided its own estimate. Cboe also hasn't provided any estimate of what its market makers will return to investors via tighter spreads and larger quotes, saying, in effect, "trust me." Well, no, the public shouldn't trust an exchange group because it says so, particularly one with a miserable history of favoritism and regulatory failures.[6]

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[1] "Concerned" - *Barron's;* "Feisty" - *Bloomberg*; "Regular" - *Financial Times*; "Smarmy, know nothing know it all" - *Hudson River Trading.*

[2] Letter from Adrian Griffiths, Assistant General Counsel, Cboe to Vanessa Countryman, Secretary, SEC, December 20, 2019 ("Cboe Letter").

[3] Cboe Letter, page 3.

[4] Cboe Letter, page 5.

[5] Approximately $20 million a year on EDGA and as much as $1 billion if adopted marketwide. See letter from R. T. Leuchtkafer to Vanessa Countryman, Secretary, SEC, October 21, 2019 ("Leuchtkafer 1"), page 9.

[6] See Securities and Exchange Commission, Administrative Proceeding File No. 3-16332, In the Matter of EDGA Exchange, Inc. and EDGX Exchange, Inc., Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 19(h) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order, January 12, 2015 and "SEC Charges CBOE for Regulatory Failures," Press Release, Securities and Exchange Commission, June 11, 2013.

If I'm wrong and Cboe is convinced it's right, Cboe should have no problem putting that confidence into EDGA's rulebook with much more stringent quoting obligations than the minimal obligations it has now. Instead Cboe punts, and says whether market makers will pass on some or all of their subsidies "are factual questions that can only be answered with finality by implementing such a mechanism and attempting to improve the market for investors."[7] If Cboe lacks enough confidence in its Filing to codify its expectations why should we have any confidence at all in them?

The SEC shouldn't let Cboe ask the public and the National Market System to take the risk here rather than Cboe. If the SEC is friendly to Cboe's idea it should ask Cboe to take that risk and (a) estimate the value of the subsidy and (b) compute how that value should be properly reflected in EDGA market quality improvements and (c) change EDGA's rulebook to stipulate those market quality improvements and then (d) ensure compliance.

Ready, fire, aim

Cboe repeats its narrative that superfast HFT arbitrageurs using microwave links outrace slower market markers using fiber links from Chicago to New Jersey, and it wants a four millisecond speed bump on marketable orders to level the playing field. It once again repeats that narrative but once again offers no credible evidence for it. The "missed cancel analysis" Cboe submitted flatly contradicts Cboe's own story,[8] as neat an example of an exchange shooting itself in the foot as I can remember.[9] This matters because it is central to the diagnosis of the "market inefficiencies" Cboe wants to address, and address with a facility that "only a very small minority of market participants" are capable of using. If you grant a subsidy after misdiagnosing the inefficiency all you're left with is a transfer payment.

Manual quotes

EDGA proposes broadcasting its quotes to the SIPs as manual quotes. That designation is certainly permitted by Reg NMS. As we know, the tapes have supported manual quotes for over a decade. Importantly, however, EDGA wants exemptive relief to turn its quotes into something more than a conventional manual quote, allowing them to stand their ground against locking or crossing protected quotes and allowing them to lock or cross other manual quotes. If the SEC approves the Filing in any form that exemptive relief should be denied. It's important to remember that when Reg NMS created a category for "manual" quotes the SEC mainly had one target in mind - the specialist market. I'm not a fan of that market model - whenever I shook a specialist's hand I was careful to check for my watch and count my fingers afterward - but it did include quite a few more regulatory constraints on intermediaries than intermediaries face today, and certainly the SEC understood that at the time. At a minimum the specialist of the day had price continuity obligations. Cboe completely overlooks that vital context. I've been hard pressed to find anywhere in the Reg NMS adopting release where the SEC contemplates the kind of device EDGA proposes in the Filing, that is, a device where an exchange can broadcast a manual quote that *explicitly and intentionally* allows its participants to exacerbate price *dis*continuities and fade while the exchange queues marketable orders. The entire point of the last 50 years of market automation, and all the regulatory interventions promoting market automation in that time, has been to explicitly and intentionally prohibit participants from doing exactly that. For Cboe to claim that Reg NMS facilitates its kind of manual quote reminds me of the age-old definition of *chutzpah,* where a man convicted of murdering his parents pleads for mercy because he's an orphan.

And for that reason I agree with the other commenters who argue that if the Filing is approved EDGA's quotes should not be included in the SIP feeds, despite the SIPs' ability to process them. While Reg

[7] Cboe Letter, page 6.
[8] Leuchtkafer 1, pages 4-7.
[9] There is the example of the Bats IPO but that wound was a little higher than its foot.

NMS created the manual quote and expected the SIPs to handle them and participants to process them, the manual quotes of that day came from a regulatory context EDGA never adopted and seems to me unaware ever existed. If the SEC approves the Filing and permits EDGA to send its manual quotes to the SIPs, Trading and Markets should simultaneously codify Cboe's (likely incorrect) belief that participants "are under no regulatory obligation to access, or post, liquidity on EDGA"[10] and issue a no action letter freeing participants to exclude EDGA quotes from their routing tables without any worry about best execution requirements. EDGA should not be allowed to pick and choose regulatory contexts for its business while participants are held to higher standards for their businesses.

We live in interesting times, and comparing EDGA's Filing to IEX's recent filing for its D-Limit order[11] is pretty interesting. The two filings try to address the same problem: resting orders are apparently picked off by speedy firms confident prices are about to change. On the one hand, IEX proposed a facility available to everyone. On the other, EDGA proposed a subsidy only available to the "very small minority of market participants" who can take advantage of its proposal. EDGA then wishes-upon-a-star those firms will pass on some of that subsidy to investors. Check for your watch and count your fingers.

I believe the Filing represents a hodgepodge of regulatory gaming and market structure jibberish that could subsidize intermediaries at the expense of every investor. Please say no.

Sincerely,

R. T. Leuchtkafer

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[10] Cboe Letter, page 14.

[11] Release No. 34-87814, File No. SR-IEX-2019-15, Notice of Filing of Proposed Rule Change to Add a New Discretionary Limit Order Type, December 20, 2019.