SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-84683; File No. SR-CboeEDGA-2018-019)

November 29, 2018

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Eliminate the Liquidity Swap Component of the Discretionary Range Instruction

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on November 23, 2018, 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, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b-4(f)(6) thereunder.[4] 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. ("EDGA" or the "Exchange") is filing with the Securities and Exchange Commission (the "Commission") a proposed rule change to eliminate the liquidity swap component of the Discretionary Range instruction in connection with the recent introduction of a "high inverted" fee model.

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

2 17 CFR 240.19b-4.

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

4 17 CFR 240.19b-4(f)(6).

The text of the proposed rule change is also available on the Exchange's website (http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx), 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 purpose of the proposed rule change is to eliminate the liquidity swap component of the Discretionary Range instruction in connection with the introduction of a "high inverted" fee model, as discussed in more detail below.[5] All other functionality offered by the Discretionary Range instruction would remain unchanged.

Discretionary Range is an instruction the User[6] may attach to an order to buy (sell) a stated amount of a security at a specified, displayed or non-displayed ranked price with discretion to execute up (down) to another specified, non-displayed price.[7] Because the

5 A liquidity swap occurs when a resting order that is posted to the EDGA Book becomes the remover rather than the adder of liquidity for fee purposes.

6 The term "User" means any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3. See Rule 1.5(ee).

7 See Rule 11.6(d). An order with a Discretionary Range instruction resting on the EDGA Book will execute at its least aggressive price when matched for execution against an incoming order that also contains a Discretionary Range instruction, as permitted by the

Discretionary Range instruction indicates a willingness by the entering User to trade at prices more aggressive than the order's ranked price, orders entered with this instruction also liquidity swap with certain incoming orders. Specifically, Rule 11.6(d) provides that a resting order with a Discretionary Range instruction would remove liquidity against: (1) an incoming Post Only order at its displayed or non-displayed ranked price that does not remove liquidity on entry pursuant to Rule 11.6(n)(4), and (2) an incoming order with a time-in-force ("TIF") other than Immediate-or-Cancel ("IOC") or Fill-or-Kill ("FOK") that is priced within its discretionary range. All other orders follow normal handling for the execution of an incoming order and remove liquidity when trading with a resting order with a Discretionary Range instruction.[8]

The Exchange proposes that a resting order with a Discretionary Range instruction would no longer perform a liquidity swap against any incoming orders, such that the incoming order would always act as the taker of liquidity, and the resting order with a Discretionary Range instruction would act as the maker of liquidity. As incoming Post Only orders always remove liquidity on entry in an inverted market where it is economically beneficial to remove liquidity,[9] this change would chiefly impact the execution of Discretionary Range orders against incoming orders with a TIF other than IOC or FOK priced within the discretionary range.

EDGA has operated with an "inverted" fee schedule whereby orders that remove liquidity are provided a rebate and orders that add liquidity pay a fee.[10] On November 1, 2018, the Exchange filed an immediately effective change to its fee schedule to introduce a "high inverted"

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terms of both the incoming and resting order. Id.

8 For example, an incoming order that executes at the ranked price of the Discretionary Range order, or an IOC or FOK order that executes at a price within the discretionary range would execute as the liquidity remover. Id.

9 See Rule 11.6(n)(4).

10 See Cboe EDGA U.S. Equities Exchange Fee Schedule.

market model that increased both the rebate provided to orders that remove liquidity and the fee paid by orders that add liquidity.[11] With the recent changes to the fee schedule, an order that removes liquidity is provided a base rebate of $0.0024 per share, and an order that adds liquidity pays a base fee of $0.0030 per share.[12]

Under the current order handling, an order that executes immediately on entry, which would ordinarily be paid a rebate of $0.0024 per share based on the new high inverted fee structure, could instead end up adding liquidity and paying a fee of up to $0.0030 per share – i.e., a swing of $0.0054 per share – if the incoming order liquidity swaps when trading with a posted order that contains a Discretionary Range instruction. For example, assume the national best bid and offer is $10.00 x $10.05, and there is an order to buy on the EDGA Book priced at $10.00 with discretion to pay up to $10.03. If the Exchange were to receive an incoming Day order to sell at $10.02, the incoming order would be posted to the EDGA Book and then trade with the Discretionary Range order at $10.02 as the adder of liquidity, paying a fee of $0.0030 per share instead of receiving the expected rebate of $0.0024 per share.

Although likely to be a rare occurrence, the Exchange believes that paying a $0.0030 per share fee in this scenario may be contrary to the expectations of Users that enter an order that trades on entry, who may instead expect to receive a $0.0024 per share rebate for sending marketable order flow to EDGA. The Exchange therefore proposes to eliminate the liquidity swap component of the Discretionary Range instruction. As proposed, an order entered with a Discretionary Range instruction would never perform a liquidity swap with an incoming order. Since an order entered with a Discretionary Range instruction would not liquidity swap with an

11 See Securities Exchange Act Release No. 84599 (November 15, 2018), 83 FR 58795 (November 21, 2018) (SR-CboeEDGA-2018-017).

12 Members also have the opportunity to qualify for a lower fee or higher rebate based on volume executed on EDGA.

incoming order under any circumstances, the Exchange proposes to reflect this change by providing that any contra-side order that executes against a resting order with a Discretionary Range instruction at its displayed or non-displayed ranked price, or a price in the discretionary range, will remove liquidity against the order with a Discretionary Range instruction.

In addition, the Exchange proposes to describe in Rule 11.6(d) how the Exchange would handle orders entered with a Discretionary Range instruction in the event that it changes its fees such that an incoming order with a Post Only instruction does not always remove liquidity on entry. As previously discussed, the Exchange is amending the Discretionary Range instruction such that orders entered with a Discretionary Range instruction would not liquidity swap with incoming orders, including orders entered with a Post Only instruction. Instead, the Exchange proposes that where an incoming order with a Post Only instruction does not remove liquidity on entry pursuant to Rule 11.6(n)(4) against a resting order with a Discretionary Range instruction, the discretionary range of the resting order with a Discretionary Range instruction would be shortened to equal the limit price of the incoming contra-side order with a Post Only instruction. While under an inverted fee schedule incoming orders with a Post Only instruction remove liquidity on entry, this language would be relevant if the Exchange were to move to a different market model (e.g., maker/taker). In such an event, the Discretionary Range instruction would behave in a manner similar to recently adopted MidPoint Discretionary Orders ("MDO") on its affiliate Cboe EDGX Exchange, Inc. ("EDGX").[13] Like the proposed handling for EDGA orders entered with a Discretionary Range instruction, MDOs on EDGX are not willing to perform a

[13] See Securities Exchange Act Release No. 84327 (October 1, 2018), 83 FR 50416 (October 5, 2018) (SR-CboeEDGX-2018-041). The Exchange also offers MDOs on EDGA that follow the handling described in this filing for orders entered with a Discretionary Range instruction. See Rule 11.8(e).

liquidity swap, and would instead have their discretionary range shortened if an order with a Post Only instruction were to be posted within the discretionary range.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,[14] in general, and Section 6(b)(5) of the Act,[15] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange offers a Discretionary Range instruction that allows Users to specify a non-displayed discretionary price in addition to a displayed or non-displayed ranked price. As part of this instruction, an order entered with a discretionary price would liquidity swap in certain scenarios described in Rule 11.6(d), including when trading within the order's discretionary range against an incoming order that is entered with a TIF other than IOC or FOK. The Exchange believes that this result is undesirable under an inverted fee structure since the order that is negatively impacted by the swap from a rebate to a fee is the incoming order, and not the resting order that has opted into this handling by including a Discretionary Range instruction. Furthermore, this issue would be exacerbated under the new high inverted fee structure since the difference between the base fee for adding liquidity and base rebate for removing liquidity is now $0.0054 per share. The Exchange therefore believes that eliminating the possibility of this liquidity swap is consistent with the public interest and the protection of investors.

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[14] 15 U.S.C. § 78f(b).

[15] 15 U.S.C. § 78f(b)(5).

With this change no resting orders on EDGA would liquidity swap with an incoming order, thereby ensuring that the incoming order would be the taker of liquidity, and paid the applicable rebate rather than charged an unexpected fee. Although certain other order instructions offered by the Exchange (e.g., Super Aggressive and Non-Displayed Swap)[16] contain a liquidity swap component, those order instructions do not liquidity swap under an inverted fee structure where a Post Only order would always remove liquidity on entry. The Exchange believes that amending its order handling, as proposed, to ensure a similar result in cases that involve the Discretionary Range instruction would promote just and equitable principles of trade.

Finally, the Exchange believes that the proposed operation of the Discretionary Range instruction where an order with a Post Only instruction posts in the discretionary range is consistent with the protection of investors and the public interest. While the Exchange currently operates under an inverted fee schedule where an incoming order with a Post Only instruction would remove liquidity on entry, the Exchange believes that it would be appropriate to shorten the discretion of a resting order with a Discretionary Range instruction if necessary due to an incoming order with a Post Only instruction posting at a price within the discretionary range, which would be possible, for example, in the event the Exchange were to introduce a maker/taker market model. Shortening the order's discretionary range in such circumstances is intended to avoid the discretionary range extending past the contra-side order's limit price, which could create a price priority issue should a later order be entered and be eligible to execute against the resting order within its discretionary range but at a price that extends beyond the

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16 See Rule 11.6(n)(2),(n)(7).

contra-side order with a Post Only instruction. As mentioned in the purpose section of this proposed rule change, similar behavior is already implemented for MDOs on EDGX.[17]

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

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to eliminate the possibility that a liquidity swap could cause an incoming order that was expecting to receive a rebate as a remover of liquidity to instead pay a fee. The Exchange believes that the proposed handling accords with the expectation of its Users when sending order flow to EDGA, which operates under an inverted fee model that generally incentivizes marketable order flow that removes liquidity on entry. The Exchange therefore believes that the proposed rule change would promote a fair and competitive market in securities traded on EDGA.

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

No comments were solicited or received on the proposed rule change.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[18] and Rule 19b-4(f)(6) thereunder.[19]

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17 See note 13 supra.

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

19 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act[20] normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)[21] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative upon filing. Waiver of the operative delay would allow the Exchange to immediately amend its rules to change its handling of orders entered with a Discretionary Range instruction so that such orders, when resting, no longer may liquidity swap with incoming orders with which they execute. The Exchange believes that eliminating this potential for a liquidity swap would be more consistent with the expectation of Exchange participants who submit orders that trade on entry and, in light of the Exchange's inverted fee structure, may expect to receive a rebate for such executions instead of incurring a fee due to a liquidity swap. The Exchange also believes that waiver of the operative delay will reduce the possibility that Exchange participants are inadvertently disadvantaged by a recent Exchange fee schedule change introducing higher fees and rebates. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[22]

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with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[20] 17 CFR 240.19b-4(f)(6).

[21] 17 CFR 240.19b-4(f)(6)(iii).

[22] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 shall 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 (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CboeEDGA-2018-019 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-2018-019. 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 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-2018-019, 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.[23]

Eduardo A. Aleman
Assistant Secretary

[23] 17 CFR 200.30-3(a)(12).