

non-TPHs may purchase to connect to the Exchange's trading system, do not support the routing of orders to PULSe. As such, TPHs that wish to route orders to PULSe via physical ports must maintain a legacy Network Access Port. Due to this limitation, the Exchange believes it's reasonable to waive fees for one Network Access Port that is used only to access PULSe. As noted above, the Exchange believes it's appropriate to waive either one 1 Gb Network Access Port or one 10 Gb Network Access Port, as for this particular purpose, there is no latency advantages to maintain a 10 Gb versus 1 Gb port and because users' own architecture may require one size over the other. The Exchange believes the proposed waiver is equitable and not unfairly discriminatory as it applies to any TPH or non-TPH that must maintain a Network Access Port for the sole purpose of accessing PULSe.

Lastly, the Exchange believes eliminating obsolete language in the Fees Schedule pertaining to fees assessed in a prior month maintains clarity in the Fees Schedule and alleviates potential confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

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 because the proposed changes applies uniformly to all similarly situated market participants. The Exchange believes that the proposed rule change will not cause an unnecessary burden on intermarket competition because it only applies to trading on Cboe Options. To the extent that the proposed changes make Cboe Options a more attractive marketplace for market participants at other exchanges, such market participants are welcome to become Cboe Options market participants.

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 Act⁸ and paragraph (f) of Rule 19b-4⁹ 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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-CBOE-2019-105 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-CBOE-2019-105. 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 such 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-CBOE-2019-105, and should be submitted on or before December 12, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019-25215 Filed 11-20-19; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-87545; File No. SR-CboeEDGA-2019-019]

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

November 15, 2019.

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 13, 2019, 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 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/), at the Exchange's Office of the

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f).

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 in connection with its standard rebates and its Remove Volume Tiers.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 13 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,⁴ no single registered equities exchange has more than 18% 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 Fees Schedule sets forth the standard rebates and rates applied per share for orders that provide and remove liquidity,

respectively. Particularly, for securities at or above \$1.00, the Exchange provides a standard rebate of \$0.0024 per share for orders that remove liquidity and assesses a fee of \$0.0030 per share for orders that add 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 or 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.

Proposed Change to the Remove Volume Tiers

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. For example, pursuant to footnote 7 of the Fees Schedule, the Exchange offers a Remove Volume Tier (Tier 1) that provides Members an opportunity to receive an enhanced rebate of \$0.0026 for liquidity removing orders that yield fee codes "N",⁵ "W",⁶ "6",⁷ and "BB".⁸ To qualify for the current Remove Volume Tier, a Member must have an ADAV⁹ of greater than or equal to 0.20% of the TCV¹⁰ and have a remove ADV¹¹ of greater than or equal to 0.40% of the TCV for orders yielding the applicable fee codes. The Exchange now proposes to amend the criteria to

achieve Tier 1. Specifically, the proposed criteria under Tier 1 would provide a Member with an opportunity to receive an enhanced rebate of \$0.0022 for qualifying, liquidity removing orders (*i.e.*, yielding fee code N, W, 6, or BB) where a Member adds or removes an ADV of greater than or equal to 0.05% of the TCV. The proposed criteria change is designed to incentivize Members to increase their overall order flow, both adding and removing orders, in order to receive an enhanced rebate on their liquidity removing orders. The Exchange notes that the proposed criteria change is also designed to make it easier to achieve an enhanced rebate on liquidity removing orders by removing the ADAV threshold component, as well as reducing the ADV threshold as a percentage of TCV for both add and remove orders. The proposed change also reduces the enhanced rebate offered under Tier 1, commensurate with proposed lower tier requirements. The Exchange believes the proposed opportunity to receive an enhanced rebate for both liquidity adding and removing orders incentivizes an increase in overall order flow to the Book. The proposed modification Tier 1 provides both liquidity providing Members and liquidity executing Members an additional opportunity to receive an enhanced rebate. Thus, it provides liquidity adding Members on the Exchange a further incentive to contribute to a deeper, more liquid market, and liquidity executing Members on the Exchange a further incentive 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 also proposes to adopt another Remove Volume Tier (proposed Tier 2), to provide Members an additional opportunity to qualify for an enhanced rebate by means of liquidity removing volume. Specifically, proposed Remove Volume Tier 2 would provide an enhanced rebate of \$0.0028 for qualifying, liquidity removing orders (*i.e.*, yielding fee code N, W, 6, or BB) where a Member removes an ADV of greater than or equal to 0.10% of the TCV and has a Step-Up Remove TCV from October 2019 of greater than or equal to 0.05%. The Exchange notes that a Step-Up Remove means remove ADV as a percentage of TCV in the relevant baseline month subtracted from current remove ADV as a percentage of TCV, and now proposes to incorporate this

³ The Exchange initially filed the proposed change on business date November 1, 2019 (SR-ChoeEDGA-2019-018). On business date November 13, 2019, the Exchange withdrew those filings and submitted this filing.

⁴ See Cboe Global Markets, U.S. Equities Market Volume Summary (October 25, 2019), available at https://markets.cboe.com/us/equities/market_statistics/. This market share percentage is based on a Month-to-Date volume summary.

⁵ Appended to orders that remove liquidity from EDGA (Tape C).

⁶ Appended to orders that remove liquidity from EDGA (Tape A).

⁷ Appended to orders that remove liquidity from EDGA, pre and post market (All Tapes).

⁸ Appended to orders that remove liquidity from EDGA (Tape B).

⁹ ADAV means average daily volume calculated as the number of shares added per day. ADAV is calculated on a monthly basis.

¹⁰ 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.

¹¹ 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.

definition into its Fee Schedule as a result of its reference in proposed Remove Volume Tier 2. The Exchange notes that this definition is consistent with the definitions in the Fees Schedules of the Exchange's affiliated exchanges.¹² As a result, the Exchange hopes to incentivize more Members to remove additional liquidity from the Exchange, in turn, increasing the number of liquidity executing orders that are sent to the Exchange to transact with the increased number of liquidity adding orders, thereby improving overall liquidity and market quality on the Exchange.

The Exchange notes the proposed tiers are available to all Members and are competitively achievable for all Members that submit add and/or remove order flow, in that, all firms that submit the requisite displayed order flow could compete to meet the tiers.

Proposed Change to the Standard Rebate for Liquidity Removing Orders

As stated above, the Exchange currently provides a standard rebate of \$0.0024 per share for liquidity removing orders (*i.e.*, those yielding fee codes N, W, 6, and BB) in securities priced at or above \$1.00. Orders in securities priced below \$1.00 that remove liquidity are not assessed a fee. The Exchange now proposes to reduce the current standard rebate of \$0.0024 per share to \$0.0018 per share for orders that remove liquidity for securities priced at or above \$1.00. Orders that remove liquidity in securities priced below \$1.00 would continue to be free. Although the proposed standard rebate is lower than the current standard rebate for liquidity removing orders, Members will now be able to achieve higher rebates for liquidity removing orders pursuant to proposed Remove Volume Tiers 1 and 2 described above, which are tied to the levels of a Member's add and/or remove order flow. Therefore, the reduced standard rebate for liquidity removing orders is balanced by the increased enhanced rebate opportunities for such orders and aligns with the Exchange's objective in implementing the proposed Remove Volume Tiers to encourage an overall increase in order flow and facilitate improved market quality on the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,¹³ in general, and furthers the objectives of Section 6(b)(4),¹⁴ 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)¹⁵ 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 proposed Tier 1 is reasonable because it provides an opportunity for Members to receive a discounted rate by means of liquidity adding and removing orders and eases the difficulty in reaching the tier criteria. Likewise, the Exchange believes that proposed Tier 2 is reasonable because it provides an additional opportunity for Members to receive a discounted rate by means of liquidity removing orders. In addition to this, the Exchange believes the proposed reduction in the standard rebate for liquidity removing orders is reasonable because it serves as a balance to the proposed increase in enhanced rebates for liquidity removing orders and the additional opportunities to achieve such increased incentives, which are tied to relative increases in Members' liquidity adding and/or removing order flow.

Accordingly, balancing the reduced standard rebate for liquidity removing orders with the increased enhanced rebate opportunities for such orders helps support Exchange's objective in implementing increased incentives to encourage an overall increase in order flow and contribution to market quality on the Exchange. The Exchange also notes that, though the standard rebate will be lower, Members will still receive rebates for such orders.

The Exchange notes that relative volume-based incentives and discounts have been widely adopted by exchanges,¹⁶ including the Exchange,¹⁷ and are reasonable, equitable and non-discriminatory because they are open to all members on an equal basis and provide additional benefits or discounts that are reasonably related to (i) the value to an exchange's market quality and (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns. Additionally, as noted above, the Exchange operates in highly competitive market. The Exchange is only one of several 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 tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume and/or growth thresholds. These competing pricing schedules, moreover, are presently comparable to those that the Exchange provides, including the pricing of comparable criteria and rebates.¹⁸

Moreover, the Exchange believes the proposed modification to ease the criteria under Remove Volume Tier 1, by removing the ADAV threshold component and decreasing the AVD

¹⁶ See *e.g.*, The Nasdaq BX, Inc. Rules, Equity 7 Pricing Schedule, Sec. 118(a), which generally provides credits to members for adding and/or removing liquidity that reaches certain thresholds of Consolidated Volume; and Cboe BYX U.S. Equities Exchange Fee Schedule, Footnote 1, Add/Remove Volume Tiers, which provides similar incentives for liquidity removing orders.

¹⁷ See generally, Cboe EDGA U.S. Equities Exchange Fee Schedule, Footnote 7, Add/Remove Volume Tiers.

¹⁸ See *supra* note 15 [sic]. BX offers credits between \$0.0017 and \$0.0013 per share for liquidity removing orders (substantially similar to those rebates which the Exchange proposes) depending on different criteria levels achieved; see also Securities and Exchange Act Release No. 87093 (September 24, 2019), 84 FR 57530 (October 25, 2019) (SR-BX-2019-031), which, akin to the Exchange's proposal herein, recently reduced the credits for certain liquidity removing orders while balancing such with an increase in credits for others.

¹² See Cboe BZX U.S. Equities Exchange Fee Schedule, Definitions; Cboe BYX U.S. Equities Exchange Fee Schedule, Definitions; and Cboe EDGX U.S. Equities Exchange Fee Schedule, Definitions. The Exchange notes that EDGX Fee Schedule specifically defines Step-Up Add TCV, however, its definition is generally aligned with the definition of Step-Up Remove TCV.

¹³ 15 U.S.C. 78f.

¹⁴ 15 U.S.C. 78f(b)(4).

¹⁵ 15 U.S.C. 78f(b)(5).

threshold as a percentage of TCV for both liquidity adding and removing orders, is a reasonable means to further incentivize Members to increase their overall order flow to the Exchange by encouraging those Members who could not achieve the tier previously to increase their add and remove volume to receive the tier's reduced rate. As such, adopting criteria based on a Member's adding and removing orders will encourage liquidity providing Members to provide for a deeper, more liquid market, and Members executing on the Exchange to increase transactions and take such execution opportunities provided by increased liquidity. Similarly, the Exchange believes that proposed Remove Volume Tier 2 is a reasonable means to encourage overall order flow to the Exchange. As described above, Tier 2 is designed to incentivize Member's to increase their liquidity removing order flow to the Exchange based on increasing their daily total remove volume above a percentage of the total volume and their Step-Up remove TCV above a percentage from October 2019. Particularly, the Exchange believes that an increase in Members' remove volume will incentivize more Members to send liquidity adding orders to the Exchange in response to the increase in number of orders removing such liquidity provided on the Exchange. The Exchange believes that an increase in overall order flow as a result of the proposed tiers would benefit all investors by deepening the Exchange's liquidity pool, providing greater execution incentives and opportunities, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection.

In line with the proposed ease in criteria difficulty under Tier 1, the Exchange believes that providing a lesser enhanced rebate than currently offered is reasonable as it is commensurate with the proposed decreased criteria. The Exchange also believes that the proposed enhanced rebate under Tier 2, which is higher than that of the Tier 1 rebate, reasonably reflects the scaled difficulty from achieving Tier 1 to achieving the additional Step-Up criteria and incremental increase in the ADV threshold as a percentage TCV (as well as its narrower scope of remove volume orders) in proposed Tier 2. The Exchange further notes that the reduction in the standard rebate offered on the Exchange is reasonable because it, too, appropriately reflects the

incremental difficulty in receiving the enhanced rebates; in that, Members automatically receive the standard rebate (\$0.0018) for liquidity removing orders, followed by an incrementally higher rebate (\$0.0022) achieved by certain order flow (Tier 1), and by another, incrementally higher rebate (\$0.0028) (achieved by certain additional order flow plus meeting a Step-Up component (Tier 2). The proposed enhanced rebate amounts pursuant to the proposed Remove Volume Tiers also do not represent a significant departure from the rebates currently offered, or required criteria, under the Exchange's existing tiers. For example, the discounted fees assessed under the existing Add Volume Tiers, for which a Member must have a daily volume add (ADAV) of 0.10% or greater than the TCV (Add Volume Tier 1) or a daily volume add (ADAV) of 0.45% or greater than the TCV (Add Volume Tier 2), is \$0.0026 per share and \$0.0022 per share, respectively. In other words, under the Add Volume Tiers, Members can receive a \$0.0004 and \$0.0008 "discount", respectively, from the standard \$0.0030 assessed for liquidity adding orders. This is comparable to the proposed additional \$0.0004 and \$0.0008 rebates (to the proposed \$0.0018 standard rebate) offered under the proposed Remove Volume Tiers for liquidity removing orders. Also, as stated, the proposed reduction in the standard rebate offered for liquidity removing orders is in line with rebates for liquidity removing orders in place on other equities exchanges.¹⁹

The Exchange believes that the proposal represents an equitable allocation of rebates and is not unfairly discriminatory because all Members are eligible for the proposed Remove Volume Tiers, and would have the opportunity to meet the tier's criteria and would receive the proposed rebate if such criteria is met. Given previous months' data, the Exchange notes that none of its Members reached current Tier 1 in the last month.²⁰ Accordingly, the proposed ease in criteria for Tier 1 is designed as an incentive to any and all Members interested in meeting the tier criteria who were not previously able to meet such criteria to submit additional add and remove order flow to achieve the proposed discount. 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 modified Remove Volume Tier 1, as well as proposed Remove Volume Tier 2. While the Exchange has no way of predicting with certainty how the proposed tiers will impact Member activity, the Exchange anticipates that over 10 Members will be able to compete for and reach proposed Tier 1 and at least four Members will be able to compete for and reach proposed Tier 2. The Exchange anticipates that both tiers will include various Member types, including liquidity providers (e.g. wholesale firms that mainly are market makers for retail orders) and broker-dealers (e.g. bulge bracket firms that conduct trading on behalf of customers), each providing distinct types of order flow to the Exchange to the benefit of all market participants. For example, broker-dealer customer order flow provides more trading opportunities, which attracts Market Makers. Increased Market Maker activity facilitates tighter spreads which potentially increases order flow from other market participants. The Exchange also notes that the proposed tiers will not adversely impact any Member's pricing or their ability to qualify for other rebate tiers. Rather, should a Member not meet the proposed criteria under the respective tiers, the Member will merely not receive an enhanced rebate. Furthermore, the proposed enhanced rebates would uniformly apply to all Members that meet the required criteria under the respective proposed tiers. In addition, the Exchange also believes that the proposed reduction in the standard rebate for a Member's liquidity removing orders represents an equitable allocation of rebates and is not unfairly discriminatory because, as stated, it is appropriately in line with the incrementally increasing rebates offered by the proposed Remove Volume Tiers, and it will continue to automatically apply to all Members' liquidity removing orders.

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 intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, as discussed above, the Exchange believes that the proposed change 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

¹⁹ See *supra* note 17 [sic].

²⁰ Previous months' data is not indicative of those firms that would have achieved proposed Tier 2 given that proposed Tier 2's Step-Up Remove baseline is from October 2019, which has not yet concluded.

result, the Exchange believes that the proposed change furthers 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."²¹

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 change applies to all Members equally in that all Members are eligible for the proposed tier, have a reasonable opportunity to meet the tier's criteria and will all receive the proposed rebates if such criteria is met. Additionally the proposed change is designed to attract additional order flow to the Exchange. The Exchange believes that the modified tier criteria would incentivize market participants to direct displayed liquidity and, as a result, executable order flow and improved price transparency, to the Exchange. Greater overall order flow and pricing transparency benefits all market participants on the Exchange by providing more trading opportunities, enhancing market quality, and continuing to encourage Members to send orders, thereby contributing towards a robust and well-balanced market ecosystem, which benefits all market participants.

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 12 other equities exchanges and 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 18% of the market share.²² 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."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, '[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 has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

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 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 email to rule-comments@sec.gov. Please include File No. SR-CboeEDGA-2019-019 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 No. SR-CboeEDGA-2019-019. 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

²¹ Securities Exchange Act Release No. 51808, 70 FR 37495, 37498-99 (June 29, 2005) (S7-10-04) (Final Rule).

²² See *supra* note 3 [sic].

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

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).

²⁷ 15 U.S.C. 78s(b)(2)(B).

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 No. SR-CboeEDGA-2019-019, and should be submitted on or before December 12, 2019.

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

Jill M. Peterson,
Assistant Secretary.

[FR Doc. 2019-25211 Filed 11-20-19; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-87547; File No. SR-CboeBZX-2019-095]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Definition of the Final Last Sale Eligible Trade

November 15, 2019.

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 November 12, 2019, Cboe BZX Exchange, Inc. (“BZX” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II 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 BZX Exchange, Inc. (“BZX” or the “Exchange”) is filing with the Securities and Exchange Commission (the “Commission”) a proposed rule change to amend the definition of the Final Last Sale Eligible Trade (“FLSET”) such that odd lot trades executed on BZX would not be eligible to establish the FLSET for a security. 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/bzx/), 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 amend the definition of the Final Last Sale Eligible Trade (“FLSET”) such that odd lot trades executed on BZX would not be eligible to establish the FLSET for a security. The FLSET is used by the Exchange for a number of important purposes related to auctions in BZX-listed securities. For example, the FLSET sets the Halt Auction Reference Price for Halt Auctions following Non-LULD Regulatory Halts,³ and, in some cases, becomes the BZX Official Closing Price for a security where there is no Closing Auction, or where there is a Closing Auction but only an odd lot quantity is executed.⁴ Today, pursuant to BZX Rule 11.23(a)(9), the last trade occurring during Regular Trading Hours on the Exchange sets the FLSET if the trade was executed within the last one second prior to either the Closing Auction or, for Halt Auctions, trading in the security being halted. The last trade executed on BZX during Regular Trading Hours could be for a round lot or odd lot quantity. The Exchange believes, however, that it is undesirable for an odd lot execution that may be for an economically insignificant notional value to set the FLSET. The Exchange

therefore proposes to amend BZX Rule 11.23(a)(9) such that the FLSET would be set by the last *round lot* trade occurring during Regular Trading Hours on the Exchange if the trade was executed within the last one second prior to either the Closing Auction or, for Halt Auctions, trading in the security being halted.

In addition, BZX Rule 11.23(a)(9) further provides that where the trade was not executed within the last one second, the last trade reported to the consolidated tape received by BZX Exchange during Regular Trading Hours and, where applicable, prior to trading in the security being halted will be used. The Exchange proposes two changes to this language. First, the Exchange proposes to replace language that references “BZX Exchange” with simply “the Exchange” consistent with the defined term codified in BZX Rule 1.5(k) and used throughout the rulebook. Second, the Exchange proposes to amend the rule such that the last *round lot* trade reported to the consolidated tape received by the Exchange during Regular Trading Hours and, where applicable, prior to trading in the security being halted will be used. Although the Exchange has generally interpreted this requirement to convey that the last round lot trade reported to the consolidated tape, *i.e.*, consolidated last sale eligible trade, would set the FLSET, it is currently possible for an odd lot trade that was executed in the Exchange’s Opening Auction to set the FLSET in limited circumstances where the opening print was the last reported trade. Thus, adding this language to the rule would both increase clarity now that odd lot trades are reported to the consolidated tape,⁵ and ensure that odd lot Opening Auctions would no longer be used to set the FLSET. Further, the proposed change would assist in conforming the descriptions in the rule given the changes previously discussed to the FLSET definition to explicitly reference round lot trades in the first part of the rule. As is the case today, if there is no qualifying trade for the current day, the BZX Official Closing Price from the previous trading day would continue to be used.

³ See BZX Rule 11.23(d)(2)(C)(i)(B).

⁴ See BZX Rule 11.23(c)(2)(B), (B)(ii)(a). For BZX-listed corporate securities, the FLSET would be the BZX Official Closing price if there is no Closing Auction. If there is no round lot Closing Auction in a BZX-listed ETP, the FLSET would be the BZX Official Closing Price if a trade that would qualify as the FLSET occurred within the last five minutes before the end of Regular Trading Hours, or if there is no such qualifying trade but a time-weighted average price of the NBBO midpoint cannot be determined pursuant to BZX Rule 11.23(c)(2)(B)(ii)(b).

⁵ Historically, odd lot trades were not reported to the consolidated tape. In 2013, the CTA and UTP Plans were amended such that odd lot trades would be reported but would continue to be ineligible to set the consolidated last sale. See Securities Exchange Act Release Nos. 70794 (October 31, 2013), 78 FR 66789 (November 6, 2013) (SR-CTA-2013-05), 70793 (October 31, 2013), 78 FR 66788 (November 6, 2013) (S7-24-89).

²⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.