

page number provided on each page. Responses should include the name of the person(s) or organization(s) filing the comment. Comments containing references, studies, research, and other empirical data that are not widely published should include copies or electronic links of the referenced materials. No business proprietary information, copyrighted information, or personally identifiable information should be submitted in response to this RFI.

In accordance with FAR 15.202(3), responses to this notice are not offers and cannot be accepted by the Federal Government to form a binding contract. Additionally, those submitting responses are solely responsible for all expenses associated with response preparation.

**FOR FURTHER INFORMATION CONTACT:** For additional information, please direct your questions to Lisa Nichols at [publicaccess@ostp.eop.gov](mailto:publicaccess@ostp.eop.gov).

**SUPPLEMENTARY INFORMATION:** In February of 2013, OSTP issued the memorandum *Increasing Access to the Results of Federally Funded Scientific Research*. The memorandum directed Federal agencies with more than \$100M in research and development (R&D) expenditures to develop plans to make the results of federally funded unclassified research that are published in peer-reviewed publications, and digitally formatted scientific data, publicly available. Federal agency plans required that published work be made available following a twelve-month post-publication embargo period.

OSTP and the NSTC SOS continue to explore opportunities to make the knowledge, information and data generated by federally funded research more readily accessible to students, clinicians, businesses, entrepreneurs, researchers, technologists, and the general public who support these investments as a means to accelerate knowledge and innovation. Over the course of the last two years, OSTP has had nearly 100 meetings with stakeholders on open science, current policy on public access to the results of federally funded research, the evolution of scholarly communications, and access to data and code associated with published results. This RFI aims to expand on these consultations and provide all interested individuals and organizations with the opportunity to provide recommendations on approaches for ensuring broad public access to the peer-reviewed scholarly publications, data and code that result from federally funded scientific

research. OSTP is interested in perspectives on the following topics:

- What current limitations exist to the effective communication of research outputs (publications, data, and code) and how might communications evolve to accelerate public access while advancing the quality of scientific research? What are the barriers to and opportunities for change?
- What more can Federal agencies do to make tax-payer funded research results, including peer-reviewed author manuscripts, data, and code funded by the Federal Government, freely and publicly accessible in a way that minimizes delay, maximizes access, and enhances usability? How can the Federal Government engage with other sectors to achieve these goals?
- How would American science leadership and American competitiveness benefit from immediate access to these resources? What are potential challenges and effective approaches for overcoming them? Analyses that weigh the trade-offs of different approaches and models, especially those that provide data, will be particularly helpful.
- Any additional information that might be considered for Federal policies related to public access to peer-reviewed author manuscripts, data, and code resulting from federally supported research.

Dated: February 12, 2020.

**Sean Bonyun,**  
Chief of Staff, Office of Science and Technology Policy.

[FR Doc. 2020-03189 Filed 2-18-20; 8:45 am]

**BILLING CODE 3270-F9-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88176; File No. SR-CBOE-2020-007]

### Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule Regarding the Automated Improvement Mechanism (AIM) and Solicitation Auction Mechanism (SAM)

February 12, 2020.

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 January 30, 2020, Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) 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 Exchange, Inc. (the “Exchange” or “Cboe Options”) proposes to amend its Fees 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://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 Exchange proposes to amend its fees schedule in connection with the fees related to orders and auction responses executed in the Automated Improvement Mechanism (“AIM”) and Solicitation Auction Mechanism (“SAM”) Auctions.<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 options venues to which market participants may direct their order flow.

<sup>3</sup> The Exchange initially filed the proposed fee changes on December 2, 2019 (SR-CBOE-2019-112). On January 30, 2020, the Exchange withdrew that filing and submitted this filing.

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

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

Based on publicly available information, no single options exchange has more than 19% of the market share.<sup>4</sup> Thus, in such a low-concentrated and highly competitive market, no single options exchange possesses significant pricing power in the execution of option order flow. 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 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. In response to the competitive environment, the Exchange offers specific rates and credits in its fees schedule, like that of other options exchanges' fees schedules, which the Exchange believes provide incentive to Trading Permit Holders ("TPHs") to increase order flow of certain qualifying orders.

AIM and SAM include functionality in which a Trading Permit Holder ("TPH") (an "Initiating TPH") may electronically submit for execution an order it represents as agent on behalf of a customer,<sup>5</sup> broker dealer, or any other person or entity ("Agency Order") against any other order it represents as agent, as well as against principal interest in AIM only, (an "Initiating Order") provided it submits the Agency Order for electronic execution into the AIM or SAM Auctions.<sup>6</sup> The Exchange may designate any class of options traded on Cboe Options as eligible for AIM or SAM. The Exchange notes that all Users, other than the Initiating TPH, may submit responses to an Auction ("AIM Responses").<sup>7</sup> AIM and SAM Auctions take into account AIM Responses to the applicable Auction as well as contra interest resting on the Cboe Options Book at the conclusion of the Auction ("unrelated orders"), regardless of whether such unrelated orders were already present on the Book when the Agency Order was received by the Exchange or were received after the

Exchange commenced the applicable Auction. If contracts remain from one or more unrelated orders at the time the Auction ends, they are considered for participation in the AIM or SAM order allocation process.

The Exchange notes that it recently updated its rules in connection with the AIM and SAM Auctions to permit all Users to respond to such Auctions; AIM responses were previously restricted to Market-Makers with an appointment in the applicable class and TPHs representing orders at the top of the Book, and SAM responses were previously available to all TPHs, except responses could not be submitted for the account of an away market-maker.<sup>8</sup> Because AIM Responses were limited to certain market participants, the Exchange did not impose separate fees on Auction responders (as it did for the Auction Agency and Contra orders). As a result, the Exchange now proposes to adopt fee codes for certain AIM Responses (the "AIM Response" fee as proposed in the fees schedule, which is consistent with other AIM-specific headings and fee codes in the fees schedule that also encompass orders in SAM). Specifically, the Exchange proposes to add: (1) Fee code "NB", which would be appended to non-Customer, non-Market-Maker AIM Responses in penny classes and assessed a fee of \$0.50 per contract; and (2) and fee code "NC", which would be appended to Non-Customer, Non-Market-Maker AIM Responses in non-penny classes and assessed a fee of \$1.05. Non-Customer, non-Market-Maker orders include: Clearing Trading Permit Holder ("F" Capacity Code); non-Trading Permit Holder Affiliate ("L" Capacity Code); Broker-Dealer ("B" Capacity Code); Non-Trading Permit Holder Market-Maker ("N" Capacity Code); Join Back-Office ("J" Capacity Code); and Professional ("U" Capacity Code) orders. The Exchange also proposes to add footnote 20, which clarifies that the AIM Responder fee applies to AIM Responses of the aforementioned capacities in all products, except Sector Indexes<sup>9</sup> and Underlying Symbol List A,<sup>10</sup> executed in AIM, SAM, FLEX AIM, and FLEX SAM Auctions. The Exchange notes that the same FLEX AIM and FLEX SAM

responses will be assessed the same fee, which is consistent with the structure of the Exchange's current fees for AIM Agency/Primary and AIM Contra orders, which apply uniformly to qualifying orders in AIM, SAM, FLEX AIM, and FLEX SAM.<sup>11</sup> The Exchange further notes that excluding orders in Sector Indexes and Underlying Symbol List A from the proposed AIM Response fee is also consistent with the same exclusions under the structure of the Exchange's fees for AIM Agency/Primary and AIM Contra orders.<sup>12</sup> These specific sets of proprietary products are also commonly excluded from a variety of fee programs, qualification calculations and transaction fees, including the Volume Incentive Program ("VIP"), the Marketing Fee, and the Clearing Trading Permit Holder Fee Cap ("Fee Cap").<sup>13</sup>

Additionally, in light of the proposed fee, the Exchange also proposes to exclude non-Customer, non-Market-Maker AIM Responses from the Complex Surcharge, described in footnote 35. The Complex Surcharge is assessed per contract per side for non-customer complex order executions that remove liquidity from the Complex Order Book ("COB") and auction responses in the Complex Order Auction ("COA") and AIM in all classes except Sector Indexes and Underlying Symbol List A.

The Exchange also proposes to adopt Break-Up Credits, applicable to Customer Agency orders when traded against a qualifying AIM response (yielding fee code NB or NC, as proposed). Specifically, the Exchange proposes a Break-Up Credit of \$0.25 per contract with respect to a Customer Agency order in a Penny Pilot Class and a Break-Up Credit of \$0.60 per contract with respect to a Customer Agency order in a Non-Penny Pilot Class.

The proposed AIM Responder fees for non-Customer, non-Market-Maker AIM Responses, which covers the market participants recently permitted to respond to Auctions, are designed as an additional incentive for Market-Makers to increase their responses to AIM and SAM Auctions. Prior to opening up the Auctions to all market participants, Market-Makers were naturally

<sup>4</sup> See Cboe Global Markets U.S. Options Market Volume Summary (January 30, 2020), available at [https://markets.cboe.com/us/options/market\\_statistics/](https://markets.cboe.com/us/options/market_statistics/).

<sup>5</sup> The term "customer" means a Public Customer or a broker-dealer. The term "Public Customer" means a person that is not a broker-dealer. See Rule 1.1.

<sup>6</sup> See Rule 5.37 (AIM); Rule 5.39 (SAM); Rule 5.38 (Complex AIM); Rule 5.40 (Complex SAM); Rule 5.73 (FLEX AIM); and Rule 5.74 (FLEX SAM).

<sup>7</sup> For purposes of this filing and the proposed fee, the term "AIM Response" will include responses submitted to AIM and SAM Auctions.

<sup>8</sup> See Securities Exchange Act Release No. 87072 (September 24, 2019), 84 FR 51673 (September 30, 2019) (SR-CBOE-2019-045); and Securities Exchange Act Release No. 87192 (October 1, 2019), 84 FR 53525 (October 7, 2019) (SR-CBOE-2019-063).

<sup>9</sup> See Cboe Exchange, Inc. Fees Schedule, footnote 47.

<sup>10</sup> See Cboe Exchange, Inc. Fees Schedule, footnote 34.

<sup>11</sup> See Cboe Exchange, Inc. Fees Schedule, footnotes 18 and 19.

<sup>12</sup> Also like the structure of the Exchange's fees for AIM Agency/Primary and AIM Contra orders, the applicable standard transaction fees will continue to apply to AIM Response orders in Sector Indexes and Underlying Symbol List A. The Exchange notes this in proposed footnote 20.

<sup>13</sup> See Cboe Exchange, Inc. Fees Schedule, "Volume Incentive Program" table and footnote 36, "Marketing Fee" table, and "Clearing Trading Permit Holder Fee Cap" table and footnote 11, respectively.

incentivized to respond to Auctions as they were the exclusive (or among the exclusive) market participants permitted to submit responses. Therefore, the Exchange believes the proposed AIM Responder fees for non-Customer, non-Market-Maker responses will encourage Market-Makers to continue to respond to Auctions and compete to provide price improvement in a competitive auction process, thus contributing to a deeper, more liquid auction process with additional execution opportunities which benefits all market participants. Likewise, the Exchange believes the proposed Break-Up Credits will encourage Customer order flow to Auctions. Increased Customer order flow benefits all market participants because it continues to attract liquidity to the Exchange by providing more trading opportunities. This attracts Market-Makers and other liquidity providers, thus, facilitating price improvement in the auction process, signaling additional corresponding increase in order flow from other market participants, and, as a result, contributing towards a robust, well-balanced market ecosystem.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,<sup>14</sup> in general, and furthers the requirements of Section 6(b)(4),<sup>15</sup> in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. As stated above, 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 fee changes reflect a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange's price improvement Auctions, which the Exchange believes would enhance market quality to the benefit of all TPHs.

The Exchange believes that its proposed adoption of fees for non-Customer, non-Market-Maker responses and Break-Up Credits for Customer Agency orders is consistent with Section 6(b)(4) of the Act in that the proposal is reasonable, equitable and not unfairly discriminatory. Also, as noted above, the Exchange operates in highly competitive market. The

Exchange is only one of several options venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. The Exchange believes that the proposed fees are reasonable, equitable, and not unfairly discriminatory in that competing options exchanges,<sup>16</sup> including the Exchange's affiliated options exchanges,<sup>17</sup> offer substantially the same fees and credits in connection with similar price improvement auctions, as the Exchange now proposes.

The Exchange believes that it is reasonable to assess a fee for non-Customer, non-Market-Maker AIM Responses because it is reasonably designed to incentivize Market-Makers to continue to respond, and potentially increase their responses, to AIM and SAM Auctions in light of the recent opening of the Auctions to other market participants not previously permitted to respond to such Auctions. The Exchange believes that encouraging increased Market-Maker order flow will increase liquidity and Auction execution and price improvement opportunities to the benefit of all participants. Deepening the Exchange's liquidity pool and offering additional opportunities enables all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. The Exchange believes excluding non-Customer, non-Market-Maker AIM Responses from the Complex Surcharge is reasonable as such market participants will not be assessed the extra surcharge. The Exchange also notes that auction responses in COA and AIM are currently capped at \$0.50 per contract for non-customer complex orders in

Penny classes (which includes the applicable transaction fee, Complex Surcharge and Marketing Fee (if applicable)).<sup>18</sup> As such, given the proposed fee for AIM Responses is \$0.50 per contract, the Complex Surcharge would, in effect, not be assessed for non-customer, non-Market-Maker complex orders in Penny classes. The Exchange also notes that other types of orders are currently excluded from the Complex Surcharge.<sup>19</sup> Similarly, the Exchange believes that applying a Break-Up Credit to Customer Agency orders is a reasonable means to encourage Customer order flow to Exchange Auctions. As stated, increased Customer order flow provides continued liquidity to the Exchange, in that it provides additional transaction opportunities which attract Market-Makers and other liquidity providers (by means of both unrelated orders and responses in connection with the Auctions), thus facilitating price improvement and signals an increase in additional order flow from other market participants. In turn, these increases benefit all market participants by contributing towards a robust and well-balanced market ecosystem.

The Exchange also believes that the proposed fees in connection with AIM Responses and Customer Agency orders does not represent a significant departure from the fees and credits rebates currently offered under the fees schedule for these market participants. For example, under the existing fees schedule orders with F and L Capacity Codes are assessed a fee of \$0.43 per contract in Penny Classes and \$0.70 per contract in non-Penny Classes, while orders with B, N, U, or J Capacity Codes are assessed a fee of \$0.47 per contract in Penny Classes and \$0.75 per contract in non-Penny Classes. Additionally, under the existing "Volume Incentive Program", Customer orders may receive credits ranging from \$0.09 to \$0.24 per contract executed in AIM.

The Exchange also believes that the proposed fees are equitable and not unfairly discriminatory because the proposed fee for AIM Responses will apply equally to all non-Customer, non-Market-Maker responses, *i.e.* all such TPHs will be assessed the same amount. Similarly, the exclusion of AIM Responses from the Complex Surcharge is equitable and not unfairly discriminatory as it applies equally to all non-Customer, non-Market-Maker responses.

<sup>16</sup> See MIAX Options Fee Schedule, Section 1(a)(v), "MIAX Price Improvement Mechanism ("PRIME") Fees, which assesses a fee of \$0.50 (Penny Classes) and \$0.99 (non-Penny Classes) for PRIME responses, and offers a break-up credit of \$0.25 (Penny Classes) and \$0.60 (non-Penny Classes) for PRIME Agency orders; *see also* NYSE American Options Fee Schedule, Section I(G), "CUBE Auction Fees and Credits", which assesses a fee of \$0.50 (Penny Classes) and \$0.99 (non-Penny Classes) for CUBE (its Customer Best Execution Auction) responses, and offers a break-up credit of \$0.25 (Penny Classes) and \$0.60 (non-Penny Classes) for PRIME Agency orders, and an Initiating Participant Credit (akin to an Agency Order) of \$0.30 (Penny Pilot) and \$0.70 (non-Penny Pilot).

<sup>17</sup> See EDGX Options Exchange Fee Schedule, "Fee Codes and Associated Fees", fee code BD is appended to AIM Responder Penny Pilot orders and is assessed a fee of \$0.50 per share, and fee code BE is appended to AIM Responder Non-Penny Pilot orders and is assessed a fee of \$1.05 per share; and "AIM Break-Up Credits", which offers a credit of \$0.25 for AIM Agency Orders in Penny Pilot securities and \$0.60 for such orders in non-Penny Pilot securities.

<sup>18</sup> See Cboe Options Fees Schedule, Footnote 35.

<sup>19</sup> *See e.g.* Cboe Options Fees Schedule, Footnote 35. Stock-option orders are currently excluded from the Complex Surcharge.

<sup>14</sup> 15 U.S.C. 78f.

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

The Exchange also believes that continuing to not assess a fee applicable to Market-Maker responses other than the applicable standard transaction fee is equitable and not unfairly discriminatory because Market-Makers are already subject to certain other transaction fees not otherwise applicable to other market participants. In particular, in addition to Market-Maker-specific standard transaction fees,<sup>20</sup> Market-Makers are also currently assessed a marketing fee of \$0.25 in Penny Pilot classes and \$0.70 in all other classes on certain transactions resulting from customer orders,<sup>21</sup> including qualifying orders submitted as AIM Responses. Further, Market-Makers, unlike other market participants, take on a number of obligations, including quoting obligations that other market participants do not have, as well as added market making and regulatory requirements, which normally do not apply to other market participants. For example, Market-Makers have obligations to maintain continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and to not make bids or offers or enter into transactions that are inconsistent with a course of dealing. Additionally, the Exchange notes that Market-Makers (with an appointment in the applicable class) may not submit solicited orders into an AIM Auction;<sup>22</sup> this restriction does not apply to Firm orders. As stated, the Exchange also recognizes that Market-Makers are the primary liquidity providers in the options markets, and particularly, during AIM auctions. Thus, the Exchange believes Market-Makers provide the most accurate prices reflective of the true state of the market and are primarily responsible for encouraging more aggressive quoting and superior price improvement during an AIM Auction. As a result, the Exchange believes it is important to continue to incent Market-Makers to actively participate in such auctions by means of continuing to assess no fee other than the current applicable standard transaction fees for Market-Maker AIM Response orders. Increased Market-Maker liquidity also increases trading opportunities and signals to other participants to increase their order

flow, which benefits all market participants.

Likewise, the Exchange believes that providing a Break-Up Credit for Customer Agency orders is equitable and not unfairly discriminatory because the proposed Break-Up Credit will apply equally to all Customer Agency orders that execute in an Auction against qualifying responses. The Exchange notes that while Customer Agency orders will receive the Break-Up Credit, as opposed to other Agency orders, the Exchange believes that this application of the credit is equitable and not unfairly discriminatory because, as stated above, Customer order flow enhances liquidity on the Exchange, in turn providing more trading opportunities and attracting other market participants, thus, facilitating tighter spreads, increased order flow and trading opportunities to the benefit of all market participants. Moreover, the options industry has a long history of providing preferential pricing to Customers, and the Exchange's current fees schedule currently does so in many places, as do the fees structures of multiple other exchanges.<sup>23</sup>

#### *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 liquidity to price improvement auctions of a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution and price improvement opportunities for all TPHs. As a 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."<sup>24</sup>

The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in

furtherance of the purposes of the Act because the proposed changes will apply uniformly to all non-Customer, non-Market-Maker responses and to all Customer Agency orders, respectively. As described above, different market participants have different circumstances, such as the fact that Market-Makers have marketing fees (which apply to qualifying transactions in AIM auctions) and other Market-Maker-specific transaction fees, as well as quoting obligations and restrictions within an AIM Auction that other market participants do not have. Market-Makers have also recently lost their exclusive Auction response incentive. Additionally, the Exchange notes the fact that preferential pricing to Customers is a long-standing options industry practice. The proposed fee changes serve to enhance Market-Maker and Customer order flow to the Exchange's Auctions, which, as a result, facilitates increased liquidity and execution opportunities to the benefit of all market participants. In addition to this, the Exchange notes that it currently assesses similar fees for certain non-Customer, non-Market-Maker orders and similar credits for certain Customer orders.

The Exchange also does not believe that the proposed fees will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the Act because, as noted above, competing options exchanges,<sup>25</sup> including the Exchange's affiliated options exchange,<sup>26</sup> currently have substantially similar fees in place in connection with similar price improvement auctions. Additionally, and as previously discussed, the Exchange operates in a highly competitive market. TPHs have numerous alternative venues that they may participate on and direct their order flow, including 15 other options exchanges, many of which offer substantially similar price improvement auctions. Based on publicly available information, no single options exchange has more than 19% of the market share.<sup>27</sup> Therefore, no exchange possesses significant pricing power in the execution of option order flow. Indeed, participants can readily choose to send their orders to other exchange, and, additionally 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

<sup>20</sup> See Cboe Options Fees Schedule, "SPX Liquidity Provider Sliding Scale" table; "Liquidity Provider Sliding Scale" table; and "Liquidity Provider Sliding Scale Adjustment Table".

<sup>21</sup> That is, Market-Maker orders that execute against customer orders.

<sup>22</sup> This is also true for SAM Auctions. See Rule 5.39.

<sup>23</sup> See MIAx Options Fee Schedule, Section 1(a)(v), "MIAx Price Improvement Mechanism ("PRIME") Fees, and NYSE American Options Fee Schedule, Section I(G), "CUBE Auction Fees and Credits", each of which assesses a lower transaction fee for customer orders than that of other market participants for executions in their respective auctions.

<sup>24</sup> Securities Exchange Act Release No. 51808, 70 FR 37495, 37498-99 (June 29, 2005) (S7-10-04) (Final Rule).

<sup>25</sup> See *supra* note 13.

<sup>26</sup> See *supra* note 14.

<sup>27</sup> See *supra* note 3.

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>28</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: “[i]n 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>29</sup> Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

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

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>30</sup> and paragraph (f) of Rule 19b-4<sup>31</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**

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-CBOE-2020-007 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-2020-007. 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-CBOE-2020-007 and should be submitted on or before March 11, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>32</sup>

**J. Matthew DeLesDernier,**  
*Assistant Secretary.*

[FR Doc. 2020-03178 Filed 2-18-20; 8:45 am]

BILLING CODE 8011-01-P

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-88177; File No. SR-CboeEDGA-2019-013]

### **Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Introduce the Small Retail Broker Distribution Program**

February 12, 2020.

On August 1, 2019, Cboe EDGA Exchange, Inc. (the “Exchange” or “EDGA”) 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 thereunder,<sup>2</sup> a proposed rule change to amend the EDGA fee schedule to introduce a Small Retail Broker Distribution Program (the “Program”). The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.<sup>3</sup> The proposed rule change was published for comment in the **Federal Register** on August 20, 2019.<sup>4</sup> The Commission received no comment letters regarding the proposed rule change. On September 30, 2019, under Sections 19(b)(2) and (b)(3)(C) of the Act,<sup>5</sup> the Commission temporarily suspended the proposed rule change and instituted proceedings to determine whether to approve or disapprove the proposed rule change (“OIP”).<sup>6</sup> The Commission has received no comment letters in response to the OIP.

Section 19(b)(2) of the Act<sup>7</sup> provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(2) and (b)(3)(A).

<sup>4</sup> See Securities Exchange Act Release No. 86676 (August 14, 2019), 84 FR 43218 (“Notice”).

<sup>5</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>6</sup> See Securities Exchange Act Release No. 87165 (September 30, 2019), 84 FR 53205 (October 4, 2019).

<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>28</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

<sup>29</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>30</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>31</sup> 17 CFR 240.19b-4(f).

<sup>32</sup> 17 CFR 200.30-3(a)(12).