

III. Discussion and Commission Findings

After careful review of the proposal and the comment letters, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.¹⁵ In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,¹⁶ which requires, among other things, that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change is reasonably designed to reduce a number of risks associated with syndicate debt issuances, including counterparty and liquidity risk. Specifically, it would reduce the exposure of syndicate members to the potential deterioration of the credit of syndicate managers during the pendency of account settlement. Further, a shorter syndicate settlement timeframe would result in lower liquidity risk for certain syndicate members by providing syndicate members with earlier access to capital and improve the syndicate member's liquidity position where their own net capital is limited. Additionally, because the proposed rule change is expected to benefit smaller firms, especially those that are capital-constrained, the Commission believes that the proposed rule change is reasonably designed to have positive effects on competition and thereby to remove impediments to, and perfect the mechanism of a free and open market. Alleviation of liquidity constraints would create opportunities for the syndicate members, especially those that are capital-constrained, to participate in more new offerings and enhance their ability to compete with other firms, maintain business operations, or use the funds for other purposes. This may reduce barriers to entering the corporate debt underwriting market and could ultimately result in an increase in the supply of underwriters and lower costs for corporate debt issuers and investors.

At the same time, the Commission believes that the proposed rule change is reasonably designed not to impact negatively the ability of syndicate

managers to run the syndicate settlement account process or unduly burden syndicate managers, given the technological advances that have been made since the 90-day syndicate account settlement timeframe was adopted in 1987, such as electronic order entry and accounting systems.¹⁷ Specifically, FINRA stated that in more than 95% of offerings from 2016 to 2018, the debt security is priced, allocated to investors, and starts trading in the secondary market all within the same day, meaning a large part of syndicate income can be accounted for within days after the date of issuance.¹⁸

Commenters supported approval of the proposed rule change¹⁹ and some commenters encouraged the Commission to act quickly to approve it so that FINRA can meet its proposed January 1, 2023 effective date.

For the reasons noted above, the Commission finds that the proposed rule change is consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁰ that the proposed rule change (SR-FINRA-2022-025) be, and hereby is, approved.

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

J. Matthew DeLesDernier,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-96291; File No. SR-CboeEDGA-2022-017]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 11.10(d) To Permit Affiliated Users To Enable EdgeRisk Self Trade Prevention

November 9, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,²

¹⁷ See Notice, 87 FR at 50900.

¹⁸ See *id.* at 50898.

¹⁹ See Letter from Michael Decker, Senior Vice President for Public Policy, Bond Dealers of America, to Secretary, Commission, dated September 8, 2022; Letter from Joseph Corcoran, Managing Director, Associate General Counsel, SIFMA, to Vanessa Countryman, Secretary, Commission, dated September 8, 2022; Letter from Anonymous, dated October 12, 2022.

²⁰ 15 U.S.C. 78s(b)(2).

²¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

notice is hereby given that on October 27, 2022, 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 Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ 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. (the “Exchange” or “EDGA”) proposes to amend Exchange Rule 11.10(d) (“EdgeRisk Self Trade Prevention (“ERSTP”) Modifiers”) to permit affiliated Users to enable Self Trade Prevention at the parent company level. 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 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 Rule 11.10(d) (“EdgeRisk Self Trade Prevention (“ERSTP”) Modifiers”) to add the term “affiliate identifier” to the definition of “Unique Identifier” while also adding a description of eligibility to utilize the proposed affiliate identifier.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f); *infra* Section III.

¹⁶ 15 U.S.C. 78o-3(b)(6).

Adding an affiliate identifier for ERSTP functionality on the Exchange would allow affiliated Users⁵ to enable ERSTP at the affiliate level, in addition to the current ERSTP functionality based on market participant identifier (“MPID”), Exchange Member identifier, or ERSTP Group identifier (any such existing identifier, a “Unique Identifier”).⁶ Currently, the Exchange’s ERSTP functionality prevents certain contra side orders entered by a User from executing, provided that each order has been marked with the same Unique Identifier.⁷ ERSTP functionality is currently available only to individual Users on the Exchange, and cannot be enabled by affiliated Users who each maintain individual Exchange memberships or Sponsored Participant relationships.

As noted above, there are currently three Unique Identifiers that a User may choose from when submitting an order subject to ERSTP: (i) MPID;⁸ (ii) Exchange Member identifier; and (iii) ERSTP Group identifier.⁹ Use of ERSTP functionality is optional and is not automatically implemented by the Exchange. Both the buy and the sell order must include the same Unique Identifier in order to prevent an execution from occurring and to effect a cancel instruction. For example, a User who enables ERSTP functionality using the MPID Unique Identifier will prevent contra side executions between the same MPID from occurring. A User who

⁵ See Exchange Rule 1.5(ee). “User” is defined as “[a]ny Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3.” The “System” is “[t]he electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away.” See Exchange Rule 1.5(cc). The term “Member” means any registered broker or dealer that has been admitted to membership in the Exchange. See Exchange Rule 1.5(n).

⁶ See Exchange Rule 11.10(d).

⁷ *Id.*

⁸ An MPID is a four-character unique identifier that is approved by the Exchange and assigned to a Member for use on the Exchange to identify the Member firm on the orders sent to the Exchange and resulting executions.

⁹ See Securities Exchange Act Release No. 63427 (December 3, 2010), 75 FR 76768 (December 9, 2010) SR-EDGA-2010-19 (“Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend EDGA Rule 11.9 To Offer Anti-Internalization Qualifier (“AIQ”) Functionality to Exchange Users”). See also Securities Exchange Act Release No. 73592 (November 13, 2014), 79 FR 68937 (November 19, 2014) SR-EDGA-2014-20 (“Notice of Filing of Amendment Nos. 1 and 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To Amend EDGA Rule 1.5 and Chapter XI Regarding Current System Functionality Including the Operation of Order Types and Order Instructions”), in which AIQ functionality was renamed ERSTP.

enables ERSTP using the Exchange Member Unique Identifier would prevent contra side executions between any MPID associated with that User and not just a single MPID. The ERSTP Group Unique Identifier permits Users to prevent matched trades amongst traders or desks within a certain firm, but allows orders from outside such group or desk to interact with other firm orders. The Exchange is not proposing any change in functionality for the current Unique Identifiers described above.

The Exchange now proposes to amend Rule 11.10(d) and enhance its existing ERSTP functionality by introducing a fourth Unique Identifier, affiliate identifier, which will allow a User to prevent its orders from matching with another User that is an affiliate of the User. In addition to the proposed addition of the affiliate identifier, the Exchange also proposes to add language to Rule 11.9(f) in order to provide clarity to Users about how eligibility for the use of the affiliate identifier will be determined.¹⁰ The proposed addition of the affiliate identifier does not present any new or novel ERSTP functionality, but rather would extend existing ERSTP functionality to a User who demonstrates an affiliate relationship with another User who maintains a separate membership or Sponsored Participant relationship on the Exchange. Generally speaking, an affiliated entity is an organization that directly or indirectly controls another entity, or is directly controlled by another entity, or which is under common control alongside another entity. The concept of affiliation is formally recognized in securities law, particularly Rule 405 of the Securities Act of 1933.¹¹ As applied to the Exchange, there are situations where two separate entities (*i.e.*, Users) maintain individual memberships or Sponsored Participant relationships on the Exchange even as Firm A owns a controlling percentage of Firm B (*i.e.*, Firm A and Firm B are affiliated entities). The proposed functionality would serve as an additional tool that Users may enable in order to assist with compliance with the various securities laws relating to potentially manipulative trading activity such as

¹⁰ *Infra* note 14.

¹¹ See 17 CFR 230.405. An *affiliate* of, or person *affiliated* with, a specified person, is a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified.

wash sales¹² and self-trades.¹³ Additionally, the proposed functionality would provide Users an additional solution to manage order flow by preventing undesirable executions against the User’s affiliates. As is the case with the existing risk tools, Users, and not the Exchange, have full responsibility for ensuring that their orders comply with applicable securities rules, laws, and regulations. Furthermore, as is the case with the existing risk settings, the Exchange does not believe that the use of the proposed ERSTP functionality can replace User-managed risk management solutions.

The Exchange is proposing to allow affiliated Users that maintain individual Exchange memberships to utilize ERSTP where one User is an affiliate of another User.¹⁴ Specifically, the Exchange is proposing to allow affiliated Users to use ERSTP functionality in order to prevent executions from occurring between those individual Users. When a User requests ERSTP at the affiliate level and an affiliate relationship is confirmed by the Exchange, the Exchange will assign an identical affiliate identifier to each User that will be used to prevent executions between contra side orders entered by the Users using the same affiliate identifier. The purpose of this proposed change is to extend ERSTP functionality to affiliated Users in order to prevent transactions between Users who maintain individual memberships on the Exchange but where an affiliate relationship exists for which ERSTP functionality may be useful.

To demonstrate how ERSTP will operate with the proposed affiliate identifier, the Exchange has included examples of potential scenarios in which ERSTP may be used by affiliated Users. For all examples below, Firm A and Firm B are presumed to have a controlling affiliate relationship and

¹² A “wash sale” is generally defined as a trade involving no change in beneficial ownership that is intended to produce the false appearance of trading and is strictly prohibited under both the federal securities laws and FINRA rules. See, *e.g.*, 15 U.S.C. 78i(a)(1); FINRA Rule 6140(b) (“Other Trading Practices”).

¹³ Self-trades are “transactions in a security resulting from the unintentional interaction of orders originating from the same firm that involve no change in beneficial ownership of the security.” FINRA requires members to have policies and procedures in place that are reasonably designed to review trading activity for, and prevent, a pattern or practice of self-trades resulting from orders originating from a single algorithm or trading desk, or related algorithms or trading desks. See FINRA Rule 5210, Supplementary Material .02.

¹⁴ The Exchange will consider a User to be an affiliate of another User if: (i) Greater than 50% ownership is identified in a User’s Form BD; and (ii) the Users execute an affidavit stating that a control relationship exists between the two Users.

will use an affiliate identifier of “A” when requesting ERSTP at the affiliate level. Firm C is unaffiliated with Firms A and B and uses an affiliate identifier of “C”.

Affiliate Level ERSTP

Scenario 1: Firm A submits a buy order. Firm B submits a sell order. Firm C also submits a sell order. Firm A has enabled ERSTP at the affiliate level using an affiliate identifier of A. Firm B has enabled ERSTP at the affiliate level using an affiliate identifier of A. Firm C has not enabled ERSTP. Firm A’s buy order is prevented from executing with Firm B’s sell order as each firm has enabled ERSTP at the affiliate level using an affiliate identifier of A. Firm A’s buy order will be permitted to execute with Firm C’s sell order because Firm C has not enabled ERSTP.

Scenario 2: Firm A submits a buy order. Firm B submits a sell order. Firm C also submits a sell order. Firm A has enabled ERSTP at the affiliate level using an affiliate identifier of A. Firm B has not enabled ERSTP. Firm C has enabled ERSTP at the affiliate level using an affiliate identifier of C. Firm A’s order will be eligible to trade with both Firm B and Firm C. Firm A’s order is eligible to trade with Firm B because Firm B did not enable ERSTP. In order for ERSTP to prevent the matching of contra side orders, both the buy and sell order must contain an ERSTP modifier. Firm A’s order is also eligible to trade with Firm C because even though Firm A and Firm C have both enabled ERSTP at the affiliate level, Firm A and Firm C have been assigned different affiliate identifiers.

Scenario 3: Firm A submits a buy order and a sell order. Firm B submits a buy order. Firm A has enabled ERSTP at the affiliate level using an affiliate identifier of A. Firm B has enabled ERSTP at the affiliate level using an affiliate identifier of A. Firm A’s buy order is not eligible to execute with Firm A’s sell order because Firm A has enabled ERSTP at the affiliate level using an affiliate identifier of A. Firm A’s sell order is not eligible to execute with Firm B’s buy order because both Firm A and Firm B have enabled ERSTP at the affiliate level using an affiliate identifier of A.

Scenario 4: Firm A submits a buy order and a sell order. Firm B submits a sell order. Firm C submits a sell order. Firm A has enabled ERSTP at the affiliate level using an affiliate identifier of A. Firm B has enabled ERSTP at the affiliate level using an affiliate identifier of A. Firm C has enabled ERSTP at the affiliate level using an affiliate identifier of C. Firm A’s buy order is not eligible

to execute with Firm A’s sell order because Firm A has enabled ERSTP at the affiliate level using an affiliate identifier of A. Firm A’s buy order is not eligible to execute with Firm B’s sell order because both Firm A and Firm B have enabled ERSTP at the affiliate level using an affiliate identifier of A. Firm A’s buy order is eligible to execute with Firm C’s sell order because while Firm A and Firm C have enabled ERSTP at the affiliate level, Firm A and Firm C have been assigned different affiliate identifiers.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.¹⁵ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁶ 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁷ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposed affiliate level ERSTP functionality promotes just and equitable principles of trade by allowing Users to better manage order flow and prevent undesirable trading activity such as wash sales¹⁸ or self-trades¹⁹ that may occur as a result of the velocity of trading in today’s high-speed marketplace. The proposed affiliate identifier and description of eligibility to utilize the proposed affiliate identifier does not introduce any new or novel functionality, but rather will extend the Exchange’s ERSTP functionality in a manner generally consistent with the functionality currently offered at the MPID, Exchange

Member, and ERSTP Group identifier levels because the proposed Users are required to have control over the affiliated User and transactions entered by the firms may be viewed as functionally originating from one User.²⁰ For instance, the Users may share traders or trading strategies, and elected to not impose information barriers between trading desks. In this regard, Users may desire ERSTP functionality on an affiliate level that will help them achieve compliance²¹ with regulatory rules regarding wash sales and self-trades in a very similar manner to the way that the current ERSTP functionality applies on the existing Unique Identifier level. In this regard, the proposed affiliate level ERSTP functionality will permit Users that have separate memberships but who also maintain an affiliate relationship, to prevent the execution of transactions by and between the Users.

The Exchange also believes that the proposed rule change is fair and equitable, and is not designed to permit unfair discrimination. By way of example, subject to appropriate information barriers, many firms that are Users of the Exchange operate both a principal market making desk, which is responsible for handling and executing orders for the benefit of the User, and an agency trading desk that is responsible for handling and executing customer orders. In such instances, the User may elect to utilize ERSTP to prevent transactions between their market maker desk and their agency trading desk. In contrast, other firms may be part of a corporate structure that separates those business lines into separate, but affiliated, entities either for business, compliance, or historical reasons, with each entity maintaining its own Exchange membership. In scenarios where one User indirectly or directly controls the other User (*e.g.*,

²⁰ The Exchange notes that the proposed rule filing is similar in concept to how derivatives markets sometimes contemplate ownership and relationship between accounts. Specifically, in the derivatives markets, rules have developed around of the idea of “beneficial ownership”, and whether separate accounts have common ownership. For example, the CME Group (“CME”), an operator of global derivatives markets, recognizes that “buy and sell orders for different accounts with common beneficial ownership . . . shall also be deemed to violate the prohibition on wash trades.” See CME Rule 534. See also <https://www.cmegroup.com/rulebook/files/cme-group-Rule-534.pdf>, FAQ Q2, which describes “common beneficial ownership” as accounts with common beneficial ownership that is less than 100%.

²¹ The Exchange reminds Users that while they may utilize ERSTP to help develop potential transactions such as wash sales or self-trades, Users, not the Exchange, are ultimately responsible for ensuring that their orders comply with applicable rules, laws, and regulations.

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ *Id.*

¹⁸ *Supra* note 5.

¹⁹ *Supra* note 6.

voting power, shared traders and algorithms, shared trading strategies, shared technology, etc.), it is logical that the Users, though separate entities, may determine that transactions between their firms would potentially run afoul of certain securities rules, laws, or regulations, such as wash sales and self-trades. In this regard, absent the proposed rule change, such affiliated entities would not receive the same treatment as firms operating similar business lines within a single entity that is a User of the Exchange. Accordingly, the Exchange believes that its proposed policy is fair and equitable, and not unreasonably discriminatory.

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. ERSTP is an optional functionality offered by the Exchange and Users are free to decide whether to use ERSTP in their decision-making process when submitting orders to the Exchange.

The Exchange believes that the proposed affiliate identifier does not impose any intramarket competition as it seeks to enhance an existing functionality available to all Users. The Exchange is not proposing to introduce any new or novel functionality, but rather is proposing to provide an extension of its existing ERSTP functionality to Users who have an affiliate relationship with another User of the Exchange. Additionally, the proposed rule specifies which Users are eligible to use the proposed affiliate identifier, which will be available to any User who satisfies such criteria. ERSTP will continue to be an optional functionality offered by the Exchange and the addition of affiliate level ERSTP will not change how the current Unique Identifiers and ERSTP functionality operate.

The Exchange believes that the proposed affiliate identifier does not impose any undue burden on intermarket competition. ERSTP is an optional functionality offered by the Exchange and Users are not required to use ERSTP functionality when submitting orders to the Exchange. Further, the Exchange is not required to offer ERSTP and is choosing to do so as a benefit for Users who wish to enable ERSTP functionality. Moreover, the proposed change is not being submitted for competitive reasons, but rather to provide Users enhanced order processing functionality that may prevent undesirable executions by

affiliated Users such as wash sales or self-trades.

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 Act²² and Rule 19b-4(f)(6)²³ thereunder because the proposal does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.²⁴

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act²⁵ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)²⁶ 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 asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiver of the 30-day operative delay would permit affiliated Users to immediately enable ERSTP functionality in order to better manage order flow and assist with preventing undesirable executions in the same manner as individual Users who currently enable ERSTP at either the MPID, Exchange Member identifier, or ERSTP Group identifier levels. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change does not raise any new or novel issues. Accordingly, the Commission hereby waives the

²² 15 U.S.C. 78s(b)(3)(A).

²³ 17 CFR 240.19b-4(f)(6).

²⁴ In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and 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. The Exchange has satisfied this requirement.

²⁵ 17 CFR 240.19b-4(f)(6).

²⁶ 17 CFR 240.19b-4(f)(6)(iii).

operative delay and designates the proposal operative upon filing.²⁷

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.²⁸

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-ChoeEDGA-2022-017.

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-ChoeEDGA-2022-017. 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

²⁷ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁸ 15 U.S.C. 78s(b)(3)(C).

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–2022–017, and should be submitted on or before December 7, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁹

J. Matthew DeLesDernier,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96282; File No. SR–NASDAQ–2022–059]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Expiration Date of the Temporary Amendments Concerning Video Conference Hearings

November 9, 2022.

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 October 28, 2022, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b–4 under the Act,³ which renders the proposal effective upon receipt of this filing by the Commission. 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

The Exchange proposes to extend the expiration date of the temporary amendments in SR–NASDAQ–2020–076 from October 31, 2022, to January 31,

2023.⁴ The proposed rule change would not make any changes to the text of the Exchange rules.

The text of the proposed rule change is available on the Exchange’s website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, at the principal office of the Exchange, 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 continue to harmonize Exchange Rules 1015, 9261, 9524 and 9830 with recent changes by the Financial Industry Regulatory Authority, Inc. (“FINRA”) to its Rules 1015, 9261, 9524 and 9830 in response to the COVID–19 global health crisis and the corresponding need to restrict in-person activities. The Exchange originally filed proposed rule change SR–NASDAQ–2020–076, which allows the Exchange’s Office of Hearing Officers (“OHO”) and the Exchange Review Council (“ERC”) to conduct hearings, on a temporary basis, by video conference, if warranted by the current COVID–19-related public health risks posed by an in-person hearing. In July 2022, the Exchange filed a proposed rule change, SR–NASDAQ–2022–044, to extend the expiration date of the temporary amendments in SR–NASDAQ–2020–076 from July 31, 2022, to October 31, 2022.⁵ Due to the continued presence and uncertainty of

⁴ If the Exchange seeks to provide additional temporary relief from the rule requirements identified in this proposed rule change beyond January 31, 2023, the Exchange will submit a separate rule filing to further extend the temporary extension of time. The amended Exchange rules will revert to their original form at the conclusion of the temporary relief period and any extension thereof.

⁵ See Securities Exchange Act Release No. 95436 (August 5, 2022), 87 FR 49624 (August 11, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR–NASDAQ–2022–044).

COVID–19, the Exchange proposes to extend the expiration date of the temporary rule amendments in SR–NASDAQ–2020–076 from October 31, 2022, to January 31, 2023.

On November 5, 2020, the Exchange filed, and subsequently extended to October 31, 2022, SR–NASDAQ–2020–076, to temporarily amend Exchange Rules 1015, 9261, 9524 and 9830 to grant OHO and the ERC authority⁶ to conduct hearings in connection with appeals of Membership Application Program decisions, disciplinary actions, eligibility proceedings and temporary and permanent cease and desist orders by video conference, if warranted by the COVID–19-related public health risks posed by an in-person hearing.⁷

Although there has been a downward trend in the number of COVID–19 cases since July 2022, the Exchange believes there is a continued need for temporary relief beyond October 31, 2022. In this regard, the Exchange notes that COVID–19 still remains a public health concern. For example, according to the Centers for Disease Control and Prevention (“CDC”), the 7-day moving average of new deaths from COVID–19 in the United States during September 2022 ranged from approximately 300 to 500 deaths per day,⁸ and approximately 19 percent of counties in the United States have a medium or high COVID–19 Community Level based on the CDC’s most recent calculations.⁹ Much

⁶ For OHO hearings under Exchange Rules 9261 and 9830, the proposed rule change temporarily grants authority to the Chief or Deputy Chief Hearing Officer to order that a hearing be conducted by video conference. For ERC hearings under Exchange Rules 1015 and 9524, this temporary authority is granted to the ERC or relevant Subcommittee.

⁷ See Securities Exchange Act Release No. 90390 (November 10, 2020), 85 FR 73302 (November 17, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR–NASDAQ–2020–076); see also Securities Exchange Act Release No. 90774 (December 22, 2020), 85 FR 86614 (December 30, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR–NASDAQ–2020–092); Securities Exchange Act Release No. 91763 (May 4, 2021), 86 FR 25055 (May 10, 2021) (Notice of Filing and Immediate Effectiveness of File No. SR–NASDAQ–2021–033); Securities Exchange Act Release No. 92911 (September 9, 2021), 86 FR 51395 (September 15, 2021) (Notice of Filing and Immediate Effectiveness of File No. SR–NASDAQ–2021–067); Securities Exchange Act Release No. 93852 (December 22, 2021), 86 FR 74201 (December 29, 2021) (Notice of Filing and Immediate Effectiveness of File No. SR–NASDAQ–2021–104); Securities Exchange Act Release No. 94610 (April 5, 2022), 87 FR 21225 (April 11, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR–NASDAQ–2022–028); *supra* note 5.

⁸ See CDC, COVID Data Tracker—Trends in Number of COVID–19 Cases and Deaths in the US Reported to CDC, by State/Territory, https://covid.cdc.gov/covid-data-tracker/#trends_dailydeaths_select_00 (last visited Oct. 24, 2022).

⁹ See CDC, COVID Data Tracker—COVID–19 Integrated County View, <https://covid.cdc.gov/>

²⁹ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ 17 CFR 240.19b–4(f)(6).