

to this the Exchange notes that at least one other exchange currently has higher MPID fees in place, which have been previously filed with the Commission. 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.”¹³ 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’”¹⁴ 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 Act¹⁵ and paragraph (f) of Rule 19b-4¹⁶ 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.

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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeBYX-2024-011 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-CboeBYX-2024-011. 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 (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CboeBYX-2024-011 and should be submitted on or before May 10, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Vanessa A. Countryman,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-99959; File No. SR-CboeEDGA-2024-011]

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

April 15, 2024.

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 April 1, 2024, Cboe EDGA Exchange, Inc. (“Exchange” or “EDGA”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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 its 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 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

¹³ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

¹⁴ *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)).

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f).

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 applicable to its equities trading platform ("EDGA Equities") to increase its monthly fee assessed on Members' MPIDs. The Exchange proposes to implement these changes effective April 1, 2024.

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 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 Securities Exchange Act of 1934 (the "Act"), to which market participants may direct their order flow. Based on publicly available information,³ no single registered equities exchange has more than 15% 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 further notes that broker-dealers are not compelled to be Members of the Exchange, and a significant proportion of broker-dealers that trade U.S. equity securities have, in fact, chosen not to apply for membership on the Exchange.

By way of background, 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. Members may choose to request more than one MPID as a unique identifier(s) for their transactions on the Exchange. The Exchange notes that a Member may have multiple MPIDs for use by separate business units and trading desks or to support Sponsored Participant access.⁴ Certain members

currently leverage multiple MPIDs to obtain benefits from and added value in their participation on the Exchange. Multiple MPIDs provide unique benefits to and efficiencies for Members by allowing: (1) Members to manage their trading activity more efficiently by assigning different MPIDs to different trading desks and/or strategies within the firm; and (2) Sponsoring Members⁵ to segregate Sponsored Participants by MPID to allow for detailed client-level reporting, billing, and administration, and to market the ability to use separate MPIDs to Sponsored Participants, which, in turn, may serve as a potential incentive for increased order flow traded through the Sponsoring Member.

The Exchange currently assesses a fee applicable to Members that use multiple MPIDs to facilitate their trading on the Exchange. Specifically, the Exchange assesses a monthly MPID Fee of \$150 per MPID per Member, with a Member's first MPID provided free of charge. The MPID Fee is assessed on a pro-rated basis for new MPIDs by charging a Member based on the trading day in the month during which an additional MPID becomes effective for use. If a Member cancels an additional MPID on or after the first business day of the month, the Member will be required to pay the entire MPID Fee for that month.

The Exchange now proposes to increase the monthly MPID Fee from \$150 per MPID per Member to \$250 per MPID per Member. The Exchange believes the proposed increase continues to align with the additional value and benefits provided to Members that choose to utilize more than one MPID to facilitate their trading on the Exchange. The Exchange also believes that continuing to assess a fee on additional MPIDs will be beneficial because such fee will promote efficiency in MPID use.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁶ Specifically,

is authorized in advance by one or more Sponsoring Members. See Rules 1.5(z) and 11.3.

⁵ A Sponsoring Member is a Member that is a registered broker-dealer and that has been designated by a Sponsored Participant to execute, clear and settle transactions resulting from the System. The Sponsoring Member shall be either (i) a clearing firm with membership in a clearing agency registered with the Commission that maintains facilities through which transactions may be cleared or (ii) a correspondent firm with a clearing arrangement with any such clearing firm. See Rule 1.5(aa).

⁶ 15 U.S.C. 78f(b).

the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁷ 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)⁸ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers as well as Section 6(b)(4)⁹ as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

As described 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 Exchange believes that the proposed MPID Fee is consistent with the Act in that it is reasonable, equitable, and not unfairly discriminatory. In particular, the Exchange believes that the proposed fee is reasonable because it is reasonably aligned with the benefits provided to Members that choose to utilize multiple MPIDs to facilitate their trading on the Exchange. While each Member must have an MPID to participate on the Exchange, additional MPIDs are optional and will be assessed the fee, as amended. Additional MPIDs currently allow for Members to realize certain benefits from and added value to their participation on the Exchange but also require the Exchange to allocate additional administrative resources to manage each MPID that a Member chooses to use for its trading activity. Therefore, the Exchange believes that it is reasonable to assess a modest fee on any additional MPIDs that Members choose to use to facilitate their trading. The Exchange again notes that it is optional for a Member to request and employ additional MPIDs, and a large portion (approximately 68%) of the Exchange's Members currently utilize

⁷ 15 U.S.C. 78f(b)(5).

⁸ *Id.*

⁹ 15 U.S.C. 78f(b)(4).

³ See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (March 20, 2024), available at https://www.cboe.com/us/equities/market_statistics/.

⁴ A Sponsored Participant is a person which has entered into a sponsorship arrangement with a Sponsoring Member pursuant to Rule 11.3, which permits a Sponsored Participant to obtain authorized access to the System only if such access

just the one MPID necessary to participate on the Exchange.

The Exchange also believes that assessing a fee on additional MPIDs continues to be reasonably designed to promote efficiency in MPID use. When the Exchange first implemented the current MPID Fee,¹⁰ it observed as a result that Members were incentivized to more effectively administer their MPIDs and reduce the number of under-used or superfluous MPIDs, or MPIDs that did not contribute additional value to a Member's participation on the Exchange. Reduction of such MPIDs, in turn, reduces Exchange resources allocated to administration and maintenance of those MPIDs. In particular, the Exchange observed that within the first few months of introducing the previous MPID Fee, the number of MPIDs on the Exchange decreased by approximately 17%, demonstrating that Members may choose to be more efficient in their use of MPIDs in response to an MPID Fee, such as that proposed in this fee change.¹¹

The Exchange further believes the proposed MPID Fee change is reasonable because the amount assessed continues to be less than the analogous fees charged by at least one other market; namely, Nasdaq Stock Market LLC ("Nasdaq").¹² The Exchange's proposed MPID Fee increase to \$250 a month per MPID, with no charge associated with a Member's first MPID, continues to be lower than Nasdaq's MPID fee of \$550 per MPID, which is charged for all MPIDs used by a Nasdaq member, including a member's first MPIDs.

The Exchange believes that the proposed MPID Fee change is equitable and not unfairly discriminatory because it will apply equally to all Members that choose to employ two or more MPIDs based on the number of additional MPIDs that they use to facilitate their trading on the Exchange. As stated, additional MPIDs beyond a Member's first MPID are optional, and Members may choose to trade using such additional MPIDs to achieve additional benefits and added value to support their individual business needs. Moreover, the Exchange believes the proposed fee is equitable and not

unfairly discriminatory because it is proportional to the potential value or benefit received by Members with a greater number of MPIDs. That is, those Members that choose to employ a greater number of additional MPIDs have the opportunity to more effectively manage firm-wide trading activity and client-level administration, as well as potentially appeal to customers through the use of separate MPIDs, which may result in increased order flow through a Sponsoring Member. A Member may request at any time that the Exchange terminate an MPID, including MPIDs that may be under-used or superfluous, or that do not contribute additional value to a Member's participation on the Exchange.

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 competition that is not necessary in furtherance of the purposes of the Act because the proposed change will apply equally to all Members that choose to employ additional MPIDs and equally to each additional MPID. As stated, additional MPIDs are optional and Members may choose to utilize additional MPIDs, or not, based on their view of the additional benefits and added value provided by utilizing the single MPID necessary to participate on the Exchange. The Exchange believes the proposed fee will be assessed proportionately to the potential value or benefit received by Members with a greater number of MPIDs and notes that a Member may continue to request at any time that the Exchange terminate any MPID, including those that may be under-used or superfluous, or that do not contribute additional value to a Member's participation on the Exchange.

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, including competition for exchange memberships. Members have numerous alternative venues that they may participate on, including 15 other equities exchanges, as well as off-exchange venues, including alternative trading systems, where competitive products are available for trading. Indeed, participants can readily choose to submit their order flow to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. In addition

to this the Exchange notes that at least one other exchange currently has higher MPID fees in place, which have been previously filed with the Commission. 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."¹³ 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'. . . ."¹⁴ 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 Act¹⁵ and paragraph (f) of Rule 19b-4¹⁶ 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

¹⁰ See Securities and Exchange Release No. 90964 (January 21, 2021), 86 FR 7324 (January 27, 2021) (SR-CboeEDGA-2021-004).

¹¹ The reduction in MPIDs may also demonstrate that Members are free to cancel MPIDs on the Exchange and choose, instead, to utilize unique identifiers associated with participation on other exchanges.

¹² See Nasdaq Price List, MPID Fees, available at <https://nasdaqtrader.com/Trader.aspx?id=PriceListTrading2>.

¹³ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

¹⁴ *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)).

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f).

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.

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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeEDGA-2024-011 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to file number SR-CboeEDGA-2024-011. 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 (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CboeEDGA-2024-011 and should be submitted on or before May 10, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-08358 Filed 4-18-24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-86, OMB Control No. 3235-0080]

Submission for OMB Review; Comment Request; Extension: Rule 12d2-2 and Form 25

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for approval of extension of the existing collection of information provided for in Rule 12d2-2 (17 CFR 240.12d2-2) and Form 25 (17 CFR 249.25) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

On February 12, 1935, the Commission adopted Rule 12d2-2¹ and Form 25, under the Securities Exchange Act of 1934 ("Act"), to establish the conditions and procedures under which a security may be delisted from an exchange and withdrawn from registration under Section 12(b) of the Act.² The Commission adopted amendments to Rule 12d2-2 and Form 25 in 2005.³ Under the amended Rule 12d2-2, all issuers and national securities exchanges seeking to delist and deregister a security in accordance with the rules of an exchange must file the adopted version of Form 25 with the Commission. The Commission also adopted amendments to Rule 19d-1 under the Act to require exchanges to file the adopted version of Form 25 as notice to the Commission under Section 19(d) of the Act. Finally, the Commission adopted amendments to exempt standardized options and security futures products from Section 12(d) of the Act. These amendments

were intended to simplify the paperwork and procedure associated with a delisting and to unify general rules and procedures relating to the delisting process.

Form 25 is useful because it informs the Commission and members of the public that a security previously traded on an exchange is no longer traded. In addition, Form 25 enables the Commission to verify that the delisting and/or deregistration has occurred in accordance with the rules of the exchange. Further, Form 25 helps to focus the attention of delisting issuers to make sure that they abide by the proper procedural and notice requirements associated with a delisting and/or deregistration. Without Rule 12d2-2 and Form 25, as applicable, the Commission would be unable to fulfill its statutory responsibilities.

There are 24 national securities exchanges that could possibly be respondents complying with the requirements of Rule 12d2-2 and Form 25.⁴ The burden of complying with Rule 12d2-2 and Form 25 is not evenly distributed among the exchanges, however, since there are many more securities listed on the New York Stock Exchange, the NASDAQ Stock Market, and NYSE American than on the other exchanges. However, for purposes of this filing, the Commission staff has assumed that the number of responses is evenly divided among the exchanges. Since approximately 985 responses under Rule 12d2-2 and Form 25 for the purpose of delisting and/or deregistration of equity securities are received annually by the Commission from the national securities exchanges, the resultant aggregate annual reporting hour burden would be, assuming on average one hour per response, 985 annual burden hours for all exchanges (24 exchanges × an average of 41.04 responses per exchange × 1 hour per response). In addition, since approximately 117 responses are received by the Commission annually from issuers wishing to remove their

⁴ The staff notes that a few of these 24 registered national securities exchanges only have rules to permit the listing of standardized options, which are exempt from Rule 12d2-2 under the Act. Nevertheless, the staff counted national securities exchanges that can only list options as potential respondents because these exchanges could potentially adopt new rules, subject to Commission approval under Section 19(b) of the Act, to list and trade equity and other securities that have to comply with Rule 12d2-2 under the Act. Notice registrants that are registered as national securities exchanges solely for the purposes of trading securities futures products have not been counted since, as noted above, securities futures products are exempt from complying with Rule 12d2-2 under the Act and therefore do not have to file Form 25.

¹⁷ 17 CFR 200.30-3(a)(12).

¹ See Securities Exchange Act Release No. 98 (Feb. 12, 1935).

² See Securities Exchange Act Release No. 7011 (Feb. 5, 1963), 28 FR 1506 (Feb. 16, 1963).

³ See Securities Exchange Act Release No. 52029 (Jul. 14, 2005), 70 FR 42456 (Jul. 22, 2005).