

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-ISE-2018-04 and should be submitted on or before February 13, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>39</sup>

**Eduardo A. Aleman,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-82518; File No. SR-CboeEDGA-2018-001]

### Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Harmonize the Definition of Non-Professional User in Its Fee Schedule With That of Its Affiliates

January 17, 2018.

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 8, 2018, Cboe EDGA Exchange, Inc. (the "Exchange" or "EDGA") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6)(iii) thereunder,<sup>4</sup> which renders it effective upon filing with 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 filed a proposal to amend the Market Data section of its fee schedule to harmonize the definition of "Non-Professional User" with that of its affiliates, Cboe Exchange, Inc. ("Cboe") and Cboe C2 Exchange, Inc. ("C2").

The text of the proposed rule change is available at the Exchange's website at [www.markets.cboe.com](http://www.markets.cboe.com), 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 parts 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 the Market Data section of its fee schedule to harmonize the definition of "Non-Professional User" with that of its affiliates, Cboe and C2. In late 2016, the Exchange and its affiliates Cboe EDGX Exchange, Inc. ("EDGX"), Cboe BYX Exchange, Inc. ("BYX"), and Cboe BZX Exchange, Inc. ("BZX") received approval to effect a merger (the "Merger") of the Exchange's parent company, Bats Global Markets, Inc., the parent of EDGA, EDGX, BYX, and BZX with CBOE Holding, Inc. (now known as Cboe Global Markets, Inc.) the parent company of Cboe and C2.<sup>5</sup> In order to provide consistent rules and terminology amongst the Exchange, Cboe, and C2, the Exchange proposes to amend the definition of "Non-Professional User" to harmonize it with that of its affiliates, Cboe and C2.

The EDGX Option's fee schedule currently defines "Non-Professional User" as:

a natural person who is not: (i) Registered or qualified in any capacity with the Commission, the Commodity Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an "investment adviser" as that term is defined in Section 202(a)(11) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt.

As amended, "Non-Professional User" would be defined as:

a natural person or qualifying trust that uses Data only for personal purposes and not for any commercial purpose and, for a natural person who works in the United States, is not: (i) Registered or qualified in any capacity with the Securities and Exchange Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an "investment adviser" as that term is defined in Section 202(a)(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt; or, for a natural person who works outside of the United States, does not perform the same functions as would disqualify such person as a Non-Professional User if he or she worked in the United States.

The revised definition is substantially identical to the definition of "Non-Professional User" included within the Cboe and C2 fee schedules.<sup>6</sup> The Exchange's current definition of "Non-Professional User" does differ from that contained in the Cboe and C2 fee schedules in following minor, non-substantive ways. First, the harmonized definition will make clear that a Non-Professional User may be a natural person or qualifying trust that uses Data only for personal purposes and not for any commercial purpose. To date, the Exchange is not aware of any entity that

<sup>6</sup> See the Cboe fee schedule available at [https://www.cboe.org/general-info/pdf/framed?content=/publish/mdx/fees/cboe-cds-fees-schedule-for-cboe-datafeeds.pdf&section=SEC\\_MDX\\_CSM&title=Cboe%20CDS%20Fees%20Schedule](https://www.cboe.org/general-info/pdf/framed?content=/publish/mdx/fees/cboe-cds-fees-schedule-for-cboe-datafeeds.pdf&section=SEC_MDX_CSM&title=Cboe%20CDS%20Fees%20Schedule) and the C2 fee schedule available at [https://www.cboe.org/general-info/pdf/framed?content=/publish/mdx/fees/c2-cds-fees-schedule.pdf&section=SEC\\_MDX\\_CSM&title=C2%20CDS%20Fees%20Schedule](https://www.cboe.org/general-info/pdf/framed?content=/publish/mdx/fees/c2-cds-fees-schedule.pdf&section=SEC_MDX_CSM&title=C2%20CDS%20Fees%20Schedule).

<sup>39</sup> 17 CFR 200.30-3(a)(12).

<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)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>5</sup> See Securities Exchange Act Release No. 79585 (December 16, 2016), 82 FR 6961 (December 22, 2016) (SR-BatsEDGX-2016-60; SR-BatsEDGA-2016-24; SR-BatsBYX-2017-29; and SR-BatsBYX-2016-68).

receives an Exchange market data product would be deemed a qualifying trust and, therefore, has not had to determine whether such entity is a Professional or Non-Professional User under the prior definition. Second, the harmonized definition would specify that a natural person who works outside of the United States would not be deemed a Non-Professional User where that person does not perform the same functions as would disqualify such person as a Non-Professional User if he or she worked in the United States. The definition with regard to natural persons who work in the United States are substantively identical amongst the old and harmonized definition.

None of these differences impact the manner in which the Exchange would characterize a User and a Professional or Non-Professional. The harmonized definition would provide additional specificity while harmonizing the definition with that of its affiliates. Doing so would ensure consistent terms amongst the Exchange and its affiliates, thereby reducing the potential for confusion amongst market data subscribers regarding the type of User they may be considered by the Exchange.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>8</sup> in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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. The harmonized definition of Non-Professional User is equitable, reasonable, and removes impediments to and perfect the mechanism of a free and open market and a national market system it would provide additional specificity while harmonizing the definition with that of its affiliates. Doing so would ensure consistent terms amongst the Exchange and its affiliates, thereby reducing the potential for confusion amongst market data subscribers regarding the type of User they may be considered by the Exchange.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The harmonized definition of Non-Professional User would have no impact on competition because it does not materially alter the definition.

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

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

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>9</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>10</sup> In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its 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.

In its filing, the Exchange requested that the Commission waive the 30-day operative delay in order to enable the Exchange to immediately ensure consistent use of terms amongst the Exchange and its affiliates, thereby reducing the potential for confusion amongst market data subscribers regarding the type of User they may be considered by the Exchange. The Commission believes that such waiver is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposed rule change to be operative upon filing. 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.<sup>11</sup>

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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-CboeEDGA-2018-001 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 CboeEDGA-2018-001. 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

<sup>7</sup> 15 U.S.C. 78f.

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> See 15 U.S.C. 78c(f).

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 CboeEDGA-2018-001 and should be submitted on or before February 13, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Eduardo A. Aleman,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-82522; File No. SR-BatsBZX-2017-34]

### Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Introduce Cboe Market Close, a Closing Match Process for Non-BZX Listed Securities Under New Exchange Rule 11.28

January 17, 2018.

#### I. Introduction

On May 5, 2017, Bats BZX Exchange, Inc. (now known as Cboe BZX Exchange, Inc.) (“BZX” or “Exchange”) 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 adopt Bats Market Close, a closing match process for non-BZX Listed Securities. The proposed rule change was published for comment in the **Federal Register** on May 22, 2017.<sup>3</sup> On July 3, 2017, the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved.<sup>4</sup> The Commission received 54 comment

letters on the proposed rule change, including a response from the Exchange.<sup>5</sup> On August 18, 2017, the

<sup>5</sup> See Letters to Brent J. Fields, Secretary, Commission, from: (1) Donald K. Ross, Jr., Executive Chairman, PDQ Enterprise, LLC, dated June 6, 2017 (“PDQ Letter”); (2) Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, Inc., dated June 12, 2017 (“Nasdaq Letter 1”); (3) Ray Ross, Chief Technology Officer, Clearpool Group, dated June 12, 2017 (“Clearpool Letter”); (4) Venu Palaparthi, SVP, Compliance, Regulatory and Government Affairs, Virtu Financial, dated June 12, 2017 (“Virtu Letter”); (5) Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, dated June 13, 2017 (“SIFMA Letter 1”); (6) Elizabeth K. King, General Counsel and Corporate Secretary, New York Stock Exchange (“NYSE”), dated June 13, 2017 (“NYSE Letter 1”); (7) John M. Bowers, Bowers Securities, dated June 14, 2017 (“Bowers Letter”); (8) Jonathan D. Corpina, Senior Managing Partner, Meridian Equity Partners, dated June 16, 2017 (“Meridian Letter”); (9) Fady Taniou, Chief Executive Officer, and Brian Fraioli, Chief Compliance Officer, Americas Executions, LLC, dated June 16, 2017 (“Americas Executions Letter”); (10) Ari M. Rubenstein, Co-Founder and Chief Executive Officer, GTS Securities LLC, dated June 22, 2017 (“GTS Securities Letter 1”); (11) John Ramsay, Chief Market Policy Officer, Investors Exchange LLC, dated June 23, 2017 (“IEX Letter”); (12) Jay S. Sidhu, Chairman, Chief Executive Officer, Customers Bancorp, Inc., dated June 27, 2017 (“Customers Bancorp Letter”); (13) Joanne Freiberger, Vice President, Treasurer, Masonite International Corporation, dated June 27, 2017 (“Masonite International Letter”); (14) David B. Griffith, Investor Relations Manager, Orion Group Holdings, Inc., dated June 27, 2017 (“Orion Group Letter”); (15) Kieran O’Sullivan, Chairman, President and CEO, CTS Corporation, dated June 28, 2017 (“CTS Corporation Letter”); (16) Sherri Brillon, Executive Vice-President and Chief Financial Officer, Encana Corporation, dated June 29, 2017 (“Encana Letter”); (17) Steven C. Lilly, Chief Financial Officer, Triangle Capital Corporation, dated June 29, 2017 (“Triangle Capital Letter”); (18) Robert F. McCadden, Executive Vice President and Chief Financial Officer, Pennsylvania Real Estate Investment Trust, dated June 29, 2017 (“Pennsylvania REIT Letter”); (19) Andrew Stevens, General Counsel, IMC Financial Markets, dated June 30, 2017 (“IMC Letter”); (20) Daniel S. Tucker, Senior Vice President and Treasurer, Southern Company, dated July 5, 2017 (“Southern Company Letter”); (21) Cole Stevens, Investor Relations Associate, Nobilis Health, dated July 6, 2017 (“Nobilis Health Letter”); (22) Mehmet Kinak, Head of Global Equity Market Structure & Electronic Trading, et al., T. Rowe Price Associates, Inc., dated July 7, 2017 (“T. Rowe Price Letter”); (23) David L. Dragics, Senior Vice President, Investor Relations, CACI International Inc., dated July 7, 2017 (“CACI Letter”); (24) Mark A. Stegeman, Senior Vice President & CFO, Turning Point Brands, Inc., dated July 12, 2017 (“Turning Point Letter”); (25) Jon R. Moeller, Vice Chair and Chief Financial Officer, and Deborah J. Majoras, Chief Legal Officer and Secretary, The Proctor & Gamble Company, dated July 12, 2017 (“P&G Letter”); (26) Christopher A. Iacovella, Chief Executive Officer, Equity Dealers of America, dated July 12, 2017 (“EDA Letter”); (27) Rob Bernshiteyn, Chief Executive Officer, Chairman Board of Directors, Coupa Software, Inc., dated July 12, 2017 (“Coupa Software Letter”); (28) Sally J. Curley, Senior Vice President, Investor Relations, Cardinal Health, Inc., dated July 14, 2017 (“Cardinal Health Letter”); (29) Mickey Foster, Vice President, Investor Relations, FedEx Corporation, dated July 14, 2017 (“FedEx Letter”); (30) Alexander J. Matturri, CEO, S&P Dow Jones Indices, dated July 18, 2017 (“SPDJI Letter”); (31) John L. Killea, Chief Legal Officer, Stewart Information

Commission instituted proceedings under Section 19(b)(2)(B) of the Act<sup>6</sup> to determine whether to approve or disapprove the proposed rule change.<sup>7</sup> Thereafter, the Commission received nine more comment letters, including three responses from the Exchange.<sup>8</sup> On

Services, dated July 19, 2017 (“Stewart Letter”); (32) M. Farooq Kathwari, Chairman, President & CEO, Ethan Allen Interiors, Inc., dated July 24, 2017 (“Ethan Allen Letter”); (33) Jeff Green, Founder, Chief Executive Officer and Chairman of the Board of Directors, The Trade Desk Inc., dated July 26, 2017 (“Trade Desk Letter”); (34) James J. Angel, Associate Professor, McDonough School of Business, Georgetown University, dated July 30, 2017 (“Angel Letter”); (35) Jon Stonehouse, CEO, and Tom Staab, CFO, BioCryst Pharmaceuticals, Inc., dated July 31, 2017 (“BioCryst Letter”); (36) Peter Campbell, Chief Financial Officer, Mimecast, dated July 31, 2017 (“Mimecast Letter”); (37) Joanne Moffic-Silver, Executive Vice President, General Counsel, and Corporate Secretary, Bats Global Markets, Inc., dated August 2, 2017 (“BZX Letter 1”); (38) David M. Weisberger, Head of Equities, ViableMkts, dated August 3, 2017 (“ViableMkts Letter”); (39) Charles Beck, Chief Financial Officer, Digimarc Corporation, dated August 3, 2017 (“Digimarc Letter”); (40) Elizabeth K. King, General Counsel and Corporate Secretary, NYSE, dated August 9, 2017 (“NYSE Letter 2”); (41) Representative Sean P. Duffy and Representative Gregory W. Meeks, dated August 9, 2017 (“Duffy/Meeks Letter”); (42) Michael J. Chewens, Senior Executive Vice President & Chief Financial Officer, NBT Bancorp Inc., dated August 11, 2017 (“NBT Bancorp Letter”); (43) Barry Zwarenstein, Chief Financial Officer, Five9, Inc., dated August 11, 2017 (“Five9 Letter”); (44) William A. Backus, Chief Financial Officer & Treasurer, Balchem Corporation, dated August 15, 2017 (“Balchem Letter”); (45) Raiford Garrabrant, Director, Investor Relations, Cree, Inc., dated August 15, 2017 (“Cree Letter”); (46) Steven Paladino, Executive Vice President & Chief Financial Officer, Henry Schein, Inc., dated August 16, 2017 (“Henry Schein Letter”); (47) Theodore Jenkins, Senior Director, Investor Relations and Communications, Corbus Pharmaceuticals, Inc., dated August 17, 2017 (“Corbus Letter”); (48) Ari M. Rubenstein, Co-Founder and Chief Executive Officer, GTS Securities LLC, dated August 17, 2017 (“GTS Securities Letter 2”); (49) Cameron Bready, Senior Executive VP, Chief Financial Officer, Global Payments Inc., dated August 17, 2017 (“Global Payments Letter”); (50) Mike Gregoire, CEO, CA Technologies, dated August 17, 2017 (“CA Technologies Letter”); (51) Patrick L. Donnelly, Executive Vice President & General Counsel, Sirius XM Holdings Inc., dated August 17, 2017 (“Sirius Letter”); (52) Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, dated August 18, 2017 (“SIFMA Letter 2”); (53) Donald Bollerman, dated August 18, 2017 (“Bollerman Letter”); and (54) Sarah A. O’Dowd, Senior Vice President, Chief Legal Officer and Secretary, Lam Research Corporation, dated August 18, 2017 (“Lam Letter”).

<sup>6</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>7</sup> See Securities Exchange Act Release No. 81437, 82 FR 40202 (August 24, 2017) (“OIP”). In the OIP, the Commission specifically requested comment on eight series of questions. See *id.* at 40210-11.

<sup>8</sup> See Letters to Brent J. Fields, Secretary, Commission, from: (1) Gabrielle Rabinovitch, VP, Investor Relations, PayPal Holdings, Inc., dated September 12, 2017 (“PayPal Letter”); (2) Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, Inc., dated September 18, 2017 (“Nasdaq Letter 2”); (3) Joanne Moffic-Silver, Executive Vice President, General Counsel, and

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

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

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

<sup>3</sup> See Securities Exchange Act Release No. 80683 (May 16, 2017), 82 FR 23320 (“Notice”).

<sup>4</sup> See Securities Exchange Act Release No. 81072, 82 FR 31792 (July 10, 2017).