waiver will be passed through to the Acquiring Management Company.

15. No Acquiring Fund or Acquiring Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to an ETF) will cause an ETF to purchase a security in an Affiliated Underwriting.

16. The Board of an ETF, including a majority of the Independent Trustees, will adopt procedures reasonably designed to monitor any purchases of securities by an ETF in an Affiliated Underwriting, once an investment by an Acquiring Fund in the securities of the ETF exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Acquiring Fund in an ETF. The Board will consider, among other things: (i) Whether the purchases were consistent with the objectives and policies of the ETF; (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the ETF in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to ensure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders of the ETF.

17. Each ETF will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by an Acquiring Fund in the securities of the ETF exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate’s members, the terms of the purchase, and the information or materials upon which the Board’s determinations were made.

18. Before investing in an ETF in excess of the limits in section 12(d)(1)(A)(i), an Acquiring Fund will execute an Acquiring Fund Agreement with the ETF stating that their respective boards of directors or trustees and their investment advisers, or trustee and Sponsor, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in shares of an ETF in excess of the limit in section 12(d)(1)(A)(i), an Acquiring Fund will notify the ETF of the investment. At such time, the Acquiring Fund will also transmit to the ETF a list of the names of each Acquiring Fund Affiliate and Underwriting Affiliate. The Acquiring Fund will notify the ETF of any changes to the list as soon as reasonably practicable after a change occurs. The ETF and the Acquiring Fund will maintain and preserve a copy of the order, the Acquiring Fund Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

19. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Acquiring Management Company, including a majority of the Independent Trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any ETF in which the Acquiring Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Acquiring Management Company.

20. Any sales charges (other than customary brokerage fees) and/or service fees charged with respect to shares of an Acquiring Fund will not exceed the limits applicable to a fund of funds as set forth in FINRA Rule 2341.

21. No ETF will acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent an ETF acquires securities of another investment company pursuant to exemptive relief from the Commission permitting the ETF to acquire securities of one or more investment companies for short-term cash management purposes.
SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85521; File No. SR–
CboeEDGA–2019–004]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Clarify the Handling of Orders That Contain Both a Post Only Instruction and Certain Other Order Handling Instructions Maintained To Facilitate Compliance with Rule 610(d) of Regulation NMS

April 5, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),1 and Rule 19b–4 thereunder,2 notice is hereby given that on March 25, 2019, Cboe EDGA Exchange, Inc. (the “Exchange” or “EDGA”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act 3 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. ("EDGA" or the "Exchange") is filing with the Securities and Exchange Commission (the “Commission”) a proposed rule change to amend EDGA rules to clarify the handling of orders that contain both a Post Only instruction and certain other order handling instructions maintained to facilitate compliance with Rule 610(d) of Regulation NMS (the “Locked and Crossed Markets Rule”). An order entered with a Post Only instruction does not remove liquidity, except when the order is an order to buy or sell a security priced below $1.00, or when executing as the taker of liquidity would be economically beneficial to the firm entering the order—i.e., if the value of such execution when removing liquidity equals or exceeds the value of such execution if the order instead posted to the EDGA Book and subsequently provided liquidity, including the applicable fees charged or rebates provided.5 Today, the Exchange’s rules state that this handling applies to Post Only orders entered with Price Adjust6 or Display-Price Sliding7 instruction, which are re-pricing instructions used for compliance with the Locked and Crossed Markets Rule. Thus, an executable order entered with a Post Only instruction is eligible to remove

concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend EDGA rules to clarify the handling of orders that contain both a Post Only instruction and certain other order handling instructions maintained to facilitate compliance with Rule 610(d) of Regulation NMS.

2. Statutory Basis

According to the Act, the Commission is authorized to permit self-regulatory organizations to maintain rules to facilitate compliance with the provisions of the Act. The Commission has determined that the rule change is consistent with the general purposes of the Act, specifically Sections 6(b)(5), 6(c)(15), 15(b)(3)(A)(iii), and 15(b)(3)(B).

3. Effectiveness

The proposed rule change becomes effective immediately upon filing in accordance with Section 19(b)(2) of the Act.

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

5 See EDGA Rule 11.6(a)(4). To determine at the time of a potential execution whether the value of such execution when removing liquidity equals or exceeds the value of such execution if the order instead posted to the EDGA Book and subsequently provided liquidity, the Exchange will use the highest possible rebate paid and highest possible fee charged for such executions on the Exchange.
6 “Price Adjust” is an order instruction requiring that where an order would be a Locking Quotation of an external market or Crossing Quotation if displayed by the System on the EDGA Book at the time of entry, the order will be displayed and ranked at a price that is one Minimum Price Variation lower (higher) than the Locking Price for orders to buy (sell). See EDGA Rule 11.6(l)(1)(A).
7 “Display-Price Sliding” is an order instruction requiring that where an order would be a Locking Quotation or Crossing Quotation of an external market if displayed by the System on the EDGA Book at the time of entry, the order will be displayed and ranked at the Price that is one Minimum Price Variation lower (higher) than the Locking Price for orders to buy (sell). See EDGA Rule 11.6(l)(1)(B).

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