OMB APPROVAL
OMB Number: 3235-0045 Estimated average burden hours per response.....38

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 28

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No.* SR - 2019 - * 022
Amendment No. (req. for Amendments *)

Filing by Cboe EDGA Exchange, Inc.

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * ☑ Amendment * ☐ Withdrawal ☐

Section 19(b)(2) * ☐ Section 19(b)(3)(A) * ☑ Section 19(b)(3)(B) * ☐

Pilot ☐

Extension of Time Period for Commission Action * ☐

Date Expires *

Rule

☐ 19b-4(f)(1) ☐ 19b-4(f)(4)
☐ 19b-4(f)(2) ☐ 19b-4(f)(5)
☐ 19b-4(f)(3) ☑ 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) * ☐ Section 806(e)(2) * ☐

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934

Section 3C(b)(2) * ☐

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

The Exchange proposes to amend Rule 5.6 to conform to the FinCEN's adoption of a final rule on Customer Due Diligence Requirements for Financial Institutions.

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Sarah Last Name * Tadtman
Title * Counsel
E-mail * stadtman@cboe.com
Telephone * (913) 815-7203 Fax

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 12/05/2019

By Adrian Griffiths
(Name *)

(Title *)
Assistant General Counsel

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

agriffiths@cboe.com

Required fields are shown with yellow backgrounds and asterisks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information *

Add Remove View

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO] -xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO] -xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

Add Remove View

Exhibit Sent As Paper Document

☐

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

Add Remove View

Exhibit Sent As Paper Document

☐

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

Add Remove View

The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

Add Remove View

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] Cboe EDGA Exchange, Inc. ("EDGA" or the "Exchange") is filing with the Securities and Exchange Commission (the "Commission"), the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange, to reflect the Financial Crimes Enforcement Network's ("FinCEN") adoption of a final rule on Customer Due Diligence Requirements for Financial Institutions ("CDD Rule"). Specifically, the proposed amendments would conform EDGA Rule 5.6 to the CDD Rule's amendments to the minimum regulatory requirements for Members' anti-money laundering ("AML") compliance programs by requiring such programs to include risk-based procedures for conducting ongoing customer due diligence. This ongoing customer due diligence element for AML programs includes: (1) understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and (2) conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information. The Exchange has designated this proposal as "non-controversial" under paragraph (f)(6) of Rule 19b-4 under the Act,[3] and provided the Commission with the notice required by Rule 19b-4(f)(6)(iii) under the Act.

---

1 15 U.S.C. 78s(b)(1).
2 17 CFR 240.19b-4.
3 17 CFR 240.19b-4(f)(6).

The text of the proposed rule change is attached as Exhibit 5. The text of the proposed rule change is available on the Exchange's website at http://markets.cboe.com/, at the Exchange's principal office and at the Public Reference Room of the Commission.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

(a) The Exchange's President (or designee) pursuant to delegated authority approved the proposed rule change on November 18, 2019.

(b) Please refer questions and comments on the proposed rule change to Pat Sexton, Executive Vice President, General Counsel, and Corporate Secretary, (312) 786-7467, or Sarah Tadtman, Counsel, (913) 815-7203.

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

(a) Purpose

I. Background

The Bank Secrecy Act[4] ("BSA"), among other things, requires financial institutions,[5] including broker-dealers, to develop and implement AML programs that, at a minimum, meet the statutorily enumerated "four pillars."[6] These four pillars currently require broker-dealers to have written AML programs that include, at a minimum:

---

4 31 U.S.C. 5311, et seq.

5 See U.S.C. 5312(a)(2) (defining "financial institution").

6 31 U.S.C. 5318(h)(1).

- the establishment and implementation of policies, procedures and internal controls reasonably designed to achieve compliance with the applicable provisions of the BSA and implementing regulations;
- independent testing for compliance by broker-dealer personnel or a qualified outside party;
- designation of an individual or individuals responsible for implementing and monitoring the operations and internal controls of the AML program; and
- ongoing training for appropriate persons.[7]

In addition to meeting the BSA's requirements with respect to AML programs, Exchange Members[8] must also comply with Exchange Rule 5.6, which incorporates the BSA's four pillars, as well as requires Members' AML programs to establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of suspicious transactions.

On May 11, 2016, FinCEN, the bureau of the Department of the Treasury responsible for administering the BSA and its implementing regulations, issued the CDD Rule[9] to clarify and strengthen customer due diligence for covered financial

---

7 31 CFR 1023.210(b).

8 See Exchange Rule 1.5(n).

9 FinCEN Customer Due Diligence Requirements for Financial Institutions; CDD Rule, 81 FR 29397 (May 11, 2016) (CDD Rule Release); 82 FR 45182 (September 28, 2017) (making technical correcting amendments to the final CDD Rule published on May 11, 2016). FinCEN is authorized to impose AML program requirements on financial institutions and to require financial institutions to maintain procedures to ensure compliance with the BSA and associated regulations. 31 U.S.C. 5318(h)(2) and (a)(2). The CDD Rule is the result of the rulemaking process FinCEN initiated in March 2012. See 77 FR 13046 (March 5, 2012) (Advance Notice of Proposed Rulemaking) and 79 FR 45151 (Aug. 4, 2014) (Notice of Proposed Rulemaking).

institutions,[10] including broker-dealers. In its CDD Rule, FinCEN identifies four components of customer due diligence: (1) customer identification and verification; (2) beneficial ownership identification and verification; (3) understanding the nature and purpose of customer relationships; and (4) ongoing monitoring for reporting suspicious transactions and, on a risk basis, maintaining and updating customer information.[11] As the first component is already required to be part of a broker-dealers AML program under the BSA, the CDD Rule focuses on the other three components.

Specifically, the CDD Rule focuses particularly on the second component by adding a new requirement that covered financial institutions identify and verify the identity of the beneficial owners of all legal entity customers at the time a new account is opened, subject to certain exclusions and exemptions.[12] The CDD Rule also addresses the third and fourth components, which FinCEN states "are already implicitly required for covered financial institutions to comply with their suspicious activity reporting requirements," by amending the existing AML program rules for covered financial institutions to explicitly require these components to be included in AML programs as a new "fifth pillar."

On November 21, 2017, FINRA published Regulatory Notice 17-40 to provide guidance to member firms regarding their obligations under FINRA Rule 3310 in light of the adoption of FinCEN's CDD Rule. In addition, the Notice summarized the CDD Rule's impact on member firms, including the addition of the new fifth pillar required for

---

10 See 31 CFR 1010.230(f) (defining "covered financial institution").

11 See CDD Rule Release at 29398.

12 See 31 CFR 1010.230(d) (defining "beneficial owner") and 31 CFR 1010.230(e) (defining "legal entity customer").

member firms' AML programs. FINRA also amended FINRA Rule 3310 to explicitly incorporate the fifth pillar.[13] This proposed rule change amends EDGA Rule 5.6 to harmonize it with the FINRA rule and incorporate the fifth pillar.

II. Exchange Rule 5.6 and Amendment to Minimum Requirements for Members' AML Programs

Section 352 of the USA PATRIOT Act of 2001[14] amended the BSA to require broker-dealers to develop and implement AML programs that include the four pillars mentioned above. Consistent with Section 352 of the PATRIOT Act, and incorporating the four pillars, EDGA Rule 5.6 requires each Member to develop and implement a written AML program reasonably designed to achieve and monitor the Member's compliance with the BSA and implementing regulations. Among other requirements, EDGA Rule 5.6 requires that each Member firm, at a minimum: (1) establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of suspicious transactions; (2) establish and implement policies, procedures, and internal controls reasonably designed to achieve compliance with the BSA and implementing regulations; (3) provide independent testing for compliance to be conducted by Member personnel or a qualified outside party; (4) designate and identify to EDGA an individual or individuals (i.e., AML compliance person(s)) who will be responsible for implementing and monitoring the day-to-day operations and internal

---

13 See Securities Exchange Act Release No. 83154 (May 2, 2018), 83 FR 20906 (May 8, 2018) (File No. SR-FINRA-2018-016).

14 Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001).

controls of the AML program and provide prompt notification to the Exchange of any changes to the designation; and (5) provide ongoing training for appropriate persons.

FinCEN's CDD Rule does not change the requirements of Exchange Rule 5.6, and Members must continue to comply with its requirements.[15] However, FinCEN's CDD Rule amends the minimum regulatory requirements for broker-dealers' AML programs by explicitly requiring such programs to include risk-based procedures for conducting ongoing customer due diligence.[16] Accordingly, the Exchange is proposing to amend Exchange Rule 5.6 to incorporate this ongoing customer due diligence element, or "fifth pillar" required for AML programs. Thus, proposed Rule 5.6(b)(6) would provide that the AML programs required by this Rule shall, at a minimum include appropriate risk-based procedures for conducting ongoing customer due diligence, to include, but not be limited to: (A) understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and (B) conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information.

As stated in the CDD Rule, these provisions are not new and merely codify existing expectations for Members to adequately identify and report suspicious transactions as required under the BSA and encapsulate practices generally already undertaken by securities firms to know and understand their customers.[17] The proposed

---

15 FinCEN notes that broker-dealers must continue to comply with FINRA Rules, notwithstanding differences between the CDD Rule and FINRA Rule 3310, which is substantially identical to Exchange Rule 5.6. See CDD Rule Release 29421, n. 85.

16 See CDD Rule Release at 29420; 31 CFR §1023.210.

17 Id. at 29419.

rule change simply incorporates into Exchange Rule 5.6 the ongoing customer due diligence element, or "fifth pillar," required for AML programs by the CDD Rule to aid Members in complying with the CDD Rule's requirements. However, to the extent that these elements, which are briefly summarized below, are not already included in Members' AML programs, the CDD Rule requires Members to update their AML programs to explicitly incorporate them.

III. Summary of Fifth Pillar's Requirements

Understanding the Nature and Purpose of Customer Relationships

FinCEN states in the CDD Rule that firms must necessarily have an understanding of the nature and purpose of the customer relationship in order to determine whether a transaction is potentially suspicious and, in turn, to fulfill their SAR obligations.[18] To that end, the CDD Rule requires that firms understand the nature and purpose of the customer relationship in order to develop a customer risk profile. The customer risk profile refers to information gathered about a customer to form the baseline against which customer activity is assessed for suspicious transaction reporting.[19] Information relevant to understanding the nature and purpose of the customer relationship may be self-evident and, depending on the facts and circumstances, may include such information as the type of customer, account or service offered, and the customer's income, net worth, domicile, or principal occupation or business, as well as, in the case of existing customers, the customer's history of activity.[20] The CDD Rule also does not

---

18 Id. at 29421.
19 Id. at 29422.
20 Id.

prescribe a particular form of the customer risk profile.[21] Instead, the CDD Rule states that depending on the firm and the nature of its business, a customer risk profile may consist of individualized risk scoring, placement of customers into risk categories or another means of assessing customer risk that allows firms to understand the risk posed by the customer and to demonstrate that understanding.[22]

The CDD Rule also addresses the interplay of understanding the nature and purpose of customer relationships with the ongoing monitoring obligation discussed below. The CDD Rule explains that firms are not necessarily required or expected to integrate customer information or the customer risk profile into existing transaction monitoring systems (for example, to serve as the baseline for identifying and assessing suspicious transactions on a contemporaneous basis).[23] Rather, FinCEN expects firms to use the customer information and customer risk profile as appropriate during the course of complying with their obligations under the BSA in order to determine whether a particular flagged transaction is suspicious.[24]

Conduct Ongoing Monitoring

As with the requirement to understand the nature and purpose of the customer relationship, the requirement to conduct ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information, merely adopts existing supervisory and regulatory expectations as explicit minimum

---

21 Id.
22 Id.
23 Id.
24 Id.

standards of customer due diligence required for firms' AML programs.[25] If, in the course of its normal monitoring for suspicious activity, the Member detects information that is relevant to assessing the customer's risk profile, the Member must update the customer information, including the information regarding the beneficial owners of legal entity customers.[26] However, there is no expectation that the Member update customer information, including beneficial ownership information, on an ongoing or continuous basis.[27]

(b) Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)[28] of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act[29] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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. Specifically, the Exchange believes the proposed rule change will protect investors, because it will aid Members in complying with the CDD Rule's requirement that Members' AML programs include risk-based procedures for conducting ongoing customer due diligence by also incorporating the requirement into Exchange Rule 5.6.

4. Self-Regulatory Organization's Statement on Burden on Competition

---

25 Id. at 29402.

26 Id. at 29420-21. See also FINRA Regulatory Notice 17-40 (discussing identifying and verifying the identity of beneficial owners of legal entity customers).

27 Id.

28 15 U.S.C. 78f.

29 15 U.S.C. 78f(b)(5).

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. The proposed rule change simply incorporates into Exchange Rule 5.6 the ongoing customer due diligence element, or "fifth pillar," required for AML programs by the CDD Rule. Regardless of the proposed rule change, to the extent that the elements of the fifth pillar are not already included in Members' AML programs, the CDD Rule requires Members to update their AML programs to explicitly incorporate them. In addition, as stated in the CDD Rule, these elements are already implicitly required for covered financial institutions to comply with their suspicious activity reporting requirements. Further, all Exchange Members that have customers are required to be members of FINRA pursuant to Rule 15b9-1 under the Exchange Act,[30] and are therefore already subject to the requirements of FINRA Rule 3310. Additionally, the proposed rule change is virtually identical[31] to FINRA Rule 3310. The Exchange is not imposing any additional direct or indirect burdens on member firms or their customers through this proposal, and as such, the proposal imposes no new burdens on competition.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

---

30 17 CFR 240.15b9-1.

31 The Exchange notes that changes between the proposed Rule and FINRA Rule 3310 are non-substantive and relate to cross references.

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act[32] and paragraph (f)(6) of Rule 19b-4 thereunder.[33] The Exchange asserts that the proposed rule change: (1) will not significantly affect the protection of investors or the public interest, (2) will not impose any significant burden on competition, (3) and will not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. In addition, the Exchange provided the Commission with 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.[34]

The Exchange believes that the proposed rule change is non-controversial because it raises no novel issues. In particular, the purpose of the proposed rule change is to harmonize with and conform to FINRA Rule 3310, as described in the Purpose section. Because the new rule provision by its terms only applies to Members with customers, and all Members with customers are already subject to FINRA Rule 3310, the rule change does not impose any new requirements on Members.

For the foregoing reasons, the rule filing qualifies for immediate effectiveness as a "non-controversial" rule change under Rule 19b-4(f)(6). 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

---

32 15 U.S.C. 78s(b)(3)(A).
33 17 CFR 240.19b-4(f)(6).
34 17 CFR 240.19b-4(f)(6)(iii).

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.

8. Proposed Rule Change Based on the Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is based on FINRA Rule 3310 as described in the Purpose section.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1. Completed Notice of Proposed Rule Change for publication in the Federal Register.

Exhibit 5. Proposed rule text.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34- ; File No. SR-CboeEDGA-2019-022]

[Insert date]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Reflect the Financial Crimes Enforcement Network's ("FinCEN") Adoption of a Final Rule on Customer Due Diligence Requirements for Financial Institutions ("CDD Rule")

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 [insert date], 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, II, and III 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"), the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange, to reflect the Financial Crimes Enforcement Network's ("FinCEN") adoption of a final

---

1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 15 U.S.C. 78s(b)(3)(A)(iii).

4 17 CFR 240.19b-4(f)(6).

rule on Customer Due Diligence Requirements for Financial Institutions ("CDD Rule"). 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

I. Background

The Bank Secrecy Act[5] ("BSA"), among other things, requires financial institutions,[6] including broker-dealers, to develop and implement AML programs that, at a minimum, meet the statutorily enumerated "four pillars."[7] These four pillars currently require broker-dealers to have written AML programs that include, at a minimum:

---

5 31 U.S.C. 5311, et seq.

6 See U.S.C. 5312(a)(2) (defining "financial institution").

7 31 U.S.C. 5318(h)(1).

- the establishment and implementation of policies, procedures and internal controls reasonably designed to achieve compliance with the applicable provisions of the BSA and implementing regulations;
- independent testing for compliance by broker-dealer personnel or a qualified outside party;
- designation of an individual or individuals responsible for implementing and monitoring the operations and internal controls of the AML program; and
- ongoing training for appropriate persons.[8]

In addition to meeting the BSA's requirements with respect to AML programs, Exchange Members[9] must also comply with Exchange Rule 5.6, which incorporates the BSA's four pillars, as well as requires Members' AML programs to establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of suspicious transactions.

On May 11, 2016, FinCEN, the bureau of the Department of the Treasury responsible for administering the BSA and its implementing regulations, issued the CDD Rule[10] to clarify and strengthen customer due diligence for covered financial

---

8 31 CFR 1023.210(b).

9 See Exchange Rule 1.5(n).

10 FinCEN Customer Due Diligence Requirements for Financial Institutions; CDD Rule, 81 FR 29397 (May 11, 2016) (CDD Rule Release); 82 FR 45182 (September 28, 2017) (making technical correcting amendments to the final CDD Rule published on May 11, 2016). FinCEN is authorized to impose AML program requirements on financial institutions and to require financial institutions to maintain procedures to ensure compliance with the BSA and associated regulations. 31 U.S.C. 5318(h)(2) and (a)(2). The CDD Rule is the result of the rulemaking process FinCEN initiated in March 2012. See 77 FR 13046 (March 5, 2012) (Advance Notice of Proposed Rulemaking) and 79 FR 45151 (Aug. 4, 2014) (Notice of Proposed Rulemaking).

institutions,[11] including broker-dealers. In its CDD Rule, FinCEN identifies four components of customer due diligence: (1) customer identification and verification; (2) beneficial ownership identification and verification; (3) understanding the nature and purpose of customer relationships; and (4) ongoing monitoring for reporting suspicious transactions and, on a risk basis, maintaining and updating customer information.[12] As the first component is already required to be part of a broker-dealers AML program under the BSA, the CDD Rule focuses on the other three components.

Specifically, the CDD Rule focuses particularly on the second component by adding a new requirement that covered financial institutions identify and verify the identity of the beneficial owners of all legal entity customers at the time a new account is opened, subject to certain exclusions and exemptions.[13] The CDD Rule also addresses the third and fourth components, which FinCEN states "are already implicitly required for covered financial institutions to comply with their suspicious activity reporting requirements," by amending the existing AML program rules for covered financial institutions to explicitly require these components to be included in AML programs as a new "fifth pillar."

On November 21, 2017, FINRA published Regulatory Notice 17-40 to provide guidance to member firms regarding their obligations under FINRA Rule 3310 in light of the adoption of FinCEN's CDD Rule. In addition, the Notice summarized the CDD Rule's impact on member firms, including the addition of the new fifth pillar required for

---

11 See 31 CFR 1010.230(f) (defining "covered financial institution").

12 See CDD Rule Release at 29398.

13 See 31 CFR 1010.230(d) (defining "beneficial owner") and 31 CFR 1010.230(e) (defining "legal entity customer").

member firms' AML programs. FINRA also amended FINRA Rule 3310 to explicitly incorporate the fifth pillar.[14] This proposed rule change amends EDGA Rule 5.6 to harmonize it with the FINRA rule and incorporate the fifth pillar.

II. Exchange Rule 5.6 and Amendment to Minimum Requirements for Members' AML Programs

Section 352 of the USA PATRIOT Act of 2001[15] amended the BSA to require broker-dealers to develop and implement AML programs that include the four pillars mentioned above. Consistent with Section 352 of the PATRIOT Act, and incorporating the four pillars, EDGA Rule 5.6 requires each Member to develop and implement a written AML program reasonably designed to achieve and monitor the Member's compliance with the BSA and implementing regulations. Among other requirements, EDGA Rule 5.6 requires that each Member firm, at a minimum: (1) establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of suspicious transactions; (2) establish and implement policies, procedures, and internal controls reasonably designed to achieve compliance with the BSA and implementing regulations; (3) provide independent testing for compliance to be conducted by Member personnel or a qualified outside party; (4) designate and identify to EDGA an individual or individuals (i.e., AML compliance person(s)) who will be responsible for implementing and monitoring the day-to-day operations and internal

---

14 See Securities Exchange Act Release No. 83154 (May 2, 2018), 83 FR 20906 (May 8, 2018) (File No. SR-FINRA-2018-016).

15 Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001).

controls of the AML program and provide prompt notification to the Exchange of any changes to the designation; and (5) provide ongoing training for appropriate persons.

FinCEN's CDD Rule does not change the requirements of Exchange Rule 5.6, and Members must continue to comply with its requirements.[16] However, FinCEN's CDD Rule amends the minimum regulatory requirements for broker-dealers' AML programs by explicitly requiring such programs to include risk-based procedures for conducting ongoing customer due diligence.[17] Accordingly, the Exchange is proposing to amend Exchange Rule 5.6 to incorporate this ongoing customer due diligence element, or "fifth pillar" required for AML programs. Thus, proposed Rule 5.6(b)(6) would provide that the AML programs required by this Rule shall, at a minimum include appropriate risk-based procedures for conducting ongoing customer due diligence, to include, but not be limited to: (A) understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and (B) conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information.

As stated in the CDD Rule, these provisions are not new and merely codify existing expectations for Members to adequately identify and report suspicious transactions as required under the BSA and encapsulate practices generally already undertaken by securities firms to know and understand their customers.[18] The proposed

---

16 FinCEN notes that broker-dealers must continue to comply with FINRA Rules, notwithstanding differences between the CDD Rule and FINRA Rule 3310, which is substantially identical to Exchange Rule 5.6. See CDD Rule Release 29421, n. 85.

17 See CDD Rule Release at 29420; 31 CFR §1023.210.

18 Id. at 29419.

rule change simply incorporates into Exchange Rule 5.6 the ongoing customer due diligence element, or "fifth pillar," required for AML programs by the CDD Rule to aid Members in complying with the CDD Rule's requirements. However, to the extent that these elements, which are briefly summarized below, are not already included in Members' AML programs, the CDD Rule requires Members to update their AML programs to explicitly incorporate them.

III. Summary of Fifth Pillar's Requirements

Understanding the Nature and Purpose of Customer Relationships

FinCEN states in the CDD Rule that firms must necessarily have an understanding of the nature and purpose of the customer relationship in order to determine whether a transaction is potentially suspicious and, in turn, to fulfill their SAR obligations.[19] To that end, the CDD Rule requires that firms understand the nature and purpose of the customer relationship in order to develop a customer risk profile. The customer risk profile refers to information gathered about a customer to form the baseline against which customer activity is assessed for suspicious transaction reporting.[20] Information relevant to understanding the nature and purpose of the customer relationship may be self-evident and, depending on the facts and circumstances, may include such information as the type of customer, account or service offered, and the customer's income, net worth, domicile, or principal occupation or business, as well as, in the case of existing customers, the customer's history of activity.[21] The CDD Rule also does not

---

19 Id. at 29421.

20 Id. at 29422.

21 Id.

prescribe a particular form of the customer risk profile.[22] Instead, the CDD Rule states that depending on the firm and the nature of its business, a customer risk profile may consist of individualized risk scoring, placement of customers into risk categories or another means of assessing customer risk that allows firms to understand the risk posed by the customer and to demonstrate that understanding.[23]

The CDD Rule also addresses the interplay of understanding the nature and purpose of customer relationships with the ongoing monitoring obligation discussed below. The CDD Rule explains that firms are not necessarily required or expected to integrate customer information or the customer risk profile into existing transaction monitoring systems (for example, to serve as the baseline for identifying and assessing suspicious transactions on a contemporaneous basis).[24] Rather, FinCEN expects firms to use the customer information and customer risk profile as appropriate during the course of complying with their obligations under the BSA in order to determine whether a particular flagged transaction is suspicious.[25]

Conduct Ongoing Monitoring

As with the requirement to understand the nature and purpose of the customer relationship, the requirement to conduct ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information, merely adopts existing supervisory and regulatory expectations as explicit minimum

---

22 Id.

23 Id.

24 Id.

25 Id.

standards of customer due diligence required for firms' AML programs.[26] If, in the course of its normal monitoring for suspicious activity, the Member detects information that is relevant to assessing the customer's risk profile, the Member must update the customer information, including the information regarding the beneficial owners of legal entity customers.[27] However, there is no expectation that the Member update customer information, including beneficial ownership information, on an ongoing or continuous basis.[28]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)[29] of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act[30] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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. Specifically, the Exchange believes the proposed rule change will protect investors, because it will aid Members in complying with the CDD Rule's requirement that Members' AML programs include risk-based procedures for conducting ongoing customer due diligence by also incorporating the requirement into Exchange Rule 5.6.

---

26 Id. at 29402.

27 Id. at 29420-21. See also FINRA Regulatory Notice 17-40 (discussing identifying and verifying the identity of beneficial owners of legal entity customers).

28 Id.

29 15 U.S.C. 78f.

30 15 U.S.C. 78f(b)(5).

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. The proposed rule change simply incorporates into Exchange Rule 5.6 the ongoing customer due diligence element, or "fifth pillar," required for AML programs by the CDD Rule. Regardless of the proposed rule change, to the extent that the elements of the fifth pillar are not already included in Members' AML programs, the CDD Rule requires Members to update their AML programs to explicitly incorporate them. In addition, as stated in the CDD Rule, these elements are already implicitly required for covered financial institutions to comply with their suspicious activity reporting requirements. Further, all Exchange Members that have customers are required to be members of FINRA pursuant to Rule 15b9-1 under the Exchange Act,[31] and are therefore already subject to the requirements of FINRA Rule 3310. Additionally, the proposed rule change is virtually identical[32] to FINRA Rule 3310. The Exchange is not imposing any additional direct or indirect burdens on member firms or their customers through this proposal, and as such, the proposal imposes no new burdens on competition.

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

Written comments were neither solicited nor received.

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

Because the foregoing proposed rule change does not:

---

31 17 CFR 240.15b9-1.

32 The Exchange notes that changes between the proposed Rule and FINRA Rule 3310 are non-substantive and relate to cross references.

A. significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. 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) of the Act[33] and Rule 19b-4(f)(6)[34] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CboeEDGA-2019-022 on the subject line.

---

33 15 U.S.C. 78s(b)(3)(A).

34 17 CFR 240.19b-4(f)(6).

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-2019-022. This file number should be included on the subject line if e-mail 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, D.C. 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeEDGA-2019-022 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

---

[35] 17 CFR 200.30-3(a)(12).

Secretary

EXHIBIT 5

(additions are underlined; deletions are [bracketed])

* * * * *

Rules of Cboe EDGA Exchange, Inc.

* * * * *

Rule 5.6. Anti-Money Laundering Compliance Program

(a) No change.

(b) The anti-money laundering programs required by the Rule shall, at a minimum:

(1)-(3) No change.

(4) designate, and identify to the Exchange (by name, title, mailing address, e-mail address, telephone number, and facsimile number), a person or persons responsible for implementing and monitoring the day-to-day operations and internal controls of the program and provide prompt notification to the Exchange regarding any change in such designation(s); [and]

(5) provide ongoing training for appropriate persons[.]; and

(6) include appropriate risk-based procedures for conducting ongoing customer due diligence, to include, but not be limited to:

(A) understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and

(B) conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information. For purposes of this subparagraph (6)(B), customer information shall include information regarding the beneficial owners of legal entity customers (as defined in 31 CFR 1010.230(e)).

In the event that any of the provisions of this Rule 5.6 conflict with any of the provisions of another applicable self-regulatory organization's rule requiring the development and implementation of an anti-money laundering compliance program, the provisions of the rule of the Member's Designated Examining Authority shall apply.

* * * * *