

Required fields are shown with yellow backgrounds and asterisks.

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) *
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
			Rule		
Pilot	Extension of Time Period for Commission Action *	Date Expires *	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>	<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) *	Section 806(e)(2) *
<input type="checkbox"/>	<input type="checkbox"/>
	Section 3C(b)(2) *
	<input type="checkbox"/>

Exhibit 2 Sent As Paper Document	Exhibit 3 Sent As Paper Document
<input type="checkbox"/>	<input type="checkbox"/>

**Description**

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

Proposal relating to the correction of certain billing errors.

**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 \* Corinne Last Name \* Klott

Title \* Assistant General Counsel

E-mail \* cklott@cboe.com

Telephone \* (312) 786-7793 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.

(Title \*)

Date 02/18/2021 VP, Associate General Counsel

By Laura G. Dickman

(Name \*)

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.

[ldickman@cboe.com](mailto:ldickman@cboe.com)

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF 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 \***

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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**

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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**

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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**

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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**

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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**

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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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> Cboe EDGA Exchange, Inc. (“EDGA” or the “Exchange”) is filing with the Securities and Exchange Commission (the “Commission”) a proposal to permit the Exchange to look back only to July 2020 to correct certain billing errors which were discovered in October 2020. This rule change does not provide for any modifications to the text of the Exchange’s rules or fees schedule.

(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 February 5, 2021.

(b) Please refer questions and comments on the proposed rule change to Patrick Sexton, Executive Vice President, General Counsel, and Corporate Secretary, (312) 786-7462, or Corinne Klott, Assistant General Counsel, (312) 786-7793.

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

(a) Purpose

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

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

The Exchange recently amended its fees schedule to adopt a provision relating to billing errors and fee disputes.<sup>3</sup> Specifically, the Exchange adopted a provision that provides that all fees and rebates assessed prior to the three full calendar months before the month in which the Exchange becomes aware of a billing error shall be considered final. Particularly, the Exchange will resolve an error by crediting or debiting Members and Non-Members based on the fees or rebates that should have been applied in the three full calendar months preceding the month in which the Exchange became aware of the error, including to all impacted transactions that occurred during those months.<sup>4</sup> The Exchange will apply the three month look back regardless of whether the error was discovered by the Exchange or by a Member or Non-Member that submitted a fee dispute to the Exchange. The Exchange's fees schedule also provides that all disputes concerning fees and rebates assessed by the Exchange would have to be submitted to the Exchange in writing and accompanied by supporting documentation. The purpose of this policy is to provide both the Exchange and Members and Non-Members subject to the Exchange's fee schedule finality and the ability to close their books after a known period of time.

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<sup>3</sup> See Securities Exchange Act Release No. 90900 (January 11, 2021), 86 FR 4149 (January 15, 2021) (SR-CboeEDGA-2020-032).

<sup>4</sup> For example, if the Exchange becomes aware of a transaction fee billing error on February 4, 2021, the Exchange will resolve the error by crediting or debiting Members based on the fees or rebates that should have been applied to any impacted transactions during November, 2020, December 2020 and January 2021. The Exchange notes that because it bills in arrears, the Exchange would be able to correct the error in advance of issuing the February 2021 invoice and therefore, transactions impacted through the date of discovery (in this example, February 4, 2021) and thereafter, would be billed correctly.

The Exchange further notes that several other exchanges have adopted similar provisions in their rules.<sup>5</sup>

The Exchange proposes to apply the recently adopted billing policy to transactions impacted by billing errors that were discovered in October 2020. Particularly, in October 2020, the Exchange's affiliate, Cboe BZX Exchange, Inc. identified a billing error relating to certain fee codes. As a result of the discovery, the Exchange, along with its affiliates, conducted a review of additional fee code configurations across each Exchange, which review was only recently completed. The review resulted in the discovery of additional billing errors relating to fee codes. These errors resulted in various EDGA Members being under-billed or over-billed, over the course of several years. In the absence of applying the recently adopted billing policy to transactions impacted by the October 2020 billing errors, the Exchange would be required to credit or debit Members based on the fees or rebates that should have been applied to all impacted transactions, regardless of how far back the transactions occurred (which as noted above, is several years). If the Exchange were permitted to apply the current rule language to the billing errors discovered in October 2020 however, then the Exchange could limit its look back in correcting those errors to only those transactions that occurred in the three months preceding the discovery of the errors (i.e., July 2020

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<sup>5</sup> See e.g. Securities Exchange Act Release No. 87650 (December 3, 2019), 84 FR 67304 (December 9, 2019) (SR-NYSECHX-2019-024); Securities Exchange Act Release No. 84430 (October 16, 2018), 83 FR 53347 (October 22, 2018) (SR-NYSESTAT-2018-23); and Securities Exchange Act Release No. 79060 (October 6, 2016), 81 FR 70716 (October 13, 2016) (SR-ISEGemini-2016-11).

through September 2020).<sup>6</sup> Moreover, the Exchange notes there are a number of Members that would benefit from the proposal. Specifically, the nature of these particular billing errors is such that in correcting the errors, more members owe the Exchange more than a de minimis amount of money than the number of Members the Exchange owes more than de minimis amount of money to. Accordingly, the Exchange believes it's appropriate and equitable to apply the three-month look back for corrective billing to the errors that were discovered in October 2020.

(b) Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>7</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>8</sup> 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

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<sup>6</sup> The Exchange corrected errors in advance of issuing the October 2020 invoice and therefore, transactions impacted through the date of discovery and thereafter, were billed correctly.

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

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

the Section 6(b)(5)<sup>9</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In adopting its currently policy, the Exchange noted that it believed providing that all fees are final after 3 months is reasonable as both the Exchange and Members have an interest in knowing when its fee assessments are final and when reliance can be placed on those assessments. Indeed, without some deadline on fee disputes and billing errors, the Exchange and market participants would never be able to close their books with any confidence. Furthermore, as noted above, a number of Exchanges similarly consider their fees final after a similar period of time.<sup>10</sup> As discussed above, in October 2020, the Exchange became aware of certain billings errors which resulted in various Members being over-rebated or under-billed, and to a lesser extent over-billed over the course of several years. The Exchange believes it's appropriate that Members that were impacted by these billing errors similarly be subject to the recently adopted billing policy to not resolve billing errors past three months from the time a billing error was discovered (in this case, not be invoiced for impacted transactions that occurred prior to July 2020).<sup>11</sup> The Exchange does not think it is appropriate or equitable to have to correct billing errors for transactions that occurred prior to July 2020. As discussed, the Exchange believes it's reasonable and important for both Members and the Exchange to rely on the finality of fees and rebates assessed. Moreover, the proposed rule change would apply to all Members equally, in that the Exchange would be precluded from invoicing any Member

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<sup>9</sup> Id.

<sup>10</sup> See supra note 5.

<sup>11</sup> Since the errors were discovered in October 2020, the three preceding months that would be corrected are July, August, and September 2020.

for the correct amounts that should have been applied to trades that were otherwise billed incorrectly before July 2020. The Exchange also believes the proposal would be consistent with the protection of investors and the public interest because it would allow impacted market participants to benefit from the same rule recently adopted by the Exchange. Additionally, there are a number of members that would receive a greater benefit from the application of the current billing errors policy as compared to the Exchange with respect to these particular billing errors. Furthermore, the Exchange believes the proposal to limit the time period it must correct billing errors does not raise any new or novel issues that have not been already been considered by the Commission. Particularly, the proposal to limit how far back an exchange must go to correct billing errors is comparable to other policies and practices that have long been established at other exchanges.<sup>12</sup>

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

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. First, the Exchange notes the proposal is not intended to address any competitive issue, but rather provide finality to Members with respect to billing errors that were just recently discovered and extend to them the applicability of a recently adopted billing practice that considers all fees final after three months. Further, the Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes apply equally to all Members. The

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<sup>12</sup> See supra note 5.

Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed change only affects transactions that occurred on the Exchange. Additionally, other exchanges have long established policies in which fees shall be considered final after a specified period of time.

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

No comments were solicited or received on the proposed rule change.

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)

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)<sup>13</sup> of the Act and Rule 19b-4(f)(6)<sup>14</sup> thereunder. The proposed rule change effects a change that (A) does not significantly affect the protection of investors or the public interest; (B) does not impose any significant burden on competition; and (C) by its terms, does not become operative for thirty (30) days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description

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<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

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.<sup>15</sup>

The Exchange believes its proposal will not significantly affect the protection of investors or the public interest because it already aligns with practices that are already in place at other exchanges regarding the finality of fees and rebates and enables market participants to close their books with confidence. The proposal would also apply to all Members equally in that the Exchange would be precluded from invoicing any market participant for the correct amounts that should have been applied to trades that were otherwise billed incorrectly beyond July 2020. The Exchange also believes the proposal would be consistent with the protection of investors and the public interest because it would allow impacted market participants to benefit from the same rule recently adopted by the Exchange which limits how far back the Exchange can refund or debit Members for billing errors. Moreover, Members would receive a greater benefit as compared to the Exchange if the Exchange were permitted to limit the impact of the October 2020 billing errors to July 2020 through September 2020.

For the foregoing reasons, the Exchange believes that this rule filing qualifies for immediate effectiveness as a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4.<sup>16</sup> At any time within 60 days of the filing of such 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

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<sup>15</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>16</sup> 17 CFR 240.19b-4(f)(6).

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

The proposed rule change is not based on the rules of another self-regulatory organization, or of the Commission.

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: Form of Notice of Proposed Rule Change for Federal Register.

Exhibit 2-5: Not applicable.

EXHIBIT 1**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34- ; File No. SR-CboeEDGA-2021-006]

[Insert date]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposal to Permit the Exchange to Look Back Only to July 2020 to Correct Certain Billing Errors which were Discovered in October 2020

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 [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<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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 proposal to permit the Exchange to look back only to July 2020 to correct certain billing errors which were discovered in October 2020. This rule change does not provide for any modifications to the text of the Exchange’s rules or fees schedule.

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<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)(iii).

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

The text of the proposal is also available on the Exchange's website

([http://markets.cboe.com/us/equities/regulation/rule\\_filings/edga/](http://markets.cboe.com/us/equities/regulation/rule_filings/edga/)), at the Exchange's

Office of the Secretary, and at the Commission's Public Reference Room.

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

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

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

#### **1. Purpose**

The Exchange recently amended its fees schedule to adopt a provision relating to billing errors and fee disputes.<sup>5</sup> Specifically, the Exchange adopted a provision that provides that all fees and rebates assessed prior to the three full calendar months before the month in which the Exchange becomes aware of a billing error shall be considered final. Particularly, the Exchange will resolve an error by crediting or debiting Members and Non-Members based on the fees or rebates that should have been applied in the three full calendar months preceding the month in which the Exchange became aware of the error, including to all impacted transactions that occurred during those months.<sup>6</sup> The

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<sup>5</sup> See Securities Exchange Act Release No. 90900 (January 11, 2021), 86 FR 4149 (January 15, 2021) (SR-CboeEDGA-2020-032).

<sup>6</sup> For example, if the Exchange becomes aware of a transaction fee billing error on February 4, 2021, the Exchange will resolve the error by crediting or debiting Members based on the fees or rebates that should have been applied to any

Exchange will apply the three month look back regardless of whether the error was discovered by the Exchange or by a Member or Non-Member that submitted a fee dispute to the Exchange. The Exchange's fees schedule also provides that all disputes concerning fees and rebates assessed by the Exchange would have to be submitted to the Exchange in writing and accompanied by supporting documentation. The purpose of this policy is to provide both the Exchange and Members and Non-Members subject to the Exchange's fee schedule finality and the ability to close their books after a known period of time. The Exchange further notes that several other exchanges have adopted similar provisions in their rules.<sup>7</sup>

The Exchange proposes to apply the recently adopted billing policy to transactions impacted by billing errors that were discovered in October 2020. Particularly, in October 2020, the Exchange's affiliate, Cboe BZX Exchange, Inc. identified a billing error relating to certain fee codes. As a result of the discovery, the Exchange, along with its affiliates, conducted a review of additional fee code configurations across each Exchange, which review was only recently completed. The review resulted in the discovery of additional billing errors relating to fee codes. These errors resulted in various EDGA Members being under-billed or over-billed, over the

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impacted transactions during November, 2020, December 2020 and January 2021. The Exchange notes that because it bills in arrears, the Exchange would be able to correct the error in advance of issuing the February 2021 invoice and therefore, transactions impacted through the date of discovery (in this example, February 4, 2021) and thereafter, would be billed correctly.

<sup>7</sup> See e.g. Securities Exchange Act Release No. 87650 (December 3, 2019), 84 FR 67304 (December 9, 2019) (SR-NYSECHX-2019-024); Securities Exchange Act Release No. 84430 (October 16, 2018), 83 FR 53347 (October 22, 2018) (SR-NYSESTAT-2018-23); and Securities Exchange Act Release No. 79060 (October 6, 2016), 81 FR 70716 (October 13, 2016) (SR-ISEGemini-2016-11).

course of several years. In the absence of applying the recently adopted billing policy to transactions impacted by the October 2020 billing errors, the Exchange would be required to credit or debit Members based on the fees or rebates that should have been applied to all impacted transactions, regardless of how far back the transactions occurred (which as noted above, is several years). If the Exchange were permitted to apply the current rule language to the billing errors discovered in October 2020 however, then the Exchange could limit its look back in correcting those errors to only those transactions that occurred in the three months preceding the discovery of the errors (i.e., July 2020 through September 2020).<sup>8</sup> Moreover, the Exchange notes there are a number of Members that would benefit from the proposal. Specifically, the nature of these particular billing errors is such that in correcting the errors, more members owe the Exchange more than a de minimis amount of money than the number of Members the Exchange owes more than de minimis amount of money to. Accordingly, the Exchange believes it's appropriate and equitable to apply the three-month look back for corrective billing to the errors that were discovered in October 2020.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>9</sup> Specifically, the Exchange believes the proposed rule change is consistent with the

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<sup>8</sup> The Exchange corrected errors in advance of issuing the October 2020 invoice and therefore, transactions impacted through the date of discovery and thereafter, were billed correctly.

<sup>9</sup> 15 U.S.C. 78f(b).

Section 6(b)(5)<sup>10</sup> 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)<sup>11</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In adopting its currently policy, the Exchange noted that it believed providing that all fees are final after 3 months is reasonable as both the Exchange and Members have an interest in knowing when its fee assessments are final and when reliance can be placed on those assessments. Indeed, without some deadline on fee disputes and billing errors, the Exchange and market participants would never be able to close their books with any confidence. Furthermore, as noted above, a number of Exchanges similarly consider their fees final after a similar period of time.<sup>12</sup> As discussed above, in October 2020, the Exchange became aware of certain billings errors which resulted in various Members being over-rebated or under-billed, and to a lesser extent over-billed over the course of several years. The Exchange believes it's appropriate that Members that were impacted by these billing errors similarly be subject to the recently adopted billing policy to not resolve billing errors past three months from the time a billing error was discovered (in

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<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> Id.

<sup>12</sup> See supra note 7.

this case, not be invoiced for impacted transactions that occurred prior to July 2020).<sup>13</sup>

The Exchange does not think it is appropriate or equitable to have to correct billing errors for transactions that occurred prior to July 2020. As discussed, the Exchange believes it's reasonable and important for both Members and the Exchange to rely on the finality of fees and rebates assessed. Moreover, the proposed rule change would apply to all Members equally, in that the Exchange would be precluded from invoicing any Member for the correct amounts that should have been applied to trades that were otherwise billed incorrectly before July 2020. The Exchange also believes the proposal would be consistent with the protection of investors and the public interest because it would allow impacted market participants to benefit from the same rule recently adopted by the Exchange. Additionally, there are a number of members that would receive a greater benefit from the application of the current billing errors policy as compared to the Exchange with respect to these particular billing errors. Furthermore, the Exchange believes the proposal to limit the time period it must correct billing errors does not raise any new or novel issues that have not been already been considered by the Commission. Particularly, the proposal to limit how far back an exchange must go to correct billing errors is comparable to other policies and practices that have long been established at other exchanges.<sup>14</sup>

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

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes

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<sup>13</sup> Since the errors were discovered in October 2020, the three preceding months that would be corrected are July, August, and September 2020.

<sup>14</sup> See supra note 7.

of the Act. First, the Exchange notes the proposal is not intended to address any competitive issue, but rather provide finality to Members with respect to billing errors that were just recently discovered and extend to them the applicability of a recently adopted billing practice that considers all fees final after three months. Further, the Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes apply equally to all Members. The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed change only affects transactions that occurred on the Exchange. Additionally, other exchanges have long established policies in which fees shall be considered final after a specified period of time.

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

No comments were solicited or received 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:

- 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<sup>15</sup> and Rule 19b-4(f)(6)<sup>16</sup> thereunder. At any time within

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

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](mailto:rule-comments@sec.gov). Please include File Number SR-CboeEDGA-2021-006 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-2021-006. 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-2021-006 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.<sup>17</sup>

Secretary

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