

proposed Credit Facility would enable NSCC, which has been designated a systemically important financial market utility,<sup>52</sup> to continue to maintain an additional liquidity resource that NSCC may access to help manage a member default. In addition, because the proposed Evergreen Provisions would ensure that any annual renewals entered into without filing an advance notice would be on substantially similar terms to the currently proposed Credit Facility, such future renewals also would enable NSCC to maintain an additional liquidity resource that NSCC may access to help manage a member default. Moreover, allowing the annual renewal of the Credit Facility under the proposed Evergreen Provisions without filing an additional advance notice would reduce the risk of disruption in availability of this liquidity resource. Further, allowing renewal without an advance notice in these specific circumstances would also provide heightened certainty and stability for NSCC and market participants regarding the availability of this liquidity resource on an ongoing basis. Accordingly, the Commission believes that the proposal would help reduce the systemic risk of NSCC, which in turn would help support the stability of the broader financial system, consistent with Section 805(b) of the Act.<sup>53</sup>

#### *B. Consistency With Rule 17Ad-22(e)(7)(i) and (ii)*

The Commission believes the changes proposed in the Advance Notice are consistent with Rules 17Ad-22(e)(7)(i) and (ii), each promulgated under the Exchange Act,<sup>54</sup> for the reasons described below.

Rule 17Ad-22(e)(7)(i) under the Exchange Act requires that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain sufficient liquid resources at the minimum in all relevant currencies to effect same-day and, where appropriate, intraday and multiday settlement of payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios that includes, but is not limited to, the default of the participant family that would generate the largest aggregate payment obligation for the covered clearing agency in extreme but plausible market conditions.<sup>55</sup> Rule 17Ad-22(e)(7)(ii) under the Act requires that a cover clearing agency establish,

implement, maintain and enforce written policies and procedures reasonably designed to hold qualifying liquid resources sufficient to meet the minimum liquidity resource requirement under Rule 17Ad-22(e)(7)(i) in each relevant currency for which the covered clearing agency has payment obligations owed to its clearing members.<sup>56</sup>

As described above, the currently proposed Credit Facility renewal would provide NSCC with a readily available liquidity resource that would enable NSCC to continue to meet its obligations in a timely fashion in the event of a member default, thereby helping to contain losses and liquidity pressures from that default. Additionally, because the proposed Evergreen Provisions would ensure that any annual renewals would be substantially similar to the currently proposed Credit Facility, such future renewals would also continue to provide NSCC with a readily available liquidity resource that would enable it to continue to meet its respective obligations in a timely fashion in the event of a member default, thereby helping to contain losses and liquidity pressures from that default. Moreover, allowing NSCC annually to renew the Credit Facility pursuant to the proposed Evergreen Provisions without filing an additional advance notice would reduce the risk of gaps in liquidity coverage and better allow NSCC to continually maintain sufficient liquidity resources.

In addition, the currently proposed renewal of the Credit Facility would permit NSCC to maintain a single Credit Facility designed to help ensure that NSCC has sufficient, readily-available qualifying liquid resources to meet the cash settlement obligations of its largest family of affiliated members. Similarly, because the proposed Evergreen Provisions would ensure that any annual renewals would be substantially similar to the currently proposed renewal of the Credit Facility, such renewals also would permit NSCC to maintain a single Credit Facility designed to help ensure that NSCC has sufficient, readily-available qualifying liquid resources to meet the cash settlement obligations of their largest family of affiliated members. Therefore, the Commission believes that NSCC's proposal would support its ability to hold qualifying liquid resources sufficient to meet the minimum liquidity resource requirement under

Rule 17Ad-22(e)(7)(i),<sup>57</sup> as required by Rule 17Ad-22(e)(7)(ii).<sup>58</sup>

Accordingly, the Commission believes that the current renewal would be consistent with Rule 17Ad-22(e)(7)(i) and (ii) under the Exchange Act.<sup>59</sup>

## VI. Conclusion

*It is therefore noticed*, pursuant to Section 806(e)(1)(I) of the Clearing Supervision Act,<sup>60</sup> that the Commission *does not object* to Advance Notice SR-NSCC-2021-802 and that NSCC be and hereby is *authorized* to implement the change as of the date of this notice.

By the Commission.

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021-09428 Filed 5-4-21; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91702; File No. SR-EMERALD-2021-15]

### **Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Interpretation and Policy .13 (Temporary Extension of the Limited Period for Registered Persons To Function as Principals) to Exchange Rule 1900, Registration Requirements, To Extend the Expiration Date of the Temporary Amendment Set Forth in SR-EMERALD-2020-21 From April 30, 2021 to June 30, 2021**

April 29, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”) <sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 21, 2021, MIAX Emerald, LLC (“MIAX Emerald” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>57</sup> 17 CFR 240.17Ad-22(e)(7)(i).

<sup>58</sup> 17 CFR 240.17Ad-22(e)(7)(ii).

<sup>59</sup> 17 CFR 240.17Ad-22(e)(7).

<sup>60</sup> 12 U.S.C. 5465(e)(1)(I).

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

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

<sup>56</sup> 17 CFR 240.17Ad-22(e)(7)(ii). For purposes of Rule 17Ad-22(e)(7)(ii), “qualifying liquid resources” are defined in Rule 17Ad-22(a)(14) as including, in part, cash held either at the central bank of issue or at creditworthy commercial banks. 17 CFR 240.17Ad-22(a)(14).

<sup>52</sup> See *supra* note 28.

<sup>53</sup> 12 U.S.C. 5464(b).

<sup>54</sup> 17 CFR 240.17Ad-22(e)(7)(i) and (ii).

<sup>55</sup> 17 CFR 240.17Ad-22(e)(7)(i).

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Interpretation and Policy .13 (Temporary Extension of the Limited Period for Registered Persons to Function as Principals) to Exchange Rule 1900, Registration Requirements, to extend the expiration date of the temporary amendment set forth in SR-EMERALD-2020-21 from April 30, 2021 to June 30, 2021. The Exchange does not anticipate providing any further extensions to the temporary amendment identified in this proposed rule change beyond June 30, 2021.

The text of the proposed rule change is available on the Exchange's website at <http://www.miaxoptions.com/rule-filings/emerald>, at MIAX Emerald's principal office, 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 proposes to amend Interpretation and Policy .13 (Temporary Extension of the Limited Period for Registered Persons to Function as Principals) to Exchange Rule 1900, Registration Requirements, to extend the expiration date of the temporary amendment set forth in SR-EMERALD-2020-21 from April 30, 2021 to June 30, 2021. The proposed rule change would extend the 120-day period that certain individuals can function as principals without having successfully passed an appropriate qualification examination through June 30, 2021,<sup>3</sup> and would apply only to

<sup>3</sup> See Exchange Act Release No. 91506 (April 8, 2021) 86 FR 19671 (April 14, 2021) (SR-FINRA-2021-005) (the "FINRA Filing"). The Exchange notes that the FINRA Filing also provides temporarily relief to individuals registered with FINRA as Operations Professionals under FINRA

those individuals who were designated to function as principals prior to March 3, 2021. This proposed rule change is based on a filing recently submitted by the Financial Industry Regulatory Authority, Inc. ("FINRA")<sup>4</sup> and is intended to harmonize the Exchange's registration rules with those of FINRA so as to promote uniform standards across the securities industry.

In response to the COVID-19 global pandemic, last year FINRA began providing temporary relief by way of frequently asked questions ("FAQs")<sup>5</sup> to address disruptions to the administration of FINRA qualification examinations caused by the pandemic that have significantly limited the ability of individuals to sit for examinations due to Prometric test center capacity issues.<sup>6</sup>

FINRA published the first FAQ on March 20, 2020, providing that individuals who were designated to function as principals under FINRA Rule 1210.04<sup>7</sup> prior to February 2, 2020, would be given until May 31, 2020, to pass the appropriate principal qualification examination.<sup>8</sup> On May 19, 2020, FINRA extended the relief to pass the appropriate examination until June 30, 2020. On June 29, 2020, FINRA again extended the temporary relief providing that individuals who were designated to function as principals under FINRA Rule 1210.04 prior to May 4, 2020, would be given until August 31, 2020, to pass the appropriate principal qualification examination. On August

Rule 1220. The Exchange does not have a registration category for Operations Professionals and therefore, the Exchange is not proposing to adopt that aspect of the FINRA Filing. If the Exchange seeks to provide additional temporary relief from the rule requirement identified in this proposal beyond June 30, 2021, it will submit a separate rule filing to further extend the temporary extension of time.

<sup>4</sup> See *id.*

<sup>5</sup> See <https://www.finra.org/rules-guidance/key-topics/covid-19/faq#qe>.

<sup>6</sup> At the outset of the COVID-19 pandemic, all FINRA qualification examinations were administered at test centers operated by Prometric. Based on the health and welfare concerns resulting from COVID-19, in March 2020 Prometric closed all of its test centers in the United States and Canada and began to slowly reopen some of them at limited capacity in May. Currently, Prometric has resumed testing in many of its United States and Canada test centers, at either full or limited occupancy, based on local and government mandates.

<sup>7</sup> Exchange Rule 1900, Interpretation and Policy .04, is the corresponding rule to FINRA Rule 1210.04.

<sup>8</sup> FINRA Rule 1210.04 (Requirements for Registered Persons Functioning as Principals for a Limited Period) allows a FINRA-member firm to designate certain individuals to function in a principal capacity for 120 calendar days before having to pass an appropriate principal qualification examination. Exchange Rule 1900, Interpretation and Policy .04, provides the same allowance to Exchange Members.

28, 2020, FINRA filed with the Commission a proposed rule change for immediate effectiveness to extend the temporary relief provided via the two FAQs by adopting: (1) Temporary Supplementary Material .12 (Temporary Extension of the Limited Period for Registered Persons to Function as Principals) under FINRA Rule 1210 (Registration Requirements), and (2) temporary Supplementary Material .07 (Temporary Extension of the Limited Period for Persons to Function as Operations Professionals) under FINRA Rule 1220 (Registration Categories).<sup>9</sup> Pursuant to this rule filing, individuals who were designated prior to September 3, 2020, to function as a principal under FINRA Rule 1210.04 would have until December 31, 2020, to pass the appropriate qualification examination.

Thereafter, on December 9, 2020, FINRA filed with the Commission a proposed rule change for immediate effectiveness to extend the limited period for registered persons to function as a principal through April 30, 2021.<sup>10</sup> Pursuant to this rule filing, individuals who were designated prior to January 1, 2021 to function as a principal would have until April 30, 2021 to pass the appropriate qualifying examination. On December 28, 2020, the Exchange filed with the Commission a proposed rule change for immediate effectiveness to extend the limited period for registered persons to function as a principal through April 30, 2021.<sup>11</sup>

The Exchange continues to closely monitor the impact of the COVID-19 pandemic on Members,<sup>12</sup> investors, and other stakeholders. The Exchange initially provided temporary relief to address the interruptions in the administration of FINRA qualification examinations at Prometric test centers and the limited ability of individuals to sit for the examinations caused by the COVID-19 pandemic.<sup>13</sup> As mentioned in the FINRA Filing (SR-FINRA-2021-005), FINRA noted that the pandemic could result in firms potentially

<sup>9</sup> See Exchange Act Release No. 89732 (September 1, 2020), 85 FR 55535 (September 8, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2020-026).

<sup>10</sup> See Exchange Act Release No. 90617 (December 9, 2020), 85 FR 81258 (December 15, 2020) (SR-FINRA-2020-043).

<sup>11</sup> See Exchange Act Release No. 90829 (December 28, 2020), 86 FR 636 (December 30, 2020) (SR-EMERALD-2020-21).

<sup>12</sup> The term "Member" means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed "members" under the Exchange Act. See Exchange Rule 100.

<sup>13</sup> Information about the continued impact of COVID-19 on FINRA-administered examinations is available at <https://www.finra.org/rules-guidance/key-topics/covid-19/exams>.

experiencing significant disruptions to their normal business operations that may be exacerbated by being unable to keep principal positions filled. Specifically, FINRA noted that the limitation of in-person activities and staff absenteeism as a result of the health and welfare concerns stemming from COVID-19 could result in firms having difficulty finding other qualified individuals to transition into those roles or requiring them to reallocate employee time and resources away from other critical responsibilities at the firm's organization.

While there are signs of improvement, the COVID-19 conditions necessitating the temporary relief persist and the Exchange has determined that there is a continued need for this temporary relief beyond April 30, 2021. Although Prometric has resumed testing in many of its U.S. test centers, Prometric's safety practices mean that currently not all test centers are open, some of the open test centers are at limited capacity, and some open test centers are delivering only certain examinations that have been deemed essential by the local government.<sup>14</sup> In addition, while certain states have started to ease COVID-19 restrictions on businesses and social activities, public health officials continue to emphasize the importance for individuals to keep taking numerous steps to protect themselves and help slow the spread of the disease.<sup>15</sup>

Although the COVID-19 conditions necessitating the temporary relief persist, the Exchange believes that an extension of the relief is necessary only until June 30, 2021, because FINRA recently expanded the availability of online examinations. Prior to this expansion, the ongoing effects of the pandemic made it impracticable for Members to ensure that the individuals who they had designated to function in a principal capacity, as set forth in Exchange Rule 1900, Interpretation and Policy .04, could successfully sit for and pass an appropriate qualification examination within the 120-calendar day period required under the rules.<sup>16</sup> Specifically, if the individual wanted to take a qualifying examination, they were required to accept the health risks associated with taking an in-person examination because those

examinations were not available online. On February 24, 2021, however, FINRA adopted an interim accommodation request process to allow candidates to take additional FINRA examinations online, including the General Securities Principal ("Series 24") and Operations Professional ("Series 99") examinations.<sup>17</sup> Because the Series 24 qualifying examination has been made available online only recently, the Exchange is concerned that individuals who have been designated to function in a principal capacity may not have sufficient time to schedule, study for, and take the applicable examination before April 30, 2021, the date the temporary amendment is set to expire. Therefore, the Exchange proposes to extend the expiration date of the temporary amendment set forth in Exchange Rule 1900, Interpretation and Policy .13, from April 30, 2021 until June 30, 2021. The proposed rule change would apply only to those individuals who have been designated to function as a principal prior to March 3, 2021. As noted above, the Exchange does not anticipate providing any further extensions to the temporary amendment and any individuals designated to function as a principal on or after March 3, 2021, will need to successfully pass an appropriate qualification examination within 120 days.

The Exchange believes that this proposed continued extension of time is tailored to address the needs and constraints on a Member's operations during the COVID-19 pandemic, without significantly compromising critical investor protection. The proposed extension of time will help to minimize the impact of COVID-19 on Members by providing continued flexibility so that Members can ensure that principal positions remain filled. The potential risks from the proposed extension of the 120-day period are mitigated by a Member's continued requirement to supervise the activities of these designated individuals and ensure compliance with federal securities laws and regulations, as well as Exchange and FINRA rules.

The Exchange has filed the proposed rule change for immediate effectiveness and has requested that the Commission waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so the Exchange can implement the proposed rule change immediately.

## 2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act<sup>18</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>19</sup> in particular, in that it is 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 facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The proposed rule change is intended to minimize the impact of COVID-19 on Member operations by further extending the 120-day period certain individuals may function as a principal without having successfully passed an appropriate qualification examination under Exchange Rule 1900, Interpretation and Policy .04, until June 30, 2021. The proposed rule change does not relieve Members from maintaining, under the circumstances, a reasonably designed system to supervise the activities of their associated persons to achieve compliance with applicable securities laws and regulations, and with applicable Exchange and FINRA rules that directly serve investor protection. In a time when faced with unique challenges resulting from the COVID-19 pandemic, the Exchange believes that the proposed rule change is a sensible accommodation that will continue to afford Members the ability to ensure that critical positions are filled and client services maintained, while continuing to serve and promote the protection of investors and the public interest in this unique environment.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is intended to provide temporary relief given the impacts of the COVID-19 pandemic crisis and to also maintain consistency with the rules of other self-regulatory organizations ("SROs") with respect to the registration requirements applicable to Members and their registered personnel. In that regard, the Exchange believes that any burden on competition would be clearly outweighed by providing Members with temporary

<sup>14</sup> Information from Prometric about its safety practices and the impact of COVID-19 on its operations is available at <https://www.prometric.com/corona-virusupdate>. See also *supra* note 13.

<sup>15</sup> See, e.g., Centers for Disease Control and Prevention, How to Protect Yourself & Others, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-gettingsick/prevention.html>.

<sup>16</sup> See *supra* note 13.

<sup>17</sup> *Id.*

<sup>18</sup> 15 U.S.C. 78f(b).

<sup>19</sup> 15 U.S.C. 78f(b)(5).

relief in this unique environment while also ensuring clear and consistent requirements applicable across SROs and mitigating any risk of SROs implementing different standards in these important areas. In its filings, FINRA provides an abbreviated economic impact assessment maintaining that the changes are necessary to temporarily rebalance the attendant benefits and costs of the obligations under FINRA Rule 1210 in response to the impacts of the COVID-19 pandemic that is equally applicable to the changes the Exchange proposes.<sup>20</sup> The Exchange accordingly incorporates FINRA's abbreviated economic impact assessment by reference.

*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: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>21</sup> and Rule 19b-4(f)(6) thereunder.<sup>22</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately upon filing. As noted above, the Exchange stated that the conditions necessitating the temporary relief continue to exist and the proposed extension of time will help minimize the impact of the COVID-19

outbreak on Members' operations by allowing them to keep principal positions filled and minimizing disruptions to client services and other critical responsibilities. Despite signs of improvement, the Exchange further stated that the ongoing extenuating circumstances of the COVID-19 pandemic make it impractical to ensure that individuals designated to act in a principal capacity are able to take and pass the appropriate qualification examination during the 120-calendar day period required under the rules.

The Exchange observed that, following a nationwide closure of all test centers earlier in the year, some test centers have re-opened, but are operating at limited capacity or are only delivering certain examinations that have been deemed essential by the local government.<sup>23</sup> However, on February 24, 2021, FINRA began providing the General Securities Principal (Series 24) Examination online through an interim accommodation request process.<sup>24</sup> Prior to this change, if individuals wanted to take these qualifying examinations, they were required to accept the health risks associated with taking an in-person examination. Even with the expansion of online qualifications examinations, the Exchange stated that extending the expiration date of the relief set forth in SR-EMERALD-2020-21 until June 30, 2021 is still needed. The Exchange stated that this temporary relief will provide flexibility to allow individuals who have been designated to function as a principal sufficient time to schedule, study for and take the applicable examination before the temporary relief expires. Notably, the Exchange stated that it does not anticipate providing any further extensions to the temporary amendment and that any individuals designated to function as a principal on or after March 3, 2021 will need to successfully pass an appropriate qualification examination within 120 days.

For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest.<sup>25</sup> Accordingly, the Commission

hereby waives the 30-day operative delay and designates the proposal operative upon filing.<sup>26</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is 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 shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

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

*Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-EMERALD-2021-15 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-EMERALD-2021-15. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official

<sup>20</sup> See *supra* notes 3 and 10; see also Exchange Act Release No. 89732 (September 1, 2020), 85 FR 55535 (September 8, 2020) (SR-FINRA-2020-26).

<sup>21</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>22</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>23</sup> See *supra* notes 13 and 14. The Exchange notes that Prometric has also had to close some reopened test centers due to incidents of COVID-19 cases.

<sup>24</sup> See *supra* note 13 (including the February 24, 2021 announcement of the interim accommodation process for candidates to take certain examinations, including the General Securities Principal (Series 24) Examination, online.)

<sup>25</sup> As noted above by the Exchange, this proposal is an extension of temporary relief provided in SR-EMERALD-2020-21 where the Exchange also requested and the Commission granted a waiver of the 30-day operative delay. See SR-EMERALD-2020-21, 86 FR at 639.

<sup>26</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-EMERALD-2021-15 and should be submitted on or before May 26, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>27</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

[FR Doc. 2021-09432 Filed 5-4-21; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91725; File No. SR-CboeEDGA-2021-009]

### Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Amend the Sixth Amended and Restated Bylaws of Cboe EDGA Exchange, Inc.'s Parent Corporation, Cboe Global Markets, Inc. To Implement Proxy Access

April 29, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 16, 2021, Cboe EDGA Exchange, Inc. ("Exchange" or "EDGA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGA Exchange, Inc. (the "Exchange" or "EDGA") is filing with the Securities and Exchange Commission (the "Commission") a proposed rule change with respect to amendments to the Sixth Amended and Restated Bylaws (the "CGM Bylaws") of

its parent corporation, Cboe Global Markets, Inc. ("Cboe" or "Corporation"). 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/](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

Cboe has received a stockholder proposal submitted pursuant to Rule 14a-8 under the Act<sup>3</sup> which requested that the CGM Board take steps to implement a "proxy access" bylaw provision. In general, proxy access bylaws allow a stockholder, or group of stockholders, who comply with certain requirements, to nominate candidates for service on a board and have those candidates included in a company's proxy materials. Such provisions have become common among S&P 500 companies.<sup>4</sup> Cboe has determined to take the stockholder's requested steps to implement proxy access. Accordingly, the Exchange now proposes to make these changes by adopting new Section 2.16 of the CGM Bylaws and making certain conforming changes to current Sections 2.10 and 2.11 of the CGM Bylaws, all of which are described further below.

In developing its proposal, Cboe generally tried to balance the relative weight of arguments for and against proxy access provisions. On the one hand, Cboe recognizes the significance

of this issue to some investors, who see proxy access as an important accountability mechanism that allows them to participate in board elections through the nomination of stockholder candidates that are presented in a company's proxy statement. On the other hand, Cboe's proposed proxy access provision includes certain procedural requirements that are designed to help ensure, among other things, that Cboe and its stockholders will have full and accurate information about nominating stockholders and their nominees and that such stockholders and nominees will comply with applicable laws, regulations and other requirements. Additionally, the Exchange notes the proposed terms are common among companies that have adopted proxy access. The Exchange also notes that the parent companies of other exchanges have adopted substantively similar proxy access provisions and the Exchange does not believe such provisions are materially different than the Exchange's proposal.<sup>5</sup>

The proposed rule change would add new Section 2.16 to the CGM Bylaws. Section 2.16 would permit a stockholder, or group of up to 20 stockholders, to nominate director nominees for the Cboe Board, so long as the stockholder(s) have owned at least three percent of Cboe's outstanding shares of capital stock continuously for at least three years. The director nominees would be included in Cboe's annual meeting proxy materials. The proposed provision would limit the number of proposed director nominees to the greater of (i) two or (ii) 20% of the number of Cboe directors in office (rounded down to the nearest whole number, but no less than two) provided that the stockholder(s) and nominee(s) satisfy the other conditions specified in the CGM Bylaws as described further below.

##### Proposed Section 2.16(a)

The Exchange first proposes to amend the CGM Bylaws to, as set forth in the first sentence of proposed Section 2.16(a), require the Corporation to include in its proxy statement, its form proxy and any ballot distributed at the stockholder meeting, the name of, and

<sup>5</sup> See Securities Exchange Release No. 79357 (November 18, 2016) 81 FR 85283 (November 25, 2016) (SR-NASDAQ-2016-127; SR-BX-2016-051; SR-ISE-2016-22; SR-ISEGemini-2016-10; SR-ISEMercury-2016-16; SR-PHLX-2016-93; SR-BSECC-2016-001; SR-SCCP-2016-01). See also Securities Exchange Release No. 77782 (May 6, 2016) 81 FR 29600 (May 12, 2016) (SR-NYSE-2016-14; SR-NYSEArca-2016-25; SR-NYSEMKT-2016-20).

<sup>27</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See 17 CFR 240.14a-8, which requires companies that are subject to the federal proxy rules to include shareholder proposals in companies' proxy statements to shareholders, subject to certain procedural and substantive requirements.

<sup>4</sup> More than 75% of S&P 500 companies have adopted proxy access bylaw provisions.