MEMO# 32237

February 25, 2020

SEC Disapproves Cboe EDGA Exchange Proposed Liquidity Provider Protection Delay Mechanism

[32237]

February 25, 2020 TO: ICI Members SUBJECTS: Trading and Markets RE: SEC Disapproves Cboe EDGA Exchange Proposed Liquidity Provider Protection Delay Mechanism

Cboe EDGA Exchange filed a proposed rule with the SEC in June 2019 to establish the Liquidity Provider Protection delay mechanism. The proposed rule would have intentionally delayed certain liquidity-taking equity orders and related messages for up to four milliseconds.[1] As we previously informed you, ICI submitted a comment letter last October opposing the delay mechanism and urging the SEC to disapprove the rule.[2] After extending its review several times, the SEC issued an order on Friday disapproving the rule.[3]

ICI's comment letter expressed opposition on the basis that the delay mechanism would create unfair discrimination against liquidity takers and slower liquidity providers.[4] The SEC cited this argument in concluding that the Exchange did not meet its burden under Section 6(b)(5) of the Exchange Act of showing that the rule, among other things, would "not [] permit unfair discrimination." Specifically, the Commission determined that the Exchange did not provide "sufficiently detailed and specific analysis" to demonstrate that the benefits to liquidity providers would make the discriminatory impact upon liquidity takers not unfair.

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endnotes

[1] Securities Exchange Act Release No. 86168 (June 20, 2019), *available at* https://www.sec.gov/rules/sro/cboeedga/2019/34-86168.pdf.

[2] ICI Memorandum No. 32018 (Oct. 21, 2019), *available at*

https://www.ici.org/my_ici/memorandum/memo32018.

[3] Securities Exchange Act Release No. 88621, Order Disapproving Proposed Rule Change to Introduce a Liquidity Provider Protection Delay Mechanism on EDGA (February 21, 2020), *available at* https://www.sec.gov/rules/sro/cboeedga/2020/34-88261.pdf.

[4] ICI also argued that the proposed rule (i) would introduce intractable complexity to the duty of best execution and market structure; and (ii) is inconsistent with a fair and effective national market system under Section 11A of the Exchange Act. The Commission noted ICI's comments on best execution, as well as impact on competition, but ultimately based its disapproval on the Exchange's failure to adequately show that the delay would not permit unfair competition.

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