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May 8, 2019

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission 100 F. Street N.E.
Washington, D.C. 20549-1090

RE: Release No. 34-85482; File No. SR-Cboe EDGX-2019-012- EDGX Retail Priority Proposal

Dear Ms. Countryman:

Themis Trading appreciates the opportunity to comment on the above referenced proposed rule change in which the Cboe EDGX Exchange proposes to introduce order book priority for equity orders submitted on behalf of retail investors. We believe that the SEC should reject this proposal for these reasons:

1) Identification of retail orders in the exchange proprietary data feed will **result in information leakage**. In their proposal, Cboe EDGX states:

"A Retail Member Organization on EDGX has the option of designating Retail Orders to be identified as such on the EDGX Book Feed, which may increase potential execution opportunities for that order."

In a follow up note, Cboe EDGX further clarified that **retail orders will be identified** in their data feed:

"On the Equities PITCH feeds, the *Customer Indicator* field in the Add Order message will be populated with a value of 'R' to indicate a Retail Order. The *CustomerIndicator* field is new for the Equities TCP PITCH feed. For Retail Orders that are not attributed to the order's MPID, EDGX will populate the *ParticipantID* field with 'RTAL'."

While EDGX is offering order book priority for retail orders, the catch is that they are wiling to sacrifice the identity of an order as "retail". It's important to note that only clients who purchase EDGX proprietary data feeds will have access to this information. These clients will be

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able to identify the order as a retail order since they will have access to the FIX tag which identifies the order with a value of 'R' on the data feed.

2) Retail investors will not know that their order is being identified as "retail" on the EDGX data feed and **will not have a choice to opt out** of the order book priority option. While the EDGX proposal is designed to give retail orders priority on their exchange, it will not be the retail investor who decides to identify the order as "retail". The decision to mark the order as retail rests with Retail Member Organization (RMO). If an RMO wants to participate in the retail priority program, they must agree to mark ALL of their orders as "retail". We suspect that EDGX will be offering these RMOs an enhanced liquidity rebate to entice them to sacrifice the anonymity of their clients.

3) Most limit orders that an exchange receives are generated by automated systems and expire in less than a second. These orders "flicker" in and out throughout the day. However, orders from institutional and retail investors tend to last longer and therefore do not "flicker" as much. Retail and institutional orders tend to stand out on exchange data feeds since they are "static" and can easily be spotted by those who purchase the proprietary exchange data feeds. However, some high-speed traders have trouble distinguishing whether a static order is retail or institutional. Marking an order as "retail"(as EDGX is proposing) on these feeds essentially has the result of also identifying institutional orders. If the order is not "flickering" and doesn't have a retail indicator attached, then most likely the order originated from an institutional investor. This type of order information leakage will result in **increased adverse selection for institutional investors** since there is a greater likelihood that their orders will now be identified in the limit order book.

Sadly, identification of retail orders by exchanges is not new. Retail Attribution programs have existed for some time now and exchanges have incented brokers to mark their client orders this way by offering them increased rebates. We believe exchanges began this practice as a way of winning back some retail order flow that they were losing to market makers. While paying higher rebates could accomplish this task, why then would an exchange also require that the retail order flow also be marked with a "retail" FIX tag? The reason is because unique data that reveals information about order flow makes their exchange data feed more valuable and likely encourages consumers of those data feeds to continue purchasing these data feeds.

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We don't think that gaining retail order priority offsets the cost of identifying retail order flow. When they announced the retail order proposal, the Cboe said that they wanted to "bring forth new ideas that add value to this ever-evolving market". The value added in this proposal is for the high speed traders that consume the EDGX direct feed and now get to identify all the retail orders on the EDGX book. Another value added is for the Cboe themselves since they are protecting the value of their data feed and can continue to charge exorbitant fees for access to their data.

We strongly object to this proposal and encourage the SEC to reject it. The Cboe listed a number of other order types that the SEC has approved as precedent for approval of this proposal. Rather than approving this order type, we think the SEC should take this opportunity to review all prior approval of order types that might be leaking information about retail orders.

Sincerely,

Joseph Saluzzi and Sal Arnuk

Partners, Themis Trading LLC