



August 19, 2019

Via Electronic Submission

Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Re: Release No. 34-85482; File No. SR-CboeEDGX-2019-012

Dear Ms. Countryman:

Cboe EDGX Exchange, Inc. (“EDGX” or “Exchange”) appreciates the opportunity to respond to comments submitted to the Securities and Exchange Commission (“Commission”) on the above-referenced proposal (the “Proposal”). The Proposal was initially filed on March 18, 2019 to provide priority benefits to Retail Orders entered on the EDGX Book.¹ On May 16, 2019, the Exchange filed an amendment to the Proposal (“Amendment”) in response to comments indicating concerns with the Exchange offering priority benefits broadly to all Retail Orders, including those entered by more active retail traders.² Thus, as currently proposed, the Exchange would offer priority benefits exclusively to Retail Orders that are entered on behalf of retail investors that enter a limited number of equity orders each trading day (“Retail Priority Orders”).

¹ See Securities Exchange Act Release No. 85482 (April 2, 2019), 84 FR 13729 (April 5, 2019) (SR-CboeEDGX-2019-012).

² See Securities Exchange Act Release No. 86280 (July 2, 2019), 84 FR 32808 (July 9, 2019) (SR-CboeEDGX-2019-012).

The Exchange is submitting this letter to respond to two additional topics raised by commenters in response to the original Proposal. No comments were received on the amended filing.

First, two commenters questioned the initial proposal to attribute all Retail Orders, which they argued was designed to leak information about retail and, consequently, institutional investor orders. Specifically, these commenters argued that since every Retail Order would be identified on the Exchange's market data feeds, market participants could infer that any order not attributed was submitted on behalf of an institutional investor. Nasdaq, Inc. ("Nasdaq") also echoed these arguments, explaining that it would have provided members the choice of entering a Retail Order with or without an extended life order attribute under its proposal to introduce priority for Retail Orders that are willing to rest on the order book for at least one second ("Retail ELO"). The Exchange disagrees with the commenters. As explained in detail in the Amendment, the purpose of requiring attribution of priority eligible orders is, first and foremost, to ensure that market participants can continue to ascertain their own priority on the order book. As a result, with the changes to limit priority to a subset of Retail Orders, *i.e.*, Retail Priority Orders, the Exchange would only require attribution of orders entered with the priority attribute.³ This renders the information leakage question moot, since similar to Nasdaq's suggestion referencing the approved Retail ELO proposal, a Retail Member Organization ("RMO") would ultimately retain the choice of whether or not to attribute the order by entering it as a Retail Priority Order. Further, since only a subset of Retail Orders would be required to be attributed, market participants would not be able to infer that any non-attributed order is an institutional order. In fact, such orders could be Retail

³ Retail Orders not entered with the Retail Priority Order designation would retain all other benefits associated with Retail Orders today, including the materially enhanced rebates that are made available to such orders. See Amendment, *supra* note 2, 84 FR at 32812.

Orders entered without a priority attribute, or indeed could have been entered on behalf of one of a myriad of investors that together comprise the U.S. equities ecosystem.⁴

Second, Nasdaq questioned the steps that the Exchange would take to deter abuse of retail priority, explaining that under its approved Retail ELO proposal it would have imposed restrictions related to non-cancellation or alteration of orders, and would have enforced member compliance with these restrictions. The Amendment addresses issues with potential misuse by more active traders by limiting retail priority to orders entered on behalf of retail investors that enter a limited number of equity orders each trading day. The Exchange also believes that it has an effective regulatory program to address member compliance. Members entering Retail Priority Orders would be subject to regulatory review and inspection, including a review of their procedures and processes for compliance with the eligibility requirements for submitting priority eligible orders, and may be subject to disciplinary action for misuse of the priority attribute. The Exchange currently has in place a robust regulatory program for overseeing RMOs' compliance with the rules for designating Retail Orders entered on the EDGX Book. This regulatory program includes an established process for approving the RMOs that are permitted to enter Retail Orders; an attestation that such RMOs must provide about the retail quality of their order flow; a requirement for RMO policies and procedures to ensure the effectiveness of that attestation; surveillance conducted by Exchange staff; and an examination process currently conducted on behalf of the Exchange's Regulatory Division by Financial Industry Regulatory Authority, Inc. ("FINRA") pursuant to a regulatory services agreement. The Exchange believes that these longstanding

⁴ For example, such orders could also be institutional investor orders entered on behalf of hedge funds, pension funds, or other buy-side investors; quotes entered by registered market makers or other automated liquidity providers; orders generated by algorithmic trading strategies; or orders of other professional investors or traders.

regulatory program features, which have been in place for almost seven years, would continue to be effective in protecting against attempted misuse of the retail priority attribute. Further, with the introduction of Retail Priority Orders, the Exchange's Regulatory Division intends to implement enhancements to the current regulatory program designed to oversee RMO compliance with the proposed rules and ensure that orders entered with a priority attribute are appropriately marked. These enhancements would be similar to the regulatory program currently used to monitor compliance with the similar Priority Customer and Professional Customer designations for the Exchange's options trading platform and those of its affiliated options exchanges.⁵

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We appreciate the opportunity to respond to comments received on the Proposal. The Proposal would provide important market structure benefits to retail investors that would allow them to obtain better execution quality, and compete more effectively in the public markets. Ensuring that our evolving market structure continues to serve the needs of ordinary investors is an important and fundamental goal for our markets. The Exchange therefore urges the Commission to approve the Proposal so that millions of ordinary investors can reap the benefits of retail priority.

Sincerely,



Adrian Griffiths
Assistant General Counsel

⁵ For example, examinations of RMOs' policies and procedures for designating Retail Priority Orders would be conducted.