

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-84697; File No. SR-CboeEDGX-2018-057)

November 30, 2018

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Directed Market Makers and Primary Market Makers

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 27, 2018, Cboe EDGX Exchange, Inc. (“Exchange” or “EDGX”) filed with the Securities and Exchange Commission (“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

The Exchange proposes to amend its rules relating to Directed Market Makers and Primary Market Makers.

The text of the proposed rule change is also available on the Exchange’s website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 its rules related to Directed Market Makers and Primary Market Makers. Particularly, the Exchange proposes to (1) rename “Directed Market Makers” and “Primary Market Makers”, (2) clarify the applicable participation entitlements when a market participation is both a Directed Market Maker and Primary Market Maker, and (3) amend the definition of small size orders.

The Exchange first proposes to update the names of “Directed Market Makers” and “Primary Market Makers”. Specifically, the Exchange proposes to replace all references to “Directed Market Makers” to “Preferred Market Makers” (or “PMMs”) and make a corresponding change to replace references to “Directed Orders” to “Preferred Orders.” The Exchange also proposes to replace all references to “Primary Market Makers” to “Designated Primary Market Makers” (or “DPMs”). The Exchange notes the proposed name changes conforms its terminology with respect to these types of Market Makers to the terminology used by its affiliated exchange, Cboe Options, for similar market participants.³ The Exchange notes that Directed Market Makers and Primary Market Makers will be referred to herein as “PMMs” and “DPMs”, respectively.

Next, the Exchange proposes to provide in the rules which participation entitlement applies in the event an order is preferred to a DPM (i.e., the DPM is also the PMM) and both PMM and DPM participation entitlements are in effect. Although not explicitly specified in the

³ See e.g., Cboe Exchange, Inc.’s (“Cboe Options”) Rules 8.13 and 8.80.

rules, currently, if a DPM is also the PMM, the PMM entitlements apply. The Exchange proposes to expressly provide under Rule 21.18(h)(1) that, going forward, if the DPM is also a PMM with respect to an incoming order, that PMM/DPM will be treated as a DPM and the DPM participation entitlements under paragraph (g) of Rule 21.8 will apply to that order. The Exchange believes that the proposed rule change is appropriate given a DPM's heightened quoting obligations.⁴ Put another way, the Exchange believes that a DPM that is preferred on an order should not be subject to a potentially lesser entitlement just because that DPM happened to also be preferred.⁵ Moreover, the Exchange believes that it is appropriate to provide the DPM entitlements when the DPM is also designated as a PMM as the obligations that the DPM has to the market are not diminished when it receives a Preferred Order.

The Exchange lastly proposes to amend the definition of a small size order. More specifically, Rule 21.8(g)(2) provides that small size orders are allocated in full to the DPM if the DPM has a priority quote at the NBBO. The rule also provides that small size orders are defined as five (5) or fewer contracts. The Exchange proposes to provide that in order to qualify as a small size order, the incoming order must be a size of five or fewer contracts (i.e., the size of the original order determines whether the definition is met, not the number of contracts remaining after customer orders have been satisfied). The Exchange notes that a similar preference is given

⁴ See EDGX Options Rule 22.2.

⁵ For example, if a DPM is preferred on a small size order (i.e., 5 or less contracts), that DPM should receive the small size order entitlement, which is a 100% allocation, notwithstanding the fact that DPM was also preferred on that order (i.e., it would otherwise receive 60% or 40% allocation under Rule 21.8(f)(1)). The Exchange notes that its affiliate exchange, Cboe Options, as well as other exchanges similarly apply the small order preference allocation where a DPM is also preferred on an order. See Cboe Options Regulatory Circular RG15-011. See also, Nasdaq ISE Rule 713, Supplementary Material to Rule 713 .03(c)(iii).

for small orders on Cboe Options as well as other exchanges and that such preference is based on the original size of the order.⁶

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.⁷ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁸ 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)⁹ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

First, the Exchange believes its proposal to rename Directed Market Makers and Primary Market Makers standardizes the naming conventions used for similar market participants (i.e., Market Makers) across affiliated exchanges (i.e., Cboe Options and EDGX), thereby making the rules easier to read and reducing potential confusion. Similarly, the Exchange believes explicitly stating in the rules which participation entitlements a Market Maker will receive when it’s both a

⁶ See Cboe Options Rule 6.45(a)(ii)(C). See also, NYSE Arca Rule 6.76A-O(a)(B).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ Id.

DPM and PMM with respect to a particular order alleviates confusion and provides clarity in the rules. Providing clarity and reducing confusion in the rules removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest.

The Exchange also believes the proposal to apply the DPM participation entitlements to an order that is preferred to a DPM is appropriate given DPMs' heightened quoting obligations.¹⁰ The regular allocation entitlements for DPMs, including the small size order entitlement, are designed to balance the obligations that the DPM has to the market with corresponding benefits. The Exchange believes that it is appropriate to provide DPM entitlements when the DPM is also a PMM as the obligations that the DPM has to the market are not diminished when it receives a Preferred Order. The proposed rule change also applies equally to similarly situated market participants. Moreover, the proposed change is consistent with other Exchanges' rules, including the Exchange's affiliate, Cboe Options.¹¹

The Exchange lastly believes the proposal to use the size of the original order to determine whether an order meets the small size order definition for purposes of the small size order entitlement is reasonable as it better achieves the purpose of the participation entitlement, which is to provide a benefit to DPMs when an order involves a small number of contracts in exchange for their heightened quoting obligations. The Exchange does not believe the DPM should receive that same benefit where the order involves a small number of contracts only as a result of prior executions. For example, without the proposed rule change, a DPM may receive full allocation on an order that was originally 1,000 contracts because 995 contracts were first

¹⁰ See EDGX Options Rule 22.2.

¹¹ See Cboe Options Regulatory Circular RG15-011. See also, Nasdaq ISE Rule 713, Supplementary Material to Rule 713 .03(c)(iii).

executed by Customers. The Exchange no longer wishes to allow such orders to qualify for the small size order entitlement. The Exchange notes the proposed rule change applies to all DPMs uniformly. As noted above, the proposed change also conforms to how small orders are determined on its affiliated exchange, Cboe Options and other Exchanges (i.e., determined by the size of the original order).¹²

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. Particularly, the Exchange notes that the proposed changes apply equally to similarly situated market participants. Moreover, the proposed changes provide greater clarity in the rules and greater harmonization between the Exchange and its affiliated exchange, Cboe Options. Moreover, the proposed changes only apply to EDGX. To the extent that the proposed changes may make the Exchange a more attractive trading venue for market participants on other exchanges, such market participants may elect to become Exchange market participants.

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

The Exchange neither solicited nor received comments 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: (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

¹² See Cboe Options Rule 6.45(a)(ii)(C). See also, NYSE Arca Rule 6.76A-O(a)(B).

as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹³ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁴

A proposed rule change filed under Rule 19b-4(f)(6)¹⁵ normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b-4(f)(6)(iii)¹⁶ permits the Commission to 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 proposal may become operative immediately upon filing. The Exchange notes that the proposed changes relating to (i) which participation entitlement applies when a DPM is also a PMM and (ii) determining whether an order qualifies for a small order size entitlement based on original order size will be available for implementation starting November 29, 2018. The Exchange states that the waiver of the operative delay would allow the proposed changes to be implemented as soon as it's available. The Exchange further states that the implementation of conforming and clarifying changes would also immediately reduce confusion and provide further harmonization across affiliated exchanges. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the

¹³ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁴ 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 the 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.

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ 17 CFR 240.19b-4(f)(6)(iii).

proposed rule change as operative upon filing.¹⁷

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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 e-mail to rule-comments@sec.gov. Please include File Number SR-CboeEDGX-2018-057 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-CboeEDGX-2018-057. This file number should be included on the subject line if e-mail is used. To help the Commission process and review

¹⁷ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 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. 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-CboeEDGX-2018-057 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.¹⁸

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Assistant Secretary

¹⁸ 17 CFR 200.30-3(a)(12).