

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-85414; File No. SR-CboeEDGX-2019-011)

March 26, 2019

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Rules Related to the Designated Primary Market-Maker (“DPM”) Participation Entitlements

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 March 15, 2019, 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 the Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the “Exchange” or “EDGX”) proposes to amend the Rules related to the Designated Primary Market-Maker (“DPM”) participation entitlements. The text of the proposed rule change is provided below and in Exhibit 1.

(additions are italicized; deletions are [bracketed])

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Rules of Cboe EDGX Exchange, Inc.

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Rule 21.8. Order Display and Book Processing

(a) – (c) No change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

(d) Additional Priority Overlays Applicable to the Pro-Rata Allocation Method. In connection with the allocation methodology set forth in paragraph (c) above, the Exchange may apply, on a class-by-class basis, one or more of the following designated market participant overlay priorities in a sequence determined by the Exchange. The Exchange will issue a notice to Options Members which will specify which classes of options are initially subject to these additional priority overlays and will provide such Options Members with reasonable advance notice of any changes to the application of such overlays.

(1) – (2) No change.

(3) Designated Primary Market Maker. The Exchange may determine to grant Designated Primary Market Makers (“DPMs”) the DPM participation entitlement[s] and/or the DPM small order entitlement pursuant to the provisions of paragraph (g) below. As indicated in such paragraph, neither the DPM participation entitlement nor the DPM small order entitlement may [only] be in effect [when] in a class unless the Customer Overlay is also in effect.

(e) – (f) No change.

(g) Designated Primary Market Maker [Participation] Entitlements. A DPM may be appointed by the Exchange in option classes in accordance with Rule 22.2. [The] Neither the DPM participation entitlement[s] nor DPM small order entitlement may [shall not] be in effect in a class unless the Customer Overlay is also in effect, [and] When in effect, the DPM participation entitlement[s] and/or DPM small order entitlement shall only apply to any remaining balance after Priority Customer Orders have been satisfied. The DPM [participation] entitlements are as follows:

(1) DPM Participation Entitlement. For each incoming order, if the DPM has a priority quote at the NBBO, its participation entitlement is equal to the greater of (i) the proportion of the total size at the best price represented by the size of its quote, or (ii) sixty percent (60%) of the contracts to be allocated if there is only one (1) other Market Maker quotation or non-Customer order at the NBBO and forty percent (40%) if there are two (2) or more other Market Maker quotes and/or non-Customer orders at the NBBO.

(2) DPM Small Order Entitlement. Small size orders will be allocated in full to the DPM if the DPM has a priority quote at the NBBO. The Exchange will review this provision quarterly and will maintain the small order size at a level that will not allow small size orders executed by DPMs to account for more than 40% of the volume executed on the Exchange. Small size orders are defined as incoming orders of five (5) or fewer contracts.

(h) Conditions of Participation Entitlements. In allocating the participation entitlements set forth in this Rule 21.8 to the PMM and the DPM, the following shall apply:

(1) In a class of options where [both] the PMM participation entitlement, [and] the DPM participation entitlement[s], and the DPM small order entitlement are in effect and an Options Member has preferred an order to a PMM:

(A) if the PMM's priority quote is at the NBBO, the PMM's participation entitlement will supersede the DPM's participation entitlement[s], and the DPM small order entitlement, for an order preferred to such PMM;

(B) if the PMM's priority quote is not at the NBBO, the DPM's participation entitlement or DPM small order entitlement, as applicable, will apply to that order, provided the DPM's priority quote is at the NBBO;

(C) if an order is preferred to the DPM (i.e., the DPM is also the PMM), the DPM receives the DPM participation entitlement or DPM small order entitlement, as applicable, provided the DPM/PMM's priority quote is at the NBBO; and

(D) if neither the PMM's nor the DPM's priority quote is at the NBBO then executed contracts will be allocated in accordance with the pro-rata allocation methodology as described in paragraphs (c) and (e) above without regard to any participation entitlement.

(2) If an incoming order has not been preferred to a PMM by an Options Member, then the DPM['s] participation entitlement or DPM small order entitlement, as applicable, will apply to that order, provided the DPM's priority quote is at the NBBO.

(3) The participation entitlements shall not be in effect unless the Customer Overlay is also in effect and the participation entitlements shall only apply to any remaining balance after Priority Customer Orders have been satisfied.

(4) Neither the DPM nor the PMM may be allocated a total quantity greater than the quantity they are quoting at the execution price. If the DPM's or the PMM's allocation of an order pursuant to its participation entitlement is greater than its pro-rata share of priority quotes at the best price at the time that the participation entitlement is granted, neither the DPM nor the PMM shall receive any further allocation of that order.

(5) In establishing the counterparties to a particular trade, the participation entitlements must first be counted against the DPM's highest priority bids and offers or the PMM's highest priority bids or offers.

(6) These participation entitlements only apply to the allocation of executions among competing Market Maker priority quotes existing on the EDGX Options Book at the time the order is received by the Exchange. No market participant is allocated any portion of an execution unless it has an existing interest at the execution price. Moreover, no market participant can execute a greater number of contracts than is associated with its interest at a given price. Accordingly, the DPM participation entitlement, the DPM small order entitlement, and the PMM participation entitlement[s] contained in this Rule are not guarantees.

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The text of the proposed rule change is also available on the Exchange's website (http://markets.cboe.com/us/options/regulation/rule_filings/edgx/), 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

The proposed rule change amends the Designated Primary Market-Maker ("DPM") participation entitlements in Rule 21.8(d) and (g). Pursuant to Rule 21.8(d), the Exchange currently may determine to grant DPMs participation entitlements as set forth in Rule 21.8(g). The DPM participation entitlement currently consists of two parts:

- For each incoming order, if the DPM has a priority quote at the national best bid or offer ("NBBO"), its participation entitlement is equal to the greater of (i) the proportion of the total size at the best price represented by the size of its quote or (ii) 60% of the contracts to be allocated if there is only one other Market Maker quotation or non-Customer order at the NBBO and 40% if there are two or more other Market Maker quotes and/or non-Customer orders at the NBBO (the "DPM participation entitlement").

- Small size orders will be allocated in full to the DPM if the DPM has a priority quote at the NBBO (the “DPM small order entitlement”).³

If the Exchange grants DPMs participation entitlements in a class, then both the DPM participation entitlement and the DPM small order entitlement apply. Therefore, if a DPM is to receive a participation entitlement for an incoming order, it will receive the DPM participation entitlement if the order has more than five contracts or the DPM small order entitlement if the order has five or fewer contracts.

The proposed changes to Rule 21.8(d) and (g) provide that the Exchange may grant DPMs either the DPM participation entitlement, the DPM small order entitlement, or both in a class.⁴ This flexibility will permit the Exchange to apply the market model it deems most appropriate to each class. For example, the Exchange may believe a DPM in a class should receive the DPM participation entitlement but not the DPM small order entitlement. For classes in which the Exchange grants both entitlements to a DPM, there will be no change, as the DPM will continue to receive the DPM participation entitlement or the DPM small order entitlement,

³ Small size orders are defined as incoming orders of five or fewer contracts. The Exchange will review this provision quarterly and will maintain the small order size at a level that will not allow small size orders executed by DPMs to account for more than 40% of the volume executed on the Exchange.

⁴ The proposed rule change makes corresponding changes to Rule 21.8(h) to reflect the separation of the two DPM entitlements. The Exchange will announce this determination to Options Members by Exchange Notice or technical specifications on its public website, and will provide Options Members with sufficient advanced notice of any determination it makes.

depending on the size of the order.⁵ For classes in which the Exchange grants the DPM priority entitlement but not the DPM small order entitlement, the DPM would have the opportunity to receive the DPM participation entitlement on small size orders (*i.e.*, 60% or 40%) rather than the entire size of the small size order (after Priority Customer Orders were satisfied).⁶ Additionally, the Exchange may not apply either DPM entitlement to a class unless the Customer Overlay is also in effect (and thus both entitlements will apply to any remaining balance after Priority Customer Orders have been satisfied).⁷ The Exchange will continue to review the DPM small order entitlement quarterly and will maintain the small order size at a level that will not allow small size orders executed by DPMs to account for more than 40% of the volume executed on the Exchange. The proposed rule change is based on the rules of another options exchange.⁸

⁵ The Exchange has no current plans to change the allocation algorithm for any currently listed classes. However, it may determine to apply the DPM participation entitlement but not the DPM small order entitlement to a class it intends to list for trading in the future. The Exchange plans to begin listing XSP options on April 8, 2019, and intends to apply the DPM participation entitlement (and Customer Overlay) but not the DPM small order entitlement to that class. As noted in footnote 2, the Exchange will announce any such determination to Options Members by Exchange Notice or technical specifications on its public website, and will provide Options Members with sufficient advanced notice of any determination it makes.

⁶ Other participants would have an opportunity to trade against the remaining size of these small size orders in those classes.

⁷ See Rule 21.8(g) and (h)(3).

⁸ See Cboe Exchange, Inc. (“Cboe Options”) Rule 6.45(a)(ii)(B) and (a)(ii)(c) (which permits Cboe Options to apply the DPM participation entitlement and/or the small order preference to a class). Cboe Options applies the DPM participation entitlement but not the small order preference to certain classes, while it applies both the DPM participation entitlement and the small order preference to other classes. See Cboe Options Operational Settings (RTH Session), at <https://www.cboe.org/publish/opsettingsrth/operational-settings-for-rth.pdf> (electronic allocation and priority for simple orders and quotes).

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.⁹ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁰ 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)¹¹ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed rule change will benefit investors and promote just and equitable principles of trade, as it provides the Exchange with flexibility to establish a more appropriate market model for a class that may exhibit different trading characteristics than other classes. The proposed rule change does not modify the amount of contracts to which a DPM may be entitled or the criteria that must be met for a DPM to receive an entitlement; it merely provides the Exchange with flexibility regarding which entitlements it may grant to DPMs. For classes in which the Exchange grants both entitlements to a DPM, there will be no change, as the DPM may continue to receive the DPM participation entitlement or the DPM small order

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ Id.

entitlement, depending on the size of the order. If the Exchange determines to not apply the DPM small order entitlement, but does apply the DPM participation entitlement, to a class, DPMs will still be entitled to a significant participation right of 40% or 60%, as applicable, of small orders, which will continue to provide an appropriate balance with their corresponding obligations.

The proposed rule change will continue to protect Priority Customers, because the Exchange may not grant either DPM entitlement unless the Customer Overlay is also in effect, and the entitlements will apply to the contracts remaining after Priority Customer Orders have been satisfied. The proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system, because the rules of another options exchange provide similar flexibility.¹²

As noted above, the Exchange has no current plans to change the allocation algorithm for any currently listed classes. However, the Exchange plans to begin listing XSP options on April 8, 2019, and intends to apply the DPM participation entitlement (and Customer Overlay) but not the DPM small order entitlement to that class. The Exchange will announce any such determination to Options Members by Exchange Notice or technical specifications on its public website, and will provide Options Members with sufficient advanced notice of any determination it makes.

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

¹² See Cboe Exchange, Inc. ("Cboe Options") Rule 6.45(a)(ii)(B) and (a)(ii)(C) (which permits Cboe Options to apply the DPM participation entitlement and/or the small order preference to a class).

proposed rule change will not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because the proposed rule change will apply in the same manner to all DPMs. The proposed rule change does not modify the amount of contracts to which a DPM may be entitled or the criteria that must be met for a DPM to receive an entitlement; it merely provides the Exchange with flexibility regarding which entitlements it may grant to DPMs. For classes in which the Exchange grants both entitlements to a DPM, there will be no change, as the DPM may continue to receive the DPM participation entitlement or the DPM small order entitlement, depending on the size of the order. If the Exchange determines to not apply the DPM small order entitlement, but does apply the DPM participation entitlement, to a class, DPMs will still be entitled to a significant participation right of 40% or 60%, as applicable, of small orders, which will continue to provide an appropriate balance with their corresponding obligations. The proposed rule change will not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because the rules of another options exchange provide similar flexibility.¹³

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

¹³ See Cboe Exchange, Inc. (“Cboe Options”) Rule 6.45(a)(ii)(B) and (C) (which permits Cboe Options to apply the DPM participation entitlement and/or the small order preference to a class).

as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁴ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁵

A proposed rule change filed under Rule 19b-4(f)(6)¹⁶ normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b-4(f)(6)(iii)¹⁷ 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 proposed rule change may become effective and operative immediately upon filing. The Exchange notes that it plans to begin listing XSP options on April 8, 2019, and intends to apply the DPM participation entitlement (and Customer Overlay), but not the DPM small order entitlement to that class. The Exchange states that waiver of the operative delay would permit the Exchange to apply the market model it believes is most appropriate for XSP options on its planned launch date. The Exchange also states that the proposed rule change will benefit investors that are members of both EDGX Options and its affiliated exchange Cboe Options to have corresponding rules regarding participation entitlements, as it may reduce confusion. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the

¹⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁵ 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.

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ 17 CFR 240.19b-4(f)(6)(iii).

30-day operative delay and designates the proposed rule change as operative upon filing.¹⁸

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-2019-011 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-2019-011. This file number should be included on the subject line if e-mail is used. To help the Commission process and review

¹⁸ 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-2019-011 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.¹⁹

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Deputy Secretary

¹⁹ 17 CFR 200.30-3(a)(12).