

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-92914; File No. SR-CboeEDGX-2021-037)

September 9, 2021

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend EDGX Rule 11.1(a)(1) to Begin Accepting Orders at 2:30 a.m. Eastern Time

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 31, 2021, Cboe EDGX Exchange, Inc. (the “Exchange” or “EDGX”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ 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

Cboe EDGX Exchange, Inc. (the “Exchange” or “EDGX”) proposes to amend EDGX Rule 11.1(a)(1) to begin accepting orders at 2:30 a.m. Eastern Time. The text of the proposed rule change is provided in Exhibit 5.

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

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 Exchange proposes to amend EDGX Rule 11.1 (Hours of Trading and Trading Days) to begin accepting orders at 2:30 a.m. Eastern Time rather than 3:30 a.m. Eastern Time. The proposal is substantially similar to NYSE Arca, LLC (“Arca”) Rule 7.34-E(a)(1) that provides Arca may accept orders 90 minutes before its early trading session begins.⁵

Currently EDGX Rule 11.1(a)(1) provides that orders may be entered into the System from 3:30 a.m. until 8:00 p.m. Eastern Time. The rule provides that orders entered between 3:30 a.m. and 4:00 a.m. Eastern Time are not eligible for execution until the start of the Early Trading Session,⁶ Pre-Opening Session⁷ or Regular Trading Hours,⁸ depending on the time in force selected

⁵ The Arca early trading session begins at 4:00 a.m. Eastern Time.

⁶ The term “Early Trading Session” shall mean the time between 4:00 a.m. and 8:00 a.m. Eastern Time. See EDGX Rule 1.5(ii).

⁷ The term “Pre-Opening Session” shall mean the time between 8:00 a.m. and 9:30 a.m. Eastern Time. See EDGX Rule 1.5(s).

⁸ The term “Regular Trading Hours” shall mean the time between 9:30 a.m. and 4:00 p.m. Eastern Time. See EDGX Rule 1.5(y).

by the User.⁹ The rule further provides that at the commencement of the Early Trading Session, orders entered between 3:30 a.m. and 4 a.m. Eastern Time will become eligible for execution (“4:00 a.m. Start”), unless designated as eligible for execution during the Early Trading Session beginning at 7:00 a.m. Eastern Time (“7:00 a.m. Start”). Orders with a 7:00 a.m. Start designation may be entered between 3:30 a.m. and 7:00 a.m. Eastern Time.

The Exchange proposes to amend Rule 11.1(a)(1) to provide that the Exchange would begin accepting orders at 2:30 a.m. Eastern Time. The Exchange proposes to begin accepting earlier orders to compete with non-exchange trading venues that begin accepting orders before 3:30 a.m. Eastern Time. By moving the Exchange’s order acceptance time earlier, Members that route orders to multiple venues before 3:30 a.m. Eastern Time would be able to include the Exchange in their early morning routing determinations. The Exchange does not propose to change the time when the Early Trading Session would begin or many any other rule changes.

Because of the technology changes required to implement this change, subject to effectiveness of this proposed rule change, the Exchange will notify Members when the Exchange would begin accepting orders at 2:30 a.m. Eastern Time, which the Exchange anticipates would be in September 2021.

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.¹⁰ Specifically, the

⁹ The term “User” shall mean any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3. See EDGX Rule 1.5(ee).

¹⁰ 15 U.S.C. 78f(b).

Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹¹ 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.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would not change any trading functions on the Exchange and would only move up the time when the Exchange would begin accepting order flow for trading in the Early Trading Session. In addition, a Member that opts to send in orders during this earlier time period could, as today, designate which trading session such orders would be eligible to trade, including per Rule 11.1(a)(1), a 4:00 a.m. Start or a 7:00 a.m. Start. The Exchange further believes that the proposed rule change would promote competition among the exchanges and non-exchange venues because it would allow Members that currently route to non-exchange trading venues prior to 3:30 a.m. Eastern Time to include the Exchange in their early morning routing determinations.

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 Exchange believes that the proposed rule change would promote intermarket competition between the Exchange and non-exchange trading venues that accept order flow before 3:30 a.m.

¹¹ 15 U.S.C. 78f(b)(5).

Eastern Time. Further, the Exchange believes the proposed rule change would impose no burden on intramarket competition as all Members could submit order flow to the Exchange beginning at 2:30 a.m. Eastern Time.

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 as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹² and subparagraph (f)(6) of Rule 19b-4 thereunder.¹³

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 necessary or appropriate in the public interest, for the protection of investors, or 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.

¹² 15 U.S.C. 78s(b)(3)(A)(iii).

¹³ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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.

A proposed rule change filed under Rule 19b-4(f)(6)¹⁴ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁵ the Commission may designate a shorter time if such action is consistent with 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 operative upon filing. According to the Exchange, the technology supporting the proposed rule change would be available less than 30 days after filing, and the Exchange would be able to implement the change before the 30-day operative delay ends. The Exchange also states that the proposed rule change would promote competition by providing Members that route orders to non-exchange venues or another exchange that accepts order flow before 3:30 a.m. Eastern Time¹⁶ the opportunity to include the Exchange on its early morning routing determinations. The Commission believes that the Exchange's proposal does not raise any new or novel issues and that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission designates the proposed rule change to be operative on upon filing.¹⁷

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

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ See Arca Rule 7.34-E(a)(1). See also Securities and Exchange Act No. 92657 (August 12, 2021) 86 FR 46296 (August 18, 2021) (SR-NYSEArca-2021-71).

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

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-2021-037 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-2021-037. This file number should be included on the subject line if e-mail is used. To help the Commission process and review 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, D.C. 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-2021-037 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

J. Matthew DeLesDernier
Assistant Secretary

¹⁸ 17 CFR 200.30-3(a)(12).