

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-94144; File No. SR-CboeEDGX-2022-004)

February 3, 2022

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing of a Proposed Rule Change to Codify Certain Practices and Requirements Related to the Exchange's Port Message Rate Thresholds

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 January 21, 2022, Cboe EDGX Exchange, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III 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

Cboe EDGX Exchange, Inc. ("EDGX" or the "Exchange") is filing with the Securities and Exchange Commission (the "Commission") a proposal to codify certain practices and requirements related to the Exchange's port message rate thresholds, and to promote transparency and maintain clarity in the rules. 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.

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 purpose of this rule filing is to codify certain of the Exchange’s current practices and requirements related to its port message rate thresholds, which it believes will promote transparency and maintain clarity in its rules. Specifically, the Exchange is proposing to add new Rule 11.23, titled Port Message Rate Threshold, in order to memorialize the Exchange’s ability to establish per port message rate limits applicable to its Members. The Exchange has historically provided Members with information regarding the port order rate threshold, as defined below, in its publicly available technical specifications,³ but to promote transparency, the Exchange is proposing to codify the Exchange’s discretion to impose such limits in its rulebook. The System⁴ does not have unlimited port capacity to consistently support an unlimited number

³ Port Order Rate Threshold is defined as the maximum allowed message rate on a port. See Cboe FIX Specifications, available at: https://cdn.cboe.com/resources/membership/Cboe_US_Equities_FIX_Specification.pdf. See also Cboe BOE Specifications, available at: https://cdn.cboe.com/resources/membership/Cboe-US_Equities_BOE_Specification.pdf.

⁴ The term “System” shall mean the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away. See Rule 1.5(cc).

of messages throughout the trading day. For this reason, the Exchange limits each Member to a maximum number of messages over a set amount of time, per port (hereinafter the “Port Order Rate Thresholds”). While Members may elect to establish a *lower* Port Order Rate Threshold, each Member is subject to the same *maximum* Port Order Rate Threshold. Like other exchanges,⁵ EDGX currently imposes a maximum Port Order Rate Threshold, at its discretion, and notifies its Members of such maximum number through the Exchange’s publicly available technical specifications.⁶ Consistent with this current functionality, proposed Rule 11.23 would memorialize that all Members shall be subject to a Port Order Rate Threshold, as determined by the Exchange in its discretion.

The Exchange notes that proposed Rule 11.23 is based on substantially similar rules that historically⁷ existed in the Cboe Options Exchange (“C1”) and the Cboe C2 Options Exchange

⁵ *E.g.*, Section 5.7 of the New York Stock Exchange’s technical specifications states, “In order to protect the Trading Engine from an overload of incoming messages, the CGC Gateway employs a session-level throttle mechanism. This is a configurable value currently set to 1000 messages per second on a rolling 1 second basis. In the event this throttle mechanism is activated, the gateway will slow the sending of incoming messages down to the Trading Engine during the throttle period (i.e. messages will be queued) so as to not exceed the defined message threshold. *See* https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_CCG_FIX_Specification.pdf.”

⁶ *E.g.*, page 73, “Port Order Rate Threshold”, of the Cboe U.S. Equities FIX Technical Specifications, which denotes the *current* maximum allowed message rate on the port. When the first non-administrative message is received, a one second window begins. During the second no more than 4,999 additional non-administrative messages will be allowed within that window. If the rate is exceeded all new orders in the time window are rejected, modifies are treated as cancels, and cancels are processed. If maximum rate limit of 10,000 is requested, no more than 9,999 additional non-administrative messages will be allowed within that one second window.

⁷ In 2016, Cboe Global Markets, Inc. the parent company of C1 and C2, acquired Cboe EDGA Exchange Inc., Cboe EDGX Exchange, Inc., Cboe BZX Exchange, Inc., and Cboe BYX Exchange, Inc. (collectively, the “Cboe Affiliated Exchanges”). Subsequent to the acquisitions, the Cboe Affiliated Exchanges sought to align their rulebooks, retaining only intended differences between the Cboe Affiliated Exchanges. As part of this process C1 Rule 6.23B and C2 Rule 6.35 were removed from the C1 and C2 rulebooks. *See* SR-CBOE-2019-033

("C2") rulebooks, as well as MIAX Rule 502 ("Message Packets") which currently exists in the MIAX Options and MIAX Emerald (collectively, "MIAX") rulebooks⁸. Like new Rule 11.23, C1 Rule 6.23B⁹ (Bandwidth Packets), C2 Rule 6.35¹⁰ (Message Packets), and MIAX Rule 502 provide(d) that Trading Permit Holders are entitled to a maximum number of orders and quotes per second as determined by C1/C2 or MIAX.

The Exchange further notes that C1 Rule 6.23B, C2 Rule 6.35, and MIAX Rule 502 provide(d) for certain other messaging restrictions and actions not included in proposed Rule 11.23; namely, the restriction that only a Market-Maker¹¹ may enter quotes, and language noting the ability of Trading Permit Holders to purchase additional bandwidth packets at the prices set forth in the exchanges' fee schedule. However, these changes are not necessary for the purposes

(https://cdn.cboe.com/resources/regulations/rule_filings/approved/2019/SR-CBOE-2019-033.pdf.)

⁸ See MIAX Options and MIAX Emerald Rule 502 ("Message Packets").

⁹ Rule 6.23B and 6.35 provided: Each Trading Permit shall entitle the holder to a maximum number of orders and quotes per second(s) as determined by the Exchange. Only Market-Makers may submit quotes. Trading Permit Holders seeking to exceed that number of messages per second(s) may purchase additional bandwidth packets at prices set forth in the Exchange's Fees Schedule. The Exchange shall, upon request and where good cause is shown, temporarily increase a Trading Permit Holder's order entry bandwidth allowance at no additional cost. All determinations to temporarily expand bandwidth allowance shall be made in a non-discriminatory manner and on a fair and equal basis. No bandwidth limits shall be in effect during pre-opening prior to 8:25 a.m. CT, which shall apply to all Trading Permit Holders. The Exchange may also determine time periods for which there shall temporarily be no bandwidth limits in effect for all Trading Permit Holders. Any such determination shall be made in the interest of maintaining a fair and orderly market. The Exchange shall notify all Trading Permit Holders of any such determination."

¹⁰ Id.

¹¹ The C1 and C2 Rulebooks defined "Market-Maker" as a Trading Permit Holder registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter 5 of the Rules.

of proposed Rule 11.23 because all Exchange Members, not just Market Makers, may submit messages to the Exchange. Additionally, it is already clear from the Exchange's fee filings¹² that additional ports are available for purchase. Additionally, C1 Rule 6.23B and C2 Rule 6.35, provided those exchanges with the discretion to temporarily increase, upon request, a Member's limits, as well as the discretion to designate time periods when Members shall not be subject to a message limit. This language is not included in this rule filing because the Exchange is not currently proposing to allow Members to request temporary message rate increases or to designate time periods when Members shall not be subject to a message limit.

2. Statutory Basis

The Exchange believes the proposed rule changes are consistent with the requirements of Section 6(b) of the Act,¹³ in general, and Section 6(b)(5) of the Act,¹⁴ in particular, in that it is 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 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.

Specifically, the Exchange believes that proposed Rule 11.23 does not unfairly discriminate amongst market participants. Under proposed Rule 11.23, Members may elect a lower Port Order Rate Threshold, but all Members are limited to the same maximum Port Order Rate Threshold.

¹² See EDGX Exchange fees, effective December 1, 2021, available at: https://www.cboe.com/us/equities/membership/fee_schedule/edgx/.

¹³ 15 U.S.C. § 78f(b).

¹⁴ 15 U.S.C. § 78f(b)(5).

Moreover, by providing the Exchange with the explicit discretion to impose Port Order Rate Thresholds, proposed Rule 11.23 helps to foster a free and open national market system, as well as the Commission’s goal of ensuring that critical market infrastructure has “levels of capacity, integrity, availability, and security adequate to maintain their operational capability and promote the maintenance of fair and order market”.¹⁵

As noted above the Exchange’s Systems do not have unlimited port capacity to consistently support an unlimited number of messages throughout the trading day. As such, it is critical that the Exchange maintain discretion to impose Port Order Rate Thresholds to ensure that Members are not able to submit orders in quantities that degrade the capacity and performance of Members’ ports, as well as the Exchange systems through which securities orders of Members are consolidated for ranking, execution and, where applicable, routing away.¹⁶

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the proposed rule change seeks merely to provide Members with additional clarity and transparency regarding Exchange port message rate limits.

Importantly, the Exchange notes that similar to other exchanges, proposed rule 11.23 does not include an explicit number of messages or range of messages, that may be imposed by the Exchange, in its discretion. Accordingly, proposed Rule 11.23 places the Exchange on par

¹⁵ See Securities and Exchange Act Release No. 73639 (November 19, 2014) 79 FR 72251 (December 5, 2014) (File No. S7-01-13) (Regulation SCI Adopting Release).

¹⁶ See Section 6(b) of the Securities and Exchange Act of 1934 (the “Act”), 15 USC § 78f (National Securities Exchanges), which requires that exchanges have the capacity to carry out the purposes of an exchange under the Act.

with its peer exchanges by preserving the Exchange's ability to adjust the port order rate threshold as needed, to ensure the Exchange's operational resiliency.

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposal. No written comments were solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

- A. by order approve or disapprove such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be 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-2022-004 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-2022-004. 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, 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-2022-004 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.¹⁷

J. Matthew DeLesDernier
Assistant Secretary

¹⁷ 17 CFR 200.30-3(a)(12).