

SECURITIES AND EXCHANGE COMMISSION
Release No. 34-82087; File No. SR-BatsEDGA-2017-29

November 15, 2017

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rule 11.8, Order Types, to Clarify When a MidPoint Discretionary Order May Execute at Sub-Penny Prices

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 November 2, 2017, Cboe EDGA Exchange, Inc. (“EDGA” or the “Exchange”) (formerly known as Bats EDGA Exchange, Inc.) 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 Exchange has designated this proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders it effective upon filing with the Commission. 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 filed a proposal to amend paragraph (e) of Exchange Rule 11.8, Order Types, to clarify when a MidPoint Discretionary Orders [sic] (“MDO”) may execute at sub-penny prices.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

The text of the proposed rule change is available at the Exchange's website at www.markets.cboe.com, at the principal office of the Exchange, 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 parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

An MDO is a limit order to buy that is pegged to the National Best Bid ("NBB"), with discretion to execute at prices up to and including the midpoint of the National Best Bid and Offer ("NBBO"), or a limit order to sell that is pegged to the National Best Offer ("NBO"), with discretion to execute at prices down to and including the midpoint of the NBBO.⁵ MDOs are designed to exercise discretion to execute to the midpoint of the NBBO and provide price improvement over the NBBO.

Currently, Rule 11.8(e) describes the operation of an MDO and states that an MDO in a stock priced at \$1.00 or more can only be executed in sub-penny increments when it executes (i) at the midpoint of the NBBO against contra side MidPoint Peg Orders⁶ or (ii) against other

⁵ See Exchange Rule 11.8(e) for a complete description of the operation of MDOs.

⁶ See Exchange Rule 11.8(d) (describing MidPoint Peg Orders).

MDOs. The Exchange included this provision within Rule 11.8(e) as part of a proposed rule change to provide additional specificity regarding the current functionality of the Exchange's System,⁷ including the operation of its order types and order instructions.⁸ Over time, this provision has become too restrictive and inadvertently excluded scenarios where an MDO may execute at a sub-penny price. Although accurate at the time it was adopted, because such contra-side orders (MidPoint Peg Orders and MDOs) were the only orders eligible to execute at the sub-penny midpoint of the NBBO, an MDO will trade at a sub-penny midpoint against all orders eligible to execute at the midpoint of the NBBO.⁹ MDOs will also currently trade at sub-penny prices in other scenarios. The Exchange, therefore, proposes to revise this provision in Rule 11.8(e) to clarify that MDOs in a stock priced at \$1.00 or more can only be executed in sub-penny increments when it executes at the midpoint of the NBBO or against a contra-side order pursuant to Exchange Rule 11.10(a)(4)(D) (described below), regardless of the type of contra-side order, which would update the rule to reflect current system functionality.

Rule 612 of Regulation NMS¹⁰ (the "Sub-Penny Rule") prohibits a national securities exchange, national securities association, alternative trading system ("ATS"), vendor, or broker-dealer from displaying, ranking, or accepting a bid or offer, an order, quotation, or indication of interest in any NMS stock that is priced in an increment smaller than \$0.01 per share, unless the

⁷ Exchange Rule 1.5(cc) defines "System" as "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."

⁸ See Securities Exchange Act Release No. 73592 (November 13, 2014), 79 FR 68937 (November 19, 2014) (order approving SR-EDGA-2014-20).

⁹ See e.g., NYSE Arca, Inc. ("NYSE Arca") Rule 7.31-E(d)(3)(C) (stating that a Mid-Point Liquidity Order "to buy (sell) will trade at the midpoint of the PBBO against all incoming orders to sell (buy) priced at or below (above) the midpoint of the PBBO").

¹⁰ 17 CFR 242.612.

price of the bid or offer, order, or indication of interest is priced less than \$1.00 per share. The Sub-Penny Rule, however, does not prohibit sub-penny executions at the midpoint of the NBBO so long as the execution does not result from an impermissible sub-penny order or quotation.¹¹ Pursuant to the Sub-Penny Rule, an MDO to buy (sell) will trade at a sub-penny midpoint of the NBBO not only against contra-side MDOs and MidPoint Peg Orders, but also against other contra-side orders eligible to execute at the midpoint of the NBBO. The Sub-Penny Rule also does not prohibit sub-penny price improvement, compared to the NBBO, so long as the order was not priced in an impermissible sub-penny increment.¹² For instance, Exchange Rule 11.10(a)(4)(D) governs the price at which an order is executable when it is posted non-displayed on the Exchange and there is a contra-side displayed order at the same price, creating an internally locked book. Specifically, for bids or offers equal to or greater than \$1.00 per share, in the event that an incoming order on the same side of the market as the displayed order on the Exchange is priced more aggressively than that displayed order, the Exchange will execute the incoming order against the resting non-displayed order at, in the case of an incoming sell order, one-half minimum price variation less than the price of the displayed order, and, in the case of an incoming buy order, at one-half minimum price variation more than the price of the displayed order. For example, assume the NBBO was \$16.10 by \$16.11 resulting in a sub-penny midpoint of \$16.105. An order to buy at \$16.11 is resting non-displayed on the EDGA Book. A Limit Order to sell at \$16.11 with a Post Only instruction is subsequently entered. Assume that the order to sell with a Post Only instruction would not remove any liquidity upon entry pursuant to

¹¹ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37556 (June 29, 2005).

¹² See Question 13, Division of Market Regulation: Responses to Frequently Asked Questions Concerning Rule 612 (Minimum Pricing Increment) of Regulation NMS, available at <https://www.sec.gov/divisions/marketreg/subpenny612faq.htm#q13>.

the Exchange's economic best interest functionality, and would post to the EDGA Book and be displayed at \$16.11. The display of this order would, in turn, make the resting non-displayed bid not executable at \$16.11. If an incoming MDO to sell at \$16.10 is entered into the EDGA Book, the resting non-displayed bid originally priced at \$16.11 will execute against the incoming MDO at \$16.105 per share, thus providing a half-penny of price improvement as compared to the order's limit price of \$16.11.

Also consider the following example where the execution occurs at a sub-penny price that is not at the midpoint of the NBBO. Assume the NBBO is \$16.08 by \$16.10 resulting in a midpoint of \$16.09. An order to sell at \$16.08 is resting non-displayed on the EDGA Book. A Limit Order to buy at \$16.08 with a Post Only instruction is subsequently entered. Assume that the order to buy with a Post Only instruction would not remove any liquidity upon entry pursuant to the Exchange's economic best interest functionality, and would post to the EDGA Book and be displayed at \$16.08. The display of this order would, in turn, make the resting non-displayed offer not executable at \$16.08. If an incoming MDO to buy is entered into the EDGA Book, the resting non-displayed sell originally priced at \$16.08 will execute against the incoming MDO at \$16.085 per share, thus providing a half-penny of price improvement as compared to the order's limit price of \$16.08.

These scenarios were historically unavailable on the Exchange prior to the merger of the Exchange's former parent company, Direct Edge Holdings LLC, with Bats Global Markets, Inc.¹³ Therefore, the Exchange proposes to amend Rule 11.8(e) to clarify that a MDO's ability to execute at sub-penny midpoint prices is not limited to contra-side orders that are MDOs or

¹³ See Securities Exchange Act Release No. 71449 (January 30, 2014), 79 FR 6961 (February 5, 2014) (SR-EDGX-2013-43; SR-EDGA-2013-34).

MidPoint Peg Orders and that a sub-penny execution may also occur against a contra-side order pursuant to Exchange Rule 11.10(a)(4)(D). The Exchange does not propose any additional changes to the operation of MDOs as described in Rule 11.8(e).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹⁴ in general, and furthers the objectives of Section 6(b)(5) of the Act¹⁵ in particular, in that it is designed 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. As stated above, the Exchange included this provision within Rule 11.8(e) as part of a proposed rule change to provide additional specificity regarding the current functionality of the Exchange's System, including the operation of its order types and order instructions.¹⁶ Over time, this provision has become too restrictive and inadvertently excludes scenarios where an MDO may execute at a sub-penny price in accordance with the Sub-Penny Rule. The Exchange does not propose to amend or alter the operation of MDOs. Therefore, the proposed rule change removes impediments to and perfects the mechanism of a free and open market and a national market system by further aligning the rule with current system functionality.

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ See supra note 8.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The proposed rule change does not propose any new functionality and simply updates the rule to reflect current system functionality.

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

No comments were solicited or received 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) of the Act¹⁷ and paragraph (f)(6) of Rule 19b-4 thereunder.¹⁸

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹⁹ 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 requested that the Commission waive the 30-day operative delay so that the proposed rule change will become operative upon filing. The Exchange stated

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 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 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.

¹⁹ 17 CFR 240.19b-4(f)(6)(iii).

that such waiver will enable the Exchange to immediately align Rule 11.8(e) with current system functionality. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because it would enable the Exchange to update its rule without delay. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.²⁰

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.

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-BatsEDGA-2017-29 on the subject line.

²⁰ 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).

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-BatsEDGA-2017-29. 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-BatsEDGA-2017-29 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.²¹

Eduardo A. Aleman
Assistant Secretary

²¹ 17 CFR 200.30-3(a)(12) and (59).