

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85515; File No. SR-CboeEDGX-2019-014]

### Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend EDGX Rules To Clarify the Handling of Orders That Contain Both a Post Only Instruction and Certain Other Order Handling Instructions Maintained To Facilitate Compliance With Rule 610(d) of Regulation NMS

April 4, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 25, 2019, 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 Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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 proposed rule change to amend EDGX rules to clarify the handling of orders that contain both a Post Only instruction and certain other order handling instructions maintained to facilitate compliance with Rule 610(d) of Regulation NMS. The text of the proposed rule change is attached as 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/](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 purpose of the proposed rule change is to amend EDGX rules to clarify the handling of orders that contain both a Post Only instruction and certain other order handling instructions maintained to facilitate compliance with Rule 610(d) of Regulation NMS (the “Locked and Crossed Markets Rule”). An order entered with a Post Only instruction does not remove liquidity, except when the order is an order to buy or sell a security priced below \$1.00, or when executing as the taker of liquidity would be economically beneficial to the firm entering the order—*i.e.*, if the value of such execution when removing liquidity equals or exceeds the value of such execution if the order instead posted to the EDGX Book and subsequently provided liquidity, including the applicable fees charged or rebates provided.<sup>5</sup> Today, the Exchange’s rules state that this handling applies to Post Only orders entered with Price Adjust<sup>6</sup> or Display-Price Sliding<sup>7</sup> instruction,

<sup>5</sup> See EDGX Rule 11.6(n)(4). To determine at the time of a potential execution whether the value of such execution when removing liquidity equals or exceeds the value of such execution if the order instead posted to the EDGX Book and subsequently provided liquidity, the Exchange will use the highest possible rebate paid and highest possible fee charged for such executions on the Exchange.

<sup>6</sup> “Price Adjust” is an order instruction requiring that where an order would be a Locking Quotation of an external market or Crossing Quotation if displayed by the System on the EDGX Book at the time of entry, the order will be displayed and ranked at a price that is one Minimum Price Variation lower (higher) than the Locking Price for orders to buy (sell). See EDGX Rule 11.6(l)(1)(A).

<sup>7</sup> “Display-Price Sliding” is an order instruction requiring that where an order would be a Locking Quotation or Crossing Quotation of an external market if displayed by the System on the EDGX Book at the time of entry, will be ranked at the Locking Price in the EDGX Book and displayed by the System at one Minimum Price Variation lower

which are re-pricing instructions used for compliance with the Locked and Crossed Markets Rule. Thus, an executable order entered with a Post Only instruction is eligible to remove liquidity in the circumstances described in EDGX Rule 11.6(n)(4) instead of having its ranked price or display price adjusted pursuant to those order handling instructions.

However, the Exchange also offers a “Cancel Back” instruction that is not covered by EDGX Rule 11.6(n)(4). An order entered with a Cancel Back instruction is immediately cancelled instead of re-priced when displaying the order at its limit price would create a violation of the Locked and Crossed Markets Rule.<sup>8</sup> All orders must include a Price Adjust, Display-Price Sliding, or Cancel Back instruction,<sup>9</sup> and orders entered with a Post Only instruction are handled in the same manner regardless of which of these three additional instructions is applied. The Exchange therefore proposes to amend EDGX Rule 11.6(n)(4) to eliminate references to Display-Price Sliding and Price Adjust, similar to the current rules in place on its affiliated equities exchanges, Cboe BZX Exchange, Inc. (“BZX”) and Cboe BYX Exchange, Inc. (“BYX”).<sup>10</sup> The Exchange believes that removing the references to these two instructions in the rule would reduce potential confusion as the order handling described in the rule today applies to all orders entered with a Post Only instruction, and not a specific subset of those orders. No changes to the Exchange’s trading or other systems are contemplated by this proposed change, which is instead designed to increase transparency around the Exchange’s current operation.

###### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,<sup>11</sup> in general, and Section 6(b)(5) of

(higher) than the Locking Price for orders to buy (sell). See EDGX Rule 11.6(l)(1)(B).

<sup>8</sup> “Cancel Back” is an instruction the User may attach to an order instructing the System to immediately cancel the order when, if displayed by the System on the EDGX Book at the time of entry, or upon return to the System after being routed away, would create a violation of Rule 610(d) of Regulation NMS or Rule 201 of Regulation SHO, or the order cannot otherwise be executed or posted by the System to the EDGX Book at its limit price. See EDGX Rule 11.6(b).

<sup>9</sup> Display-Price Sliding is applied as the default handling unless Price Adjust or Cancel Back is elected [sic] See EDGX Rule 11.8(b)(10).

<sup>10</sup> See BZX Rule 11.9(c)(6) and BYX Rule 11.9(c)(6).

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

the Act,<sup>12</sup> in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers.

Specifically, the Exchange believes that the proposed rule change is consistent with the public interest and the protection of investors as it would avoid potential confusion about how an order is handled if entered with both a Post Only and Cancel Back instruction. Today, the Exchange's rules provide that an order entered into the EDGX Book with a Post Only instruction would remove liquidity in certain circumstances, such as when economically beneficial for the order. In addition, the rules specify that this handling applies to orders entered with a Price Adjust or Display-Price Sliding instruction. The rules, however, are silent as to the handling applied if an order with a Post Only instruction contains a Cancel Back instruction. The Exchange's order handling is, in fact, the same regardless of which of these instructions are chosen by the member. As such, the Exchange believes that it is appropriate to amend EDGX Rule 11.6(n)(4) to eliminate references to the Price Adjust or Display-Price Sliding instruction, thereby making clear that this handling applies to all orders entered with a Post Only instruction and not only those that also contain Price Adjust or Display-Price Sliding instructions.

The Exchange believes that this order handling, which mirrors that in place on the Exchange's affiliated equities markets (*i.e.*, BZX and BYX) is appropriate regardless of whether an order entered with a Post Only instruction also contains a Display-Price Sliding, Price Adjust, or Cancel Back instruction. Specifically, the Exchange believes that it is consistent with just and equitable principles of trade to permit an order entered with a Post Only instruction to remove liquidity when the order is an order to buy or sell a security priced below \$1.00, or when executing as the taker of liquidity would be economically beneficial to the firm entering the order. This handling is designed to ensure that orders entered with a Post Only instruction are eligible to trade in certain circumstances where the entering firm may have an interest in securing an execution on entry—*i.e.*, as the taker of liquidity—

notwithstanding the member's use of the Post Only instruction. Although the Exchange's rules currently mention order handling for the Display-Price Sliding and Price Adjust instructions specifically, this functionality should be applied equally to any order entered with a Post Only instruction. Thus, amending the rule as proposed would provide additional transparency into a feature offered by the Exchange that is potentially beneficial to members that utilize the Post Only instruction.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the proposed rule change would remove ambiguity in the EDGX rules describing the Post Only instruction by amending those rules consistent with rules currently in place for the Exchange's affiliates, BZX and BYX. No change to the Exchange's order handling is contemplated by this proposed rule change, which would merely clarify the current handling for certain orders entered with a Post Only instruction. The Exchange therefore believes that the proposed rule change would increase transparency around the operation of the Exchange to the benefit of members and investors, without imposing any significant burden on competition.

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

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**

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 Act<sup>13</sup> and Rule 19b-4(f)(6) thereunder.<sup>14</sup>

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 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

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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CboeEDGX-2019-014 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-2019-014. This file number should be included on the subject line if email 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

as designated by the Commission. The Exchange has satisfied this requirement.

<sup>12</sup> 15 U.S.C. 78f(b)(5).

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-2019-014, and should be submitted on or before May 1, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Eduardo A. Aleman,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85513; File No. SR-NASDAQ-2019-022]

### Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend and Restate the Exchange's Membership Rules

April 4, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 27, 2019, The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "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 a proposal [sic] to amend and restate the Exchange's membership rules, as discussed below.

The text of the proposed rule change is available on the Exchange's website at <http://nasdaq.cchwallstreet.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 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 has adopted Rules, as set forth in the Rule 1000 Series, which prescribe the qualifications for and the procedures for applying for membership on the Exchange. The Exchange now proposes to update, reorganize and clarify these Rules, as described below.

As a general matter, the proposal makes several categories of changes to the Exchange's membership rules. First, the proposal reorganizes the rules so that they are arranged in a more logical order. Second, the proposal removes duplicative provisions, eliminates unnecessary complexity in the membership process, and otherwise streamlines the membership rules and their associated procedures. Third, the proposal relaxes needlessly rigid deadlines that the rules prescribe for taking certain actions with respect to membership applications. Fourth and finally, the proposal makes technical corrections and updates to the Rules, including by updating obsolete references to the National Association of Securities Dealers ("NASD," now known as "FINRA"), correcting the capitalization of defined terms (e.g., "Member"), and generalizing references to the Exchange so as to facilitate harmonization of the Exchange's membership rules with those of its sister exchanges.

The Exchange does not believe that any of the proposed changes will adversely impact the existing rights of prospective or existing Members or Associated Persons. Likewise, the Exchange does not believe that the proposed changes will compromise the ability of the Exchange or its Membership Department to scrutinize prospective or existing Members or Associated Persons.

A summary of specific proposed changes follows.

###### Rule 1002

The proposal amends Rule 1002 in several respects. First, it deletes existing paragraph (c), which pertains to the payment by Members and Associated Persons of dues, fees, assessments and other charges, because the requirement of Members and Associated Persons to make such payments is set forth elsewhere in the Rules, such that existing paragraph (c) is unnecessary.<sup>3</sup> The Exchange also proposes to move existing paragraph (d), which governs the reinstatement of membership and registration, to a new Rule 1018 that will consolidate all provisions of the Rules relating to transfer, resignation, termination, and reinstatement of membership. Additionally, the Exchange proposes to consolidate and move to this Rule, as newly-renumbered paragraph (d), largely duplicative provisions relating to the registration of branch offices and the designation of offices of supervisory jurisdiction, which presently reside in Rule 1012(j) and IM-1002-4, respectively.<sup>4</sup> Within the new paragraph (d), the Exchange proposes to delete language from existing Rule 1012(j)(1) that requires a Member to pay dues, fees, and charges associated with a branch office—as that provision is superfluous for reasons discussed above. Under renumbered paragraph (d)(3)(A), the Exchange also proposes to simplify the existing rules for determining compliance with branch office registration and supervisory office designation requirements. Whereas the existing processes—as set forth in Rule 1012(j) and IM-1002-4—provide that Exchange Members that are also FINRA members are deemed to comply with the branch office and designated supervisory office requirements to the extent that they comply with NASD-1000-4 and Article IV, Section 8 of the NASD's By-Laws, the proposal provides that such Exchange Members are deemed to comply to the extent that they keep current Form BR, which

<sup>3</sup> See Rule 9553.

<sup>4</sup> In proposed subparagraph (d)(3)(B), the Exchange proposes to clarify the existing rule text in Rule 1012(j) and IM-1002-4, which provide that Members that are not FINRA members shall designate offices of supervisory jurisdiction and branch offices by submitting to the Exchange a "written filing" to the Exchange "in such form as [the Exchange] may prescribe." The proposed change clarifies that this written filing is the "Branch Office Disclosure Form." The Branch Office Disclosure Form is presently in use for this purpose and it is not a new form. Nevertheless, the Exchange believes that it will be helpful in the Rule to identify the specific form that must be filed rather than refer vaguely to a filing in such form as the Exchange may prescribe.

<sup>15</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.