

initial Form ATS–N disclosures and discussions with Commission staff have revealed complexities about the operations of Legacy NMS Stock ATSs including, among other things, matching functionalities, means of order entry, order interaction and execution procedures, conditional order processes, segmentation of orders, and counterparty selection protocols. The Commission staff needs additional time to review novel and complex issues such as these, which Commission staff has discussed with Virtu MatchIt ATS. Extending the initial Form ATS–N Commission review period for an additional 120 calendar days will provide Commission staff an opportunity to continue its review of the initial Form ATS–N disclosures and discussions with Virtu MatchIt ATS.

In the conversations between Virtu MatchIt ATS and Commission staff about the initial Form ATS–N disclosures and the ATS operations, Commission staff and Virtu MatchIt ATS have discussed a potential amendment to update Virtu MatchIt ATS's disclosures regarding the complexities of its operations. Extending the review period will enable the NMS Stock ATS to amend its disclosures, if appropriate, and allow Commission staff to conduct a thorough review of amendments to the initial disclosures provided on the initial Form ATS–N.

For the reasons given above, the Commission is extending the review period of the initial Form ATS–N submitted by Virtu MatchIt ATS. Accordingly, pursuant to Rule 304(a)(1)(iv)(B), October 11, 2019 is the date by which the Commission may declare the initial Form ATS–N submitted by Virtu MatchIt ATS ineffective.

By the Commission.

**Eduardo A. Aleman,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85988; File No. SR–CboeEDGX–2019–033]

### Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending Rule 21.7 Concerning the Opening Auction Process

May 31, 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 May 22, 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. (the “Exchange” or “EDGX Options”) proposes to amend Rule 21.7. 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/](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.

<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).

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

##### 1. Purpose

The proposed rule change makes enhancements to the Exchange's opening auction process. The Exchange recently adopted an opening auction process, which the Exchange intends to implement on June 24, 2019.<sup>5</sup> The Exchange intends to implement the enhancements proposed in this rule filing at that time.

First, the proposed rule change amends the definition of Composite Market in Rule 21.7(a). The term “Composite Market” means the market for a series comprised of (1) the higher of the then-current best appointed Market-Maker bulk message bid on the Queuing Book and the away best bid (“ABB”) (if there is an ABB) and (2) the lower of the then-current best appointed Market-Maker bulk message offer on the Queuing Book and the away best offer (“ABO”) (if there is an ABO).<sup>6</sup> The Queuing Book means the book into which Users may submit orders and quotes (and onto which good-til-cancelled and good-til-day orders remaining on the Book from the previous trading session or trading day, as applicable, are entered) during the Queuing Period for participation in the applicable opening rotation. The Queuing Period means the time period prior to the initiation of an opening rotation during which the System accepts orders and quotes for participation in the opening rotation for the applicable trading session. Therefore, in an All Sessions Class (*i.e.*, a class that trades during both the Global Trading Hours (“GTH”) and Regular Trading Hours (“RTH”) trading sessions), the Composite Market will be based on the appointed Market-Maker bulk message bids and offers in the RTH Queuing Book (available from 7:30 a.m. through the opening of trading). It currently will not consider any appointed Market-Maker bulk message bids and offers in that class in the GTH book (on which trading will be occurring in that class from 8:30 a.m. through 9:15 a.m.).

Market-Makers are generally responsible for pricing the markets in

<sup>5</sup> See Securities Exchange Act Release No. 85797 (May 7, 2019), 84 FR 20920 (May 13, 2019), SR–CboeEDGX–2019–027. The changes in SR–CboeEDGX–2019–027 are currently effective but not yet operative; however, the proposed rule text in this rule filing assume operativeness of those effective changes.

<sup>6</sup> The term “Composite Bid (Offer)” means the bid (offer) used to determine the Composite Market.

their appointed classes, which is why the Exchange considers Market-Makers' bulk message bids and offers when determining the Composite Market in connection with the opening auction process. For that reason, the price protection measures applied during the opening auction process (the Maximum Composite Width check and the Opening Collar) are based on the Composite Market. The Exchange believes it would be beneficial, and may lead to more accurate pricing during the opening auction process, for the Composite Market to be used for the RTH opening auction process to incorporate all available bulk message bids and offers from appointed Market-Makers, including any in the GTH book. Therefore, the proposed rule change amends the definition of Composite Market to provide that it will be comprised of the higher (lower) of the then-current best appointed Market-Maker bulk message bid (offer) on the Exchange (which includes both the RTH Queuing Book and the GTH book), rather than just the Queuing Book.

Second, the proposed rule change amends Rule 21.7(e)(1) to provide that a series is not eligible to open if the Composite Market is crossed (*i.e.*, the Composite Bid is higher than the Composite Offer). A series will be eligible to open if the Composite Width is less than or equal to the Maximum Composite Width, or is greater than the Maximum Composite Width but there are no non-M Capacity market orders or buy (sell) limit orders with prices higher (lower) than the Composite Bid (Offer) and no orders or quotes marketable against each other (*i.e.*, locked or crossed).<sup>7</sup> The Maximum Composite Width Check is a price protection measure intended to prevent orders from executing at extreme prices at the open. A crossed market is generally unreliable, and opening with a crossed Composite Market may create price risk for any executions that may occur during the opening rotation (pursuant to subparagraph (e)(3)). Therefore, the proposed rule change enhances the Maximum Composite Width check price protection to provide that the Composite Market may not be crossed for a series to be eligible to open.

Third, the proposed rule change harmonizes how the opening auction process will be used following all trading halts. Current Rule 21.7(g)

provides that if there is a Regulatory Halt,<sup>8</sup> the Queuing Period begins immediately when the Exchange halts trading in the class. If the Exchange declares any other type of halt in a class (*i.e.*, a non-Regulatory Halt), there will be no Queuing Period. Additionally, if there is a Regulatory Halt, the System queues a User's open orders or quotes, unless the User entered instructions to cancel its open resting orders and quotes, but if there is a non-Regulatory Halt, the System cancels a User's open orders and quotes. The Exchange has determined to eliminate the distinction between how the opening auction process applies following a Regulatory Halt and a non-Regulatory Halt. The proposed rule change provides that the opening auction process following any trading halt will apply in the manner it currently applies following a Regulatory Halt. In other words, following a non-Regulatory Halt, there will be a Queuing Period during the trading halt. Additionally, in the event of a non-Regulatory Halt, the System will queue a User's orders and quotes resting on the book at the time of the trading halt for participation in the opening rotation following the trading halt, unless the User entered instructions to cancel its resting orders and quotes. This will provide Users with the ability to decide how its resting orders and quotes should be handled in the event of a non-Regulatory Halt, as they are currently able to do in the event of a Regulatory Halt. The Exchange also believes elimination of this distinction will eliminate potential investor confusion regarding how the System will handle orders and quotes in the event of a trading halt.<sup>9</sup>

Finally, the proposed rule change makes several nonsubstantive changes in Rule 21.7:

- The proposed rule change makes a grammatical change in subparagraph (b)(2).
- The proposed rule change adds the word "process" in subparagraph (b)(2)(E) after the term "opening auction," as it was inadvertently omitted (throughout Rule 21.7, the entire opening is referred to as the "opening auction process").

The proposed rule change updates subparagraph (e)(2) to clarify when the System will and will not be able to determine an Opening Trade Price. The System determines an Opening Trade Price if there are orders and quotes

marketable against each other at a price not outside the Opening Collar (this is consistent with the current rule, which states there is no Opening Trade Price if there are no locked or crossed orders or quotes (*i.e.*, marketable orders and quotes) at a price not outside the Opening Collar). The proposed rule change merely modifies the language, which the Exchange believes is clearer, and makes corresponding changes to the paragraph numbering and lettering. Additionally, the proposed rule change adds the defined term "VMIM price", which is the price determined by the process described in current subparagraphs (e)(2)(A)(i) through (iii) (proposed subparagraphs (e)(2)(A) through (3)). The proposed rule change does not modify the process used to determine that price.

## 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.<sup>10</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>11</sup> 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)<sup>12</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed revision to the definition of Composite Market will remove impediments to and perfect the mechanism of a free and open market and a national market system and protect investors, because it will ensure the price protection measures used during the opening auction process, which are based on the Composite Market, for the RTH opening in an All Sessions Class will incorporate all available pricing information on the Exchange from appointed Market-

<sup>7</sup> The proposed rule change makes a nonsubstantive change to this language in Rule 21.7(e)(1)(B). Once a series satisfies the conditions in the Maximum Composite Width Check, the System will determine an Opening Trading Price pursuant to Rule 21.7(e)(2), and then open the series pursuant to Rule 21.7(e)(3).

<sup>8</sup> If the primary market for the applicable underlying security declares a regulatory trading halt, suspension, or pause with respect to such security, it is referred to as a "Regulatory Halt."

<sup>9</sup> The proposed rule change also makes nonsubstantive changes to paragraph (g).

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> *Id.*

Makers in that class. The Exchange believes this may lead to a more accurate Opening Trade Price. The proposed rule change to not open a series if the Composite Market is crossed will promote just and equitable principles of trade and protect investors, because crossed markets are generally unreliable. The Exchange believes not opening a series if the Composite Market is crossed may reduce the risk of erroneously priced executions during the opening rotation. The proposed rule change to harmonize the opening auction process following all types of trading halts will protect investors by eliminating potential confusion regarding how the Exchange will open series following trading halts, and by providing Users with flexibility regarding how the System will handle their orders and quotes following a non-Regulatory Halt (as they currently have following a Regulatory Halt). The proposed nonsubstantive changes will benefit investors by providing additional clarity to the Rules.

#### *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 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. The proposed changes to the price protection measures used during the opening auction process will apply in the same manner to all orders and quotes of all Users. All Users will have the same flexibility regarding how the System will handle their orders and quotes following non-Regulatory Halts, which is the same flexibility currently available to Users following Regulatory Halts. If a User wants its orders and quotes to be handled following a non-Regulatory Halt in the manner they are today, that User can instruct the Exchange to do so. 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. The proposed changes to the price protections used during the opening auction process only impact how series will open on the Exchange prior to the opening of trading. The proposed changes are intended to enhance the price protections used during the opening process and are not intended as competitive changes, and to provide

Users with flexibility with respect to the handling of their orders and quotes following a non-Regulatory Halt. The proposed nonsubstantive changes do not impact trading, and thus have no competitive impact; they merely provide additional clarity to the Rules.

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

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 will institute proceedings to determine whether the proposed rule change 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:

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

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

#### *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-2019-033 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-2019-033. 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 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-2019-033 and should be submitted on or before June 27, 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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<sup>15</sup> 17 CFR 200.30-3(a)(12).