

become operational upon approval by the Commission.

#### *D. Development and Implementation Phases*

The amendment proposed herein would be implemented to coincide with amendments filed by the equity exchanges and approved by the Commission.

#### *E. Analysis of Impact on Competition*

The amendment proposed herein does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because the amendment simply incorporates into the UTP Plan the processes for Regulatory Halts that will be proposed by the equity exchanges. The Participants do not believe that the proposed amendment introduces terms that are unreasonably discriminatory for the purposes of Section 11A(c)(1)(D) of the Act.

#### *F. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plan*

Not applicable.

#### *G. Approval by Sponsors in Accordance With Plan*

Section IV(C)(1)(a) of the UTP Plan requires the Participants to unanimously approve the amendment proposed herein. They so approved it.

#### *H. Description of Operation of Facility Contemplated by the Proposed Amendment*

Not applicable.

#### *I. Terms and Conditions of Access*

Not applicable.

#### *J. Method of Determination and Imposition, and Amount of, Fees and Charges*

Not applicable.

#### *K. Method and Frequency of Processor Evaluation*

Not applicable.

#### *L. Dispute Resolution*

Not applicable.

### **II. Regulation NMS Rule 601(a) (Solely in Its Application to the Amendment to the UTP Plan)**

#### *A. Equity Securities for Which Transaction Reports Shall Be Required by the Plan*

Not applicable.

#### *B. Reporting Requirements*

Not applicable.

#### *C. Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information*

Not applicable.

#### *D. Manner of Consolidation*

Not applicable.

#### *E. Standards and Methods Ensuring Promptness, Accuracy and Completeness of Transaction Reports*

Not applicable.

#### *F. Rules and Procedures Addressed to Fraudulent or Manipulative Dissemination*

Not applicable.

#### *G. Terms of Access to Transaction Reports*

Not applicable.

#### *H. Identification of Marketplace of Execution*

Not applicable.

### **III. Solicitation of Comments**

The Commission seeks comments on the Amendment. Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed Amendment is consistent with the Act and the rules and regulations thereunder applicable to national market system plans. 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 S7-24-89 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 S7-24-89. 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 website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all written statements with respect to the proposed Amendment that are filed with the Commission, and all written communications relating to the proposed Amendment 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 website viewing and printing at the principal office of the Plan. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number S7-24-89 and should be submitted on or before March 22, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**J. Matthew DeLesDernier,**  
*Assistant Secretary.*

[FR Doc. 2021-04089 Filed 2-26-21; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-91191; File No. SR-CboeEDGX-2021-010]

### **Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Order Start Times During Its Early Trading Session**

February 23, 2021.

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 February 11, 2021, Cboe EDGX Exchange, Inc. (the "Exchange" or "EDGX") 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 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 order start times during its Early Trading Session. The text of the

<sup>17</sup> 17 CFR 200.30-3(a)(85).

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

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

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.

### 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 Rule 11.1 to allow Users to designate their orders to become eligible for execution at 7:00 a.m. Eastern Time ("ET") during the new Early Trading Session extended hours.

The Exchange currently offers four distinct trading sessions where the Exchange accepts orders for potential execution: (1) The "Early Trading Session," which begins at 4:00 a.m. ET and continues until 8:00 a.m. ET,<sup>3</sup> (2) the "Pre-Opening Session," which begins at 8:00 a.m. ET and continues until 9:30 a.m. ET,<sup>4</sup> (3) "Regular Trading Hours," which begin at 9:30 a.m. ET and continue until 4:00 p.m. ET,<sup>5</sup> and (4) the "Post-Closing Trading Session," which begins at 4:00 p.m. ET and continues until 8:00 p.m. ET.<sup>6</sup>

The Exchange recently submitted an immediately effective rule filing which amended the Early Trading Session to extend its hours from a 7:00 a.m. ET start to a 4:00 a.m. ET start, and to allow Users to begin entering orders into the

System prior to the Early Trading Session at 3:30 a.m. ET.<sup>7</sup> The Exchange intends to launch the new Early Trading Session extended hours on March 8, 2021.<sup>8</sup> As amended, Rule 11.1 now provides that the Exchange will not accept the following orders prior to 4:00 a.m. ET: Orders with a Post Only instruction, ISOs, Market Orders other than those with a TIF instruction of Regular Hours Only or a Stop Price, orders with a Minimum Execution Quantity instruction that also include a TIF instruction of Regular Hours Only, and all orders with a TIF instruction of IOC or FOK. Further, at the commencement of the Early Trading Session, orders entered between 3:30 a.m. and 4:00 a.m. ET will be handled in time sequence, beginning with the order with the oldest time stamp, and will be placed on the EDGX Book, routed, cancelled, or executed in accordance with the terms of the order.

In light of the planned extension of the Early Trading Session, the Exchange seeks to continue to provide Users with the option to submit orders that become eligible for execution during the Early Trading Session beginning at 7:00 a.m. ET. In particular, the proposed rule change amends Rule 11.1 to provide that at the commencement of the Early Trading Session, orders entered between 3:30 a.m. and 4:00 a.m. ET, 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. ET ("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. ET. At each Start time that orders may become eligible for execution in the Early Trading Session (4:00 a.m. or 7:00 a.m. ET), orders will be handled in time sequence, beginning with the order with the oldest time stamp, and will be placed on the EDGX Book, routed, cancelled, or executed in accordance with the terms of the order.<sup>9</sup> The Exchange will not accept the following orders prior to 4:00 a.m. Eastern Time or prior to 7:00 a.m. Eastern Time for orders eligible for a 7:00 a.m. Start: Orders with a Post Only instruction, ISOs, Market Orders other than those with a TIF instruction of Regular Hours Only or a Stop Price, orders with a

Minimum Execution Quantity instruction that also include a TIF instruction of Regular Hours Only, and all orders with a TIF instruction of IOC or FOK.

The proposed rule change allows Users to continue to be able to choose to submit orders that become eligible for execution during the Early Trading Session beginning at 7:00 a.m. ET, as they may today in connection with the current Early Trading Session hours.<sup>10</sup> As the Exchange's Early Trading Session currently begins at 7:00 a.m. ET and other equities exchanges, including the Exchange's affiliated equities exchanges,<sup>11</sup> have early trading sessions that begin at 7:00 a.m. ET,<sup>12</sup> the Exchange understands that many market participants have configured their systems for trading beginning at 7:00 a.m. ET and find 7:00 a.m. ET to be a time at which there are additional opportunities across the industry to access and source liquidity. For example, the Exchange understands that retail brokerage firms generally have standard agreements in place with their retail customers which provide that retail customer orders may not become eligible for execution until a specific time, and is aware of at least one such firm on the Exchange that has standard agreements in place with their retail customers that limit this time to 7:00 a.m. ET. The Exchange also understands that multiple liquidity providers wish to continue to participate in the Early Trading Session beginning at 7:00 a.m. given the particular liquidity and activity present across the U.S. equity markets at this specific time.<sup>13</sup> Without a 7:00 a.m. Start designation available, certain retail investors may be limited in their ability to source liquidity that is available at this time during the Exchange's Early Trading Session, and liquidity providers may similarly choose not to participate in this trading session, thereby reducing liquidity available to other market participants and investors.<sup>14</sup>

<sup>10</sup> The Exchange notes that the extended hours are intended to provide market participants with additional opportunities to source and access liquidity for their orders on the Exchange. See *supra* note 7.

<sup>11</sup> The Exchange's affiliated equities exchange are Cboe BZX Exchange, Inc. ("BZX"), Cboe BYX Exchange, Inc. ("BYX"), and Cboe EDGA Exchange, Inc. ("EDGA").

<sup>12</sup> See e.g., BZX Rule 1.5(ee), BYX Rule 1.5(ee), EDGA Rule 1.5(ii), NYSE Rule 7.34(a)(1), NYSE American Rule 7.34E, and Nasdaq BX Rule 4120(b)(4), each of which provide that their respective early trading sessions open at 7:00 a.m. ET.

<sup>13</sup> See *id.*

<sup>14</sup> The Exchange is aware are at least one liquidity provider that has expressed that it will not

<sup>3</sup> "Early Trading Session" means the time between 4:00 a.m. and 8:00 a.m. ET. See Rule 1.5(ii).

<sup>4</sup> "Pre-Opening Session" means the time between 8:00 a.m. and 9:30 a.m. ET. See Rule 1.5(s).

<sup>5</sup> "Regular Trading Hours" means the time between 9:30 a.m. and 4:00 p.m. ET. See Rule 1.5(y).

<sup>6</sup> "Post-Closing Trading Session" means the time between 4:00 p.m. and 8:00 p.m. ET. See Rule 1.5(r).

<sup>7</sup> See Securities Exchange Act Release No. 90509 (November 24, 2020), 85 FR 77310 (December 1, 2020) (SR-CboeEDGX-2020-056).

<sup>8</sup> The Exchange will announce the implementation of the extended Early Trading Session to Members in advance via Trade Desk Notice.

<sup>9</sup> A User will be able to designate orders with a 7:00 a.m. Start through the use of a port setting. See *also infra* note 14.

As such, the proposed rule change is intended to alleviate potential difficulty for Users that generally begin participating in the markets beginning at 7:00 a.m. ET, and to facilitate a fair and orderly market on the Exchange where retail investors and other market participants can benefit from trading opportunities present in the Exchange's Early Trading Session. As such, the proposed 7:00 a.m. Start designation will provide Users with greater control over their orders and more flexibility to carry out their investment strategies and manage their needs based on market conditions. In turn, Users may continue to provide meaningful liquidity and benefit from trading opportunities present on the Exchange throughout the duration of the Early Trading Session.

The Exchange notes that, as proposed, orders eligible for execution beginning at 7:00 a.m. ET will function in the same manner as they currently do today upon the 7:00 a.m. ET commencement of the Early Trading Session (and as they will upon the 4:00 a.m. ET commencement for the extended Early Trading Session hours). That is, Users will submit orders eligible for a 7:00 a.m. ET Start during the Early Trading Session in the same manner as they may currently submit orders eligible for execution during the Early Trading Session, and will continue to be able to submit all such orders at the beginning of the early order acceptance period. As orders with a 7:00 a.m. Start designation will not be activated until 7:00 a.m., Users will have through 7:00 a.m. to submit such orders. The Exchange will continue not to accept the same order types listed in Rule 11.1 prior to the commencement of an order's eligible start time in the Early Trading Session. The proposed rule change makes it clear that orders with a Post Only instruction, ISOs, Market Orders other than those with a TIF instruction of Regular Hours Only or a Stop Price, orders with a Minimum Execution Quantity instruction that also include a TIF instruction of Regular Hours Only, and all orders with a TIF instruction of IOC or FOK will continue to be rejected prior to an order's eligible start time in the Early Trading Session, as they are today. Additionally, the System will continue to handle all orders eligible for execution during the Early Trading Session, including those with a 7:00 a.m. Start designation, pursuant to Rule 11.1. In particular, the proposed rule language makes it clear that all orders eligible for execution during the Early Trading Session will continue to be handled in time

participate in the Early Trading Session without a 7 a.m. Start feature.

sequence, beginning with the order with the oldest time stamp, and will be placed on the EDGX Book, routed, cancelled, or executed in accordance with the terms of the order, beginning at the Start time (either 4:00 a.m. or 7:00 a.m. ET) at which they become eligible for execution in the Early Trading Session.<sup>15</sup> At 7:00 a.m., orders with a 7:00 a.m. Start designation will simply be handled as any incoming order is handled during the Early Trading Session, and merge, in time sequence, onto the already active EDGX Order Book for the Early Trading Session. A User must continue to select the appropriate TIF to allow the order to execute in the Early Trading and a port setting will merely permit a User to designate an order that is already marked for the Early Trading Session to become active later in the Early Trading Session. The Exchange notes that the proposal does not extend or otherwise modify any trading hours during which trading is currently permissible on the Exchange but simply permits a User to activate an order at a specific time during an ongoing trading session.

Additionally, the Exchange notes that permitting Users to designate a 7:00 a.m. ET Start for which orders may become active during an early trading session that begins at 4:00 a.m. is consistent with the rules currently in place on Nasdaq Stock Market LLC ("Nasdaq"). Nasdaq's early trading session currently begins at 4:00 a.m. and continues until the 9:30 a.m. commencement of Nasdaq's regular trading hours.<sup>16</sup> Nasdaq Rule 4703(a) allows participants to designate a time at which certain orders<sup>17</sup> may become active and includes 7:00 a.m. ET as an available time at which participants may activate such orders entered prior to 7:00 a.m. ET.<sup>18</sup>

<sup>15</sup> The System may delay the release of 7:00 a.m. Start orders if the System is experiencing an unusually significant amount of orders with a 7:00 a.m. Start designation that would potentially impact other System performance and processing functions during the Early Trading Session. The Exchange does not anticipate an occasion in which the System would have to implement a delayed release for orders with a 7:00 a.m. Start during the Early Trading Session. As the System does not have unlimited capacity, the proposed System flexibility to delay the release of orders with a 7:00 a.m. Start designation is a reasonable preventative measure to ensure that the System has the capacity to maintain fair and orderly markets in the event that there is an unusually significant amount of orders queued for 7:00 a.m. ET activation.

<sup>16</sup> See Nasdaq Rule 4701(g).

<sup>17</sup> Orders using the SCAN or RTFY routing strategy available on Nasdaq.

<sup>18</sup> The Exchange notes that the designation for orders to become active at 7:00 a.m. ET on Nasdaq is similarly a port level setting. See Securities Exchange Act Release No. 83125 (April 27, 2018), 83 FR 19586 (May 3, 2018) (SR-NASDAQ-2017-088).

## 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>19</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>20</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>21</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 rule change to allow Users to submit orders that become eligible for execution beginning at 7:00 a.m. ET, once the Exchange extends its Early Trading Session hours to begin at 4:00 a.m. ET, will remove impediments to and perfect the mechanism of a free and open market and national market system and will benefit investors by continuing to provide Users with the option to activate their orders for execution beginning at 7:00 a.m. ET and thus the opportunity to continue to source and access liquidity at a specific time in which there are additional trading opportunities in the markets. The Exchange does not believe that the proposed rule change will present any unique or novel issues nor affect the maintenance of a fair and orderly market, as many market participants have configured their systems for trading beginning at 7:00 a.m. ET in line with the commencement of the early trading sessions on other equities exchanges, including the Exchange's affiliated equities exchanges.<sup>22</sup> Rather, the proposed rule change is designed to benefit investors, as well as overall liquidity in the Early Trading Session, by providing Users with the option to continue to activate their orders for execution during the Early Trading

<sup>19</sup> 15 U.S.C. 78f(b).

<sup>20</sup> 15 U.S.C. 78f(b)(5).

<sup>21</sup> *Id.*

<sup>22</sup> See *supra* note 12.

Session beginning at 7:00 a.m. ET when the Exchange extends its Early Trading Session hours. As described above, certain market participants, such as retail investors and liquidity providers, may be limited in their ability to source liquidity that is available in the Exchange's Early Trading Session or choose not to participate in the Early Trading Session without the availability of a 7:00 a.m. Start designation, thereby reducing liquidity available to other market participants and investors. Thus, the proposed rule change will alleviate potential difficulties for Users that generally begin participating in the markets at 7:00 a.m. ET (as these Users would not have to time the entry of their orders to occur as close to 7:00 a.m. ET as possible), and will facilitate a fair and orderly market on the Exchange by allowing retail investors and other market participants to benefit from trading opportunities present at this specific time during the Exchange's Early Trading Session. Overall, the proposed rule change will serve to protect investors and the public interest by providing Users with greater control over their orders and more flexibility to carry out their investment strategies and manage their needs based on market conditions, thereby allowing them to continue to provide meaningful liquidity and benefit from trading opportunities present on the Exchange throughout the duration of the Early Trading Session.

The proposed rule change will not affect the protection of investors as it would simply provide Users with the opportunity to choose whether orders entered for potential execution in the Early Trading Session will become active at the new 4:00 a.m. ET commencement of that trading session, or will instead continue to become active at 7:00 a.m. ET, as they do today. The System will continue to accept all orders eligible for execution during the Early Trading Session beginning at the early acceptance time, will continue to reject the same list of order types prior to the time an order is eligible to start trading in the Early Trading Session, and will continue to process all orders that are queued for participation in the Early Trading Session in time priority pursuant to Rule 11.1.<sup>23</sup> That is, orders with a 7:00 a.m. Start designation will be handled as any incoming order is handled during the Early Trading Session, and merge, in time sequence, onto the already active EDGX Order Book for the Early Trading Session. As described above, a User must continue to select the appropriate TIF to allow

the order to execute in the Early Trading Session and a port setting step will just permit an order already marked for execution in the Early Trading Session to become active later in the Early Trading Session. The proposed rule change does not extend or otherwise modify any trading hours during which trading is currently permissible on the Exchange but simply permits Users to choose to activate their orders at a specific time during an ongoing trading session.

The Exchange also notes that, as with any order eligible for trading in the Early Trading Session, market participants must monitor market conditions to ensure compliance with best execution obligations<sup>24</sup> for their orders with a 7:00 a.m. Start designation and will be able to cancel or modify their orders with a 7:00 a.m. Start time designation at any time prior to their activation, thus allowing them to react to market conditions that may cause them to violate their best execution obligations. FINRA Rule 5310(a)(1) provides that a member must use reasonable diligence to ascertain the best market for a security and buy or sell in such market so that the resultant price to the customer is as favorable as possible under prevailing market conditions. FINRA Rule 5310(a)(1)(A) states that one of the factors that will be considered in determining whether a member has used "reasonable diligence" is "the character of the market for the security (e.g., price, volatility, relative liquidity, and pressure on available communication)."<sup>25</sup> The Exchange believes that Users are accustomed to this additional analysis and will continue to apply such in determining whether to designate an activation at 7:00 a.m. ET. The regulatory guidance with respect to best execution anticipates the continued evolution of execution venues:

[B]est execution is a facts and circumstances determination. A broker-dealer must consider several factors affecting the quality of execution, including, for example, the opportunity for price

<sup>24</sup> A member's best execution obligation may also include cancelling an order when market conditions deteriorate and could result in an inferior execution or informing customers where the execution of their order may be delayed intentionally as the member utilizes reasonable diligence to ascertain the best market for the security. See FINRA Rule 5130. See also FINRA Regulatory Notice 15-46, Best Execution. Guidance on Best Execution Obligations in Equity, Options, and Fixed Income Markets, (November 2015).

<sup>25</sup> These characteristics are reflected in the disclosure requirements mandated by Exchange Rule 3.21 before a Member may accept an order from a customer for execution in the Pre-Opening, Post-Closing, and proposed Early Trading Sessions.

improvement, the likelihood of execution . . . , the speed of execution and the trading characteristics of the security, together with other non-price factors such as reliability and service.<sup>26</sup>

To the extent there may be best execution obligations at issue, they are no different than the best execution obligations faced by brokers in the current market structure, including the current use of orders that become eligible for execution at the start of the Early Trading Session, Pre-Opening Session or Regular Trading Hours, depending on the TIF selected by the User. A User may use continue to use TIF instructions to forgo a possible execution at the start of one trading session, or at a 7 a.m. Start time, as proposed, if they believe doing so is consistent with their best execution obligations as they anticipate that the market for the security may improve upon the start of another trading session, or at 7:00 a.m. ET, as proposed. Applicable best execution guidance contains no formulaic mandate as to whether or how brokers should direct orders. The optionality created by the proposed rule change simply represents one tool available to User to meet their best execution obligations.

The Exchange also notes that Users are required to implement regulatory risk management controls and procedures that are reasonably designed to prevent the entry of orders that fail to comply with regulatory requirements that apply on a pre-order entry basis pursuant to the Market Access Rule under 15c3-5 of the Act.<sup>27</sup> These pre-trade controls must, for example, be reasonably designed to assure compliance with Exchange trading rules and Commission rules under Regulation SHO<sup>28</sup> and Regulation NMS.<sup>29</sup> In accordance with the Market Access Rule, a User's procedures must be reasonably designed to ensure compliance with their applicable regulatory requirements, not just at the time the order is routed to the Exchange, but also at the time the order becomes eligible for execution.

In addition to this, the proposed rule change will not affect the protection of investors as it is generally consistent

<sup>26</sup> See Securities Exchange Act Release No. 43950 (November 17, 2000), 65 FR 75414 (December 1, 2000) ("Disclosure of Order Execution and Routing Practices release").

<sup>27</sup> See Securities Exchange Act Release No. 63241 (November 3, 2010), 75 FR 69792 (November 15, 2010) (File no. S7-03-10).

<sup>28</sup> See e.g., Question 2.6 of the Division of Trading and Markets: Response to Frequently Asked Questions Concerning Regulations SHO, available at <https://www.sec.gov/divisions/marketreg/mrfaqregsho1204.htm>.

<sup>29</sup> 17 CFR 240.610-611.

<sup>23</sup> See also *supra* note 15.

with Nasdaq Rule 4703(a), as previously approved by the Commission,<sup>30</sup> which allows participants to designate 7:00 a.m. ET as a time in which certain orders entered prior to 7:00 a.m. ET may become active during Nasdaq's early trading session, which likewise commences at 4:00 a.m. ET. Unlike Nasdaq Rule 4703(a), which limits the types of orders that may be designated to begin at 7:00 a.m. ET, the proposal will provide Users with the control and flexibility to designate a 7 a.m. Start time for any of their same orders currently eligible to execute in the Early Trading Session, thereby providing the opportunity for all orders eligible for the Early Trading Session to access the additional liquidity and execution opportunities present in the markets at this particular time, as they may today.

#### *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. Particularly, the Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because all Users will be able to designate their orders to become eligible for execution during the Early Trading Session beginning at 7:00 a.m. ET. All Users' orders submitted with a 7:00 a.m. Start designation will become eligible for execution at 7:00 a.m. ET in the same time sequence as they are today and will be subject to the same order type restrictions as are currently in place. The Exchange also does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, and may promote competition, because the proposed activation time is substantially similar to that which is currently in place on Nasdaq, as previously approved by the Commission, and other equities exchanges currently begin their early trading sessions at 7:00 a.m. ET. Therefore, the proposal will also allow the Exchange to compete with those exchanges that allow for a 7:00 a.m. ET start 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**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>31</sup> and Rule 19b-4(f)(6) thereunder.<sup>32</sup> Because the 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, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>33</sup> and Rule 19b-4(f)(6) thereunder.<sup>34</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>35</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>36</sup> the Commission may designate a shorter time if such action is consistent with the 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 immediately. This will allow the Exchange to implement the proposal at the same time as the Exchange's new extended Early Trading Session hours, which the Exchange plans to launch on March 8, 2021. In seeking this waiver, the Exchange asserts that this proposal neither introduces any new or novel issues nor extends or otherwise modifies trading hours during which trading is currently permissible on the Exchange. Rather, the Exchange states that this proposal will allow market participants and investors to continue to submit orders that become eligible for

execution at 7:00 a.m. ET, as they already do today, once the Exchange extends its Early Trading Session hours to begin at 4:00 a.m. ET. Based on the foregoing, the Commission believes that allowing this proposed rule change to become operative upon filing is consistent with the protection of investors and the public interest. The Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.<sup>37</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 shall 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:

##### *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-2021-010 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-2021-010. 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

<sup>31</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>32</sup> 17 CFR 240.19b-4(f)(6).

<sup>33</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>34</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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.

<sup>35</sup> 17 CFR 240.19b-4(f)(6).

<sup>36</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>37</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>30</sup> See *supra* note 16.

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 offices 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-2021-010, and should be submitted on or before March 22, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>38</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

[FR Doc. 2021-04090 Filed 2-26-21; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91193]

### Order Granting Application by Cboe C2 Exchange, Inc. for Exemption Pursuant to Section 36(a) of the Exchange Act From the Rule Filing Requirements of Section 19(b) of the Exchange Act With Respect to Certain Rules Incorporated by Reference

February 23, 2021.

Cboe C2 Exchange, Inc. ("C2" or the "Exchange") has filed with the Securities and Exchange Commission (the "Commission") an application for an exemption under Section 36(a)(1) of the Securities Exchange Act of 1934 ("Exchange Act")<sup>1</sup> from the rule filing requirements of Section 19(b) of the Exchange Act<sup>2</sup> with respect to certain rules of Cboe Exchange, Inc. ("Cboe") that the Exchange seeks to incorporate by reference.<sup>3</sup> Section 36(a)(1) of the

Exchange Act,<sup>4</sup> subject to certain limitations, authorizes the Commission to conditionally or unconditionally exempt any person, security, or transaction, or any class thereof, from any provision of the Exchange Act or rule thereunder, if necessary or appropriate in the public interest and consistent with the protection of investors.

The Exchange filed a proposed rule change<sup>5</sup> under Section 19(b) of the Exchange Act to update various C2 Rules and Chapters to reflect changes to the Cboe Options rulebook. Namely, in the proposed rule change, the Exchange proposed to incorporate by reference rule changes made to each Cboe Options rule cross-referenced in the following C2 chapters or sections: Chapter 3, Section B (TPH Registration);<sup>6</sup> Chapter 4, Section A (Equity and ETP Options);<sup>7</sup> Chapter 4, Section B (Index Options);<sup>8</sup> Chapter 5 (Business Conduct);<sup>9</sup> Chapter 6, Section E (Intermarket Linkage);<sup>10</sup> Chapter 6, Section F (Exercises and Deliveries);<sup>11</sup> Chapter 7, Section A;<sup>12</sup> Chapter 7, Section B;<sup>13</sup> Chapter 9 (Doing Business with the Public);<sup>14</sup> Chapter 10 (Margin Requirements);<sup>15</sup> Chapter 1 (Net Capital Requirements);<sup>16</sup> Chapter 12 (Summary Suspension);<sup>17</sup> Chapter 13 (Discipline);<sup>18</sup> Chapter 14

<sup>4</sup> 15 U.S.C. 78mm(a)(1).

<sup>5</sup> See Securities Exchange Act Release No. 87646 (December 2, 2019), 84 FR 66938 (December 6, 2019) (SR-C2-2019-025).

<sup>6</sup> Incorporates by reference Cboe Options Chapter 3, Section B.

<sup>7</sup> Incorporates by reference Cboe Options Chapter 4, Section A.

<sup>8</sup> Incorporates by reference Cboe Options Chapter 4, Section B.

<sup>9</sup> Incorporates by reference Cboe Options Chapter 8.

<sup>10</sup> Incorporates by reference Cboe Options Chapter 5, Section E.

<sup>11</sup> Incorporates by reference Cboe Options Chapter 6, Section B.

<sup>12</sup> Incorporates by reference Cboe Options Chapter 7, Section A.

<sup>13</sup> Incorporates by reference Cboe Options Chapter 7, Section B.

<sup>14</sup> Incorporates by reference Cboe Options Chapter 9. See also Securities Exchange Act Release No. 87646 (December 2, 2019), 84 FR 66938 (December 6, 2019) (SR-C2-2019-025), which relocated former Rule 3.19 to Rule 9.20 in order to include Cboe Options Rule 9.20 in C2 Chapter 9's incorporation of Cboe Options Chapter 9 by reference, as former Rule 3.19 is identical to Cboe Options Rule 9.20 and it is within the same category of exchange rules otherwise incorporated into C2 Chapter 9 by reference to Cboe Options Chapter 9 (*i.e.*, rule related to doing business with the public).

<sup>15</sup> Incorporates by reference Cboe Options Chapter 10.

<sup>16</sup> Incorporates by reference Cboe Options Chapter 11.

<sup>17</sup> Incorporates by reference Cboe Options Chapter 12.

<sup>18</sup> Incorporates by reference Cboe Options Chapter 13.

(Arbitration);<sup>19</sup> and Chapter 15 (Hearings and Review)<sup>20</sup> (the "Cboe Incorporated Rules").

The Commission notes it previously granted C2 an exemption from the rule filing requirements of Section 19(b) of the Act for the rules of the Cboe set forth in the C2 rules referenced above.<sup>21</sup> Since that time, the Cboe has renumbered and relocated the previously incorporated rules within its rulebook. As a result, C2 has submitted this exemptive request to reflect rule number changes in the Cboe Options rulebook. Specifically, the Exchange is now requesting, pursuant to Rule 0-12 under the Exchange Act,<sup>22</sup> that the Commission grant an exemption from the rule filing requirements of Section 19(b) of the Exchange Act for changes to the Chapters 3-7 and 9-15 of the Exchange's rules that are effected solely by virtue of a change to a Cboe Incorporated Rule. The Exchange requests that it be permitted to incorporate by reference changes made to the Cboe Incorporated Rules without the need for the Exchange to file separately the same proposed rule change pursuant to Section 19(b) of the Exchange Act.<sup>23</sup>

The Exchange represents that the Cboe Incorporated Rules are not trading rules.<sup>24</sup> Moreover, the Exchange states that it proposes to incorporate by reference a category of rules (rather than individual rules within a category).<sup>25</sup> The Exchange also represents that, as a condition of this exemption, the Exchange will provide written notice to its applicants and members whenever Cboe proposes a change to a Cboe Incorporated Rule.<sup>26</sup>

According to the Exchange, this exemption is necessary and appropriate to maintain consistency between C2 rules and the Cboe Incorporated Rules, thus helping to ensure identical regulation of C2 Permit Holders that are also Cboe Trading Permit Holders with respect to the incorporated provisions as

<sup>19</sup> Incorporates by reference Cboe Options Chapter 14.

<sup>20</sup> Incorporates by reference Cboe Options Chapter 15.

<sup>21</sup> See Securities Exchange Act Release Nos. 61152 (December 10, 2009), 74 FR 66699 (December 16, 2009); and 80339 (March 29, 2017), 82 FR 16442 (April 4, 2017).

<sup>22</sup> 17 CFR 240.0-12.

<sup>23</sup> See Exemptive Request, *supra* note 3.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> The Exchange states that it will provide such notice via a posting on the same website location where the Exchange posts its own rule filings pursuant to Rule 19b-4(l) within the timeframe required by such Rule. In addition, the Exchange states that the website posting will include a link to the location on Cboe's website where the applicable proposed rule change is posted. *Id.*

<sup>38</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78mm(a)(1).

<sup>2</sup> 15 U.S.C. 78s(b).

<sup>3</sup> See letter from Rebecca Tenuta, Counsel, Cboe C2 Exchange, Inc. to Vanessa Countryman, Secretary, Commission, dated February 9, 2021 ("Exemptive Request").