

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-94883; File No. SR-CboeEDGX-2022-004)

May 10, 2022

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Codify Certain Practices and Requirements Related to the Exchange's Port Message Rate Thresholds

I. Introduction

On January 21, 2022, Cboe EDGX Exchange, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to codify certain practices and requirements related to the Exchange's port message rate thresholds. The proposed rule change was published for comment in the Federal Register on February 9, 2022.³ On March 23, 2022, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ The Commission has received no comment letters on the proposed rule change. This order institutes proceedings pursuant to Section 19(b)(2)(B) of the Act⁶ to determine whether to approve or disapprove the proposed rule change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 94144 (February 3, 2022), 87 FR 7519 ("Notice").

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 94496, 87 FR 18410 (March 30, 2022). The Commission designated May 10, 2022 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

⁶ 15 U.S.C. 78s(b)(2)(B).

II. Description of the Proposed Rule Change

The Exchange states that its System⁷ does not have unlimited port capacity to consistently support an unlimited number of messages throughout the trading day.⁸ The Exchange states that for this reason, the Exchange limits each Member⁹ to a maximum number of messages over a set amount of time, per port (“Port Order Rate Threshold”).¹⁰ The Exchange states that historically, it has provided Members with the Port Order Rate Threshold through its publicly available technical specifications.¹¹ The Exchange’s current Port Order Rate Threshold is 10,000 messages per second.¹² The Exchange further states that while Members may elect to establish a lower Port Order Rate Threshold, each Member is subject to the same maximum Port Order Rate Threshold.¹³

⁷ “System” means the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away. See Exchange Rule 1.5(cc).

⁸ See Notice, supra note 3, at 7519.

⁹ “Member” means a registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a “member” of the Exchange as that term is defined in Section 3(a)(3) of the Act. Membership may be granted to a sole proprietor, partnership, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to Section 15 of the Act, and which has been approved by the Exchange. See Exchange Rule 1.5(n).

¹⁰ See Notice, supra note 3, at 7519.

¹¹ See id. See also Cboe FIX Specifications at p. 72, available at: https://cdn.cboe.com/resources/membership/Cboe_US_Equities_FIX_Specification.pdf; and Cboe BOE Specifications, available at: https://cdn.cboe.com/resources/membership/Cboe_US_Equities_BOE_Specification.pdf.

¹² See id. According to the Exchange, when the first non-administrative message is received, a one second window begins. During the second no more than 9,999 additional non-administrative messages will be allowed within that one second window. If the rate is exceeded, all new orders in the time window are rejected, modifies are treated as cancels, and cancels are processed. See Notice, supra note 3, at 7519 n. 6.

¹³ See Notice, supra note 3, at 7519.

The Exchange now proposes to establish Rule 11.23, entitled Port Order Rate Threshold, to state that all Members shall be subject to a Port Order Rate Threshold, as determined by the Exchange in its discretion. In support of its proposal, the Exchange cites to rules that historically existed in the Cboe Options Exchange (“C1”) and the Cboe C2 Options Exchange (“C2”) rulebooks.¹⁴ The Exchange further states that proposed Rule 11.23 is based on MIAAX and MIAAX Emerald Rule 502.¹⁵ The Exchange states that the proposed amendment will promote transparency and maintain clarity in its rules and help preserve its operational resiliency.¹⁶

III. Proceedings to Determine Whether to Approve or Disapprove SR-CboeEDGX-2022-004 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act¹⁷ to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposal. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,¹⁸ the Commission is providing notice of the grounds for disapproval under consideration. As described above, the Exchange’s proposed rule states that each Member shall be subject to a maximum Port Order Rate Threshold, as

¹⁴ See Notice, supra note 3, at 7519-20.

¹⁵ Id.

¹⁶ Id.

¹⁷ 15 U.S.C. 78s(b)(2)(B).

¹⁸ Id.

determined by the Exchange. As proposed, the rule provides the Exchange with discretion to set the maximum Port Order Rate Threshold and does not include a set maximum or range within which the maximum threshold would be set. Further, although the Exchange describes how the current maximum Port Order Rate Threshold is applied to new non-administrative messages received once the threshold is reached,¹⁹ the Exchange does not specify its application under the proposed rule change. The Commission is instituting proceedings to allow for additional analysis of the proposal's consistency with Section 6(b)(5) of the Act, which requires that the rules of a national securities exchange be designed, among other things, to promote just and equitable principles of trade, 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.²⁰

Under the Commission's Rules of Practice, the "burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change."²¹ The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,²² and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.²³

¹⁹ See supra note 12.

²⁰ 15 U.S.C. 78f(b)(5).

²¹ 17 CFR 201.700(b)(3).

²² See id.

²³ See id.

The Commission is instituting proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposal is consistent with the Act.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their data, views, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder.

Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of data, views, and arguments, the Commission will consider, pursuant to Rule 19b-4 under the Act,²⁴ any request for an opportunity to make an oral presentation.²⁵

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by [insert date 21 days from publication in the Federal Register]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [insert date 35 days from publication in the Federal Register].

Comments may be submitted by any of the following methods:

²⁴ 17 CFR 240.19b-4.

²⁵ Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Pub. L. 94-29 (June 4, 1975), grants to the Commission flexibility to determine what type of proceeding – either oral or notice and opportunity for written comments – is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

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 No. SR-CboeEDGX-2022-004 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File No. SR-CboeEDGX-2022-004. The 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 No. SR-CboeEDGX-2022-004 and should be submitted by [insert date 21 days from date of publication in the Federal Register]. Rebuttal comments should be submitted by [insert date 35 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁶

J. Matthew DeLesDernier
Assistant Secretary

²⁶ 17 CFR 200.30-3(a)(57).