SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-96973; File No. SR-CboeEDGX-2023-012)

February 24, 2023

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rules 11.9, 11.10, and 11.11

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on February 15, 2023, Cboe EDGX Exchange, Inc. ("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 Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b-4(f)(6) thereunder.[4] 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 Rule 11.9(a)(4) to provide that a change in position from either sell long to sell short exempt (or vice versa) or sell short exempt to sell short (or vice versa) will result in a loss of time priority if made when a short sale circuit breaker pursuant to Rule 201 of Regulation SHO is in effect. The Exchange also proposes to amend Rule 11.10(e)(3) to provide that orders may be modified from either sell long to sell short exempt (or vice versa) or sell short exempt to sell short (or vice

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 15 U.S.C. 78s(b)(3)(A)(iii).

4 17 CFR 240.19b-4(f)(6).

versa) using a Replace Message. Additionally, the Exchange proposes to amend Rule 11.11(a) to clarify when the Exchange may route orders with a short sale instruction when a short sale circuit breaker pursuant to Rule 201 of Regulation SHO is in effect. 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/), 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 11.9(a)(4) to reflect that if a User[5] changes the position of an order from sell long to sell short exempt (or vice versa) or sell short exempt to sell short (or vice versa) while a Regulation SHO Rule 201[6] short sale circuit breaker (the "SSCB")[7] is

5 See Exchange Rule 1.5(ee).

6 See 17 CFR 242.201; Securities Exchange Act Release No. 61595 (February 26, 2010), 75 FR 11232 (March 10, 2010).

7 For any execution of a short sale order to occur on the Exchange when a short sale price test restriction is in effect, the price must be better than the national best bid ("NBB"), unless the sell order was initially displayed by the System at a price above then the current NBB or is market "short exempt" pursuant to Regulation SHO. See Exchange

in effect, the change will result in a loss of time priority. This proposed change is substantially similar to MIAX PEARL, LLC ("MIAX Pearl") Rule 2616 (discussed *infra*).[8] The Exchange also proposes to amend Rule 11.10(e)(3) to provide that an order may be modified from sell long to sell short exempt (or vice versa) or sell short exempt to sell short (or vice versa) using a Replace Message. Additionally, the Exchange proposes to amend Rule 11.11(a) (Regulation SHO) to make clear that short sale orders[9] entered with an order instruction to post to an away trading center when an SSCB is in effect are eligible for routing by the Exchange.

Priority Loss for Position Changes during an SSCB

Pursuant to Exchange Rule 11.10(e)(3), certain order modifications may be made via a Replace Message (i.e., other than changing a Limit Order to a Market Order, only the price, Stop Price, the sell long indicator, Short Sale instruction, Max Floor of an order with a Reserve Quantity, and size of the order may be changed by a Replace Message), while other modifications require that the existing order be cancelled, and a new order be entered. Furthermore, pursuant to Rule 11.9(a)(4), when an order is cancelled or replaced in accordance with 11.10(e)(3), such order will retain its priority only for certain types of modifications (e.g., changing an order's position from sell long to sell short or a decrease in the size of the order). Certain other types of order modifications[10] (e.g., a change in the order's price) will otherwise receive a new timestamp and lose priority on the

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Rule 11.10(a)(1).

8 See Securities Exchange Act Release No. 93506 (November 2, 2021), 86 FR 61796 (November 8, 2021) (SR-PEARL-2021-35) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Changes, as Modified by Amendment No. 1, To Amend Exchange Rule 2616, Priority of Orders).

9 See 17 CFR 242.200(a). The term "short sale" is defined as "any sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller."

10 See Rule 11.9(a)(4).

EDGX Book.[11] For example, if pursuant to Rule 11.10(e)(3) an order is modified from sell long to sell short, such modification may be accomplished via a Replace Message, and the System will, pursuant to Rule 11.9(a)(4), allow such order to retain its original timestamp and priority on the EDGX Book.

The Exchange first proposes to amend Rule 11.10(e)(3) to provide that an order's position may be modified from sell long to sell short exempt (or vice versa) or sell short exempt to sell short (or vice versa) through the use of a Replace Message. The Exchange notes that Users complete a position modification from sell long to sell short exempt (or vice versa) or sell short exempt to sell short (or vice versa) using the same functionality to mark an order as either sell long or sell short under Rule 11.10(e)(3). The Exchange believes this change will provide additional specificity to the rule and ensure the rule uses terminology consistent with the description of Replace Messages and their impact on an order's priority under Exchange Rule 11.9(a)(4) (discussed *infra*).

The Exchange also proposes to amend Rule 11.9(a)(4) in order to align the Rule text with how the System currently behaves when an SSCB is in effect, and to provide clarification to Users that when an SSCB is in effect that changing an order's position from either sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa) will instead result in such order receiving a new timestamp and losing its original priority. The Exchange is not proposing to change the timestamp for modifications from either sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa) when an SSCB is *not* in effect. Additionally, the Exchange is also proposing to add language to Rule 11.9(a)(4) stating that a modification from sell long to sell short exempt (or vice versa) is a type of order modification that would retain time priority and would not receive a new timestamp, regardless of whether an SSCB is in effect (discussed *infra*).

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11 See Rule 1.5(d).

The Exchange also proposes a non-substantive change to Rule 11.9(a)(4) to provide that an order is being modified by a Replace Message rather than cancelled and replaced with a new order. This change is intended to provide that an order does not need to be cancelled and replaced with a new order, but rather includes modifications to orders via the use of a Replace Message. The proposed changes to Exchange Rule 11.9(a)(4) are based on previously-approved changes to MIAX Pearl Rule 2616(a)(5), which is substantially similar to Exchange Rule 11.9(a)(4).[12]

In the event that a User requests an order modification using a Replace Message, the System will first determine whether the modification is of a kind that may result in a loss of time priority in order to determine how the modification will be handled by the System. For example, as noted in Exchange Rule 11.9(a)(4), a modification to the price of an order will cause the loss of time priority. Therefore, in the event of a modification of the price of an order, the System will first determine that the type of modification may result in a loss of time priority and then handle the order accordingly by giving it a new timestamp.[13] Since an order modification from sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa) may result in a change in price of the order when an SSCB is in effect, the Exchange immediately gives the order a new timestamp. As previously discussed, a modification from sell long to sell short (or vice versa) or a modification from sell short exempt to sell short (or vice versa) requires the System to determine whether an order must be re-priced to be compliant with the requirements of Regulation SHO. The Exchange notes, however, that an order modification from sell long to sell short exempt (or vice versa) does

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12 Supra note 8.

13 Alternatively, as noted in Rule 11.9(a)(4) a modification that involves a decrease in the size of the order will not cause the loss of time priority. Therefore, in order to decrease the size of the order, the System will first determine that the type of modification will not result in a loss of time priority and will handle the order in a completely different manner than it would if the order would have resulted in a loss of time priority.

not require the System to determine whether the order shall be re-priced as a result of the modification, as both a sell long and a sell short exempt order may execute at a more aggressive price than a sell short order when an SSCB is in effect. Given that the System does not have to evaluate whether a price change is required as part of an order modification from sell long to sell short exempt (or vice versa), this specific order modification does not lose priority on the EDGX Book.

Specifically, if a sell long order is modified to a sell short order (or vice versa) or a sell short exempt order is modified to a sell short order (or vice versa) while an SSCB is in effect, the Exchange cannot simply change the order from sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa) while resting on the book, but rather must verify that the sell short order would not violate Rule 201(b)(1)(ii)[14] of Regulation SHO before the order is re-added to the EDGX Book. Therefore, as such a modification may result in a change of the order's price, the System gives the order a new timestamp, resulting in a loss of priority. Similarly, if a sell short order is modified to a sell long order (or vice versa) or a sell short order is modified to a sell short exempt (or vice versa) order while an SSCB is in effect, the order may be eligible to display at a more aggressive price. As such, the System gives the order a new timestamp, again resulting in a loss of time priority, but potentially in improved price priority. However, if an order is modified from sell long to sell short exempt (or vice versa) when an SSCB is in effect, the System does not have to take an additional step to evaluate whether the modification violates Rule 201(b)(1)(ii) of Regulation SHO given that sell long and sell short exempt orders may execute at more aggressive

14 Pursuant to Rule 201(b)(1)(ii) of Regulation SHO, the Exchange must establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution or display of a short sale order of a covered security at a price that is less than or equal to the current NBB during an SSCB.

prices that sell short orders during an SSCB. Accordingly, an order modification from sell long to sell short exempt (or vice versa) would not result in a loss of priority. Stated differently, the System treats orders marked sell long and sell short exempt the same, and only order modifications from either sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa) would cause an order to lose priority during an SSCB because the System is required to determine whether a change in the order's price is required as a consequence of the change in status from either sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa). This order price analysis by the System is required in order to prevent potential violations of Rule 201(b)(1)(ii) of Regulation SHO as orders may be required to be re-priced to prevent potential violations of Rule 201 when the SSCB is in effect.

To illustrate order behavior with a modification from sell long to sell short during an SSCB, consider the following example:

Assume the National Best Bid and Offer ("NBBO")[15] in a given covered security[16] is $5.00 x $5.10 while an SSCB is in effect. A User enters a non-displayed sell long order with a limit price of $5.00. Subsequently, the User modifies the position of the order from sell long to sell short, while the NBBO has remained the same. In order to effect the modification, the System determines that a modification from sell long to sell short may result in a change in the order's price in order to prevent potential violations of Rule 201(b)(1)(ii) of Regulation SHO, as orders may be required to

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15 See Exchange Rule 1.5(o).

16 Rule 201(a)(1) of Regulation SHO defines the term "covered security" to mean any "NMS stock" as defined under Rule 600(b)(48) of Regulation NMS. Rule 600(b)(48) of Regulation NMS defines an "NMS stock" as "any NMS security other than an option." Rule 600(b)(47) of Regulation NMS defines an "NMS security" as "any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options." See 17 CFR 242.201(a)(1); 17 CFR 242.600(b)(47); and 17 CFR 242.600(b)(48).

be repriced to prevent potential violations of Rule 201 when the SSCB is in effect. Accordingly, the order loses its time priority in order for the System to handle the potential price change. In this example, the subject order resulted in a change of the order's price as the sell short order was not eligible for execution at a price equal to the NBB. Nonetheless, even if the modification would not have ultimately resulted in a price change, the modification would have necessarily caused the System to evaluate whether a price change was necessary and, thus, required a new timestamp, resulting in a loss of time priority.

Order modifications from sell long to sell short (or vice versa), sell long to sell short exempt (or vice versa), or sell short exempt to sell short (or vice versa) that occur when an SSCB is not in effect will not be subject to a loss of priority on the Exchange, as orders may be required to be re-priced to prevent potential violations of Rule 201 of Regulation SHO, only when an SSCB is in effect. When an SSCB is not in effect the System does not have to take the additional step of determining whether a price change is required before effecting a position modification from sell long to sell short (or vice versa), sell long to sell short exempt (or vice versa), or sell short exempt to sell short (or vice versa) and as such, these order modifications can be processed without a loss of priority.

Routing Clarification for Orders that will Post to an Away Trading Center

The Exchange is also proposing to amend Rule 11.11(a) in order to codify that any sell short order that will post to an away Trading Center[17] will be routed when an SSCB is in effect. Given that sell short orders that post to an away Trading Center are subjected to the receiving Trading

[17] Rule 600(b)(82) of Regulation NMS defines a "Trading Center" as "a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent." See 17 CFR 242.201(a)(9); 17 CFR 242.600(b)(82).

Center's processes for handling sell short orders in compliance with Rule 201 of Regulation SHO,[18] the Exchange believes the capability to route all sell short orders with the ability to post to an away market center during an SSCB is appropriate and that Exchange Rules should be amended to codify such functionality.[19]

The proposed rule change would provide Users with clarity as how the Exchange will handle routable sell short orders when the SSCB is in effect. For instance, Rule 11.11(a) explicitly states that the Post to Away[20], RDOT[21], and ROOC[22] routing options will post an order to another Trading Center's book when the SSCB is in effect.[23] While Rule 11.11(a) provides

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18 Rule 201(b)(1) of Regulation SHO requires a Trading Center (e.g., Cboe EDGX) to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution or display of a short sale order of a covered security at a price that is less than or equal to the national best bid if the price of that covered security decrease by 10% or more from the covered security's closing price as determined by the listing market for the covered security as of the end of regular trading hours on the prior day. See 17 CFR 242.201(b)(1).

19 See, e.g., Nasdaq Rule 4763; NYSE Rule 440B; and Nasdaq's Regulation SHO Frequently Asked Questions (updated March 10, 2011), available at https://nasdaqtrader.com/content/marketregulation/regsho/regshoFAQs.pdf.

20 See Rule 11.11(g)(11). Post to Away is a routing option that routes the remainder of a routed order to and posts such order on the order book of a destination on the System routing table as specified by the User.

21 See Rule 11.11(g)(5). RDOT is a routing option under which an order checks the System for available shares and then is sent to destinations on the System routing table. If shares remain unexecuted after routing, they are sent to the NYSE and can be re-routed by the NYSE. Any remainder will be posted to the NYSE, unless otherwise instructed by the User.

22 See Rule 11.11(g)(8). ROOC is a routing option for orders that the entering firm wishes to designate for participation in the opening, re-opening (following a halt, suspension, or pause), or closing process of a primary listing market (Cboe BZX, NYSE, Nasdaq, NYSE American, or NYSE Arca) if received before the opening/re-opening/closing time of such market. If shares remain unexecuted after attempting to execute in the opening, re-opening, or closing process, they are either posted to the EDGX Book, executed, or routed to destinations on the System routing table.

23 The Exchange notes that orders routed pursuant to the Post to Away routing option that include a short sale instruction are identified as "short" and are subject to the receiving

that the Post to Away, RDOT, and ROOC routing options may post an order to another Trading Center's book (which could occur if the order is entered with a time-in-force ("TIF") of Day),[24] the Exchange seeks to clarify that *any* routing strategy that would post the remainder of the routed order to another Trading Center's book is eligible for routing during an SSCB. Under Exchange Rule 11.11(a), orders that include a Short Sale instruction and a Time-in-Force of IOC[25] that are not eligible for routing during an SSCB will continue to be cancelled. For any other order that includes a Short Sale instruction that is ineligible for routing due to an SSCB being in effect, the Exchange will continue to post the unfilled balance of the order to the EDGX Book, treat the order as if it included a Book Only or Post Only instruction, and subject it to the Re-Pricing Instructions to Comply with Rule 201 of Regulation SHO, as described in Rule 11.6(l)(2), unless the User has elected the order Cancel Back as described in Rule 11.6(b).

Trading Center's processes for handling sell short orders in compliance with Rule 201 of Regulation SHO. See Securities Exchange Act Release No. 79151 (October 25, 2016) 81 FR 75458 (October 31, 2016) (SR-BatsEDGX-2016-54) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend EDGX Rule 11.11, Routing to Away Trading Centers). See also Securities Exchange Act Release No. 34-88154 (February 7, 2020) 85 FR 8327 (February 13, 2020) (SR-CboeEDGX-2020-006) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt the Dark Routing Technique Routing Option; To Eliminate References to the ROUD, ROUE, and ROUQ Routing Options; and To Reflect Additional Routing Strategies for Which the Exchange May Route Orders with a Short Sale Instruction).

24 A "Day Order" refers to an order to buy or sell which, if not executed, expires at the end of Regular Trading Hours. See Exchange Rule 11.6(q)(2). Day Orders routed pursuant to the RDOT routing option that include a short sale instruction are identified as "short" and are subject to the receiving Trading Center's processes for handling short sale orders in compliance with Rule 201 of Regulation SHO.

25 An "IOC Order" refers to an order that is to be executed in whole or in part as soon as such order is received and the portion not executed immediately on the Exchange or another trading center is treated as cancelled and is not posted to the EDGX Book. See Exchange Rule 11.6(q)(1).

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.[26] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[27] 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)[28] 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 Rule 11.10(e)(3) is consistent with the protection of investors and the public interest because it aligns the rule text with the how the System currently operates and helps to eliminate any potential confusion Users may have regarding current Rule 11.10(e)(3). This proposed amendment will not change existing System behavior and Users will have more certainty about how orders may be modified, which is related to the proposed changes to Rule 11.9(a)(4).

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26 15 U.S.C. 78f(b).

27 15 U.S.C. 78f(b)(5).

28 Id.

Additionally, the proposed rule change to Rule 11.9(a)(4) is designed to ensure all sell short orders are subjected to the Exchange's process for ensuring that the order would not violate Rule 201(b)(1)(ii) of Regulation SHO during an SSCB. In order to verify the displayed price of an order with a position modification from sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa) during an SSCB, the System handles the modification as if a price change would occur, even if the modification does not ultimately result in a price change. If the System permitted such order modifications to forego this process, no order modifications from sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa) during an SSCB would result in a loss of time priority, and as a result, certain sell short orders could be permitted to display or execute at an impermissible price that would not comply with Rule 201(b)(1)(ii). The Exchange's process is designed to ensure compliance with Rule 201(b)(1)(ii) of Regulation SHO and is consistent with the protection of investors and the public interest. As designed, during an SSCB, the System determines up front whether an order modification could result in a price change before it can properly effect the modification. If the modification is of a type that may result in a price change to comply with Regulation SHO, the System gives the order a new timestamp. As a result, such a modification from sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa) always results in a loss of time priority even if the modification did not result in a change of the order's price. Conversely, an order modification from sell long to sell short exempt (or vice versa) does not result in an order losing priority because the System does not conduct an order price analysis to ensure compliance with Rule 201(b)(1)(ii) of Regulation SHO as both sell long and sell short exempt orders may execute at more aggressive prices than sell short orders during an SSCB.

Moreover, the Exchange processes billions of order modifications each month, with only a limited amount of modifications involving a change from sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa) during an SSCB. Out of the billions of order modifications processed by the Cboe affiliated equity exchanges during the months of May, June, and July 2022, the Exchange identified approximately 369,884 order modifications from sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa) across the Cboe affiliated equity exchanges during an SSCB that would potentially be affected by the proposed amendment to Rule 11.9(a)(4).[29] Given that 369,884 order modifications during an SSCB across the Cboe affiliated equity exchanges is an extremely small percentage of the billions of order modifications that the Cboe affiliated equity exchanges processed during the months of May, June, and July 2022, the Exchange believes that any benefit from restoring priority to this limited amount of order modifications is outweighed by the burden of changing the System to be able to conduct an order price analysis in real time to prevent potential violations of Rule 201(b)(1)(ii) of Regulation SHO and to permit these orders to retain priority.

In addition, the proposed change to Rule 11.9(a)(4) will also protect investors and the public interest because it continues to promote compliance with Regulation SHO, including Regulation SHO's order marking requirements[30] and Users' compliance with any applicable exemptions. Users are currently able to modify their order's position using a Replace Message and the proposed rule change does not alter a User's ability to do so. Users are required to mark

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29 When identifying orders impacted by this functionality during May, June, and July 2022, the Exchange broadly identified any orders regardless of whether those orders were at or near the NBBO (i.e., marketable orders) at the time of the event. The Cboe affiliated equities exchanges refers to the Exchange, Cboe BYX Exchange, Inc. ("BYX"), Cboe BZX Exchange, Inc. ("BZX"), and Cboe EDGA Exchange, Inc. ("EDGA").

30 17 CFR 242.200(g).

their orders properly upon entry and upon modification[31] and the proposed amendment to Rule 11.9(a)(4) does not change this obligation. As they are required to do today, Users must also continue to ensure that their order complies with any applicable exemption from Regulation SHO that they seek to avail themselves of, not only at the time of entry, but also at the time they change an order's position via a Replace Message.[32] The Exchange notes that it will continue to surveil for compliance with Exchange Rules 11.5 and 11.10(a)(5) as well as Regulation SHO.

The proposed amendment to Rule 11.10(e)(3) is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system because it does not seek to change how order modifications from either sell long to sell short exempt (or vice versa) or sell short exempt to sell short (or vice versa) are accomplished. Instead, the proposed change provides clarity to Users that a position change from either sell long to sell short exempt (or vice versa) or from sell short exempt to sell short (or vice versa) may be accomplished through the use of a Replace Message and does not require an order to be cancelled and a new order submitted in order to modify an order's position to sell short exempt. The proposed change to Rule 11.10(e)(3) will also provide continuity between Rule 11.10(e)(3) and the proposed

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31 See Exchange Rule 11.10(a)(5) ("Short Sales"). The rule provides that "[a]ll orders to sell short shall include a Short Sale instruction, and if applicable, a Short Exempt instruction when entered into the System. If an order includes a Short Exempt instruction, the Exchange shall execute, display and/or route an order without regard to any short sale price test restriction in effect under Regulation SHO. The Exchange relies on the inclusion of a Short Exempt instruction when handling such order, and thus, it is the entering Member's responsibility, not the Exchange's responsibility, to comply with the requirements of Regulation SHO relating to including a Short Exempt instruction on an order."

32 A change in an order's price or position as well as an increase in an order's size via a Replace Message implicitly results in a new order. All Users must, therefore, ensure continued compliance with the order market and locate requirements of Regulation SHO (17 CFR 242.201) including compliance with Question 2.6 of the Commission's "Responses to Frequently Asked Questions Concerning Regulation SHO" available at https://www.sec.gov/divisions/marketreg/rule201faq.htm (last accessed October 3, 2022).

changes to Rule 11.9(a)(4), and as such are directly intended to remove impediments to and perfect the mechanism of a free and open market and national market system.

The proposed change to Rule 11.9(a)(4) removes impediments to and perfects the mechanism of a free and open market and a national market system because it addresses a limited scenario when a User modifies an order's position using a Replace Message during an SSCB. The proposed rule change specifically states that orders whose positions are modified from either sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa) using a Replace Message when an SSCB is in effect will not lose priority as compared to other orders on the EDGX Book. Further, the proposed rule change provides that order modifications from sell long to sell short exempt (or vice versa) using a Replace Message will not lose priority as compared to other orders on the EDGX Book, regardless of whether an SSCB is in effect. Additionally, the proposed change to Rule 11.9(a)(4) removes impediments to and perfects a free and open market system because it is designed to make clear to Users that orders may be modified using a Replace Message without losing priority subject to the limitations named in Rule 11.9(a)(4). This change does not amend the meaning or operation of Rule 11.9(a)(4).

The proposed changes to Rule 11.11(a) are designed to clarify that any sell short order that will post to an away Trading Center will be routed when an SSCB is in effect. In addition, providing Users the ability to send sell short orders that will post to an away Trading Center, and thus are routable when an SSCB is in effect provides them additional flexibility with regard to the handling of their orders, and may provide additional execution opportunities for those orders. Given this, the proposed amendments to Rule 11.11(a) are directly targeted at removing impediments to and perfecting the mechanism of a free and open market and national market system, as well as to assure fair competition among brokers and dealers and among exchange markets.

The proposed change to Rule 11.11(a) further promotes just and equitable principles of trade and perfects a free and open market system by identifying which orders containing routing instructions are eligible to route and post to an away market center during an SSCB. As all Trading Centers are required to comply with Rule 201(b)(1)(ii) of Regulation SHO, a User can expect that an order routed from the Exchange to an away market center will be treated similarly on the away market center as it would on the Exchange during an SSCB. There is no change to the meaning or operation of this rule, but rather an amendment to make clear that an order that is eligible to post to an away market may be routed during an SSCB.

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 as the proposed rule changes are not being proposed for competitive reasons. Rather, the proposed amendment to Rule 11.10(e)(3) provides that modifications from sell long to sell short exempt (or vice versa) or from sell short exempt to sell short (or vice versa) may be accomplished through the use of a Replace Message. This proposed amendment will not change existing System behavior and Users will have more certainty about how orders may be modified, which is related to the proposed changes to Rule 11.9(a)(4). Order modifications from sell long to sell short (or vice versa) use the same Replace Message functionality as a modification from either sell long to sell short exempt (or vice versa) or from sell short exempt to sell short (or vice versa), and amending Rule 11.10(e)(3) to describe this behavior for Users is directly related to the Exchange's proposed changes to Rule 11.9(a)(4) and does not impose a burden on inter-market competition that is not necessary or appropriate in furtherance of the Act.

Additionally, the proposed amendments to Rule 11.9(a)(4) will enhance the transparency of the rules by revising the rule text. By revising the rule text to align with the current System behavior, Users will be aware that if they modify their orders from sell long to sell short (or vice versa) or from sell short exempt to sell short (or vice versa) and an SSCB is in effect, their orders will be given a new timestamp and lose time priority. Users are free to consider this proposed change as part of their overall experience with the Exchange, which also includes execution quality and functionality offerings, when making order routing decisions. Additionally, the Exchange notes that the proposed rule change applies equally to all Users, and all Users' orders are subject to the described functionality, regardless of their size. Users may not opt-out of this System functionality.

Furthermore, this loss of time priority for a position modification would only occur when an SSCB is in effect and the Exchange is required to comply with Rule 201 of Regulation SHO. The impact of an order modification from sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa) using a Replace Message during an SSCB with respect to loss of time priority is no different than when a User seeks to increase the size of their order using a Replace Message or when a User seeks to change the position of their order by cancelling the existing order and entering a new order. In each instance, the order will receive a new timestamp reflecting the time the modification was made and the order would lose priority as compared to other orders on the EDGX Book.

Furthermore, the proposed change to Rule 11.9(a)(4) does not impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the Act in that the proposed change does not present a novel approach to sell short order handling. Indeed, the proposed changes to Rule 11.9(a)(4) are consistent with a recently approved amendment[33] to MIAX Pearl Rule 2616(a).[34] Pursuant to MIAX Pearl Rule 2616(a), any position modification involving a change from sell long to either sell short exempt or sell short (or vice versa) will result in the order receiving a new timestamp and the order losing priority, as compared to other orders resting on the book while an SSCB is in effect. The Exchange's proposed Rule is also similar to MIAX Pearl Rule 2616(a) in that modifications from sell long to sell short (or vice versa) and modifications from sell short exempt to sell short (or vice versa) will be subject to a loss of priority during an SSCB.

While the proposed rule change is substantially similar to that of MIAX Pearl, the Exchange's proposal differs in that its proposal would not cause orders modified from sell long to sell short exempt (or vice versa) to lose priority during an SSCB, whereas MIAX Pearl Rule 2616(a) specifically states that a change from sell long to sell short exempt is a type of order modification that would be subject to a loss of priority during an SSCB. The Exchange's System does not view an order modification from sell long to sell short exempt (or vice versa) as a type of change which requires an order price analysis in order to prevent potential violations of Rule 201(b)(1)(ii) of Regulation SHO, and as such does not cause these types of order modifications to result in a loss of priority.

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33 Supra note 8.

34 MIAX Pearl Rule 2616(a) states: "[i]n the event an order has been modified via a Cancel/Replace message in accordance with Rule 2614(e) above, such order only retains its timestamp if such modification involves a decrease in the size of the order, a change to the Max Floor of an order with a Reserve Quantity, or when a Short Sale Period, as defined in Exchange Rule 2614(g)(3)(A), is not in effect, a change in position from (A) sell to sell short; (B) sell to sell short exempt; (C) sell short to sell; (D) sell short to sell short exempt; (E) sell short exempt to sell; and (F) sell short exempt to sell short."

In addition, the proposed rule change is more narrowly tailored than the rules of Investors Exchange LLC ("IEX"), which requires market participants to enter a new order where an order's position is changed even when an SSCB is not in effect[35] and Nasdaq Stock Market, LLC ("Nasdaq"), which requires orders to be cancelled if the order's position is redesignated as short during a Short Sale Period and the order is not priced at a Permitted Price or higher under Nasdaq Rule 4763(e).[36] In each instance mentioned above, the original order would need to be replaced with a new order and therefore would receive a new timestamp which would result in a loss of priority. The Exchange is seeking to only append a new timestamp and cause a loss of priority as compared to other orders on the EDGX Book when an order's position is modified from sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa) during an SSCB, which is more narrowly-tailored than the rules governing similar order behavior on MIAX Pearl, IEX and Nasdaq.

Furthermore, the proposed change to Rule 11.11(a) does not impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the Act as it makes clear that orders that may post to away market centers will be routed during an SSCB. Users will have the ability to take this factor into consideration when determining which routing strategy to use when entering an order on the Exchange and are able to consider this proposed change as part of their overall experience with the Exchange. If a User disfavors this proposed change they are free to use a different routing strategy or submit an order directly to an away market center. This proposed change is not being proposed for competitive reasons, but rather to make clear that any order eligible to be posted to an away market center will be routed during an SSCB. As each

[35] See IEX Rule 11.190(d)(3) and IEX Rule 11.190(d)(4).

[36] See Nasdaq Equity 4, Rule 4756(a)(3).

market center is required to comply with Rule 201 of Regulation SHO, the Exchange believes that any order eligible to be posted to an away market center should be permitted to route, as the order would be subject to the away market center's rules regarding compliance with Rule 201 of Regulation SHO upon posting.

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) of the Act[37] and Rule 19b-4(f)(6) thereunder.[38]

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),[39] 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. The Exchange states the proposed rule change provides clarity on how orders modified to sell short exempt are accomplished and the priority of orders marked sell short

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37 15 U.S.C. 78s(b)(3)(A).

38 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.

39 17 CFR 240.19b-4(f)(6)(iii).

exempt. The Exchange believes that the proposed rule change related to modifications from sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa) that occur during an SSCB will affect only a small percentage of overall order modifications.[40] Finally, the Exchange states that the proposed change to Rule 11.11(a) will permit orders containing routing instructions entered by all Users that would post to an away market during an SSCB to route to away market centers immediately upon becoming operative. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change does not raise any new or novel issues. Accordingly, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[41]

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:

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40 See supra note 29.

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

Electronic Comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CboeEDGX-2023-012.

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-2023-012. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeEDGX-2023-012, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[42]

J. Matthew DeLesDernier

Deputy Secretary

[42] 17 CFR 200.30-3(a)(12), (59).