

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-99459; File No. SR-CboeEDGX-2024-007)

February 1, 2024

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing of a Proposed Rule Change to Amend Rule 11.6(n)(4) and Rule 11.10(a)(4)(D) to Permit the Use of the Post Only Order Instruction at Prices Below \$1.00

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 19, 2024, Cboe EDGX Exchange, Inc. (the “Exchange” or “EDGX”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III 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 Rule 11.6(n)(4) and Rule 11.10(a)(4)(D) to permit the use of the Post Only order instruction at prices below \$1.00. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange’s website ([http://markets.cboe.com/us/options/regulation/rule\\_filings/edgx/](http://markets.cboe.com/us/options/regulation/rule_filings/edgx/)), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

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

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

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

Trading in sub-dollar securities both on- and off-exchange has grown significantly since early 2019. An analysis of SIP<sup>3</sup> data by the Exchange found that sub-dollar average daily volume has increased over 300% as compared to volumes in the first quarter of 2019.<sup>4</sup> During this period, on-exchange average daily volume in sub-dollar securities grew from 442 million shares per day to 1.8 billion shares per day.<sup>5</sup> A separate analysis of SIP and FINRA Trade Reporting Facility (“TRF”)<sup>6</sup> data indicated that exchanges represented approximately 39.8% market share in sub-dollar securities, with a total of 1,638 securities trading below \$1.00.<sup>7</sup> As an exchange group, Cboe had approximately 13.3% of market share in sub-dollar securities in the first quarter of 2023.<sup>8</sup> Additionally, an analysis of internal data showed that the Exchange has seen retail sub-dollar average daily volume grow from approximately \$40 million during the first quarter of 2022 to over \$100 million during the third quarter of 2023.

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<sup>3</sup> The “SIP” refers to the centralized securities information processors.

<sup>4</sup> See “How Subdollar Securities are Trading Now” (March 16, 2023). Available at <https://www.cboe.com/insights/posts/how-subdollar-securities-are-trading-now/>.

<sup>5</sup> Id.

<sup>6</sup> Trade Reporting Facilities are facilities through which FINRA members report off-exchange transactions in NMS stocks, as defined in SEC Rule 600(b)(47) of Regulation NMS. See Securities Exchange Act Release No. 96494 (December 14, 2022), 87 FR 80266 (December 29, 2022) (“Tick Size Proposal”) at 80315.

<sup>7</sup> Supra note 4.

<sup>8</sup> Id.

As a result of the growth in sub-dollar trading, the Exchange proposes to amend Rule 11.6(n)(4) in order to permit an order containing a Post Only instruction to post to the EDGX Book<sup>9</sup> at prices below \$1.00. As defined in Rule 11.6(n)(4), a Post Only instruction is “[a]n instruction that may be attached to an order that is to be ranked and executed on the Exchange pursuant to Rule 11.9 and Rule 11.10(a)(4) or cancelled, as appropriate, without routing away to another trading center except that the order will not remove liquidity from the EDGX Book...”. Accordingly, an order containing a Post Only instruction does not remove liquidity, but rather posts to the EDGX Book to the extent permissible. Additionally, the Exchange proposes to amend Rule 11.10(a)(4)(D) to describe the manner in which bids or offers priced below \$1.00 per share are executed against orders resting on the EDGX Book. The Exchange believes the proposed changes will provide Users<sup>10</sup> with an additional order type to utilize when submitting order flow to the Exchange in securities priced below \$1.00, thereby contributing to a deeper and more liquid market, which benefits all market participants and provides greater execution opportunities on the Exchange.

Currently, orders containing a Post Only instruction priced below \$1.00 are automatically treated as orders that remove liquidity.<sup>11</sup> In order to permit an order containing a Post Only instruction to post to the EDGX Book at prices below \$1.00, the Exchange proposes to amend Rule 11.6(n)(4) to remove language that states that an order containing a Post Only instruction will remove contra-side liquidity from the EDGX Book if the order is an order to buy or sell a security

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<sup>9</sup> See Rule 1.5(d). The EDGX Book means the System’s electronic file of orders.

<sup>10</sup> See Rule 1.5(ee). The term “User” shall mean any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3.

<sup>11</sup> Orders containing a Post Only instruction in securities priced at or above \$1.00 remove contra-side liquidity only if the value of such execution when removing liquidity equals or exceeds the value of such execution if the order instead posted to the EDGX Book and subsequently provided liquidity. The Exchange does not propose to change the functionality of orders containing a Post Only instruction in securities priced at or above \$1.00.

“priced below \$1.00...” While the Exchange’s economic best interest calculation<sup>12</sup> will remain the same as is currently in-place for securities priced at or above \$1.00, the impact of this proposal will modify the outcome of orders containing a Post Only instruction in securities priced below \$1.00 for Users who choose to utilize this particular order type. Under this proposal, orders containing a Post Only instruction priced below \$1.00 will only remove liquidity if the value of the overall execution (taking into account all applicable fees and rebates) make it economically beneficial for the order to remove liquidity. The Exchange has received User feedback requesting the ability to utilize orders with a Post Only instruction in securities priced below \$1.00 in order to allow Users to operate a single trading strategy for securities at all prices even though the execution cost economics for securities priced below \$1.00 may only provide a slight economic benefit for Users who choose to utilize orders with a Post Only instruction in securities priced below \$1.00.

In addition to the proposed amendment to Rule 11.6(n)(4), the Exchange proposes an amendment to its order handling procedures in order to permit Non-Displayed Orders<sup>13</sup> and orders subject to display-price sliding (collectively, “Resting Orders”) which are not executable at their most aggressive price due to the presence of a contra-side order containing a Post Only instruction to be executed at one minimum price variation less aggressive than the order’s most aggressive price.<sup>14</sup> Currently, similar order handling behavior applies only to securities priced at or above

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<sup>12</sup> The Exchange’s economic best interest calculation determines whether the value of price improvement associated with an order containing a Post Only instruction equals or exceeds the sum of fees charged for such execution and the value of any rebate that would be provided if the order posted to the EDGX Book and subsequently provided liquidity. The determination of whether an order containing a Post Only instruction will be allowed to post to the EDGX Book or be eligible to remove liquidity is based on the current fee schedule, the execution price, and the amount of price improvement received.

<sup>13</sup> See Rule 11.6(e)(2). A User may attach a “Non-Displayed Order” instruction to an order stating that the order is not to be displayed by the System on the EDGX Book.

<sup>14</sup> See Securities Exchange Act Release No. 75479 (July 17, 2015), 80 FR 43810 (July 23, 2015), SR-EDGX-2015-33 (“EDGX Order Handling Filing”). See also Securities Exchange Act Release No. 64475 (May 12, 2011), 76 FR 28830 (May 18, 2011), SR-BATS-2011-015 (“Resting Order Execution Filing”). The Resting Order Execution Filing introduced an order handling change for certain Non-Displayed Orders and orders subject to display-price sliding that are not executable at prices equal to displayed orders on the opposite

\$1.00.<sup>15</sup> When proposed in 2011, the Resting Order Execution Filing stated that the order handling functionality was not necessary for securities priced below \$1.00 as the Exchange did not have the ability to quote in sub-pennies and the system limitations that market participants may encounter if attempting to execute in increments finer than \$0.0001.<sup>16</sup> Given the rise in sub-dollar trading discussed above, the Exchange now proposes to expand the order handling functionality introduced by the Resting Order Execution Filing to securities priced below \$1.00.

Rule 11.10(a)(4)(D) states that for securities priced above \$1.00, incoming orders that are Market Orders<sup>17</sup> or Limit Orders<sup>18</sup> priced more aggressively than an order displayed on the EDGX Book, the Exchange will execute the incoming order at, in the case of an incoming sell order, one-half minimum price variation less than the price of the displayed order, and, in the case of an incoming buy order, at one-half minimum price variation more than the price of the displayed order. The Exchange proposes that for securities priced below \$1.00, incoming orders that are Market Orders or Limit Orders priced more aggressively than an order displayed on the EDGX Book, the Exchange will execute the incoming order at, in the case of an incoming sell order, one minimum price variation less than the price of the displayed order, and, in the case of an incoming buy order, at one minimum price variation more than the price of the displayed order. The different treatment

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side of the market (the “locking price”) on the Exchange’s affiliate, BZX (BATS) Exchange in 2011 and is incorporated by reference in the EDGX Order Handling Filing. The Resting Order Execution Filing permits Resting Orders priced at or above \$1.00 to be executed at one-half minimum price variation less aggressive than the locking price (for bids) and one-half minimum price variation more aggressive than the locking price (for offers), under certain circumstances.

<sup>15</sup> See Rule 11.10(a)(4)(D).

<sup>16</sup> See Resting Order Execution Filing footnote 8.

<sup>17</sup> See Rule 11.8(a). A “Market Order” is an order to buy or sell a stated amount of a security that is to be executed at the NBBO or better when the order reaches the Exchange.

<sup>18</sup> See Rule 11.8(b). A “Limit Order” is an order to buy or sell a stated amount of a security at a specified price or better.

of securities priced below \$1.00 from securities priced at or above \$1.00 arises from limitations within the System,<sup>19</sup> which cannot process executions out to five decimal places.

In order to demonstrate the proposed order handling behavior for securities priced below \$1.00, the Exchange has included the following example:

**Example 1**

- Assume the NBB is \$0.50 and the NBO is \$0.53. There is no resting interest on the EDGX Book.

	<u>Bid</u>		<u>Offer</u>
National best:	\$0.50	X	\$0.53

- Next, assume the Exchange received an incoming displayed offer (Order 1) to sell 100 shares at \$0.50. Order 1 is eligible for display-price sliding pursuant to Rule 11.6(l).<sup>20</sup> Pursuant to Rule 11.6(l)(1)(B)(i), Order 1 is temporarily slid to a displayed price of \$0.5001 as it locked the NBB upon entry.<sup>21</sup> Even though Order 1 is now temporarily displayed at a price of \$0.5001, Order 1's ranked price remains \$0.50, as \$0.50 is the locking price.<sup>22</sup>
- Next, assume the Exchange received an incoming bid containing a Post Only instruction (Order 2) to buy 100 shares at \$0.50. The Exchange's economic best interest calculation determined that it was more beneficial for Order 2 to post to the EDGX Book and display at

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<sup>19</sup> See Rule 1.5(cc). The term "System" shall mean the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranked, executions and, when applicable, routing away.

<sup>20</sup> See Rule 11.6(l)(1)(B)(i). An order instruction requiring that where an order would be a Locking Quotation or Crossing Quotation of an external market if displayed by the System on the EDGX Book at the time of entry, will be ranked at the Locking Price in the EDGX Book and displayed by the System at one Minimum Price Variation lower (higher) than the Locking Price for orders to buy (sell) ("Display-Price Sliding").

<sup>21</sup> The Exchange notes that the reference to "temporarily" is meant to convey that for so long as the NBB is locked, Order 1 will be displayed at a price of \$0.5001 pursuant to Rule 11.6(l)(1)(B)(i). In the event that the NBB moves so that Order 1 is no longer locking the NBB, Order 1 will be displayed at the most aggressive permissible price. See also Rule 11.6(l)(1)(B)(ii).

<sup>22</sup> Id.

a price of \$0.50. Orders containing a Post Only instruction are permitted to post and be displayed opposite the ranked price of orders subject to Display-Price Sliding.<sup>23</sup> The result would be depicted as follows:

	<u>Bid</u>		<u>Offer</u>
National best:	\$0.50	X	\$0.5001
EDGX best:	\$0.50	X	\$0.5001

- The Exchange then receives an IOC<sup>24</sup> order to buy (Order 3) 100 shares at \$0.5001. Order 3 executes against Order 1 in its entirety at a price of \$0.5001.

Consistent the Exchange’s rule regarding priority of orders, Rule 11.9, a Non-Displayed Order cannot be executed by the Exchange pursuant to Rule 11.10 when such order would be executed at the locking price. Specifically, if an incoming, marketable order was allowed to execute against the resting, non-displayed portion of Order 1 at the locking price, such order would receive a priority advantage over Order 2, a resting, displayed order at the locking price. The EDGX Order Handling Filing granted the Exchange the ability to execute Non-Displayed Orders and orders subject to NMS Price Sliding<sup>25</sup> priced at or above \$1.00 at one-half minimum price variation more (less) than the locking price in the event that a bid (offer) submitted to the Exchange opposite such Resting Order is a market order or limit order priced more aggressive than the locking price.

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<sup>23</sup> See Rule 11.6(l)(1)(B)(v).

<sup>24</sup> See Rule 11.6(q)(1). “IOC” is an instruction the User may attach to an order stating the order is to be executed in whole or in part as soon as such order is received. The portion not executed immediately on the Exchange or another trading center is treated as cancelled and is not posted to the EDGX Book.

<sup>25</sup> Orders subject to NMS price sliding (“Display-Price Sliding”) that are temporarily slid to one minimum price variation above (below) the NBO (NBB) will consist of a non-displayed ranked price that is equal to the locking price while simultaneously showing a displayed price that is one minimum price variation above (below) the NBO (NBB). Given that orders subject to Display-Price Sliding contain a non-displayed ranked price in addition to the order’s displayed price, the particular priority issue identified in the Resting Order Execution Filing with regard to Non-Displayed Orders is also present when an order subject to Display-Price Sliding is resting on the book opposite a displayed order.

In the example above, Order 1, ranked at \$0.50 upon entry, was slid to a displayed price of \$0.5001 pursuant to Rule 11.6(l)(1)(B)(i) as it locked the NBB. Upon the arrival of Order 2, which is an order containing a Post Only instruction that is permitted to post to the EDGX Book and display opposite of Order 1,<sup>26</sup> the Exchange's current priority rule prohibits Order 1 from executing at a price of \$0.50 in the event a subsequent contra-side incoming order is entered at a more aggressive price than the locking price. In the example above, Order 3 was entered at a more aggressive price (\$0.5001) than the locking price (\$0.50). Without the proposed changes to Rule 11.10(a)(4)(D), Order 3 would be cancelled upon entry as it cannot execute at a price of \$0.50 due to Order 2's higher priority status.

As discussed above, the Exchange is proposing that a Resting Order priced below \$1.00 be permitted to execute at one minimum price variation above the locking price (in the event of a Resting Order offer) or one minimum price variation below the locking price (in the event of a Resting Order bid) in the event that an order submitted to the Exchange on the side opposite such Resting Order is a market or limit order priced more aggressively than the locking price.<sup>27</sup> This behavior is substantially similar to the order handling functionality described in the EDGX Order Handling Filing, with one difference being that securities priced below \$1.00 will execute at one full minimum price variation above (below) the locking price for offers (bids) rather than one-half minimum price variation above (below) the locking price for offers (bids) in securities priced at or above \$1.00. While the example above shows a scenario in which only the Resting Order will

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<sup>26</sup> Supra note 20.

<sup>27</sup> See 17 CFR 242.612 ("Minimum pricing increment"). Given that the minimum pricing increment for securities priced below \$1.00 is \$0.0001, the Exchange believes that allowing orders to execute at one minimum price variation above (for offers) or below (for bids) the locking price is appropriate, as requiring executions to occur at one-half minimum price variation above (for offers) or below (for bids) the locking price, which is the current behavior for securities priced at or above \$1.00, would result in trades execution out to five decimal places, which is not supported by the System.



receive \$0.0001 of price improvement, rather than each side of the transaction as is the case in the scenarios described in the EDGX Order Handling Filing, the Exchange notes that if Order 3 in the example above was entered at any price more aggressive than \$0.5001, Order 3 would continue to execute against Order 1 at a price of \$0.5001 and Order 3 would receive price improvement equal to the difference between its limit price and \$0.5001.<sup>28</sup>

The EDGX Order Handling Filing specifically introduced order handling behavior that would permit Resting Orders to be executed at one-half minimum price variation above (below) the locking price when an incoming, marketable offer (bid) would otherwise be prevented from executing due to the presence of an order containing a Post Only instruction in order to optimize available liquidity for incoming orders and to provide price improvement for market participants.<sup>29</sup> This change to order handling behavior was required because, if incoming orders were allowed to execute against Resting Orders at the locking price, such incoming order would receive a priority advantage over the resting, displayed order at the locking price, contrary to the Exchange's priority rule, Rule 11.9.<sup>30</sup> The Exchange recognizes that the order handling behavior for securities priced at or above \$1.00 described in the EDGX Order Handling Filing results in price improvement for both sides of an affected transaction and the Exchange's proposed order handling change will result in \$0.0001 of price improvement only for the Resting Order, however this situation is limited to instances where the incoming order is entered at a price equal to the displayed price of the Resting Order. While only the Resting Order will receive \$0.0001 of price improvement when an incoming order is entered at the Resting Order's displayed price, the Exchange believes the incoming order is

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<sup>28</sup> For example, if all facts from Example 1 remain the same *except* that Order 3 is an IOC buy order entered with a limit price of \$0.5005, then Order 3 will execute against Order 1 at a price of \$0.5001 and receive \$0.0004 of price improvement.

<sup>29</sup> See Resting Order Execution Filing at 28831.

<sup>30</sup> Id.

receiving the benefit of immediate execution rather than cancelling back or posting to the EDGX Book (depending on User instruction), which will result in higher overall market quality and likelihood of execution on EDGX for Users. In situations where the incoming order is entered at a more aggressive price than the displayed price of the Resting Order, however, each side of the transaction will be receiving at least \$0.0001 of price improvement.

Without the proposed order handling change for securities priced below \$1.00, a Resting Order may be priced at the very inside of the market at a price below \$1.00 but temporarily unable to execute at its full limit price due to the Exchange's priority rule and current order handling procedures. The Exchange notes that by permitting a User's Resting Order to rest at a locking price opposite a displayed order and receive an execution against an incoming order that is priced equal to or more aggressively than the displayed price, the Exchange is incentivizing Users to post aggressively priced liquidity on both sides of the market, rather than discouraging such liquidity by leaving orders unexecuted. In addition, if the EDGX Book changes so that such orders are no longer resting or ranked opposite a displayed order, then such orders will again be executable at their full limit price, and in the case of price slid orders, will be displayed at that limit price.

The Exchange is proposing a solution to address specific conditions that are present on the EDGX Book when an order with a Post Only instruction is displayed opposite the ranked price of orders subject to display-price sliding. The Exchange believes that such specific circumstances, without modification of Rule 11.10(a)(4), would be present upon the expansion of Post Only instruction functionality to securities priced below \$1.00 and would result in Users receiving fewer executions than the Exchange could otherwise facilitate. The Exchange believes the proposed change to Rule 11.10(a)(4)(D) is substantially similar to the order handling modification proposed and ultimately approved by the EDGX Order Handling Filing and does not introduce any novel

order handling behavior that has not previously been proposed. While the Exchange is proposing to use a full minimum price variation rather than the one-half minimum price variation currently used for securities priced at or above \$1.00 as detailed in the EDGX Order Handling Filing, the minimum price variation proposed for securities priced below \$1.00 is commensurate with the standard minimum pricing increment for securities priced below \$1.00.

The Exchange believes the absence of price improvement for the incoming order is diminished by the incoming order's ability to receive an execution on the Exchange against the Resting Order, rather than receive a cancellation or be posted to the EDGX Book (depending on User instruction). Further, the Exchange believes that Users who received increased execution rates on EDGX will be more likely to submit additional order flow to the Exchange. Additional increased order flow benefits all market participants by contributing to a deeper, more liquid market and provides even more execution opportunities for active market participants. Additionally, this difference is necessary due to System limitations that do not support executions out to five decimal places (\$0.00001) in securities priced below \$1.00, which would occur should the Exchange utilize the same minimum price variation described in the EDGX Order Handling Filing. The proposal to amend Rule 11.10(a)(4)(D) is limited to certain circumstances that occur as a result of the presence of an order containing a Post Only instruction resting opposite a Non-Displayed Order or order subject to Display-Price Sliding and is designed to optimize available liquidity for incoming orders.

## 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>31</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>32</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>33</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As discussed above, the Exchange is proposing to expand the use of its Post Only instruction to securities priced below \$1.00. In conjunction with expanding the ability to utilize a Post Only instruction at prices below \$1.00, the Exchange also proposes that a Resting Order priced below \$1.00 be permitted to execute at one minimum price variation above the locking price (in the event of a Resting Order offer) or one minimum price variation below the locking price (in the event of a Resting Order bid) in the event that an order submitted to the Exchange on the side opposite such Resting Order is a market or limit order priced more aggressively than the locking price. This change in order handling behavior is necessary in order to address specific conditions that are present on the EDGX Book when an order containing a Post Only instruction is displayed opposite the ranked price of orders subject to display-price sliding. As discussed below, the Exchange believes its proposal is consistent with Section 6(b)(5) of the Act.

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<sup>31</sup> 15 U.S.C. 78f(b).

<sup>32</sup> 15 U.S.C. 78f(b)(5).

<sup>33</sup> Id.

In particular, the proposal to amend Rule 11.6(n)(4) to permit orders priced below \$1.00 to utilize a Post Only instruction promotes just and equitable principles of trade and removes impediments to, and perfects the mechanism of a free and open market and a national market system because it will allow Users to enter orders with a Post Only instruction at any price, rather than being limited to securities priced above \$1.00. The growth in trading of sub-dollar securities has expanded significantly since 2019 and as such, the Exchange believes that orders at all prices, not only securities priced above \$1.00, should be permitted to utilize a Post Only instruction, which will permit orders to post on the Exchange without removing liquidity or routing to away to another trading center. A Post Only instruction allows Users to post aggressively priced liquidity, and such Users have certainty as to the fee or rebate they will receive from the Exchange if their order is executed. Without such ability, the Exchange believes that certain Users would simply post less aggressively priced liquidity, and prices available for market participants, including retail investors, would deteriorate. Accordingly, the Exchange believes that orders containing a Post Only instruction enhance the liquidity available to all market participants by allowing market makers and other liquidity providers to add liquidity to the Exchange at or near the inside of the market. Indeed, such market participants have asked the Exchange to implement such functionality in order to permit them to utilize a single trading strategy across securities at all prices. Allowing an order containing a Post Only instruction to be utilized at prices below \$1.00 will deepen the Exchange's pool of available liquidity in sub-dollar securities, which is a growing area of trading, particularly for retail investors. A deeper and more liquid market supports the quality of price discovery, promotes market transparency, and improves market quality for all investors. The Exchange does not believe that the proposed amendment to Rule 11.6(n)(4) is unfairly discriminatory as it will permit the Post Only

instruction to be used by all Users at any price and the order instruction will no longer be limited to securities priced at or above \$1.00.

Similarly, the proposal to amend Rule 11.10(a)(4)(D) to allow, under limited circumstances, a Resting Order priced below \$1.00 that would otherwise be non-executable due to the presence of an order containing a Post Only instruction to execute at one minimum price variation above (below) the locking price upon the receipt of an incoming, marketable offer (bid) that would otherwise be prohibited from executing due to the presence of an order containing a Post Only instruction promotes just and equitable principles of trade and removes impediments to, and perfects the mechanism of a free and open market and a national market system because it extends functionality currently available to orders priced at or above \$1.00 to orders priced below \$1.00, with a slight difference in the minimum price variation to account for the System's inability to display orders out to five decimal places (\$0.00001). The proposed amendment to Rule 11.10(a)(4)(D) is substantially similar to the order handling behavior change that was proposed (and later approved) by the Resting Order Execution Filing on the Exchange's affiliate, BZX Exchange, and subsequently by the EDGX Order Handling Filing, and will only serve to improve execution quality for participants sending orders to the Exchange.

The Exchange does not believe that the treatment of sub-dollar securities is unfairly discriminatory as the Exchange will be using the standard minimum pricing increment for sub-dollar securities in order to determine the price at which the Resting Order is eligible to execute.<sup>34</sup> While the Exchange recognizes that under its proposal for securities priced below \$1.00 results in a limited situation in which only the Resting Order will receive \$0.0001 of price improvement (i.e., when an incoming order is entered at the same price as the displayed price of

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<sup>34</sup> Supra note 27.

the Resting Order), the Exchange believes the incoming, contra-side order is receiving the benefit of immediate execution rather than cancelling or posting to the EDGX Book (depending on User instruction), which will result in higher overall market quality and likelihood of execution on EDGX for Users. In situations where the incoming order is entered at a more aggressive price than the displayed price of the Resting Order, however, each side of the transaction will be receiving at least \$0.0001 of price improvement, which is substantially similar to how the order handling functionality works for securities priced at or above \$1.00. The Exchange believes the proposed change to execute marketable orders that are currently not executed under specific scenarios will help provide price improvement to Resting Orders that, in these limited circumstances, otherwise would not receive an execution even though their order is priced at the inside of the market and would also provide increased execution opportunities to aggressively priced incoming orders rather than requiring these orders to be cancelled or post to the EDGX Book. Thus, the Exchange believes that its proposed order handling process in the limited scenario where a Resting Order is ineligible to execute due to the presence of a contra-side order containing a Post Only instruction will benefit market participants and their customers by allowing them greater flexibility in their efforts to fill orders and minimize trading costs.

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 intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change to Rule 11.6(n)(4) will apply equally to all Users in that all Users will be eligible to utilize the Post Only instruction for securities priced below \$1.00. Similarly, the proposed change to Rule 11.10(a)(4)(D) applies equally to all Users in that all Resting Orders will benefit from the proposed order handling behavior change that will execute Resting Orders at one minimum price variation above (below) the locking price upon the receipt of a marketable

offer (bid) should a Resting Order be ineligible to execute due to the presence of a contra-side order containing a Post Only instruction. The proposed changes are designed to expand an existing Exchange order instruction and existing order handling behavior to securities priced below \$1.00 due to the growth in sub-dollar trading that has been seen since 2019. Further, the Exchange does not believe that Users submitting incoming, contra-side orders are burdened by virtue of not receiving price improvement in limited situations as they instead receive the benefit of an immediate execution as opposed to being cancelled back to the User or posting on the EDGX Book which results in increased overall market quality and a higher likelihood of execution on EDGX.

The Exchange similarly 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. In fact, the Exchange notes that other exchanges already offer the ability to submit an order that is not eligible for routing to away markets and posts to the relevant exchange book at prices below \$1.00.<sup>35</sup> The Exchange believes its proposal to expand the use of the Post Only instruction to securities priced below \$1.00 will promote competition between the Exchange and other exchanges for volume in sub-dollar securities. Furthermore, the Exchange believes its proposal will promote competition between the Exchange and off-exchange trading venues, where a significant amount of sub-dollar trading occurs today.<sup>36</sup> The Exchange similarly believes that its proposal to amend its order handling behavior in limited circumstances where a Resting Order cannot execute due to the presence of a contra-side order containing a Post Only

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<sup>35</sup> See Nasdaq Equity 4, Rule 4702(b)(4) (“Post-Only Order”). See also NYSE Rule 7.31(e)(2) (“ALO Order”).

<sup>36</sup> See “Off-Exchange Trends: Beyond Sub-dollar Trading” (May 17, 2023). Available at <https://www.cboe.com/insights/posts/off-exchange-trends-beyond-sub-dollar-trading/>.



instruction does not impose a burden on intermarket competition as the change is not designed to address any competitive issue, but rather to address order handling behavior in a substantially similar manner to how the Exchange treats Resting Orders priced at or above \$1.00 in the limited scenario where a Resting Order is ineligible to execute against an incoming, marketable order due to the presence of a contra-side order containing a Post Only instruction.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

- A. by order approve or disapprove such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be 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 (<https://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-2024-007 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-2024-007. 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 (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CboeEDGX-2024-007 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>37</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>37</sup> 17 CFR 200.30-3(a)(12).