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SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-86493; File No. SR-CboeEDGX-2019-028]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Adopt Rule 21.22 (Complex Automated Improvement Mechanism)

July 26, 2019.

I. Introduction

On April 26, 2019, Cboe EDGX Exchange, Inc. (the “Exchange” or “EDGX Options”) 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 adopt Exchange Rule 21.22, Complex Automated Improvement Mechanism (“C-AIM” or “C-AIM Auction”), to permit the use of the Exchange’s Automated Improvement Mechanism (“AIM” or “AIM Auction”) for complex orders. The proposed rule change was published for comment in the Federal Register on May 16, 2019.³ On June 14, 2019, the Exchange filed Amendment No. 1 to the proposed rule change.⁴ On June 26, 2019, pursuant

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 85831 (May 10, 2019), 84 FR 22178 (the “Notice”).

⁴ Amendment No. 1 revises the proposal to (1) cap the prices of C-AIM responses based on the Synthetic Best Bid or Offer and the prices of orders resting on the top of the Complex Order Book at the conclusion of the C-AIM Auction, rather than at the beginning of the C-AIM Auction; (2) incorporate the new defined terms “C-AIM Auction period” and “final auction price” into the proposed rule text; (3) provide additional justification for the proposal to allow an Options Market Maker registered in the applicable series on the Exchange to be solicited to participate in a C-AIM Auction for a complex order that includes those series; (4) provide additional justification for the proposal to allow Agency Orders to execute only against complex interest at the conclusion of a C-AIM Auction; (5) make non-substantive simplifying, clarifying, and correcting changes to the proposed rule text; and (6) make non-substantive clarifications and corrections to the Form 19b-4 discussion of the proposed rule change. Amendment No. 1 is available at

to Section 19(b)(2) of the Act,⁵ 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 approve or disapprove the proposed rule change.⁶ The Commission has received no comments regarding the proposal. The Commission is publishing this notice to solicit comment on Amendment No. 1 and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposed Rule Change

A. Background

As described more fully in the Notice,⁷ the Exchange proposes to adopt Exchange Rule 21.22 to establish the C-AIM Auction for complex orders. The Exchange notes that the C-AIM Auction will operate in a manner that is substantially similar to the Exchange's AIM Auction for single leg orders, with differences to, among other things, ensure that execution prices in the C-AIM Auction are consistent with complex order priority principles.⁸ The Exchange states that the proposed C-AIM Auction is similar to the complex order price improvement mechanisms of Cboe Exchange, Inc. ("Cboe Options") and other options exchanges and will provide market participants with an opportunity to receive price improvement for their complex orders.⁹

⁵ <https://www.sec.gov/comments/sr-cboeedgx-2019-028/srcboeedgx2019028-5679914-185869.pdf>.

⁶ 15 U.S.C. 78s(b)(2).

⁷ See Securities Exchange Act Release No. 86202, 84 FR 31646 (July 2, 2019). The Commission designated August 14, 2019, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

⁸ See Notice, supra note 3.

⁹ See Notice, 84 FR at 22184.

⁹ See Notice, 84 FR at 22178-79.

B. C-AIM Auction Eligibility

The proposal will allow an Options Member (the “Initiating Member”) to electronically submit for execution a complex order it represents as agent (the “Agency Order”) against principal interest or a solicited complex order(s), provided the Initiating Member submits the Agency Order for electronic execution in a C-AIM Auction.¹⁰ The Agency Order may be in any class of options traded on the Exchange, and there is no minimum size for Agency Orders.¹¹ The Initiating Member must stop the entire Agency Order at a stop price that: (1) is at least \$0.01 better than the same-side Synthetic Best Bid (“SBB”) or Synthetic Best Offer (“SBO”)¹² if the BBO on any component of the complex strategy represents a Priority Customer order on the Simple Book, or is at or better than the same-side SBB (SBO) if each component of the complex strategy represents a non-Priority Customer order or quote on the Simple Book; (2) is at least \$0.01 better than a same-side complex order resting in the Complex Order Book (“COB”),¹³ unless the Agency Order is a Priority Customer Order and the resting order is a non-Priority Customer order, in which case the stop price must be at or better than the bid (offer) of the

¹⁰ See proposed Exchange Rule 21.22.

¹¹ See proposed Exchange Rule 21.22(a)(1) and (3). In addition, proposed Exchange Rule 21.22(a) provides that: the Initiating Member must mark an Agency Order for C-AIM Auction processing; the Initiating Order must be for the same size as the Agency Order; the price of the Agency Order and Initiating Order must be in an increment of \$0.01; the Initiating Member may not designate an Agency Order or Initiating Order as Post Only; and an Initiating Member may only submit an Agency Order to a C-AIM Auction after the Complex Order Book opens. The System rejects or cancels both an Agency Order and an Initiating Order submitted to a C-AIM Auction that do not meet these conditions.

¹² The Synthetic Best Bid or Offer (“SBBO”) is calculated using the best displayed price for each component of a complex strategy from the Simple Book. The Simple Book is the Exchange’s regular electronic book of orders. See Exchange Rules 21.20(a)(10) and (11). For purposes of proposed Rule 21.22, the SBBO means the SBBO at the particular point in time applicable to the reference. See proposed Exchange Rule 21.22.

¹³ The COB is the Exchange’s electronic book of complex orders and used for all trading sessions. See Exchange Rule 21.20(a)(6).

resting complex order; and (3) is at least \$0.01 better than the opposite side SBO (SBB) if the BBO of any component of the complex strategy represents a Priority Customer quote or order on the Simple Book, or is at or better than the opposite side SBO (SBB) if the BBO of each component of the complex strategy represents a non-Priority Customer order or quote on the Simple Book.¹⁴ The Initiating Member must specify (A) a single price at which it seeks to execute the Agency Order against the Initiating Order (“single-price submission”), including whether it elects to have last priority in allocation; or (B) an initial stop price and instruction to automatically match the price and size of all C-AIM responses and other trading interest (“auto-match”) up to a designated limit price or at all prices that improve the stop price.¹⁵

One or more C-AIM Auctions in the same complex strategy for Agency Orders for which the smallest leg is 50 standard option contracts (or 500 mini-option contracts) or more may occur at the same time.¹⁶ C-AIM Auctions in different complex strategies may be ongoing at any given time, even if the complex strategies have overlapping components.¹⁷ In addition, a C-AIM Auction may be ongoing at the same time as an AIM Auction in any component of the complex strategy.¹⁸ To the extent there is more than one C-AIM Auction in a complex strategy underway at a time, the C-AIM Auctions conclude sequentially based on the exact time each C-AIM

¹⁴ See proposed Exchange Rule 21.22(b)(1)-(3) and Amendment No. 1.

¹⁵ See proposed Exchange Rule 21.22(b)(4). The System rejects or cancels both an Agency Order and an Initiating Order submitted to a C-AIM Auction that do not meet the conditions of proposed Exchange Rule 21.22(b).

¹⁶ See proposed Exchange Rule 21.22(c)(1)(A). With respect to Agency Orders for which the smallest leg is less than 50 standard option contracts (or 500 mini-option contracts), only one C-AIM Auction may be ongoing at any given time in a complex strategy, and C-AIM Auctions in the same complex strategy may not queue or overlap in any manner. See id.

¹⁷ See proposed Exchange Rule 21.22(c)(1)(A).

¹⁸ See id.

Auction commenced, unless terminated early pursuant to proposed Exchange Rule 21.22(d).¹⁹ In the event there are multiple C-AIM Auctions underway that are each terminated early, the System processes the C-AIM Auctions sequentially based on the exact time each C-AIM Auction commenced.²⁰ If the System receives a simple order that causes an AIM and C-AIM (or multiple AIM and/or C-AIM) Auctions to conclude early, the System first processes AIM Auctions (in price-time priority) and then processes C-AIM Auctions (in price-time priority).²¹

C. C-AIM Auction Process

Upon receipt of an Agency Order that meets the conditions in proposed Exchange Rules 21.22(a) and (b), the System²² initiates a C-AIM Auction by sending a C-AIM notification message detailing the side, size, price, origin code, Auction ID, and complex strategy of the Agency Order to all Options Members that elect to receive C-AIM Auction notification messages.²³ The Exchange will determine the C-AIM Auction period, which may be no less than 100 milliseconds and no more than one second.²⁴ An Initiating Member may not modify or cancel an Agency Order or Initiating Order after submitting them to a C-AIM Auction.²⁵

Any User other than the Initiating Member, determined by Executing Firm ID (“EFID”), may submit responses to a C-AIM Auction that are properly marked specifying size, side of the

¹⁹ See proposed Exchange Rule 21.22(c)(1)(B).

²⁰ See id.

²¹ See id.

²² The System is 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 EDGX Rule 1.5(cc).

²³ C-AIM Auction messages will not be included in OPRA. See proposed Exchange Rule 21.22(c)(2) and Amendment No. 1.

²⁴ See proposed Exchange Rule 21.22(c)(3) and Amendment No. 1.

²⁵ See proposed Exchange Rule 21.22(c)(4).

market, and the Auction ID for the C-AIM Auction to which the User is submitting the response.²⁶ The minimum price increment for C-AIM responses is \$0.01, and C-AIM responses must be on the opposite side of the market as the Agency Order.²⁷ C-AIM responses will not be visible to C-AIM Auction participants or disseminated to OPRA.²⁸ A User may submit multiple C-AIM responses to the Auction at the same or multiple prices, and the System will aggregate all of a User's complex orders on the COB and C-AIM responses for the same EFID at the same price.²⁹ The System will cap the size of a C-AIM response, or the aggregate size of a User's complex orders on the COB and C-AIM responses for the same EFID at the same price, at the size of the Agency Order (i.e., the System ignores size in excess of the size of the Agency Order when processing the C-AIM Auction).³⁰ In addition, the C-AIM responses are capped at specified prices that exist at the conclusion of the C-AIM Auction.³¹

²⁶ A C-AIM Auction response may only participate in the C-AIM Auction with the Auction ID specified in the response and may not be designated as Immediate-or-Cancel (“IOC”). C-AIM responses may be designated with the Match Trade Prevention (“MTP”) modifier of MTP Cancel Newest, but no other MTP modifiers. A User may modify or cancel its C-AIM responses during the Auction. See proposed Exchange Rules 21.22(c)(5)(F), (G), and (I).

²⁷ See proposed Exchange Rules 21.22(c)(5)(A) and (E).

²⁸ See proposed Exchange Rule 21.22(c)(5)(H).

²⁹ See proposed Exchange Rules 21.22(c)(5)(C).

³⁰ See proposed Exchange Rules 21.22(c)(5)(D).

³¹ C-AIM buy (sell) responses are capped at the following prices that exist at the conclusion of the C-AIM Auction: (i) the better of the SBO (SBB) or the offer (bid) of a resting complex order at the top of the COB; or (ii) \$0.01 lower (higher) than the better of the SBO (SBB) or the offer (bid) of a resting complex order at the top of the COB if the BBO of any component of the complex strategy or the resting complex order, respectively, is a Priority Customer order. The System executes these C-AIM responses, if possible, at the most aggressive permissible price not outside the SBBO at the conclusion of the C-AIM Auction or the price of the resting complex order. See proposed Exchange Rules 21.22(c)(5)(B) and Amendment No. 1.

D. Conclusion of a C-AIM Auction

A C-AIM Auction will conclude at the earliest to occur of several circumstances, including the end of the C-AIM Auction period, the market close, or when the Exchange halts trading in the complex strategy or in any component of the complex strategy.³² In addition, a C-AIM Auction will conclude upon receipt by the System of certain unrelated orders.³³ A C-AIM Auction will not conclude early if the System receives an unrelated market or marketable limit complex order (against the SBBO or the best price of a complex order resting in the COB), including a Post Only complex order, on the opposite side of the market during a C-AIM Auction, and the System will execute the order against interest outside the C-AIM Auction or post the complex order to the COB.³⁴ Any contracts remaining from the unrelated complex order at the time the C-AIM Auction ends may be allocated for execution against the Agency Order pursuant to proposed Exchange Rule 21.22(e).³⁵

³² See proposed Exchange Rules 21.22(d)(1)(a), (g), and (h). If the Exchange halts trading in the complex strategy or a component of the complex strategy, the C-AIM Auction concludes without execution. See proposed Exchange Rule 21.22(d)(1)(h).

³³ A C-AIM Auction will conclude upon receipt by the System of the following unrelated orders: an unrelated non-Priority Customer complex order on the same side as the Agency Order that would post to the COB at a price better than the stop price; an unrelated Priority Customer complex order on the same side as the Agency Order that would post to the COB at a price equal to or better than the stop price; an unrelated non-Priority Customer order or quote that would post to the Simple Book and cause the SBBO on the same side as the Agency Order to be better than the stop price; an unrelated Priority Customer order in any component of the complex strategy that would post to the Simple Book and cause the SBBO on the same side as the Agency Order to be equal to or better than the stop price; a simple non-Priority Customer order that would cause the SBBO on the opposite side of the Agency Order to be better than the stop price, or a Priority Customer order that would cause the SBBO on the opposite side of the Agency Order to be equal to or better than the stop price. See proposed Exchange Rules 21.22(d)(1)(b)-(f).

³⁴ See proposed Exchange Rule 21.22(d)(2).

³⁵ See id.

E. Allocations at the Conclusion of a C-AIM Auction

At the conclusion of a C-AIM Auction, the System executes the Agency Order against the Initiating Order or contra-side complex interest, including complex orders on the COB and C-AIM responses, at the best price(s), to the price at which the balance of the Agency Order can be fully executed (the “final auction price”).³⁶ Any execution price(s) must be at or between the SBBO and the best prices of any complex orders resting on each side of the COB at the conclusion of the C-AIM Auction.³⁷ Executions of a complex Agency Order at the conclusion of a C-AIM Auction are subject to the complex order priority in Exchange Rule 21.20(c)(3).³⁸ Allocations at the conclusion of the C-AIM Auction will vary depending on whether the Auction results in price improvement for the Agency Order³⁹ and, if there is price improvement, whether the Initiating Member has selected single-price submission (with or without a last priority

³⁶ See proposed Exchange Rule 21.22(e) and Amendment No. 1.

³⁷ See proposed Exchange Rule 21.22(e).

³⁸ See proposed Exchange Rule 21.22(e)(5).

³⁹ If the C-AIM Auction results in no price improvement, the System executes the Agency Order at the final auction price (which equals the stop price) against contra-side interest in the following order: (A) Priority Customer complex orders on the COB (in time priority); (B) the Initiating Order for the greater of (i) one contract or (ii) up to 50% of the Agency Order if there is contra-side complex interest from one other User at the final auction price or 40% of the Agency Order if there is contra-side complex interest from two or more other Users at the final auction price (which percentages are based on the number of contracts remaining after execution against Priority Customer complex orders); (C) all other contra-side complex interest in a pro-rata manner; and (D) the Initiating Order to the extent there are any remaining contracts. See proposed Exchange Rule 21.22(e)(1).

election)⁴⁰ or auto-match.⁴¹

F. Customer-to-Customer Immediate Crosses

In lieu of the C-AIM Auction process described above, an Initiating Member may enter an Agency Order for the account of a Priority Customer paired with a solicited order(s) for the account of a Priority Customer.⁴² The System will automatically execute these paired orders without a C-AIM Auction (“Customer-to-Customer C-AIM Immediate Cross”), subject to certain conditions. Customer-to-Customer C-AIM Immediate Crosses are subject to the following conditions: (1) the transaction price must be at or between the SBBO and may not equal either side of the SBBO if the BBO of any component of the complex strategy represents a Priority Customer order on the Simple Book; (2) the transaction price must be at or between the

⁴⁰ If the C-AIM Auction results in price improvement for the Agency Order and the Initiating Member selected a single-price submission, the System executes the Agency Order at each price level better than the stop price against contra-side complex interest in the following order: (A) Priority Customer complex orders on the COB (in time priority); and (B) all other contra-side complex interest in a pro-rata manner. If the final auction price equals the stop price, the System executes any remaining contracts from the Agency Order at that price in the order set forth in proposed Exchange Rule 21.22(e)(1). See proposed Exchange Rule 21.22(e)(2). If the Initiating Member elects last priority, then notwithstanding proposed Exchange Rules 21.22(e)(1) and (2), the System only executes the Initiating Order against any remaining Agency Order contracts at the stop price after the Agency Order is allocated to all other contra-side interest (in the order set forth in proposed Exchange Rule 21.22(e)(2)) at all prices equal to or better than the stop price. Last priority information is not available to other market participants and may not be modified after it is submitted. See proposed Exchange Rule 21.22(e)(4).

⁴¹ If the C-AIM Auction results in price improvement for the Agency Order and the Initiating Member selected auto-match, at each price level better than the final auction price (or at each price level better than the final auction price up to the limit price if the Initiating Member specified one), the System executes the Agency Order against the Initiating Order for the number of contracts equal to the aggregate size of all other contra-side complex interest and then executes the Agency Order against that contra-side complex interest in the order set forth in proposed Exchange Rule 21.22(e)(2). At the final auction price, the System executes those contracts at that price in the order set forth in proposed Exchange Rule 21.22(e)(1).

⁴² See proposed Exchange Rule 21.22(f).

best-priced complex orders in the complex strategy resting on the COB and may not equal the price of a Priority Customer complex order resting on either side of the COB; and (3) the System will not initiate a Customer-to-Customer Complex C-AIM Immediate Cross if the transaction price equals (A) either side of the SBBO and the BBO of any component of the complex strategy represents a Priority Customer order on the Simple Book, or (B) the price of a Priority Customer complex order resting on either side of the COB. Instead, the System cancels the Agency Order and Initiating Order.⁴³ Thus, Customer-to-Customer C-AIM Crosses will trade at a price that is at least as good as the price at which the orders would have executed had they been submitted separately to the COB.⁴⁴ The Exchange believes that Customer-to-Customer C-AIM Immediate Crosses will provide Options Members with a more efficient means of executing their customer complex orders, subject to the Exchange's existing requirements limiting principal transactions.⁴⁵

G. Additional Requirements and Order Exposure Rule

An Options Member may only use a C-AIM Auction where there is a genuine intention to execute a bona fide transaction.⁴⁶ A pattern or practice of submitting orders or quotes for the purpose of disrupting or manipulating C-AIM Auctions, including to cause a C-AIM Auction to conclude before the end of the C-AIM Auction period, will be deemed conduct inconsistent with just and equitable principles of trade and a violation of Exchange Rule 3.1.⁴⁷ It will also be deemed conduct inconsistent with just and equitable principles of trade and a violation of Exchange Rule 3.1 to engage in a pattern of conduct where the Initiating Member breaks up an

⁴³ See proposed Exchange Rule 21.22(f).

⁴⁴ See id.

⁴⁵ See id.

⁴⁶ See proposed Exchange Rule 21.22, Interpretation and Policy .01.

⁴⁷ See proposed Exchange Rule 21.22, Interpretation and Policy .02.

Agency Order into separate orders for the purpose of gaining a higher allocation percentage than the Initiating Member would have otherwise received in accordance with the allocation procedures contained in proposed Exchange Rule 21.22(e).⁴⁸

Exchange Rule 22.12 prevents an Options Member from executing an agency order to increase its economic gain from trading against the order without first giving other trading interests on the Exchange an opportunity to either trade with the agency order or to trade at the execution price when the Options Member was already bidding or offering on the book.⁴⁹ However, the Exchange recognizes that it may be possible for an Options Member to establish a relationship with a Priority Customer or other person to deny agency orders the opportunity to interact on the Exchange and to realize similar economic benefits as it would achieve by executing agency order as principal.⁵⁰ It would be a violation of Exchange Rule 22.12 for an Options Member to circumvent such rule by providing an opportunity for (a) a Priority Customer affiliated with the Options Member, or (b) a Priority Customer with whom the Options Member has an arrangement that allows the Options Member to realize similar economic benefits from the transaction as the Options Member would achieve by executing agency orders as principal, to regularly execute against agency orders handled by the firm immediately upon their entry as Customer-to-Customer C-AIM Immediate Crosses pursuant to proposed Rule 21.22(f).⁵¹

The Exchange proposes to amend Exchange Rule 22.12(c) to add a reference to the C-AIM Auction as an exception to the general restriction on Options Members executing as principal orders they represent as agent.

⁴⁸ See id.

⁴⁹ See proposed Exchange Rule 21.22, Interpretation and Policy .03.

⁵⁰ See id.

⁵¹ See id.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with Section 6(b) of the Act.⁵² In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁵³ which requires, among other things, that the rules of a national securities 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.

The Commission believes that allowing Options Members to enter complex orders into the C-AIM Auction could provide opportunities for complex orders to receive price improvement. Under the proposal, an Initiating Member that submits an Agency Order to the C-AIM Auction also submits an Initiating Order, representing principal or solicited interest, that stops the entire Agency Order at a price that is at least \$0.01 better than the same- and opposite-side SBBO if the BBO for any component of the complex strategy represents a Priority Customer order on the Simple Book, and is at or better than the same- and opposite-side SBBO if each component of the complex strategy represents a non-Priority Customer order or quote on

⁵² 15 U.S.C. 78f(b). In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁵³ 15 U.S.C. 78f(b)(5).

the Simple Book.⁵⁴ In addition, the stop price must be at least \$0.01 better than the price of any same-side complex order resting in the COB, unless the Agency Order is a Priority Customer order and the resting complex order is a non-Priority Customer Order, in which case the stop price must be at or better than the bid or offer of the resting complex order.⁵⁵ An Initiating Member may not modify or cancel an Agency Order or Initiating Order after submitting them to a C-AIM Auction.⁵⁶ At the conclusion of the C-AIM Auction, the Agency Order is executed in full at the best price(s) available, taking into consideration the Initiating Order, complex orders in the COB, and C-AIM responses.⁵⁷ Thus, a complex order entered into a C-AIM Auction will be guaranteed an execution in full at its stop price and will be given an opportunity for price improvement by being exposed to Users during a C-AIM Auction. The Commission notes that other exchanges have previously adopted similar rules to permit the entry of complex orders into a price improvement mechanism.⁵⁸ In addition, with respect to Customer-to-Customer C-AIM Immediate Crosses, the Commission notes that another exchange has adopted a similar rule.⁵⁹

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Sections 6(b)(5) of the Act.⁶⁰

⁵⁴ See proposed Exchange Rules 21.22(b)(1) and (3).

⁵⁵ See proposed Exchange Rule 21.22(b)(2).

⁵⁶ See proposed Exchange Rule 21.22(c)(4).

⁵⁷ See proposed Exchange Rule 21.22(e). Any execution price(s) must be at or between the SBBO and the best prices of any complex orders resting on each side of the COB at the conclusion of the C-AIM Auction. See *id.*

⁵⁸ See, e.g., BOX Rule 7245.

⁵⁹ See ISE Options 3, Section 12(b).

⁶⁰ 15 U.S.C. 78f(b)(5).

IV. Section 11(a) of the Act

Section 11(a)(1) of the Act⁶¹ prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises investment discretion (collectively, “covered accounts”) unless an exception applies. Rule 11a2-2(T) under the Act,⁶² known as the “effect versus execute” rule, provides exchange members with an exemption from the Section 11(a)(1) prohibition. Rule 11a2-2(T) permits an exchange member, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member to execute transactions on the exchange. To comply with Rule 11a2-2(T)’s conditions, a member: (i) must transmit the order from off the exchange floor; (ii) may not participate in the execution of the transaction once it has been transmitted to the member performing the execution;⁶³ (iii) may not be affiliated with the executing member; and (iv) with respect to an account over which the member or an associated person has investment discretion, neither the member nor its associated person may retain any compensation in connection with effecting the transaction except as provided in the Rule. For the reasons set forth below, the Commission believes that Exchange members entering orders into the C-AIM Auction would satisfy the requirements of Rule 11a2-2(T).

The Rule’s first condition is that orders for covered accounts be transmitted from off the exchange floor. In the context of automated trading systems, the Commission has found that the off-floor transmission requirement is met if a covered account order is transmitted from a remote

⁶¹ 15 U.S.C. 78k(a)(1).

⁶² 17 CFR 240.11a2-2(T).

⁶³ This prohibition also applies to associated persons. The member may, however, participate in clearing and settling the transaction.

location directly to an exchange's floor by electronic means.⁶⁴ The Exchange represents that the System and the proposed C-AIM Auction receive all orders electronically through remote terminals or computer-to-computer interfaces.⁶⁵ The Exchange also represents that orders for covered accounts from Options Members will be transmitted from a remote location directly to the proposed C-AIM mechanism by electronic means. Because no Exchange members may submit orders into the C-AIM Auction from on the floor of the Exchange, the Commission believes that the C-AIM Auction satisfies the off-floor transmission requirement.

Second, the Rule requires that the member and any associated person not participate in the execution of its order after the order has been transmitted. The Exchange represents that at no time following the submission to the C-AIM Auction of an order or C-AIM response is an Options Member able to acquire control or influence over the result or timing of the order's or response's execution.⁶⁶ According to the Exchange, the execution of an order (including the

⁶⁴ See, e.g., Securities Exchange Act Release Nos. 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (SR-BATS-2009-031) (approving BATS options trading); 59154 (December 23, 2008), 73 FR 80468 (December 31, 2008) (SR-BSE-2008-48) (approving equity securities listing and trading on BSE); 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR-NASDAQ-2007-004 and SR-NASDAQ-2007-080) (approving NOM options trading); 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10-131) (approving The Nasdaq Stock Market LLC); 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (SR-PCX-00-25) (approving Archipelago Exchange); 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) (SR-NYSE-90-52 and SR-NYSE-90-53) (approving NYSE's Off-Hours Trading Facility); and 15533 (January 29, 1979), 44 FR 6084 (January 31, 1979) ("1979 Release").

⁶⁵ See Notice, 84 FR at 22188.

⁶⁶ See id. (also representing, among other things, that: (1) no Options Member, including the Initiating Member, will see a C-AIM response submitted into a C-AIM Auction and therefore will not be able to influence or guide the execution of their Agency Orders, Initiating Orders, or C-AIM responses, as applicable; and (2) the last priority feature will not permit an Options Member to have any control over an order, and the election to last priority is available prior to the submission of the order, will not be broadcast and further, the last priority option may not be modified by the Initiating Member during the C-AIM Auction).

Agency and the Initiating Order) or a C-AIM response sent to the C-AIM mechanism is determined by what other orders and responses are present and the priority of those orders and responses.⁶⁷ Accordingly, the Commission believes that a member does not participate in the execution of an order or response submitted to the C-AIM mechanism.

Third, Rule 11a2-2(T) requires that the order be executed by an exchange member who is unaffiliated with the member initiating the order. The Commission has stated that this requirement is satisfied when automated exchange facilities, such as the C-AIM mechanism, are used, as long as the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange.⁶⁸ The Exchange represents that the C-AIM is designed so that no Options Member has any special or unique trading advantage in the handling of its orders after transmitting its orders to the mechanism.⁶⁹ Based on the Exchange's representation, the Commission believes that the C-AIM mechanism satisfies this requirement.

⁶⁷ See id. The Exchange notes that an Initiating Member may not cancel or modify an Agency Order or Initiating Order after it has been submitted into a C-AIM Auction, but that Options Members may modify or cancel their responses after being submitted to a C-AIM Auction. See id. at 22188, n.64. As the Exchange notes, the Commission has stated that the non-participation requirement does not preclude members from cancelling or modifying orders, or from modifying instructions for executing orders, after they have been transmitted so long as such modifications or cancellations are also transmitted from off the floor. See Securities Exchange Act Release No. 14563 (March 14, 1978), 43 FR 11542, 11547 (the "1978 Release").

⁶⁸ In considering the operation of automated execution systems operated by an exchange, the Commission noted that, while there is not an independent executing exchange member, the execution of an order is automatic once it has been transmitted into the system. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange, the Commission has stated that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2-2(T). See 1979 Release, supra note 64.

⁶⁹ See Notice, 84 FR at 22188.

Fourth, in the case of a transaction effected for an account with respect to which the initiating member or an associated person thereof exercises investment discretion, neither the initiating member nor any associated person thereof may retain any compensation in connection with effecting the transaction, unless the person authorized to transact business for the account has expressly provided otherwise by written contract referring to Section 11(a) of the Act and Rule 11a2-2(T) thereunder.⁷⁰ The Exchange represents that Options Members relying on Rule 11a2-2(T) for transactions effected through the C-AIM Auction must comply with this condition of the Rule and that the Exchange will enforce this requirement pursuant to its obligations under Section 6(b)(1) of the Act to enforce compliance with federal securities laws.⁷¹

V. Solicitation of Comments on Amendment No. 1 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 1 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

⁷⁰ In addition, Rule 11a2-2(T)(d) requires a member or associated person authorized by written contract to retain compensation, in connection with effecting transactions for covered accounts over which such member or associated persons thereof exercises investment discretion, to furnish at least annually to the person authorized to transact business for the account a statement setting forth the total amount of compensation retained by the member or any associated person thereof in connection with effecting transactions for the account during the period covered by the statement. See 17 CFR 240.11a2-2(T)(d). See also 1978 Release, *supra* note 67, at 11548 (stating “[t]he contractual and disclosure requirements are designed to assure that accounts electing to permit transaction-related compensation do so only after deciding that such arrangements are suitable to their interests”).

⁷¹ See Notice, 84 FR at 22188.

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CboeEDGX-2019-028 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-CboeEDGX-2019-028. 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-2019-028, and should be submitted on or before [insert date 21 days after date of publication in the Federal Register].

VI. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 1 in the Federal Register. The Commission believes that Amendment No. 1 provides additional clarity to the rule text and additional analysis of aspects of the proposal, thereby facilitating the Commission's ability to make the findings set forth above to approve the proposal. In addition, the Commission believes that Amendment No. 1 does not raise novel regulatory issues or make significant substantive changes to the original proposal, which was published for notice and comment and which received no comments. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,⁷² to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

⁷² 15 U.S.C. 78s(b)(2).

VII. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁷³ that the proposed rule change (SR-CboeEDGX-2019-028), as modified by Amendment No. 1, is approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷⁴

Jill M. Peterson,
Assistant Secretary

⁷³ 15 U.S.C. 78s(b)(2).

⁷⁴ 17 CFR 200.30-3(a)(12).

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