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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88900; File No. SR-CboeEDGX-2020-022]

### **Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Certain Rules in Connection with the Exchange’s Disciplinary Process**

May 18, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 8, 2020, 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 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<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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 certain rules in connection with the Exchange’s disciplinary process. The text of the proposed rule change is provided in Exhibit 5.

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

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

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

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

The text of the proposed rule change is also available on the Exchange's website ([http://markets.cboe.com/us/equities/regulation/rule\\_filings/edgx/](http://markets.cboe.com/us/equities/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 8.8 in connection with the timing before which an offer of settlement becomes final, to amend Rule 8.10 in connection with the Board's review of offers of settlement, and to amend Rule 8.11 to be consistent with the corresponding rules of the Exchange's affiliated exchanges, Cboe Exchange, Inc. ("Cboe Options") and Cboe C2 Exchange, Inc. ("C2").<sup>5</sup>

First, the Exchange proposes to amend Rule 8.8 which governs offers of settlement during a disciplinary proceeding pursuant to Chapter 8 (Discipline). Specifically, it proposes to amend the timing for which the Chief Regulatory Officer's ("CRO") decision regarding an offer shall become final pursuant to Rule 8.8(a). Rule 8.8(a) currently provides that a Respondent may submit to the CRO a written offer of settlement, and the CRO may accept an offer of settlement, and, in doing so,

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<sup>5</sup> See Cboe Options Rule 13.11. The Exchange notes that C2 incorporates Cboe Options Disciplinary rules by reference.

issues a decision, including findings and conclusions and imposing a penalty, consistent with the terms of such offer. Pursuant to Rule 8.8(a), the CRO may also reject an offer of settlement and the matter then proceeds as if such offer had not been made. According to Rule 8.8(a), a decision of the CRO issued upon acceptance of an offer of settlement as well as the determination of the CRO whether to accept or reject such an offer does not currently become final until 20 business days after such decision is issued, and the Respondent may not seek review thereof.

The Exchange proposes to eliminate the 20-business day timeframe before which the CRO's determination and decision in connection with an offer of settlement becomes final. This is consistent with the corresponding offer of settlement rules of the Exchange's affiliated exchanges, Cboe Options and C2,<sup>6</sup> which do not have any such waiting period before which the CRO's acceptance (and accompanying decision) or rejection of an offer of settlement becomes final. In addition to providing consistency between the rules of the affiliated exchanges, the proposed rule change also removes a process that unnecessarily prolongs disciplinary proceedings. Where a matter could be either immediately closed or continued to the next steps of the proceedings upon the CRO's acceptance or rejection, respectively, of an offer of settlement, the current process unnecessarily leaves a matter open.

Second, and in line with the proposed rule change to Rule 8.8, the Exchange also proposes to remove Rule 8.8 offers of settlement from the list of certain procedural decisions in Rule 8.10 that may be reviewed by the Board on its own initiative within 20 business days after the issuance of the decision. This is also consistent with the corresponding disciplinary review rules of Cboe Options and C2, which do not include offers of settlement as decisions that the Board may review

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<sup>6</sup> See Cboe Options Rule 13.8(a). The Exchange notes that C2 incorporates Cboe Options Disciplinary rules by reference.

on its own initiative.<sup>7</sup> The Exchange notes that the Board has not previously initiated a review of an offer of settlement. Therefore, the Exchange believes maintaining a 20-business day waiting period for a review that is not invoked is unnecessary and merely exhausts additional Exchange and Member resources in the time that a matter could have been resolved or have continued through proceedings. Allowing the CRO to accept or reject offers of settlement with finality will significantly expedite the settlement process while ensuring that the independence and integrity of the regulatory process is maintained, as the CRO's regulatory decision-making responsibilities are entirely separate from those responsible for the Exchange's business interests.

Finally, the Exchange proposes to amend Rule 8.11 to incorporate the Principal Considerations in Determining Sanctions ("Principal Considerations") into proposed Rule 8.11(c), which are currently in corresponding Rule 13.11.01 of Cboe Options and C2, and the general provision regarding sanctions into proposed Rule 8.11(a), which are currently in corresponding Rule 13.11(a) of Cboe Options and C2, in order to promote consistency and uniformity across the affiliated exchanges in determining appropriate remedial sanctions.<sup>8</sup> Particularly, the proposed rule change incorporates the general authority of the CRO, Hearing Panel, and committee of the Board<sup>9</sup> to determine and apply sanctions, consistent with Cboe Options and C2 Rule 13.11(a), into proposed Rule 8.11(a), which provides that Members and persons associated with Members shall

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<sup>7</sup> See Cboe Options Rule 13.10(c).

<sup>8</sup> The Exchange notes that its other affiliated exchanges, Cboe BZX Exchange, Inc. ("BZX"), Cboe EDGX Exchange, Inc. ("EDGX"), and Cboe BYX Exchange, Inc. ("BYX"), also intend to incorporate these portions of Cboe Options and C2 Rule 13.11 into their Rule 8.11.

<sup>9</sup> The Exchange notes that it maintains the inclusion of committee of the Board (along with the CRO and Hearing Panel) in connection with the imposition of sanctions throughout proposed Rules 8.11(a) and (c), which is currently a difference in text between Cboe Options and C2 Rule 13.11 and current Rule 8.11 and maintains consistency throughout current Rule 8.11.

(subject to any rule or order of the Securities and Exchange Commission) be appropriately disciplined by the CRO, Hearing Panel, or the committee of the Board, as applicable, for violations under these Rules by expulsion, suspension, limitation of activities, functions and operations, fine, censure, being suspended or barred from being associated with a Member, suspension or revocation of membership, or any other fitting sanction. This authority is already enumerated in Rule 8.1, however, the proposed provision provides consistency with the rules of the Exchange's affiliated options exchanges.<sup>10</sup> As proposed in Rule 8.11(c), the Principal Considerations promote consistency and uniformity in the imposition of penalties, and should be considered in connection with the imposition of sanctions in all cases in determining appropriate remedial sanctions through the resolution of disciplinary matters through offers of settlement or after formal disciplinary hearings. The Principal Considerations include the following:

(1) Disciplinary sanctions are remedial in nature. The CRO, Hearing Panel or committee of the Board<sup>11</sup>, as applicable, should design sanctions to prevent and deter future misconduct by wrongdoers, to discourage others from engaging in similar misconduct, and to improve overall business standards of Exchange Members. Pursuant to this Rule 8.11, the CRO, Hearing Panel or committee of the Board, as applicable, may impose sanctions including expulsion, suspension, limitation of activities, fine, censure, suspension or revocation of one or more Members, or any other fitting sanction.

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<sup>10</sup> The proposed change also amends the current language under Rule 8.11 to be provided in paragraph (b), with a heading that reads "Effective Date of Judgment", which is consistent with the corresponding heading in Cboe Options and C2 Rule 13.11. No changes are made to the current language. It also adds in the same header language for Rule 8.11 ("Judgment and Sanction") as that of Cboe Options and C2 Rule 13.11.

<sup>11</sup> See supra note 9. The committee of the Board would, thus, also apply the Principal Considerations to any determinations made during a review related to sanctions.

(2) An important objective of the disciplinary process is to deter future misconduct by imposing progressively escalating sanctions on recidivists. The CRO, Hearing Panel or committee of the Board, as applicable, should consider a party's relevant disciplinary history in determining sanctions.

(3) The CRO, Hearing Panel or committee of the Board, as applicable, should consider prior similar disciplinary decisions (relevant precedent) in determining an appropriate sanction and may consider relevant precedent from other self-regulatory organizations.

(4) The CRO, Hearing Panel or committee of the Board, as applicable, should tailor sanctions to address the misconduct at issue. The CRO, Hearing Panel or committee of the Board, as applicable, should impose sanctions tailored to the misconduct at issue. For example, the CRO, Hearing Panel or committee of the Board, as applicable, may require a Member<sup>12</sup> to, among other things: retain a qualified independent consultant to improve future compliance with regulatory requirements; disclose disciplinary history to new and/or existing clients; implement heightened supervision of certain employees; or requalify by examination in any or all registered capacities.

(5) Aggregation of violations may be appropriate in certain instances for purposes of determining sanctions. The CRO, Hearing Panel or committee of the Board, as applicable, may aggregate individual violations of particular rules and treat such violations as a single offense for purposes of determining sanctions. Aggregation may be appropriate when the Exchange utilizes a comprehensive surveillance program in the detection of potential rules violations. Aggregation may also be appropriate where the Exchange has reviewed activity

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<sup>12</sup> The Exchange notes that, to the extent Cboe Options and C2 Rule 13.11.01 state "TPH and TPH organization", the Exchange uses the term "Member", which, pursuant to its definition in Rule 1.5(n), covers the same scope of exchange membership as the aforementioned language in Cboe Options and C2 Rule 13.11.01.

over an extensive time period during the course of an investigation of matters disclosed either through a routine examination of the Member or as the result of a complaint.

Similarly, where no exceptional circumstances are present, the Exchange may impose a fine based upon a determination that there exists a pattern or practice of violative conduct. The Exchange also may aggregate similar violations generally if the conduct was unintentional, there was no injury to public investors, or the violations resulted from a single systemic problem or cause that has been corrected.

(6) The CRO, Hearing Panel or committee of the Board, as applicable, should evaluate appropriateness of disgorgement and/or restitution. The CRO, Hearing Panel or committee of the Board, as applicable, should evaluate the appropriateness of disgorgement and/or restitution in those cases where the amount of harm is quantifiable and the harmed party is identifiable.

(7) The CRO, Hearing Panel or committee of the Board, as applicable, should consider contributions or settlements by a respondent or any related Member to the harmed party as it relates to the conduct that is the subject of the disciplinary matter.

(8) The CRO, Hearing Panel or committee of the Board, as applicable, may consider a party's inability to pay in connection with the imposition of monetary sanctions.

The Exchange notes that the CRO, Hearing Panel or committee of the Board, as applicable, already consider the above proposed Principal Considerations when determining appropriate remedial sanctions throughout the resolution of disciplinary matters. However, the Exchange now proposes to codify such considerations in order to ensure that the CRO, Hearing Panel or committee of the Board, as applicable, consider aggravating and/or mitigating factors in the same manner across each

disciplinary matter which will, in turn, provide for consistency, fairness and that the most appropriate disciplinary measure is implemented during proceedings.

The Exchange intends to announce the operative date of the updates to Rules 8.8, 8.10, and 8.11 at least 30 days in advance via a regulatory notice. To facilitate an orderly transition from the current rules to the proposed rules, the Exchange proposes to apply the current rules to all matters where a subject has received notice pursuant to Rule 8.2(d) prior to the operative date. As a consequence of this transition process, the Exchange will retain the existing processes during the transition period until such time that there are no longer any matters proceeding under the current rules. To facilitate this transition process, the Exchange will retain a transitional Chapter 8 that will contain the Exchange's rules, as they are at the time this proposal is filed with the Commission. This transitional Chapter 8 will apply only to matters initiated prior to the operational date of the changes proposed herein and it will be posted to the Exchange's public rules website. When the transition is complete and there are no longer any Members or associated persons subject to current Chapter 8, the Exchange will remove the transitional Chapter 8 from its public rules website.

## 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>13</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>14</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

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<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

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>15</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed rule changes are designed to be consistent with the corresponding rules of its affiliated exchanges,<sup>16</sup> which have been previously filed with the Commission. The Exchange believes that by providing consistent disciplinary rules across the affiliated exchanges the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system by increasing the understanding of the Exchange's disciplinary process for Members that participate across the affiliated exchanges, as well as result in greater uniformity, and less burdensome and more efficient regulatory processes. Moreover, the Exchange believes that removing an unnecessary waiting period in the disciplinary process, as well as a review provision that is not used, would serve to expedite the outcome of a matter or the progression of a matter through the next steps in the process, thereby protecting investors and the public interest by conserving Exchange and Member resources. The proposed rule change to remove the waiting period before an offer of settlement becomes final and the Board's initiative to review such will provide for a more efficient, streamlined disciplinary process as a matter would then be either immediately closed or continued to the next steps of the proceedings upon the CRO's acceptance or rejection,

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<sup>15</sup> Id.

<sup>16</sup> See supra note 5.

respectively, of an offer of settlement. Additionally, and as stated above, the CRO's regulatory decision-making responsibilities are entirely separate from those responsible for the Exchange's business interests, therefore, allowing the CRO to accept or reject offers of settlement with finality will significantly expedite the settlement process while ensuring that the independence and integrity of the regulatory process is maintained. In light of these proposed changes, the Exchange notes that the proposed addition of the Principal Considerations will ensure that the CRO determines each offer of settlement using the same set of fair standards and factors, thereby protecting investors and the public interest throughout the disciplinary process.

In addition to this, the Exchange also believes that the proposed rule is consistent with Section 6(b)(6) of the Act,<sup>17</sup> which requires the rules of an exchange provide that its members be appropriately disciplined for violations of the Act as well as the rules and regulations thereunder, or the rules of the Exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction, as well as Section 6(b)(7) of the Act,<sup>18</sup> in that it provides fair procedures for the disciplining of Members and persons associated with Members, the denial of Member status to any person seeking Membership therein, the barring of any person from becoming associated with a Member thereof, and the prohibition or limitation by the Exchange of any person with respect to access to services offered by the Exchange or a Member thereof. Specifically, the proposed rule change to incorporate Principal Considerations that the CRO, Hearing Panel or committee of the Board, as applicable, may take into consideration when determining disciplinary sanctions will ensure that the Exchange implements the most appropriate disciplinary mechanisms for violations and a fair process in determining such.

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<sup>17</sup> 15 U.S.C. 78f(b)(6).

<sup>18</sup> 15 U.S.C. 78f(b)(6).

Finally, the Exchange believes that its proposed transition plan would allow for a more orderly and less burdensome transition for the Exchange's Members. The proposed application of current rules to all matters where a subject has received notice pursuant to Rule 8.2(d) prior to the operative date provides a clear demarcation between matters that would proceed under the new rules and those that would be completed under the current rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule changes are not intended to address competitive issues, but rather, are concerned with facilitating less burdensome regulatory compliance and processes and enhancing the quality of the regulatory processes. The Exchange believes the proposed rule changes would reduce the burdens within the disciplinary process, as well as move matters through the process expeditiously by providing for more efficient finality of offers of settlement, to the benefit of all Members. Moreover, the proposed Principal Considerations will apply to all remedial sanctions throughout the disciplinary process in the same manner, thereby equally benefitting all Members by providing for fair and consistent disciplinary determinations. Additionally, the proposed rule changes are consistent with the rules of the Exchange's affiliates, Cboe Options and C2, which have been previously filed with the Commission.<sup>19</sup>

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.

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<sup>19</sup> See Cboe Options Rules 13.8, 13.10(c), 13.11(a), and 13.11.01.

### 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<sup>20</sup> and Rule 19b-4(f)(6) thereunder.<sup>21</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### Electronic comments:

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

CboeEDGX-2020-022 on the subject line.

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<sup>20</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>21</sup> 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.

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-2020-022. 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-2020-022 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.<sup>22</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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<sup>22</sup> 17 CFR 200.30-3(a)(12).

