

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="38"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2021"/> - * <input type="text" value="010"/>	Amendment No. (req. for Amendments *) <input type="text"/>
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Filing by Cboe EDGX Exchange, Inc.
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
			Rule		
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
Section 3C(b)(2) * <input type="checkbox"/>	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

The Exchange proposes to amend order start times during its Early Trading Session.

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * <input type="text" value="Rebecca"/>	Last Name * <input type="text" value="Tenuta"/>
Title * <input type="text" value="Counsel"/>	
E-mail * <input type="text" value="rtenuta@cboe.com"/>	
Telephone * <input type="text" value="(312) 786-7068"/>	Fax <input type="text"/>

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title *)

Date <input type="text" value="02/11/2021"/>	<input type="text" value="VP, Associate General Counsel"/>
By <input type="text" value="Laura G. Dickman"/>	<input type="text" value=""/>
(Name *)	

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information *

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

Item 1. Text of the Proposed Rule Change

(a) Cboe EDGX Exchange, Inc. (the “Exchange” or “EDGX”) proposes to amend order start times during its Early Trading Session. The text of the proposed rule change is provided in Exhibit 5.

(b) Not applicable.

(c) Not applicable.

Item 2. Procedures of the Self-Regulatory Organization

(a) The Exchange’s President (or designee) pursuant to delegated authority approved the proposed rule change on January 20, 2021.

(b) Please refer questions and comments on the proposed rule change to Pat Sexton, Executive Vice President, General Counsel, and Corporate Secretary, (312) 786-7467, or Rebecca Tenuta, (312) 786-7068, Cboe EDGX Exchange, Inc., 400 South LaSalle, Chicago, Illinois 60605.

Item 3. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The Exchange proposes to amend Rule 11.1 to allow Users to designate their orders to become eligible for execution at 7:00 a.m. Eastern Time (“ET”) during the new Early Trading Session extended hours.

The Exchange currently offers four distinct trading sessions where the Exchange accepts orders for potential execution: (1) the “Early Trading Session,” which begins at 4:00 a.m. ET and continues until 8:00 a.m. ET,¹ (2) the “Pre-Opening Session,” which begins at

¹ “Early Trading Session” means the time between 4:00 a.m. and 8:00 a.m. ET. See Rule 1.5(ii).

8:00 a.m. ET and continues until 9:30 a.m. ET,² (3) “Regular Trading Hours,” which begin at 9:30 a.m. ET and continue until 4:00 p.m. ET,³ and (4) the “Post-Closing Trading Session,” which begins at 4:00 p.m. ET and continues until 8:00 p.m. ET.⁴

The Exchange recently submitted an immediately effective rule filing which amended the Early Trading Session to extend its hours from a 7:00 a.m. ET start to a 4:00 a.m. ET start, and to allow Users to begin entering orders into the System prior to the Early Trading Session at 3:30 a.m. ET.⁵ The Exchange intends to launch the new Early Trading Session extended hours on March 8, 2021.⁶ As amended, Rule 11.1 now provides that the Exchange will not accept the following orders prior to 4:00 a.m. ET: orders with a Post Only instruction, ISOs, Market Orders other than those with a TIF instruction of Regular Hours Only or a Stop Price, orders with a Minimum Execution Quantity instruction that also include a TIF instruction of Regular Hours Only, and all orders with a TIF instruction of IOC or FOK. Further, at the commencement of the Early Trading Session, orders entered between 3:30 a.m. and 4:00 a.m. ET will be handled in time sequence, beginning with the order with the oldest time stamp, and will be placed on the EDGX Book, routed, cancelled, or executed in accordance with the terms of the order.

² “Pre-Opening Session” means the time between 8:00 a.m. and 9:30 a.m. ET. See Rule 1.5(s).

³ “Regular Trading Hours” means the time between 9:30 a.m. and 4:00 p.m. ET. See Rule 1.5(y).

⁴ “Post-Closing Trading Session” means the time between 4:00 p.m. and 8:00 p.m. ET. See Rule 1.5(r).

⁵ See Securities Exchange Act Release No. 90509 (November 24, 2020), 85 FR 77310 (December 1, 2020) (SR-CboeEDGX-2020-056).

⁶ The Exchange will announce the implementation of the extended Early Trading Session to Members in advance via Trade Desk Notice.

In light of the planned extension of the Early Trading Session, the Exchange seeks to continue to provide Users with the option to submit orders that become eligible for execution during the Early Trading Session beginning at 7:00 a.m. ET. In particular, the proposed rule change amends Rule 11.1 to provide that at the commencement of the Early Trading Session, orders entered between 3:30 a.m. and 4:00 a.m. ET, will become eligible for execution (“4:00 a.m. Start”), unless designated as eligible for execution during the Early Trading Session beginning at 7:00 a.m. ET (“7:00 a.m. Start”). Orders with a 7:00 a.m. Start designation may be entered between 3:30 a.m. and 7:00 a.m. ET. At each Start time that orders may become eligible for execution in the Early Trading Session (4:00 a.m. or 7:00 a.m. ET), orders will be handled in time sequence, beginning with the order with the oldest time stamp, and will be placed on the EDGX Book, routed, cancelled, or executed in accordance with the terms of the order.⁷ The Exchange will not accept the following orders prior to 4:00 a.m. Eastern Time or prior to 7:00 a.m. Eastern Time for orders eligible for a 7:00 a.m. Start: orders with a Post Only instruction, ISOs, Market Orders other than those with a TIF instruction of Regular Hours Only or a Stop Price, orders with a Minimum Execution Quantity instruction that also include a TIF instruction of Regular Hours Only, and all orders with a TIF instruction of IOC or FOK.

The proposed rule change allows Users to continue to be able to choose to submit orders that become eligible for execution during the Early Trading Session beginning at 7:00 a.m. ET, as they may today in connection with the current Early Trading Session hours.⁸ As

⁷ A User will be able to designate orders with a 7:00 a.m. Start through the use of a port setting. See also *infra* note 14.

⁸ The Exchange notes that the extended hours are intended to provide market participants with additional opportunities to source and access liquidity for their orders on the Exchange. See *supra* note 5.

the Exchange's Early Trading Session currently begins at 7:00 a.m. ET and other equities exchanges, including the Exchange's affiliated equities exchanges,⁹ have early trading sessions that begin at 7:00 a.m. ET,¹⁰ the Exchange understands that many market participants have configured their systems for trading beginning at 7:00 a.m. ET and find 7:00 a.m. ET to be a time at which there are additional opportunities across the industry to access and source liquidity. For example, the Exchange understands that retail brokerage firms generally have standard agreements in place with their retail customers which provide that retail customer orders may not become eligible for execution until a specific time, and is aware of at least one such firm on the Exchange that has standard agreements in place with their retail customers that limit this time to 7:00 a.m. ET. The Exchange also understands that multiple liquidity providers wish to continue to participate in the Early Trading Session beginning at 7:00 a.m. given the particular liquidity and activity present across the U.S. equity markets at this specific time.¹¹ Without a 7:00 a.m. Start designation available, certain retail investors may be limited in their ability to source liquidity that is available at this time during the Exchange's Early Trading Session, and liquidity providers may similarly choose not to participate in this trading session, thereby reducing liquidity available to other market participants and investors.¹²

⁹ The Exchange's affiliated equities exchange are Cboe BZX Exchange, Inc. ("BZX"), Cboe BYX Exchange, Inc. ("BYX"), and Cboe EDGA Exchange, Inc. ("EDGA").

¹⁰ See e.g., BZX Rule 1.5(ee), BYX Rule 1.5(ee), EDGA Rule 1.5(ii), NYSE Rule 7.34(a)(1), NYSE American Rule 7.34E, and Nasdaq BX Rule 4120(b)(4), each of which provide that their respective early trading sessions open at 7:00 a.m. ET.

¹¹ See *id.*

¹² The Exchange is aware are at least one liquidity provider that has expressed that it will not participate in the Early Trading Session without a 7 a.m. Start feature.

As such, the proposed rule change is intended to alleviate potential difficulty for Users that generally begin participating in the markets beginning at 7:00 a.m. ET, and to facilitate a fair and orderly market on the Exchange where retail investors and other market participants can benefit from trading opportunities present in the Exchange's Early Trading Session. As such, the proposed 7:00 a.m. Start designation will provide Users with greater control over their orders and more flexibility to carry out their investment strategies and manage their needs based on market conditions. In turn, Users may continue to provide meaningful liquidity and benefit from trading opportunities present on the Exchange throughout the duration of the Early Trading Session.

The Exchange notes that, as proposed, orders eligible for execution beginning at 7:00 a.m. ET will function in the same manner as they currently do today upon the 7:00 a.m. ET commencement of the Early Trading Session (and as they will upon the 4:00 a.m. ET commencement for the extended Early Trading Session hours). That is, Users will submit orders eligible for a 7:00 a.m. ET Start during the Early Trading Session in the same manner as they may currently submit orders eligible for execution during the Early Trading Session, and will continue to be able to submit all such orders at the beginning of the early order acceptance period. As orders with a 7:00 a.m. Start designation will not be activated until 7:00 a.m., Users will have through 7:00 a.m. to submit such orders. The Exchange will continue not to accept the same order types listed in Rule 11.1 prior to the commencement of an order's eligible start time in the Early Trading Session. The proposed rule change makes it clear that orders with a Post Only instruction, ISOs, Market Orders other than those with a TIF instruction of Regular Hours Only or a Stop Price, orders with a Minimum Execution Quantity instruction that also include a TIF instruction of Regular Hours Only,

and all orders with a TIF instruction of IOC or FOK will continue to be rejected prior to an order's eligible start time in the Early Trading Session, as they are today. Additionally, the System will continue to handle all orders eligible for execution during the Early Trading Session, including those with a 7:00 a.m. Start designation, pursuant to Rule 11.1. In particular, the proposed rule language makes it clear that all orders eligible for execution during the Early Trading Session will continue to be handled in time sequence, beginning with the order with the oldest time stamp, and will be placed on the EDGX Book, routed, cancelled, or executed in accordance with the terms of the order, beginning at the Start time (either 4:00 a.m. or 7:00 a.m. ET) at which they become eligible for execution in the Early Trading Session.¹³ At 7:00 a.m., orders with a 7:00 a.m. Start designation will simply be handled as any incoming order is handled during the Early Trading Session, and merge, in time sequence, onto the already active EDGX Order Book for the Early Trading Session. A User must continue to select the appropriate TIF to allow the order to execute in the Early Trading and a port setting will merely permit a User to designate an order that is already marked for the Early Trading Session to become active later in the Early Trading Session. The Exchange notes that the proposal does not extend or otherwise modify any trading

¹³ The System may delay the release of 7:00 a.m. Start orders if the System is experiencing an unusually significant amount of orders with a 7:00 a.m. Start designation that would potentially impact other System performance and processing functions during the Early Trading Session. The Exchange does not anticipate an occasion in which the System would have to implement a delayed release for orders with a 7:00 a.m. Start during the Early Trading Session. As the System does not have unlimited capacity, the proposed System flexibility to delay the release of orders with a 7:00 a.m. Start designation is a reasonable preventative measure to ensure that the System has the capacity to maintain fair and orderly markets in the event that there is an unusually significant amount of orders queued for 7:00 a.m. ET activation.

hours during which trading is currently permissible on the Exchange but simply permits a User to activate an order at a specific time during an ongoing trading session.

Additionally, the Exchange notes that permitting Users to designate a 7:00 a.m. ET Start for which orders may become active during an early trading session that begins at 4:00 a.m. is consistent with the rules currently in place on Nasdaq Stock Market LLC (“Nasdaq”). Nasdaq’s early trading session currently begins at 4:00 a.m. and continues until the 9:30 a.m. commencement of Nasdaq’s regular trading hours.¹⁴ Nasdaq Rule 4703(a) allows participants to designate a time at which certain orders¹⁵ may become active and includes 7:00 a.m. ET as an available time at which participants may activate such orders entered prior to 7:00 a.m. ET.¹⁶

(b) 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.¹⁷ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁸ 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

¹⁴ See Nasdaq Rule 4701(g).

¹⁵ Orders using the SCAN or RTFY routing strategy available on Nasdaq.

¹⁶ The Exchange notes that the designation for orders to become active at 7:00 a.m. ET on Nasdaq is similarly a port level setting. See Securities Exchange Act Release No. 83125 (April 27, 2018), 83 FR 19586 (May 3, 2018) (SR-NASDAQ-2017-088).

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(5).

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)¹⁹ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed rule change to allow Users to submit orders that become eligible for execution beginning at 7:00 a.m. ET, once the Exchange extends its Early Trading Session hours to begin at 4:00 a.m. ET, will remove impediments to and perfect the mechanism of a free and open market and national market system and will benefit investors by continuing to provide Users with the option to activate their orders for execution beginning at 7:00 a.m. ET and thus the opportunity to continue to source and access liquidity at a specific time in which there are additional trading opportunities in the markets. The Exchange does not believe that the proposed rule change will present any unique or novel issues nor affect the maintenance of a fair and orderly market, as many market participants have configured their systems for trading beginning at 7:00 a.m. ET in line with the commencement of the early trading sessions on other equities exchanges, including the Exchange's affiliated equities exchanges.²⁰ Rather, the proposed rule change is designed to benefit investors, as well as overall liquidity in the Early Trading Session, by providing Users with the option to continue to activate their orders for execution during the Early Trading Session beginning at 7:00 a.m. ET when the Exchange extends its Early Trading Session hours. As described above, certain market participants, such as retail investors and liquidity providers, may be limited in their

¹⁹ Id.

²⁰ See supra note 10.

ability to source liquidity that is available in the Exchange's Early Trading Session or choose not to participate in the Early Trading Session without the availability of a 7:00 a.m. Start designation, thereby reducing liquidity available to other market participants and investors. Thus, the proposed rule change will alleviate potential difficulties for Users that generally begin participating in the markets at 7:00 a.m. ET (as these Users would not have to time the entry of their orders to occur as close to 7:00 a.m. ET as possible), and will facilitate a fair and orderly market on the Exchange by allowing retail investors and other market participants to benefit from trading opportunities present at this specific time during the Exchange's Early Trading Session. Overall, the proposed rule change will serve to protect investors and the public interest by providing Users with greater control over their orders and more flexibility to carry out their investment strategies and manage their needs based on market conditions, thereby allowing them to continue to provide meaningful liquidity and benefit from trading opportunities present on the Exchange throughout the duration of the Early Trading Session.

The proposed rule change will not affect the protection of investors as it would simply provide Users with the opportunity to choose whether orders entered for potential execution in the Early Trading Session will become active at the new 4:00 a.m. ET commencement of that trading session, or will instead continue to become active at 7:00 a.m. ET, as they do today. The System will continue to accept all orders eligible for execution during the Early Trading Session beginning at the early acceptance time, will continue to reject the same list of order types prior to the time an order is eligible to start trading in the Early Trading Session, and will continue to process all orders that are queued for participation in the Early

Trading Session in time priority pursuant to Rule 11.1.²¹ That is, orders with a 7:00 a.m. Start designation will be handled as any incoming order is handled during the Early Trading Session, and merge, in time sequence, onto the already active EDGX Order Book for the Early Trading Session. As described above, a User must continue to select the appropriate TIF to allow the order to execute in the Early Trading Session and a port setting step will just permit an order already marked for execution in the Early Trading Session to become active later in the Early Trading Session. The proposed rule change does not extend or otherwise modify any trading hours during which trading is currently permissible on the Exchange but simply permits Users to choose to activate their orders at a specific time during an ongoing trading session.

The Exchange also notes that, as with any order eligible for trading in the Early Trading Session, market participants must monitor market conditions to ensure compliance with best execution obligations²² for their orders with a 7:00 a.m. Start designation and will be able to cancel or modify their orders with a 7:00 a.m. Start time designation at any time prior to their activation, thus allowing them to react to market conditions that may cause them to violate their best execution obligations. FINRA Rule 5310(a)(1) provides that a member must use reasonable diligence to ascertain the best market for a security and buy or sell in such market so that the resultant price to the customer is as favorable as possible under prevailing market conditions. FINRA Rule 5310(a)(1)(A) states that one of the factors

²¹ See also supra note 13.

²² A member's best execution obligation may also include cancelling an order when market conditions deteriorate and could result in an inferior execution or informing customers where the execution of their order may be delayed intentionally as the member utilizes reasonable diligence to ascertain the best market for the security. See FINRA Rule 5130. See also FINRA Regulatory Notice 15-46, Best Execution. Guidance on Best Execution Obligations in Equity, Options, and Fixed Income Markets, (November 2015).

that will be considered in determining whether a member has used “reasonable diligence” is “the character of the market for the security (e.g., price, volatility, relative liquidity, and pressure on available communication).”²³ The Exchange believes that Users are accustomed to this additional analysis and will continue to apply such in determining whether to designate an activation at 7:00 a.m. ET. The regulatory guidance with respect to best execution anticipates the continued evolution of execution venues:

[B]est execution is a facts and circumstances determination. A broker-dealer must consider several factors affecting the quality of execution, including, for example, the opportunity for price improvement, the likelihood of execution..., the speed of execution and the trading characteristics of the security, together with other non-price factors such as reliability and service.²⁴

To the extent there may be best execution obligations at issue, they are no different than the best execution obligations faced by brokers in the current market structure, including the current use of orders that become eligible for execution at the start of the Early Trading Session, Pre-Opening Session or Regular Trading Hours, depending on the TIF selected by the User. A User may continue to use TIF instructions to forgo a possible execution at the start of one trading session, or at a 7 a.m. Start time, as proposed, if they believe doing so is consistent with their best execution obligations as they anticipate that the market for the security may improve upon the start of another trading session, or at 7:00 a.m. ET, as proposed. Applicable best execution guidance contains no formulaic mandate as

²³ These characteristics are reflected in the disclosure requirements mandated by Exchange Rule 3.21 before a Member may accept an order from a customer for execution in the Pre-Opening, Post-Closing, and proposed Early Trading Sessions.

²⁴ See Securities Exchange Act Release No. 43950 (November 17, 2000), 65 FR 75414 (December 1, 2000) (“Disclosure of Order Execution and Routing Practices release”).

to whether or how brokers should direct orders. The optionality created by the proposed rule change simply represents one tool available to User to meet their best execution obligations.

The Exchange also notes that Users are required to implement regulatory risk management controls and procedures that are reasonably designed to prevent the entry of orders that fail to comply with regulatory requirements that apply on a pre-order entry basis pursuant to the Market Access Rule under 15c3-5 of the Act.²⁵ These pre-trade controls must, for example, be reasonably designed to assure compliance with Exchange trading rules and Commission rules under Regulation SHO²⁶ and Regulation NMS.²⁷ In accordance with the Market Access Rule, a User's procedures must be reasonably designed to ensure compliance with their applicable regulatory requirements, not just at the time the order is routed to the Exchange, but also at the time the order becomes eligible for execution.

In addition to this, the proposed rule change will not affect the protection of investors as it is generally consistent with Nasdaq Rule 4703(a), as previously approved by the Commission,²⁸ which allows participants to designate 7:00 a.m. ET as a time in which certain orders entered prior to 7:00 a.m. ET may become active during Nasdaq's early trading session, which likewise commences at 4:00 a.m. ET. Unlike Nasdaq Rule 4703(a), which limits the types of orders that may be designated to begin at 7:00 a.m. ET, the proposal will provide Users with the control and flexibility to designate a 7 a.m. Start time for any of their same orders currently eligible to execute in the Early Trading

²⁵ See Securities Exchange Act Release No. 63241 (November 3, 2010), 75 FR 69792 (November 15, 2010) (File no. S7-03-10).

²⁶ See e.g., Question 2.6 of the Division of Trading and Markets: Response to Frequently Asked Questions Concerning Regulations SHO, available at <https://www.sec.gov/divisions/marketreg/mrfaqregsho1204.htm>.

²⁷ 17 CFR 240.610 - 611.

²⁸ See supra note 14.

Session, thereby providing the opportunity for all orders eligible for the Early Trading Session to access the additional liquidity and execution opportunities present in the markets at this particular time, as they may today.

Item 4. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, 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 because all Users will be able to designate their orders to become eligible for execution during the Early Trading Session beginning at 7:00 a.m. ET. All Users' orders submitted with a 7:00 a.m. Start designation will become eligible for execution at 7:00 a.m. ET in the same time sequence as they are today and will be subject to the same order type restrictions as are currently in place. The Exchange also 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, and may promote competition, because the proposed activation time is substantially similar to that which is currently in place on Nasdaq, as previously approved by the Commission, and other equities exchanges currently begin their early trading sessions at 7:00 a.m. ET. Therefore, the proposal will also allow the Exchange to compete with those exchanges that allow for a 7:00 a.m. ET start time.

Item 5. 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.

Item 6. Extension of Time Period for Commission Action

Not applicable.

Item 7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)

(a) The proposed rule change is filed for immediate effectiveness pursuant to Section 19(b)(3)(A) of Act²⁹ and Rule 19b-4(f)(6)³⁰ thereunder.

(b) The Exchange designates that the proposed rule change effects a change that (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Additionally, the Exchange has given 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 believes that the proposed rule change does not significantly affect the protection of investors nor the public interest, but instead, benefits investors and the public interest by continuing to provide investors with the option to activate their orders for execution beginning at 7:00 a.m. ET when the Exchange extends its Early Trading Session to begin at 4:00 a.m. ET. As a result, investors will be able to continue to source and access liquidity at a specific time in which there are additional trading opportunities in the markets, as the early trading sessions on other equities exchanges, including the

²⁹ 15 U.S.C. 78s(b)(3)(A).

³⁰ 17 CFR 240.19b-4(f)(6).

Exchange's affiliated equities exchanges, commence at 7:00 a.m. ET.³¹ The proposed rule change will benefit investors by providing them with greater control over their orders and more flexibility to carry out their investment strategies and manage their needs based on market conditions, in turn, allowing them to continue to provide meaningful liquidity and benefit from trading opportunities present on the Exchange throughout the duration of the Early Trading Session. The proposed rule change will not significantly affect the protection of investors nor the public interest as Users will continue to submit all orders eligible for execution during the Early Trading session to become active either at the 4:00 a.m. ET commencement or at 7:00 a.m. ET, as they do today, and the System will continue to accept and process all orders eligible for execution during the Early Trading Session pursuant to Rule 11.1. As stated above, the proposal does not extend or otherwise modify trading hours during which trading is currently permissible on the Exchange but merely allows Users to choose to activate their orders at a specific time during an ongoing trading session. Also, the Exchange does not believe that the proposed rule change presents any unique or novel issues that have not already been addressed by the Commission as Nasdaq Rule 4703(a), as previously approved by the Commission, similarly provides the ability for Users to designate certain early trading session orders to become active at 7:00 a.m. ET. The Exchange believes that this proposal will provide further benefits to investors by allowing Users to designate any order currently eligible for the Early Trading Session to become active at 7:00 a.m. ET, thereby providing the opportunity for all such orders to access the additional liquidity and execution opportunities present in the markets at this particular time, as they may today. The

³¹ See supra note 10.

Exchange does not believe that the proposed rule change will impose any significant burden on competition because all Users will be able to designate their orders to become eligible for execution during the Early Trading Session beginning at 7:00 a.m. ET, and all such orders will become eligible for execution at 7:00 a.m. ET in the same time sequence as they are today. Also, the same order activation time during an early trading session already exists on another equities exchange.

For the foregoing reasons, this rule filing qualifies as a “non-controversial” rule change under Rule 19b-4(f)(6), which renders the proposed rule change effective upon filing with the Commission. At any time within 60 days of the filing of this proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

The Exchange respectfully requests that the Commission waive the 30-day operative delay period after which a proposed rule change under Rule 19b-4(f)(6) becomes effective. The proposed rule change does not introduce any new or novel issues nor does it extend or otherwise modify trading hours during which trading is currently permissible on the Exchange, but merely seeks to meet the needs of market participants and investors by allowing them to continue to submit orders that become eligible for execution at 7:00 a.m. ET, as they already do today, once the Exchange extends its Early Trading Session hours to begin at 4:00 a.m. ET. This, in turn, will allow for the continued provision of meaningful liquidity and for investors to benefit from trading opportunities

present on the Exchange throughout the duration of the Early Trading Session. In addition to this, the Exchange again notes that another equities exchange currently allows its members to submit certain orders for 7:00 a.m. activation during its early trading session beginning at 4:00 a.m. ET. This proposal will further benefit investors by providing them the opportunity to designate any order currently eligible for the Early Trading Session with a 7 a.m. Start time. Waiver of the operative delay will allow the Exchange to implement this activation time, along with its extended Early Trading Session hours, by the planned March 8, 2021 launch date, thus benefitting investors by providing them with opportunities to continue to access and source liquidity at 7:00 a.m. ET, while also providing them with additional opportunities to access and source liquidity at an earlier time. For these reasons, the Exchange respectfully requests that the Commission waive the 30-day operative delay.

(c) Not applicable.

(d) Not applicable.

Item 8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is consistent with the order activation time permitted by Nasdaq Rule 4703(a), which allows participants to designate 7:00 a.m. as a time at which certain orders³² may become active for such orders submitted before 7:00 a.m. ET.

Item 9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

³² See supra notes 14 and 15.

**Item 10. Advance Notices Filed Pursuant to Section 806(e) of the Payment,
Clearing and Settlement Supervision Act**

Not applicable.

Item 11. Exhibits

Exhibit 1. Completed Notice of Proposed Rule Change for publication in the
Federal Register.

Exhibit 5. Proposed rule text.

EXHIBIT 1**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34- ; File No. SR-CboeEDGX-2021-010]

[Insert date]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Order Start Times During its Early Trading Session

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on [insert date], 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 Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the “Exchange” or “EDGX”) proposes to amend order start times during its Early Trading Session. The text of the proposed rule change is provided in Exhibit 5.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

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

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to amend Rule 11.1 to allow Users to designate their orders to become eligible for execution at 7:00 a.m. Eastern Time ("ET") during the new Early Trading Session extended hours.

The Exchange currently offers four distinct trading sessions where the Exchange accepts orders for potential execution: (1) the "Early Trading Session," which begins at 4:00 a.m. ET and continues until 8:00 a.m. ET,⁵ (2) the "Pre-Opening Session," which begins at 8:00 a.m. ET and continues until 9:30 a.m. ET,⁶ (3) "Regular Trading Hours," which begin

⁵ "Early Trading Session" means the time between 4:00 a.m. and 8:00 a.m. ET. See Rule 1.5(ii).

⁶ "Pre-Opening Session" means the time between 8:00 a.m. and 9:30 a.m. ET. See Rule 1.5(s).

at 9:30 a.m. ET and continue until 4:00 p.m. ET,⁷ and (4) the “Post-Closing Trading Session,” which begins at 4:00 p.m. ET and continues until 8:00 p.m. ET.⁸

The Exchange recently submitted an immediately effective rule filing which amended the Early Trading Session to extend its hours from a 7:00 a.m. ET start to a 4:00 a.m. ET start, and to allow Users to begin entering orders into the System prior to the Early Trading Session at 3:30 a.m. ET.⁹ The Exchange intends to launch the new Early Trading Session extended hours on March 8, 2021.¹⁰ As amended, Rule 11.1 now provides that the Exchange will not accept the following orders prior to 4:00 a.m. ET: orders with a Post Only instruction, ISOs, Market Orders other than those with a TIF instruction of Regular Hours Only or a Stop Price, orders with a Minimum Execution Quantity instruction that also include a TIF instruction of Regular Hours Only, and all orders with a TIF instruction of IOC or FOK. Further, at the commencement of the Early Trading Session, orders entered between 3:30 a.m. and 4:00 a.m. ET will be handled in time sequence, beginning with the order with the oldest time stamp, and will be placed on the EDGX Book, routed, cancelled, or executed in accordance with the terms of the order.

In light of the planned extension of the Early Trading Session, the Exchange seeks to continue to provide Users with the option to submit orders that become eligible for execution during the Early Trading Session beginning at 7:00 a.m. ET. In particular, the

⁷ “Regular Trading Hours” means the time between 9:30 a.m. and 4:00 p.m. ET. See Rule 1.5(y).

⁸ “Post-Closing Trading Session” means the time between 4:00 p.m. and 8:00 p.m. ET. See Rule 1.5(r).

⁹ See Securities Exchange Act Release No. 90509 (November 24, 2020), 85 FR 77310 (December 1, 2020) (SR-CboeEDGX-2020-056).

¹⁰ The Exchange will announce the implementation of the extended Early Trading Session to Members in advance via Trade Desk Notice.

proposed rule change amends Rule 11.1 to provide that at the commencement of the Early Trading Session, orders entered between 3:30 a.m. and 4:00 a.m. ET, will become eligible for execution (“4:00 a.m. Start”), unless designated as eligible for execution during the Early Trading Session beginning at 7:00 a.m. ET (“7:00 a.m. Start”). Orders with a 7:00 a.m. Start designation may be entered between 3:30 a.m. and 7:00 a.m. ET. At each Start time that orders may become eligible for execution in the Early Trading Session (4:00 a.m. or 7:00 a.m. ET), orders will be handled in time sequence, beginning with the order with the oldest time stamp, and will be placed on the EDGX Book, routed, cancelled, or executed in accordance with the terms of the order.¹¹ The Exchange will not accept the following orders prior to 4:00 a.m. Eastern Time or prior to 7:00 a.m. Eastern Time for orders eligible for a 7:00 a.m. Start: orders with a Post Only instruction, ISOs, Market Orders other than those with a TIF instruction of Regular Hours Only or a Stop Price, orders with a Minimum Execution Quantity instruction that also include a TIF instruction of Regular Hours Only, and all orders with a TIF instruction of IOC or FOK.

The proposed rule change allows Users to continue to be able to choose to submit orders that become eligible for execution during the Early Trading Session beginning at 7:00 a.m. ET, as they may today in connection with the current Early Trading Session hours.¹² As the Exchange’s Early Trading Session currently begins at 7:00 a.m. ET and other equities exchanges, including the Exchange’s affiliated equities exchanges,¹³ have early

¹¹ A User will be able to designate orders with a 7:00 a.m. Start through the use of a port setting. See also infra note 14.

¹² The Exchange notes that the extended hours are intended to provide market participants with additional opportunities to source and access liquidity for their orders on the Exchange. See supra note 9.

¹³ The Exchange’s affiliated equities exchange are Cboe BZX Exchange, Inc. (“BZX”), Cboe BYX Exchange, Inc. (“BYX”), and Cboe EDGA Exchange, Inc.

trading sessions that begin at 7:00 a.m. ET,¹⁴ the Exchange understands that many market participants have configured their systems for trading beginning at 7:00 a.m. ET and find 7:00 a.m. ET to be a time at which there are additional opportunities across the industry to access and source liquidity. For example, the Exchange understands that retail brokerage firms generally have standard agreements in place with their retail customers which provide that retail customer orders may not become eligible for execution until a specific time, and is aware of at least one such firm on the Exchange that has standard agreements in place with their retail customers that limit this time to 7:00 a.m. ET. The Exchange also understands that multiple liquidity providers wish to continue to participate in the Early Trading Session beginning at 7:00 a.m. given the particular liquidity and activity present across the U.S. equity markets at this specific time.¹⁵ Without a 7:00 a.m. Start designation available, certain retail investors may be limited in their ability to source liquidity that is available at this time during the Exchange's Early Trading Session, and liquidity providers may similarly choose not to participate in this trading session, thereby reducing liquidity available to other market participants and investors.¹⁶

As such, the proposed rule change is intended to alleviate potential difficulty for Users that generally begin participating in the markets beginning at 7:00 a.m. ET, and to facilitate a fair and orderly market on the Exchange where retail investors and other market participants can benefit from trading opportunities present in the Exchange's Early Trading

("EDGA").

¹⁴ See e.g., BZX Rule 1.5(ee), BYX Rule 1.5(ee), EDGA Rule 1.5(ii), NYSE Rule 7.34(a)(1), NYSE American Rule 7.34E, and Nasdaq BX Rule 4120(b)(4), each of which provide that their respective early trading sessions open at 7:00 a.m. ET.

¹⁵ See *id.*

¹⁶ The Exchange is aware are at least one liquidity provider that has expressed that it will not participate in the Early Trading Session without a 7 a.m. Start feature.

Session. As such, the proposed 7:00 a.m. Start designation will provide Users with greater control over their orders and more flexibility to carry out their investment strategies and manage their needs based on market conditions. In turn, Users may continue to provide meaningful liquidity and benefit from trading opportunities present on the Exchange throughout the duration of the Early Trading Session.

The Exchange notes that, as proposed, orders eligible for execution beginning at 7:00 a.m. ET will function in the same manner as they currently do today upon the 7:00 a.m. ET commencement of the Early Trading Session (and as they will upon the 4:00 a.m. ET commencement for the extended Early Trading Session hours). That is, Users will submit orders eligible for a 7:00 a.m. ET Start during the Early Trading Session in the same manner as they may currently submit orders eligible for execution during the Early Trading Session, and will continue to be able to submit all such orders at the beginning of the early order acceptance period. As orders with a 7:00 a.m. Start designation will not be activated until 7:00 a.m., Users will have through 7:00 a.m. to submit such orders. The Exchange will continue not to accept the same order types listed in Rule 11.1 prior to the commencement of an order's eligible start time in the Early Trading Session. The proposed rule change makes it clear that orders with a Post Only instruction, ISOs, Market Orders other than those with a TIF instruction of Regular Hours Only or a Stop Price, orders with a Minimum Execution Quantity instruction that also include a TIF instruction of Regular Hours Only, and all orders with a TIF instruction of IOC or FOK will continue to be rejected prior to an order's eligible start time in the Early Trading Session, as they are today. Additionally, the System will continue to handle all orders eligible for execution during the Early Trading Session, including those with a 7:00 a.m. Start designation, pursuant to Rule 11.1. In

particular, the proposed rule language makes it clear that all orders eligible for execution during the Early Trading Session will continue to be handled in time sequence, beginning with the order with the oldest time stamp, and will be placed on the EDGX Book, routed, cancelled, or executed in accordance with the terms of the order, beginning at the Start time (either 4:00 a.m. or 7:00 a.m. ET) at which they become eligible for execution in the Early Trading Session.¹⁷ At 7:00 a.m., orders with a 7:00 a.m. Start designation will simply be handled as any incoming order is handled during the Early Trading Session, and merge, in time sequence, onto the already active EDGX Order Book for the Early Trading Session. A User must continue to select the appropriate TIF to allow the order to execute in the Early Trading and a port setting will merely permit a User to designate an order that is already marked for the Early Trading Session to become active later in the Early Trading Session. The Exchange notes that the proposal does not extend or otherwise modify any trading hours during which trading is currently permissible on the Exchange but simply permits a User to activate an order at a specific time during an ongoing trading session.

Additionally, the Exchange notes that permitting Users to designate a 7:00 a.m. ET Start for which orders may become active during an early trading session that begins at 4:00 a.m. is consistent with the rules currently in place on Nasdaq Stock Market LLC

¹⁷ The System may delay the release of 7:00 a.m. Start orders if the System is experiencing an unusually significant amount of orders with a 7:00 a.m. Start designation that would potentially impact other System performance and processing functions during the Early Trading Session. The Exchange does not anticipate an occasion in which the System would have to implement a delayed release for orders with a 7:00 a.m. Start during the Early Trading Session. As the System does not have unlimited capacity, the proposed System flexibility to delay the release of orders with a 7:00 a.m. Start designation is a reasonable preventative measure to ensure that the System has the capacity to maintain fair and orderly markets in the event that there is an unusually significant amount of orders queued for 7:00 a.m. ET activation.

(“Nasdaq”). Nasdaq’s early trading session currently begins at 4:00 a.m. and continues until the 9:30 a.m. commencement of Nasdaq’s regular trading hours.¹⁸ Nasdaq Rule 4703(a) allows participants to designate a time at which certain orders¹⁹ may become active and includes 7:00 a.m. ET as an available time at which participants may activate such orders entered prior to 7:00 a.m. ET.²⁰

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.²¹ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)²² 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

¹⁸ See Nasdaq Rule 4701(g).

¹⁹ Orders using the SCAN or RTFY routing strategy available on Nasdaq.

²⁰ The Exchange notes that the designation for orders to become active at 7:00 a.m. ET on Nasdaq is similarly a port level setting. See Securities Exchange Act Release No. 83125 (April 27, 2018), 83 FR 19586 (May 3, 2018) (SR-NASDAQ-2017-088).

²¹ 15 U.S.C. 78f(b).

²² 15 U.S.C. 78f(b)(5).

the Section 6(b)(5)²³ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed rule change to allow Users to submit orders that become eligible for execution beginning at 7:00 a.m. ET, once the Exchange extends its Early Trading Session hours to begin at 4:00 a.m. ET, will remove impediments to and perfect the mechanism of a free and open market and national market system and will benefit investors by continuing to provide Users with the option to activate their orders for execution beginning at 7:00 a.m. ET and thus the opportunity to continue to source and access liquidity at a specific time in which there are additional trading opportunities in the markets. The Exchange does not believe that the proposed rule change will present any unique or novel issues nor affect the maintenance of a fair and orderly market, as many market participants have configured their systems for trading beginning at 7:00 a.m. ET in line with the commencement of the early trading sessions on other equities exchanges, including the Exchange's affiliated equities exchanges.²⁴ Rather, the proposed rule change is designed to benefit investors, as well as overall liquidity in the Early Trading Session, by providing Users with the option to continue to activate their orders for execution during the Early Trading Session beginning at 7:00 a.m. ET when the Exchange extends its Early Trading Session hours. As described above, certain market participants, such as retail investors and liquidity providers, may be limited in their ability to source liquidity that is available in the Exchange's Early Trading Session or choose not to participate in the Early Trading Session without the availability of a 7:00 a.m. Start designation, thereby reducing liquidity available to other market participants

²³ Id.

²⁴ See supra note 14.

and investors. Thus, the proposed rule change will alleviate potential difficulties for Users that generally begin participating in in the markets at 7:00 a.m. ET (as these Users would not have to time the entry of their orders to occur as close to 7:00 a.m. ET as possible), and will facilitate a fair and orderly market on the Exchange by allowing retail investors and other market participants to benefit from trading opportunities present at this specific time during the Exchange's Early Trading Session. Overall, the proposed rule change will serve to protect investors and the public interest by providing Users with greater control over their orders and more flexibility to carry out their investment strategies and manage their needs based on market conditions, thereby allowing them to continue to provide meaningful liquidity and benefit from trading opportunities present on the Exchange throughout the duration of the Early Trading Session.

The proposed rule change will not affect the protection of investors as it would simply provide Users with the opportunity to choose whether orders entered for potential execution in the Early Trading Session will become active at the new 4:00 a.m. ET commencement of that trading session, or will instead continue to become active at 7:00 a.m. ET, as they do today. The System will continue to accept all orders eligible for execution during the Early Trading Session beginning at the early acceptance time, will continue to reject the same list of order types prior to the time an order is eligible to start trading in the Early Trading Session, and will continue to process all orders that are queued for participation in the Early Trading Session in time priority pursuant to Rule 11.1.²⁵ That is, orders with a 7:00 a.m. Start designation will be handled as any incoming order is handled during the Early Trading Session, and merge, in time sequence, onto the already active EDGX Order Book for the

²⁵ See also supra note 17.

Early Trading Session. As described above, a User must continue to select the appropriate TIF to allow the order to execute in the Early Trading Session and a port setting step will just permit an order already marked for execution in the Early Trading Session to become active later in the Early Trading Session. The proposed rule change does not extend or otherwise modify any trading hours during which trading is currently permissible on the Exchange but simply permits Users to choose to activate their orders at a specific time during an ongoing trading session.

The Exchange also notes that, as with any order eligible for trading in the Early Trading Session, market participants must monitor market conditions to ensure compliance with best execution obligations²⁶ for their orders with a 7:00 a.m. Start designation and will be able to cancel or modify their orders with a 7:00 a.m. Start time designation at any time prior to their activation, thus allowing them to react to market conditions that may cause them to violate their best execution obligations. FINRA Rule 5310(a)(1) provides that a member must use reasonable diligence to ascertain the best market for a security and buy or sell in such market so that the resultant price to the customer is as favorable as possible under prevailing market conditions. FINRA Rule 5310(a)(1)(A) states that one of the factors that will be considered in determining whether a member has used “reasonable diligence” is “the character of the market for the security (e.g., price, volatility, relative liquidity, and

²⁶ A member’s best execution obligation may also include cancelling an order when market conditions deteriorate and could result in an inferior execution or informing customers where the execution of their order may be delayed intentionally as the member utilizes reasonable diligence to ascertain the best market for the security. See FINRA Rule 5130. See also FINRA Regulatory Notice 15-46, Best Execution. Guidance on Best Execution Obligations in Equity, Options, and Fixed Income Markets, (November 2015).

pressure on available communication).”²⁷ The Exchange believes that Users are accustomed to this additional analysis and will continue to apply such in determining whether to designate an activation at 7:00 a.m. ET. The regulatory guidance with respect to best execution anticipates the continued evolution of execution venues:

[B]est execution is a facts and circumstances determination. A broker-dealer must consider several factors affecting the quality of execution, including, for example, the opportunity for price improvement, the likelihood of execution..., the speed of execution and the trading characteristics of the security, together with other non-price factors such as reliability and service.²⁸

To the extent there may be best execution obligations at issue, they are no different than the best execution obligations faced by brokers in the current market structure, including the current use of orders that become eligible for execution at the start of the Early Trading Session, Pre-Opening Session or Regular Trading Hours, depending on the TIF selected by the User. A User may use continue to use TIF instructions to forgo a possible execution at the start of one trading session, or at a 7 a.m. Start time, as proposed, if they believe doing so is consistent with their best execution obligations as they anticipate that the market for the security may improve upon the start of another trading session, or at 7:00 a.m. ET, as proposed. Applicable best execution guidance contains no formulaic mandate as to whether or how brokers should direct orders. The optionality created by the proposed rule change simply represents one tool available to User to meet their best execution obligations.

²⁷ These characteristics are reflected in the disclosure requirements mandated by Exchange Rule 3.21 before a Member may accept an order from a customer for execution in the Pre-Opening, Post-Closing, and proposed Early Trading Sessions.

²⁸ See Securities Exchange Act Release No. 43950 (November 17, 2000), 65 FR 75414 (December 1, 2000) (“Disclosure of Order Execution and Routing Practices release”).

The Exchange also notes that Users are required to implement regulatory risk management controls and procedures that are reasonably designed to prevent the entry of orders that fail to comply with regulatory requirements that apply on a pre-order entry basis pursuant to the Market Access Rule under 15c3-5 of the Act.²⁹ These pre-trade controls must, for example, be reasonably designed to assure compliance with Exchange trading rules and Commission rules under Regulation SHO³⁰ and Regulation NMS.³¹ In accordance with the Market Access Rule, a User's procedures must be reasonably designed to ensure compliance with their applicable regulatory requirements, not just at the time the order is routed to the Exchange, but also at the time the order becomes eligible for execution.

In addition to this, the proposed rule change will not affect the protection of investors as it is generally consistent with Nasdaq Rule 4703(a), as previously approved by the Commission,³² which allows participants to designate 7:00 a.m. ET as a time in which certain orders entered prior to 7:00 a.m. ET may become active during Nasdaq's early trading session, which likewise commences at 4:00 a.m. ET. Unlike Nasdaq Rule 4703(a), which limits the types of orders that may be designated to begin at 7:00 a.m. ET, the proposal will provide Users with the control and flexibility to designate a 7 a.m. Start time for any of their same orders currently eligible to execute in the Early Trading Session, thereby providing the opportunity for all orders eligible for the Early Trading

²⁹ See Securities Exchange Act Release No. 63241 (November 3, 2010), 75 FR 69792 (November 15, 2010) (File no. S7-03-10).

³⁰ See e.g., Question 2.6 of the Division of Trading and Markets: Response to Frequently Asked Questions Concerning Regulations SHO, available at <https://www.sec.gov/divisions/marketreg/mrfaqregsho1204.htm>.

³¹ 17 CFR 240.610 - 611.

³² See supra note 18.

Session to access the additional liquidity and execution opportunities present in the markets at this particular time, as they may today.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, 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 because all Users will be able to designate their orders to become eligible for execution during the Early Trading Session beginning at 7:00 a.m. ET. All Users' orders submitted with a 7:00 a.m. Start designation will become eligible for execution at 7:00 a.m. ET in the same time sequence as they are today and will be subject to the same order type restrictions as are currently in place. The Exchange also 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, and may promote competition, because the proposed activation time is substantially similar to that which is currently in place on Nasdaq, as previously approved by the Commission, and other equities exchanges currently begin their early trading sessions at 7:00 a.m. ET. Therefore, the proposal will also allow the Exchange to compete with those exchanges that allow for a 7:00 a.m. ET start time.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

- A. significantly affect the protection of investors or the public interest;
- B. impose any significant burden on competition; and
- C. 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 Act³³ and Rule 19b-4(f)(6)³⁴ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic comments:

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

³³ 15 U.S.C. 78s(b)(3)(A).

³⁴ 17 CFR 240.19b-4(f)(6).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CboeEDGX-2021-010 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-2021-010. 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, D.C. 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeEDGX-2021-010 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.³⁵

Secretary

³⁵ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

(additions are underlined; deletions are [bracketed])

* * * * *

Rules of Cboe EDGX Exchange, Inc.

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Rule 11.1. Hours of Trading and Trading Days

(a) Orders may be entered on the Exchange, executed on the Exchange or routed away from the Exchange during Regular Trading Hours, the Early Trading Session, the Pre-Opening Session, the Regular Session, and the Post-Closing Session.

(1) Trading Sessions. All orders are eligible for execution during the Regular Session. Orders may be entered into the System from 3:30 a.m. until 8:00 p.m. Eastern Time. Orders entered between 3:30 a.m. and 4:00 a.m. Eastern Time are not eligible for execution until the start of the Early Trading Session, Pre-Opening Session or Regular Trading Hours, depending on the Time-in-Force selected by the User. [The Exchange will not accept the following orders prior to 4:00 a.m. Eastern Time: orders with a Post Only instruction, ISOs, Market Orders other than those with a TIF instruction of Regular Hours Only or a Stop Price, orders with a Minimum Execution Quantity instruction that also include a TIF instruction of Regular Hours Only, and all orders with a TIF instruction of IOC or FOK.] At the commencement of the Early Trading Session, orders entered between 3:30 a.m. and 4:00 a.m. Eastern Time will become eligible for execution (“4:00 a.m. Start”), unless designated as eligible for execution during the Early Trading Session beginning at 7:00 a.m. Eastern Time (“7:00 a.m. Start”). Orders with a 7:00 a.m. Start designation may be entered between 3:30 a.m. and 7:00 a.m. Eastern Time. At each Start time that orders may become eligible for execution in the Early Trading Session (4:00 a.m. or 7:00 a.m. Eastern Time), orders will be handled in time sequence, beginning with the order with the oldest time stamp, and will be placed on the EDGX Book, routed, cancelled, or executed in accordance with the terms of the order. The Exchange will not accept the following orders prior to 4:00 a.m. Eastern Time or prior to 7:00 a.m. Eastern Time for orders eligible for a 7:00 a.m. Start: orders with a Post Only instruction, ISOs, Market Orders other than those with a TIF instruction of Regular Hours Only or a Stop Price, orders with a Minimum Execution Quantity instruction that also include a TIF instruction of Regular Hours Only, and all orders with a TIF instruction of IOC or FOK.

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