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Page 1 of * 53		SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4		File No. * SR 2025 - * 035 Amendment No. (req. for Amendments *) 1	
Filing by Cboe EDGX Exchange, Inc. Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934					
Initial * <input type="checkbox"/>		Amendment * <input checked="" type="checkbox"/>		Withdrawal <input type="checkbox"/>	
Section 19(b)(2) * <input checked="" type="checkbox"/>		Section 19(b)(3)(A) * <input type="checkbox"/>		Section 19(b)(3)(B) * <input type="checkbox"/>	
Pilot <input type="checkbox"/>		Extension of Time Period for Commission Action * <input type="checkbox"/>		Date Expires * <input type="text"/>	
		Rule			
		<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 type="checkbox"/> 19b-4(f)(6)	
Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010 Section 806(e)(1) * <input type="checkbox"/>			Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 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"/>		
<b>Description</b> Provide a brief description of the action (limit 250 characters, required when Initial is checked *). <div></div>					
<b>Contact Information</b> 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 * Matthew Last Name * Iwamaye Title * VP, Associate General Counsel E-mail * miwamaye@cboe.com Telephone * (732) 687-9355 Fax					
<b>Signature</b> Pursuant to the requirements of the Securities Exchange of 1934, Cboe EDGX Exchange, Inc. has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized. Date 09/04/2025 (Title *) By Matthew Iwamaye VP, Associate General Counsel (Name *) <div>NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.</div> <div>Matthew Iwamaye Date: 2025.09.04 11:09:38 -05'00'</div>					

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SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

**Form 19b-4 Information \***

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25-035 (Retail Order - Principal Capac

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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25-035 (Retail Order - Principal Capac

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 Advanced 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 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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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.

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Exhibit Sent As Paper Document

**Exhibit 3 - Form, Report, or Questionnaire**

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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.

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Exhibit Sent As Paper Document

**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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25-035 (Retail Order - Principal Capac

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 (i) amend Rule 11.21(a)(2), to allow a Retail Member Organization to enter a Retail Order onto the Exchange in a principal capacity, provided the requirements of proposed Rule 11.21(g) are satisfied; (ii) codify in proposed new Rule 11.21(g) additional requirements a Retail Member Organization must comply with in order to enter Retail Orders as principal; and (iii) amend Rule 11.21(b)(6) to require that Retail Member Organizations have in place policies and procedures reasonably designed to ensure compliance with proposed Rule 11.21(g), as well as to ensure that the Retail Member Organization can, upon request by the Exchange, produce documentation evidencing compliance with the requirements of Rule 11.21(g). The Exchange initially submitted this rule filing SR-CboeEDGX-2025-035 to the Securities and Exchange Commission (“Commission”) on May 21, 2025 (the “Initial Filing”).<sup>1</sup> This Amendment No. 1 supersedes the Initial Filing and replaces it in its entirety. 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 May 6, 2025. The Exchange will announce via

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<sup>1</sup> Securities Exchange Act Release No. 34-103182 (May 21, 2025), 90 FR 24476 (June 10, 2025) (SR-CboeBYX-2025-035) (“Initial Filing”).

Exchange Notice the implementation of the proposed rule change no later than 90 days after the approval date of this rule filing.

(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 Matthew Iwamaye, Vice President, Associate General Counsel, (732) 687-9355, Cboe EDGX Exchange, Inc., 433 West Van Buren Street, Chicago, Illinois 60607.

**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 (i) amend Rule 11.21(a)(2) to allow a Retail Member Organization (“RMO”)<sup>2</sup> to enter a Retail Order<sup>3</sup> onto the Exchange in a principal capacity, provided the requirements of Rule 11.21(g) are satisfied; (ii) codify in proposed new Rule 11.21(g) additional requirements a Retail Member Organization must comply with in order to enter Retail Orders as principal; and (iii) amend Rule 11.21(b)(6) requiring that Retail Member Organizations have in place policies and procedures reasonably designed to ensure compliance with proposed Rule 11.21(g), as well to ensure that the Retail Member Organization can, upon request by the Exchange, produce documentation evidencing compliance with the requirements of Rule 11.21(g).

These proposed amendments are in response to feedback received by the Exchange from certain RMOs that have stated that the ability to enter orders in a

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<sup>2</sup> A “Retail Member Organization” or “RMO” is a Member (or a division thereof) that has been approved by the Exchange under Rule 11.21 to submit Retail Orders. See Rule 11.21(a)(1).

<sup>3</sup> A Retail Order is *currently* defined as “an agency or riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person and is submitted to the Exchange by a Retail Member Organization, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology.” See Rule 11.21(a)(2).

principal capacity would better enable them to provide their retail customers with better priced executions. Currently, RMOs are only able to enter Retail Orders onto the Exchange in either an agency or riskless principal capacity. Specifically, these RMOs have explained that the ability to handle Retail Orders in a principal capacity will enable them to provide their retail customers with post-execution price improvement that is in *addition* to any price improvement received on the Exchange. Because the price ultimately allocated to the retail customer by the RMO would be different from (and notably, would always be better priced than) the price the principal order received on the Exchange, such Retail Orders would not currently qualify as riskless principal transactions.<sup>4</sup> Accordingly, because Exchange rules currently only permit the entry of Retail Orders in a riskless principal or agency capacity, such post-execution price improvement is not currently permitted.

The Exchange notes that the ultimate determination as to whether an RMO may choose to execute in this manner is not something to which the Exchange has visibility. Indeed, such a decision will vary from RMO to RMO. Generally speaking, RMOs may choose to execute in this manner to satisfy certain execution quality and price improvement benchmarks RMOs have applied to their underlying retail order(s), as well as to simply provide additional price improvement as a service to their retail customer(s) or retail broker customers. Because principal orders entered in this manner are for the benefit of the underlying retail customer(s) – i.e., to provide retail orders with better

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<sup>4</sup> A “riskless principal” transaction is a transaction in which a member, after having received an order to buy (sell) a security, purchases (sells) the security as principal and satisfies the original order by selling (buying) as principal at the *same* (emphasis added) price (the offsetting “riskless” leg). See FINRA Rule 5320.03 – “Riskless Principal Exception”, available at: <https://www.finra.org/rules-guidance/rulebooks/finra-rules/5320>.

priced executions – the Exchange believes that such transactions are consistent with the definition of Retail Order, and the purposes of EDGX’s Retail Priority Program (discussed *infra*).

Current Definition of “Retail Order”

Currently, Rule 11.21(a)(2) provides that a Retail Order is an agency order, or a riskless principal order that meets the criteria of FINRA Rule 5320.03.<sup>5</sup> A Retail Order must originate from a natural person and must be entered onto the Exchange by an RMO. The RMO is not permitted to change the terms of the order with respect to the price or side of the market, and a Retail Order may not originate from a trading algorithm or any other computerized methodology. An RMO is a Member (or a division thereof) that has been approved by the Exchange under EDGX Rule 11.21 to submit Retail Orders. Pursuant to EDGX Rule 11.21(b), which describes the qualification and application process for becoming a Retail Member Organization, any member may qualify as a Retail Member Organization if it conducts a retail business or routes retail orders on behalf of another broker-dealer.

Proposed Definition of Retail Order

The Exchange believes that retail customers are a key part of the trading ecosystem, and as such, has designed products and programs to execute Retail Orders quickly, with high execution quality and at a low-cost, with added pricing incentives. For instance, EDGX’s Retail Priority Program seeks to enhance execution quality for individual customers who trade U.S. equities on EDGX. Retail Priority offers a distinct

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<sup>5</sup> See FINRA Rule 5320.3, Riskless Principal Exception, available at: <https://www.finra.org/rules-guidance/rulebooks/finra-rules/5320>.

allocation model, which differs from the traditional time-based allocation model used by most U.S. equities market centers that allocate trades to orders that arrive first in time at each price point. Retail Priority focuses on improving execution quality and trading outcomes for individual customers, and the firms facilitating their orders, by reducing their time to execution. Under Retail Priority, individual customers' displayed limit orders will post at the front of the order queue for same-priced orders submitted on EDGX. Additionally, EDGX offers retail-only pricing incentives for low cost remove and premium rebates. EDGX also offers RMOs discounts on port fees and market data, and retail tiers give growing retail firms additional rebates.

EDGX offers RMOs the ability to participate in the Exchange's Retail Priority program, which seeks to enhance execution quality for individual customers who trade U.S. equities on EDGX. Specifically, Retail Priority offers a distinct patent-pending allocation model, which differs from the traditional time-based allocation model used by most U.S. equities market centers that allocate trades to orders that arrive first in time at each price point. The Retail Priority model focuses on improving execution quality and trading outcomes for individual customers, and the firms facilitating their orders, by reducing their time to execution. Under the mechanism, the displayed portion of an individual customers' Retail Priority Order<sup>6</sup> will post at the front of the order queue for

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<sup>6</sup> A Retail Priority Order is a Retail Order, as defined in Rule 11.21(a)(2), that is entered on behalf of a person that does not place more than 390 equity orders per day on average during a calendar month for its own beneficial account(s). See Exchange Rule 11.9, Interpretations and Policies .01. The 390 order count is considered for each distinct beneficial retail account, and where a Retail Order is entered on behalf of multiple retail customers, the 390 order limitation is considered for *each* beneficial retail account. For the purposes of calculating the 390 equity order count, the Exchange rules contemplate parent and child orders. Specifically, a parent order that is broken into multiple "child" orders by an RMO counts as one order even if the child orders are routed across multiple exchanges. Exchange rules also contemplate Cancel/Replace messages when calculating the 390 order count. Any order that cancels and replaces an existing order, counts as a separate order, except that an order that cancels and replaces any child order resulting from a

same-priced orders submitted on EDGX. While Exchange rules currently permit the routing of Retail Orders, the Exchange does not currently identify Retail Orders as such when routing to away exchanges, and the Exchange does not propose to do so with this current proposal.

The Exchange now seeks to amend Rule 11.21(a)(2) to provide that an RMO may also enter a Retail Order in a principal capacity, provided the RMO satisfies the conditions codified in proposed Rule 11.21(g). As noted above, some RMOs have expressed a desire to enter Retail Orders onto the Exchange on behalf of their retail customers in a principal capacity and subsequently provide such orders with post-execution price improvement in addition to any price improvement received on the Exchange. Because the RMO will allocate its Exchange execution to its retail customer at a different (and better) price than it received on the Exchange, such transaction can only be done in a principal capacity. To better illustrate the order flow of a Retail Order being executed in a principal capacity by an RMO, consider the following example:

- An RMO has an order in hand from its retail customer to sell 100 shares of stock XYZ
- The RMO elects to send a Retail Order to the Exchange on behalf of its retail customer;
- The Retail Order is accepted and executed by the Exchange at a price improved price of \$10.005;

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parent order that is broken into multiple child orders does not count as a new order. Importantly, the Exchange notes that this current proposal will not change how the Exchange determines whether a beneficial account has exceeded the 390 order count.



- The Exchange sends the execution message back to the RMO with the execution price of \$10.005;
- Based on their own internal best execution practices, or execution quality metrics, the RMO *may* then elect to provide their retail customer's order with price improvement *in addition* to that already received on the Exchange.
- For the purposes of this example, assume that the RMO indeed chooses to provide their retail customer with *additional* price improvement of \$0.005, for a final execution price of \$10.01.<sup>7</sup> This transaction is executed as principal, and is a separate<sup>8</sup> transaction executed off-exchange by and between the RMO and its retail customer.
- This transaction and its execution price of \$10.01 will be reported to the Transaction Reporting Facility ("TRF") consistent with FINRA off-exchange reporting rules and guidance.<sup>9</sup>

Importantly, the Exchange intends for Retail Orders to be entered on behalf of only bona fide retail customers. As such, the Exchange now also proposes to introduce new Rule 11.21(g), Retail Orders Entered as Principal, to codify requirements designed to ensure that Retail Orders by RMOs in a principal capacity are in fact on behalf of retail

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<sup>7</sup> Here, the RMO is not permitted to execute this transaction in a riskless principal capacity, because the RMO is not providing its retail customer with the *same* execution price it received on the Exchange. By permitting the RMO to use a principal order, though, the RMO would be able to provide its retail customer with price improvement *in addition* to that already received on the Exchange

<sup>8</sup> The Exchange notes that for the purposes of determining the 390 order count, the Exchange will only count the on-Exchange transaction. The off-exchange transaction, printed to the TRF will not be counted; i.e., a Retail Order entered principally on the Exchange will only count as one transaction.

<sup>9</sup> See "Trade Reporting Frequently Asked Questions", Section 309: Reporting Customer Price Adjustment Transactions, available at: <https://www.finra.org/filing-reporting/market-transparency-reporting/trade-reporting-faq#309>.

customers. Specifically, the Exchange seeks to codify that any Retail Orders entered onto the Exchange in a principal capacity by an RMO on behalf of its retail customer(s) must meet the following criteria, which are similar to the requirements under FINRA Rule 5320.03's, Riskless Principal Exception: (i) the RMO must be in receipt of and actively managing, at the time of order entry onto the Exchange, a Retail Order it seeks to execute on behalf of a retail customer (ii) the Retail Order entered by an RMO as principal must solely be for the purpose of providing post-execution price improvement<sup>10</sup> to the retail customer(s) in addition to any price improvement received on the Exchange; (iii) the size of the principal order shall not be greater than that of the underlying order(s) entered on behalf of the retail customer(s); and (iv) the total number of shares executed in a principal capacity must be fully allocated to the underlying retail customer(s) in a consistent manner and within 60-seconds of execution.

The monitoring for compliance with these requirements will occur post-trade, as part of the Exchange's surveillance functions. Importantly, the Exchange's Regulatory and Surveillance departments already possess the capability to review Retail Orders to ensure that those entered in either a principal or riskless principal transaction were indeed entered and executed by the RMO on behalf of a retail customer.<sup>11</sup> For instance, the Exchange's Regulatory and Surveillance teams currently review Retail Orders entered as

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<sup>10</sup> Should an RMO enter a Retail Order principally but elect not to provide post-execution price improvement the Exchange would expect that the RMO would allocate that execution back to their retail customer(s) in a riskless principal capacity, in which case such transaction must comply with existing Exchange Rule 11.21(a)(2) and FINRA Rule 5320.03.

<sup>11</sup> The Exchange permits RMOs to enter Retail Orders onto the Exchange in an agency, principal, or riskless principal capacity. See "Capacity" in "Cboe US Equities BOE Specification", pg. 62, available at: [https://cdn.cboe.com/resources/membership/Cboe\\_US\\_Equities\\_BOE\\_Specification.pdf](https://cdn.cboe.com/resources/membership/Cboe_US_Equities_BOE_Specification.pdf); see also "Order Capacity" in "Cboe US Equities FIX Specification," p. 21, available at: [https://cdn.cboe.com/resources/membership/Cboe\\_US\\_Equities\\_FIX\\_Specification.pdf](https://cdn.cboe.com/resources/membership/Cboe_US_Equities_FIX_Specification.pdf).

principal to determine whether such orders were in fact ultimately executed as riskless principal<sup>12</sup> and fully allocated to the RMO's end retail customer, at the *same price*, in accordance with FINRA Rule 5320.03. While the proposed amendment would enable RMOs to allocate a trade to their end retail customer at a different price, this would not diminish the Exchange's Regulatory and Surveillance teams' ability to effectively regulate RMOs' compliance with the Exchange's Retail Order rules. Rather, the Regulatory and Surveillance functions would instead need only monitor for Retail Orders that were entered principally, but not ultimately executed as riskless principal, and further inquire with the RMO that (i) the RMO was in receipt of and actively managing, at the time of order entry onto the Exchange, a Retail Order it sought to execute on behalf of a retail customer (ii) the Retail Order entered by an RMO as principal was solely be for the purpose of providing post-execution price improvement to the retail customer(s) in addition to any price improvement received on the Exchange; (iii) the size of the principal order was not greater than that of the underlying order(s) entered on behalf of the retail customer(s); and (iv) the total number of shares executed in a principal capacity was fully allocated to the underlying retail customer(s) in a consistent manner and within 60-seconds of execution.

In this regard, whether the order is executed principally or as riskless principal, the Exchange will still have the ability to effectively enforce its rules. Indeed, the

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<sup>12</sup> As a general matter the exchange notes that riskless principal transactions are typically entered into the marketplace as principal orders, buying the security for itself and then, post-execution, selling the security to its end-customer. If the broker-dealer sells its customer the security at the same price for which it purchased the security, this is typically called a riskless principal transaction. This transaction is known as "riskless" because the broker-dealer purchases the security, knowing that it will sell the security to its customer at the same price. See generally SEC Office of Education and Advocacy, "Investor Bulletin: How to Read Confirmation Statements," available at: [https://www.sec.gov/investor/alerts/ib\\_confirmations.pdf](https://www.sec.gov/investor/alerts/ib_confirmations.pdf).

Exchange's Regulatory and Surveillance functions already monitor for Retail Orders that are entered as riskless principal as well as principal. Notably, for the full year 2024, 25.5% of all Retail Orders entered across each of Cboe's four equities exchanges, were entered as principal, compared to only 6.4% entered as riskless principal. Therefore, as a practical matter, the Exchange is accustomed to conducting surveillance of Retail Orders entered as principal, and the proposed amendment should not pose any additional issues.

Importantly, for the purpose of determining whether an order should qualify as a Retail Order, the Exchange believes that from a surveillance perspective, principal orders and riskless principal orders are essentially the same order type. In addition to how it monitors and surveils Retail Orders (discussed directly above), EDGX notes that there is no difference between a Retail Order entered as a riskless principal order that meets the requirements of FINRA Rule 5320.03, and a principal order, that meets the requirements of the proposed rule. As noted above, a riskless principal order is a transaction in which a Member, after having received an order to buy (sell) a security, purchases (sells) the security as principal and, contemporaneously, satisfies the original order by selling (buying) as principal at the *same* price. A riskless principal order involves two orders, the execution of one being dependent upon the receipt of the execution of the other. As such, there is no "risk" in the interdependent transactions when completed. Notably, riskless principal orders are typically entered onto exchanges in a *principal* capacity, and the riskless principal leg of the transaction is reflected only via a corresponding non-media trade report to a FINRA Facility.<sup>13</sup> In this regard, the Exchange believes that the

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<sup>13</sup> FINRA Members can report riskless principal transactions by submitting a single tape report to a FINRA Facility in the same manner as an agency transaction, marked with a "riskless principal" capacity indicator, excluding the mark-up or mark-down, commission-equivalent or other fee. Alternatively, members can report an OTC riskless principal transaction by submitting two (or

results of a riskless principal transaction and a principal transaction are the same: the customer will receive an execution while the involved Member acts as an intermediary to effect the transaction. However, instead of receiving the *same* Exchange execution price, the retail customer will now receive a *better* priced execution because the RMO is now able to commit capital to that order, as principal. Existing rule text does not permit this scenario because the current definition of Retail Order only permits an RMO to trade in an agency or riskless principal capacity. When trading as agent, the RMO is simply passing the execution back to its retail customer(s) at the price received on-Exchange. If trading as riskless principal, the RMO trades principally on the Exchange, but then allocates to the execution, at the *same* price, back to its retail customer in a riskless transaction.<sup>14</sup> In this regard, by trading principally, an RMO may instead use its financial balance sheet and principal trading account to provide additional price improvement to a retail customer's order in a separate transaction. Here, the RMO is not permitted to execute this transaction in a riskless principal capacity, because the RMO is not providing its retail customer with the *same* execution price it received on the Exchange. By permitting the RMO to use a principal order, though, the RMO would be able to provide its retail customer with price improvement *in addition* to that already received on the Exchange.

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more, as necessary) reports: (1) a tape report to reflect the initial leg of the transaction with a capacity of principal; and (2) a non-tape (regulatory or clearing-only) report to reflect the offsetting "riskless" leg of the transaction with a capacity of riskless principal.

<sup>14</sup>

Id.

*Existing RMO Application Process/Requirements & Proposed Policies and Procedures*

The Exchange also notes that the proposed amendment does not present any new or material risks that the Exchange has not already mitigated through its RMO application process for orders entered onto the Exchange as Retail Orders on behalf of retail customers. Currently, Rule 11.21(b)(1)-(6) sets forth an objective process by which a Member organization applies to become an RMO. First, to qualify as a Retail Member Organization, a Member must conduct a retail routing business or route retail orders on behalf of another broker-dealer.<sup>15</sup> To become an RMO, a Member is required to submit an application form,<sup>16</sup> supporting documentation (e.g., marketing literature, website screenshots, and other publicly disclosed materials) confirming that the applicant's order flow would meet the requirements of the Retail Order definition,<sup>17</sup> and an attestation<sup>18</sup> in a form prescribed by the Exchange, that substantially all orders submitted as Retail Orders will qualify as such under the Rule.<sup>19</sup> After submission of these materials, various Exchange functions, including legal and operations, review the application to assess whether the applicant's order flow complies with Exchange rules.<sup>20</sup> Applicants are then notified, in writing, of the Exchange's decision.<sup>21</sup>

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<sup>15</sup> See Rule 11.21(b)(1).

<sup>16</sup> See Rule 11.21(b)(2)(A).

<sup>17</sup> See Rule 11.21(b)(2)(B).

<sup>18</sup> See, "Retail Member Organization - Broker-Dealer Customer Agreement", and "Broker-Dealer Customer Annual Attestation" of "Cboe EDGX Exchange, Inc., Retail Member Organization Application", available at: [https://cdn.cboe.com/resources/membership/EDGX\\_Retail\\_Member\\_Organization\\_Application.pdf](https://cdn.cboe.com/resources/membership/EDGX_Retail_Member_Organization_Application.pdf). Following approval of this proposal, the Exchange will make conforming edits to the attestation reflecting the changes to the definition of "Retail Order", as well as the amendments made to the Interpretations and Policies to Rule 11.21.

<sup>19</sup> See Rule 11.21(b)(2)(C)

<sup>20</sup> See Rule 11.21(b)(3)

<sup>21</sup> Id.

Furthermore, all RMOs must have in place policies and procedures reasonably designed to ensure that it will only designate orders as Retail Orders if all requirements of a Retail Order are met.<sup>22</sup> These policies and procedures must require the Member to (i) exercise due diligence before entering a Retail Order to ensure that entry as a Retail Order is in compliance with the requirements of the Rule, and (ii) monitor whether orders entered as Retail Orders meet the applicable requirements.<sup>23</sup> If an RMO does not itself conduct a retail business but routes Retail Orders on behalf of another broker-dealer, the RMO's supervisory procedures must be reasonably designed to ensure that the orders it receives from the other broker-dealer that are designated as Retail Orders meets the definition of a Retail Order.<sup>24</sup> In these cases, the RMO must (i) obtain an annual written representation, in a form acceptable to the Exchange, from each other broker-dealer that sends the RMO orders to be designated as Retail Orders that the entry of such orders as Retail Orders will be in compliance with the requirements of Rule 11.21; and (ii) monitor whether Retail Order flow routed on behalf of other such broker-dealers meets the applicable requirements.<sup>25</sup> Importantly, the Exchange's regulatory and surveillance functions provide appropriate oversight by the Exchange by monitoring for continued compliance with the terms of these provisions. If an RMO fails to abide by the Retail Order requirements, the Exchange in its sole discretion may disqualify a Member from its

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<sup>22</sup> See Rule 11.21(b)(6)

<sup>23</sup> Id.

<sup>24</sup> Id.

<sup>25</sup> Id.

status as an RMO.<sup>26</sup> The proposed amendment will not eliminate or diminish the strength of the existing protections currently codified in Rule 11.21.

In addition, as noted further above, the Exchange has proposed requirements pursuant to proposed Rule 11.21(g) designed to ensure that Retail Orders entered in a principal capacity are in fact entered on behalf of bona fide retail customers, and that such principal orders comply with specific requirements. Namely, when entering a Retail Order onto the Exchange for execution in a principal capacity, an RMO must comply with the following requirements, which are similar to those required by FINRA Rule 5320.03's Riskless Principal Exception requirements : (i) the RMO must be in receipt of and actively managing, at the time of order entry onto the Exchange, a Retail Order it seeks to execute on behalf of a retail customer (ii) the Retail Order entered by an RMO as principal must solely be for the purpose of providing post-execution price improvement<sup>27</sup> to the retail customer(s) in addition to any price improvement received on the Exchange; (iii) the size of the principal order shall not be greater than that of the underlying order(s) entered on behalf of the retail customer(s); and (iv) the total number of shares executed in a principal capacity must be fully allocated to the underlying retail customer(s) in a consistent manner and within 60-seconds of execution

In conjunction with these requirements, the Exchange also proposes to amend Rule 11.21(b)(6), to codify the requirements that RMOs choosing to enter Retail Orders in a principal capacity must have in place policies and procedures reasonably designed to

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<sup>26</sup> See Rule 11.21(b)(d)(1).

<sup>27</sup> Should an RMO enter a Retail Order principally but elect not to provide post-execution price improvement the Exchange would expect that the RMO would allocate that execution back to their retail customer(s) in a riskless principal capacity, in which case such transaction must comply with existing Exchange Rule 11.21(a)(2) and FINRA Rule 5320.03.



ensure compliance with the requirements of 11.21(g), and to ensure the RMO is able to, upon request, provide the Exchange with documentation evidencing compliance with such requirements. Moreover, if a Retail Member Organization does not itself conduct a retail business, but chooses to execute in a principal capacity Retail Orders it manages on behalf of another broker-dealer, the Retail Member Organization's supervisory procedures must be reasonably designed to ensure that the orders it receives from such other broker-dealer that are designated as Retail Orders meet the definition of a Retail Order. The Retail Member Organization must: (i) obtain an annual written representation, in a form acceptable to the Exchange, from each other broker-dealer that sends the Retail Member Organization orders to be designated as Retail Orders that entry of such orders as Retail Orders will be in compliance with the requirements of this Rule; and (ii) monitor whether Retail Order flow routed on behalf of such other broker-dealers meets the applicable requirements.

Finally, the Exchange believes it important to note that as Members of the Exchange, RMOs must be registered brokers or dealers. As registered brokers or dealers, RMOs are subject to a panoply of rules, such as FINRA Rule 2010 (Standards of Commercial Honor and Principles of Trade), EDGX Rule 2.2 (Obligation of Members and the Exchange), and EDGX Rule 3.1 (Business Conduct of Members). These rules require, amongst other things, that as brokers or dealers, Members are required to conduct business with the highest standards of commercial honor, and obligate Members to comply with all Exchange rules, by-laws, and regulations.<sup>28</sup> While the Exchange has an

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<sup>28</sup> While the RMO application process discussed above does rely on information provided by the applicant, the Exchange believes that ultimately it must be allowed to rely on representations made by registered brokers or dealers that are obligated to conduct their securities business consistent

obligation to maintain fair and orderly markets and carry out its duties as a self-regulatory organization, RMOs are also obligated to ensure that only orders that comply with Exchange rules are routed to the Exchange and designated as Retail Orders.

(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.<sup>29</sup>

Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>30</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>31</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposed rule change is consistent with these principles because it would increase competition among execution venues,

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with the highest standards of commercial honor, and in submitting their application, have attested to the accuracy of the information provided to the Exchange.

<sup>29</sup> 15 U.S.C. 78f(b).

<sup>30</sup> 15 U.S.C. 78f(b)(5).

<sup>31</sup> Id.

encourage additional on-exchange retail liquidity, and in turn, increase the opportunities for retail customers to receive even greater levels of price improvement from RMOs that trade principally and choose to commit additional capital to their Retail Orders. The Exchange notes that a significant percentage of the orders of individual customers are executed over the counter.<sup>32</sup> By providing RMOs with an additional order capacity in which they may submit their retail orders to the Exchange, EDGX believes that more retail flow may be directed to the Exchange and have the opportunity to execute on a regulated, transparent market. Indeed, even the Commission has noted that “a very large percentage of marketable (immediately executable) order flow of individual customers is ‘executed’ or ‘internalized’ by broker-dealers in the [over-the-counter-markets].”<sup>33</sup> The Commission has also noted that a review of the order flow of eight retail brokers revealed that nearly 100% of their customer market orders were routed to over-the-counter market makers, often pursuant to payment for order flow arrangements.<sup>34</sup> By making clear to retail broker-dealers that, subject to the conditions discussed herein, they can enter and execute Retail Orders on the Exchange in a principal capacity, such market participants may be encouraged to seek on-Exchange price improvement opportunities. The Exchange believes that the proposed change is likely to increase the number of Retail Orders entered onto the Exchange. Based on feedback from Members that manage retail

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<sup>32</sup> Ninety-plus percent (90%) of retail marketable orders are routed to wholesalers and executed off-exchange. See Chair Gensler’s remarks, “Market Structure and the Retail Investors: Remarks Before the Piper Sandler Global Exchange Conference”, (June 2, 2022), available at: <https://www.sec.gov/news/speech/gensler-remarks-piper-sandler-global-exchange-conference-060822>).

<sup>33</sup> See Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594, 3600 (January 21, 2010) (“Concept Release on Equity Market Structure”).

<sup>34</sup> Id.

orders, they already trade retail orders on-exchange in a principal capacity. However, because Exchange rules do not currently permit the execution and allocation of a Retail Order in a principal capacity, such Members simply enter their principal retail orders as non-retail attested order flow – i.e., they do not enter Retail Orders as RMOs, onto the Exchange. As such, these Members’ retail customer orders are not eligible to avail themselves to the benefits EDGX offers to retail firms and Retail Orders. By making clear that such Members can now enter such orders as Retail Orders, the Exchange believes the volume of Retail Orders entered onto the Exchange will increase. In turn, an increase in the number of Retail Orders submitted onto the Exchange will encourage more retail liquidity provision, thereby deepening EDGX’s retail liquidity pool, fostering enhanced price discovery, and offering Retail Orders more price improvement opportunities as the number of liquidity providers competing to trade with Retail Orders increases.

The Exchange also believes that the proposed amendment to add principal orders to the definition of Retail Order, promotes just and equitable principles of trade and is not unfairly discriminatory. All RMOs are permitted to utilize the proposed principal order capacity and doing so is not mandatory. While some RMOs may choose not to provide additional price improvement to executions they receive on the Exchange, such possibility does not make the proposed amendment discriminatory. Indeed, to prevent all RMOs from trading in a principal capacity to provide their retail customers with additional price improvement, simply because some RMOs may choose not to do so, only disadvantages the retail customer. Moreover, each RMO has its own rationale and strategies in how to provide their retail orders with best execution, and the proposed

amendment to merely permit trading in a principal capacity should not be germane to a consideration of whether certain RMOs are better positioned to trade in this manner, than others.

Moreover, proposed Rule 11.21(g) and the proposed amendment to Rule 11.21(b)(6) are designed to prevent fraudulent and manipulative acts and practices, and to promote just and equitable principles of trade. Specifically, the proposed requirements under Rule 11.21(g) are designed to ensure that RMOs trade principally only on behalf of bona fide retail customers, and not the RMOs own trading account. Furthermore, the requirement that RMOs have in place policies and procedures reasonably designed to ensure compliance with Rule 11.21(g)(1) will also help to ensure that RMOs are cognizant of their regulatory obligations, thereby better ensuring their compliance with Rule 11.21(g). Additionally, Rule 11.21(b)(6)'s requirement that RMOs also have policies and procedures in place reasonably designed to ensure that RMOs can, upon request, provide the Exchange with documentation of their compliance with Rule 11.21(g) will help to ensure the Exchange can properly surveil and regulate its RMOs.

Finally, the Exchange also believes that this proposal is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. As noted above, while the proposed definition will help to ensure that only bona fide retail customers receive the benefits afforded to Retail Orders, the segmentation afforded Retail Orders is not a novel concept in the securities market. The Commission has long recognized that U.S. capital markets should be structured with the interests of retail customers in mind<sup>35</sup>

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<sup>35</sup> See U.S. Securities and Exchange Commission, Strategic Plan, Fiscal Years 2018-2022, available at [https://www.sec.gov/files/SEC\\_Strategic\\_Plan\\_FY18-FY22\\_FINAL\\_0.pdf](https://www.sec.gov/files/SEC_Strategic_Plan_FY18-FY22_FINAL_0.pdf).

and recently proposed a series of rules designed, in part, to attempt to bring order flow back to the exchanges from off-exchange trading venues.<sup>36</sup>

Additionally, while certain RMOs may elect to trade principally and other RMOs may choose not to do so, the Exchange is not privy to such decision making and the Exchange does not dictate how RMOs may choose to enhance the execution quality of their Retail Orders. Just as some RMOs choosing to enter their Retail Orders onto the Exchange with more marketable or more conservative limit prices is non-discriminatory, the mere fact that the Exchange now seeks to permit an RMO to trade principally should not raise such concerns. Moreover, any RMO that satisfies the requirements of Rule 11.21(g) may enter Retail Orders onto the Exchange in a principal capacity, regardless of their size or trading volume. Likewise, trading principally is not a requirement to enter orders onto the Exchange as principal, and RMOs are free to do so, or not, consistent with their business models and order handling practices.

**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 intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed amendment will help to enhance the submission of Retail Orders to the Exchange by providing RMOs with

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<sup>36</sup> See Securities Exchange Act Release No. 96495 (December 14, 2022), 88 FR 128 (January 3, 2023) ("Order Competition Rule"); Securities Exchange Act Release No. 96494 (December 14, 2022), 87 FR 80266 (December 29, 2022) ("Tick Size Proposal"); Securities Exchange Act Release No. 96496 (December 14, 2022), 88 FR 5440 (January 27, 2023) ("Regulation Best Execution"); Securities Exchange Act Release No. 96493 (December 14, 2022), 88 FR 3786 (January 20, 2023) ("Disclosure of Order Execution Information"). The Exchange notes that while such proposals have since been withdrawn by the Commission, the underlying principles of investor protection and protection of the interests of retail investors, remain a critical focus of the SEC, today.

additional flexibility in how they choose to execute their retail customers' orders on the Exchange. In turn, greater overall order flow and trading opportunities benefits all market participants on the Exchange. An increase in RMO activity and liquidity providing orders will serve to enhance the Exchange's available liquidity. Deeper liquidity pools will, in turn, enhance price discovery, as well as price improvement opportunities for retail customers as liquidity providers compete for retail executions. Liquidity providers also benefit by being able to interact with retail order flow that is often executed off-exchange, and therefore generally inaccessible to those trading in the lit markets.

While the proposed definition will help to ensure that only bona fide retail customers receive the benefits afforded to Retail Orders, the segmentation afforded Retail Orders is not a novel concept in the securities market. The Commission has long recognized that U.S. capital markets should be structured with the interests of retail customers in mind<sup>37</sup> and has recently proposed a series of rules designed, in part, to attempt to bring order flow back to the exchanges from off-exchange trading venues.<sup>38</sup> In this regard, the proposed amendments should not result in any new or novel issues to be considered by the Commission or that have not already been contemplated by today's market participants. For example, many exchanges, including the Exchange's affiliate, Cboe BYX Exchange, Inc., offer retail price improvement programs designed to attract retail order flow to regulated markets and provide retail order flow with price

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<sup>37</sup> Supra note 34.

<sup>38</sup> Supra note 35.

improvement opportunities.<sup>39</sup> Additionally, as noted in Amendment 1 of EDGX's Retail Priority filing,<sup>40</sup> customer priority has a long tradition in the options market where orders entered on behalf of non-broker dealer public customers have historically been afforded priority over orders submitted by registered broker dealers. The aforementioned retail price improvement programs and Retail Priority program each provide benefits to Retail Orders not afforded to other customers by segmenting retail order flow from traditional order flow. The Exchange's proposal does not encourage additional segmentation, but rather seeks to enhance existing benefits to retail customers by codifying that RMOs may utilize a principal order type in order to provide additional post-execution price improvement to Retail Orders.

Additionally, the Exchange does not believe its proposal unfairly discriminates between Retail Orders – i.e., between Retail Orders that are executed principally, and Retail Orders executed in an agency or riskless principal capacity. While Retail Orders entered in a principal capacity must satisfy additional requirements compared to Retail Orders entered as agent or riskless principal, these requirements are designed to ensure that the benefits of the Exchange's Retail Order program accrue only to bona retail brokers and their retail customers. Moreover, treating Retail Orders entered principally in the same manner as Retail Orders entered as agent or riskless principal equally does not unfairly discriminate between Retail Orders. The choice to enter a Retail Order principally or as agent or riskless principal, does not provide a Retail Order with any

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<sup>39</sup> See, e.g., Cboe BYX Exchange Rule 11.24 (Retail Price Improvement Program); NYSE National, Inc. Rule 7.44 (Retail Liquidity Program); Investors Exchange Inc. Rule 11.232 (Retail Price Improvement Program).

<sup>40</sup> See Securities Exchange Act Release No. 86280 (July 2, 2019), 84 FR 32808 (July 9, 2019) ("Notice of Amendment No. 1").



additional on-Exchange benefits – i.e., whether entered as principal, riskless principal, or agent, the Retail Order will be handled in the same manner. The additional price improvement received by principal Retail Orders is fully accrued off-Exchange, when the RMO chooses to provide *additional* price improvement to their retail customers *post-execution on the Exchange*.

The Exchange further believes that the proposed rule change will increase intermarket competition by enabling the Exchange to better compete with other exchanges and off-exchange trading venues for retail order flow. The Commission has spoken about “increasing competition and enhancing the direct exposure of individual customer orders to a broader spectrum of market participants”<sup>41</sup> and the Exchange believes its proposed amendment to the definition of Retail Order will help to encourage RMOs to submit additional retail order flow to the Exchange. In turn, retail customers will have additional opportunities to receive executions on a transparent, regulated, national securities exchange in addition to the currently available off-exchange trading venues, and could also create additional incentives for regulated exchanges to develop additional liquidity programs designed at providing additional benefits to retail customers, thus promoting additional intermarket competition.

**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.

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<sup>41</sup> See Order Competition Rule at 178.

**Item 6.        Extension of Time Period for Commission Action**

The Exchange does not consent to an extension of the time period for Securities and Exchange Commission (the “Commission”) action on the proposed rule change specified in Section 19(b)(2) of the Act.<sup>42</sup>

**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)**

Not applicable.

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

The proposed rule change is not based on a rule either of another self-regulatory organization or of the Commission.

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

Not applicable.

**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.

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<sup>42</sup> 15 U.S.C. 78s(b)(2).

EXHIBIT 1**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34- ; File No. SR-CboeEDGX-2025-035]

[Insert date]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing of a Proposed Rule Change to Amend Rule 11.21

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on [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 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 (i) amend Rule 11.21(a)(2), to allow a Retail Member Organization to enter a Retail Order onto the Exchange in a principal capacity, provided the requirements of proposed Rule 11.21(g) are satisfied; (ii) codify in proposed new Rule 11.21(g) additional requirements a Retail Member Organization must comply with in order to enter Retail Orders as principal; and (iii) amend Rule 11.21(b)(6) to require that Retail Member Organizations have in place policies and procedures reasonably designed to ensure compliance with proposed Rule 11.21(g), as well as to ensure that the Retail Member Organization can, upon request by

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

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

the Exchange, produce documentation evidencing compliance with the requirements of Rule 11.21(g). The Exchange initially submitted this rule filing SR-CboeEDGX-2025-035 to the Securities and Exchange Commission (“Commission”) on May 21, 2025 (the “Initial Filing”).<sup>3</sup> This Amendment No. 1 supersedes the Initial Filing and replaces it in its entirety. The text of the proposed rule change is provided in Exhibit 5.

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

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the 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 (i) amend Rule 11.21(a)(2) to allow a Retail Member Organization (“RMO”)<sup>4</sup> to enter a Retail Order<sup>5</sup> onto the Exchange in a principal

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<sup>3</sup> Securities Exchange Act Release No. 34-103182 (May 21, 2025), 90 FR 24476 (June 10, 2025) (SR-CboeBYX-2025-035) (“Initial Filing”).

<sup>4</sup> A “Retail Member Organization” or “RMO” is a Member (or a division thereof) that has been approved by the Exchange under Rule 11.21 to submit Retail Orders. See Rule 11.21(a)(1).

<sup>5</sup> A Retail Order is *currently* defined as “an agency or riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person and is submitted to the Exchange by a Retail Member Organization, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any

capacity, provided the requirements of Rule 11.21(g) are satisfied; (ii) codify in proposed new Rule 11.21(g) additional requirements a Retail Member Organization must comply with in order to enter Retail Orders as principal; and (iii) amend Rule 11.21(b)(6) requiring that Retail Member Organizations have in place policies and procedures reasonably designed to ensure compliance with proposed Rule 11.21(g), as well to ensure that the Retail Member Organization can, upon request by the Exchange, produce documentation evidencing compliance with the requirements of Rule 11.21(g).

These proposed amendments are in response to feedback received by the Exchange from certain RMOs that have stated that the ability to enter orders in a principal capacity would better enable them to provide their retail customers with better priced executions. Currently, RMOs are only able to enter Retail Orders onto the Exchange in either an agency or riskless principal capacity. Specifically, these RMOs have explained that the ability to handle Retail Orders in a principal capacity will enable them to provide their retail customers with post-execution price improvement that is in *addition* to any price improvement received on the Exchange. Because the price ultimately allocated to the retail customer by the RMO would be different from (and notably, would always be better priced than) the price the principal order received on the Exchange, such Retail Orders would not currently qualify as riskless principal transactions.<sup>6</sup> Accordingly, because Exchange rules currently only permit the entry of

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other computerized methodology.” See Rule 11.21(a)(2).

<sup>6</sup> A “riskless principal” transaction is a transaction in which a member, after having received an order to buy (sell) a security, purchases (sells) the security as principal and satisfies the original order by selling (buying) as principal at the *same* (emphasis added) price (the offsetting “riskless” leg). See FINRA Rule 5320.03 – “Riskless Principal Exception”, available at: <https://www.finra.org/rules-guidance/rulebooks/finra-rules/5320>.

Retail Orders in a riskless principal or agency capacity, such post-execution price improvement is not currently permitted.

The Exchange notes that the ultimate determination as to whether an RMO may choose to execute in this manner is not something to which the Exchange has visibility. Indeed, such a decision will vary from RMO to RMO. Generally speaking, RMOs may choose to execute in this manner to satisfy certain execution quality and price improvement benchmarks RMOs have applied to their underlying retail order(s), as well as to simply provide additional price improvement as a service to their retail customer(s) or retail broker customers. Because principal orders entered in this manner are for the benefit of the underlying retail customer(s) – i.e., to provide retail orders with better priced executions – the Exchange believes that such transactions are consistent with the definition of Retail Order, and the purposes of EDGX’s Retail Priority Program (discussed *infra*).

Current Definition of “Retail Order”

Currently, Rule 11.21(a)(2) provides that a Retail Order is an agency order, or a riskless principal order that meets the criteria of FINRA Rule 5320.03.<sup>7</sup> A Retail Order must originate from a natural person and must be entered onto the Exchange by an RMO. The RMO is not permitted to change the terms of the order with respect to the price or side of the market, and a Retail Order may not originate from a trading algorithm or any other computerized methodology. An RMO is a Member (or a division thereof) that has been approved by the Exchange under EDGX Rule 11.21 to submit Retail Orders.

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<sup>7</sup> See FINRA Rule 5320.3, Riskless Principal Exception, available at: <https://www.finra.org/rules-guidance/rulebooks/finra-rules/5320>.

Pursuant to EDGX Rule 11.21(b), which describes the qualification and application process for becoming a Retail Member Organization, any member may qualify as a Retail Member Organization if it conducts a retail business or routes retail orders on behalf of another broker-dealer.

*Proposed Definition of Retail Order*

The Exchange believes that retail customers are a key part of the trading ecosystem, and as such, has designed products and programs to execute Retail Orders quickly, with high execution quality and at a low-cost, with added pricing incentives. For instance, EDGX's Retail Priority Program seeks to enhance execution quality for individual customers who trade U.S. equities on EDGX. Retail Priority offers a distinct allocation model, which differs from the traditional time-based allocation model used by most U.S. equities market centers that allocate trades to orders that arrive first in time at each price point. Retail Priority focuses on improving execution quality and trading outcomes for individual customers, and the firms facilitating their orders, by reducing their time to execution. Under Retail Priority, individual customers' displayed limit orders will post at the front of the order queue for same-priced orders submitted on EDGX. Additionally, EDGX offers retail-only pricing incentives for low cost remove and premium rebates. EDGX also offers RMOs discounts on port fees and market data, and retail tiers give growing retail firms additional rebates.

EDGX offers RMOs the ability to participate in the Exchange's Retail Priority program, which seeks to enhance execution quality for individual customers who trade U.S. equities on EDGX. Specifically, Retail Priority offers a distinct patent-pending allocation model, which differs from the traditional time-based allocation model used by

most U.S. equities market centers that allocate trades to orders that arrive first in time at each price point. The Retail Priority model focuses on improving execution quality and trading outcomes for individual customers, and the firms facilitating their orders, by reducing their time to execution. Under the mechanism, the displayed portion of an individual customers' Retail Priority Order<sup>8</sup> will post at the front of the order queue for same-priced orders submitted on EDGX. While Exchange rules currently permit the routing of Retail Orders, the Exchange does not currently identify Retail Orders as such when routing to away exchanges, and the Exchange does not propose to do so with this current proposal.

The Exchange now seeks to amend Rule 11.21(a)(2) to provide that an RMO may also enter a Retail Order in a principal capacity, provided the RMO satisfies the conditions codified in proposed Rule 11.21(g). As noted above, some RMOs have expressed a desire to enter Retail Orders onto the Exchange on behalf of their retail customers in a principal capacity and subsequently provide such orders with post-execution price improvement in addition to any price improvement received on the Exchange. Because the RMO will allocate its Exchange execution to its retail customer

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<sup>8</sup> A Retail Priority Order is a Retail Order, as defined in Rule 11.21(a)(2), that is entered on behalf of a person that does not place more than 390 equity orders per day on average during a calendar month for its own beneficial account(s). See Exchange Rule 11.9, Interpretations and Policies .01. The 390 order count is considered for each distinct beneficial retail account, and where a Retail Order is entered on behalf of multiple retail customers, the 390 order limitation is considered for *each* beneficial retail account. For the purposes of calculating the 390 equity order count, the Exchange rules contemplate parent and child orders. Specifically, a parent order that is broken into multiple “child” orders by an RMO counts as one order even if the child orders are routed across multiple exchanges. Exchange rules also contemplate Cancel/Replace messages when calculating the 390 order count. Any order that cancels and replaces an existing order, counts as a separate order, except that an order that cancels and replaces any child order resulting from a parent order that is broken into multiple child orders does not count as a new order. Importantly, the Exchange notes that this current proposal will not change how the Exchange determines whether a beneficial account has exceeded the 390 order count.



at a different (and better) price than it received on the Exchange, such transaction can only be done in a principal capacity. To better illustrate the order flow of a Retail Order being executed in a principal capacity by an RMO, consider the following example:

- An RMO has an order in hand from its retail customer to sell 100 shares of stock XYZ
- The RMO elects to send a Retail Order to the Exchange on behalf of its retail customer;
- The Retail Order is accepted and executed by the Exchange at a price improved price of \$10.005;
- The Exchange sends the execution message back to the RMO with the execution price of \$10.005;
- Based on their own internal best execution practices, or execution quality metrics, the RMO *may* then elect to provide their retail customer's order with price improvement *in addition* to that already received on the Exchange.
- For the purposes of this example, assume that the RMO indeed chooses to provide their retail customer with *additional* price improvement of \$0.005, for a final execution price of \$10.01.<sup>9</sup> This transaction is executed as principal, and is a separate<sup>10</sup> transaction executed off-exchange by and between the RMO and its retail customer.

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<sup>9</sup> Here, the RMO is not permitted to execute this transaction in a riskless principal capacity, because the RMO is not providing its retail customer with the *same* execution price it received on the Exchange. By permitting the RMO to use a principal order, though, the RMO would be able to provide its retail customer with price improvement *in addition* to that already received on the Exchange

<sup>10</sup> The Exchange notes that for the purposes of determining the 390 order count, the Exchange will only count the on-Exchange transaction. The off-exchange transaction, printed to the TRF will not be counted; i.e., a Retail Order entered principally on the Exchange will only count as one

- This transaction and its execution price of \$10.01 will be reported to the Transaction Reporting Facility (“TRF”) consistent with FINRA off-exchange reporting rules and guidance.<sup>11</sup>

Importantly, the Exchange intends for Retail Orders to be entered on behalf of only bona fide retail customers. As such, the Exchange now also proposes to introduce new Rule 11.21(g), Retail Orders Entered as Principal, to codify requirements designed to ensure that Retail Orders by RMOs in a principal capacity are in fact on behalf of retail customers. Specifically, the Exchange seeks to codify that any Retail Orders entered onto the Exchange in a principal capacity by an RMO on behalf of its retail customer(s) must meet the following criteria, which are similar to the requirements under FINRA Rule 5320.03’s, Riskless Principal Exception: (i) the RMO must be in receipt of and actively managing, at the time of order entry onto the Exchange, a Retail Order it seeks to execute on behalf of a retail customer (ii) the Retail Order entered by an RMO as principal must solely be for the purpose of providing post-execution price improvement<sup>12</sup> to the retail customer(s) in addition to any price improvement received on the Exchange; (iii) the size of the principal order shall not be greater than that of the underlying order(s) entered on behalf of the retail customer(s); and (iv) the total number of shares executed

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transaction.

<sup>11</sup> See “Trade Reporting Frequently Asked Questions”, Section 309: Reporting Customer Price Adjustment Transactions, available at: <https://www.finra.org/filing-reporting/market-transparency-reporting/trade-reporting-faq#309>.

<sup>12</sup> Should an RMO enter a Retail Order principally but elect not to provide post-execution price improvement the Exchange would expect that the RMO would allocate that execution back to their retail customer(s) in a riskless principal capacity, in which case such transaction must comply with existing Exchange Rule 11.21(a)(2) and FINRA Rule 5320.03.

in a principal capacity must be fully allocated to the underlying retail customer(s) in a consistent manner and within 60-seconds of execution.

The monitoring for compliance with these requirements will occur post-trade, as part of the Exchange's surveillance functions. Importantly, the Exchange's Regulatory and Surveillance departments already possess the capability to review Retail Orders to ensure that those entered in either a principal or riskless principal transaction were indeed entered and executed by the RMO on behalf of a retail customer.<sup>13</sup> For instance, the Exchange's Regulatory and Surveillance teams currently review Retail Orders entered as principal to determine whether such orders were in fact ultimately executed as riskless principal<sup>14</sup> and fully allocated to the RMO's end retail customer, at the *same price*, in accordance with FINRA Rule 5320.03. While the proposed amendment would enable RMOs to allocate a trade to their end retail customer at a different price, this would not diminish the Exchange's Regulatory and Surveillance teams' ability to effectively regulate RMOs' compliance with the Exchange's Retail Order rules. Rather, the Regulatory and Surveillance functions would instead need only monitor for Retail Orders that were entered principally, but not ultimately executed as riskless principal, and further inquire with the RMO that (i) the RMO was in receipt of and actively managing, at the

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<sup>13</sup> The Exchange permits RMOs to enter Retail Orders onto the Exchange in an agency, principal, or riskless principal capacity. See "Capacity" in "Cboe US Equities BOE Specification", pg. 62, available at: [https://cdn.cboe.com/resources/membership/Cboe\\_US\\_Equities\\_BOE\\_Specification.pdf](https://cdn.cboe.com/resources/membership/Cboe_US_Equities_BOE_Specification.pdf); see also "Order Capacity" in "Cboe US Equities FIX Specification," p. 21, available at: [https://cdn.cboe.com/resources/membership/Cboe\\_US\\_Equities\\_FIX\\_Specification.pdf](https://cdn.cboe.com/resources/membership/Cboe_US_Equities_FIX_Specification.pdf).

<sup>14</sup> As a general matter the exchange notes that riskless principal transactions are typically entered into the marketplace as principal orders, buying the security for itself and then, post-execution, selling the security to its end-customer. If the broker-dealer sells its customer the security at the same price for which it purchased the security, this is typically called a riskless principal transaction. This transaction is known as "riskless" because the broker-dealer purchases the security, knowing that it will sell the security to its customer at the same price. See generally SEC Office of Education and Advocacy, "Investor Bulletin: How to Read Confirmation Statements," available at: [https://www.sec.gov/investor/alerts/ib\\_confirmations.pdf](https://www.sec.gov/investor/alerts/ib_confirmations.pdf).

time of order entry onto the Exchange, a Retail Order it sought to execute on behalf of a retail customer (ii) the Retail Order entered by an RMO as principal was solely be for the purpose of providing post-execution price improvement to the retail customer(s) in addition to any price improvement received on the Exchange; (iii) the size of the principal order was not greater than that of the underlying order(s) entered on behalf of the retail customer(s); and (iv) the total number of shares executed in a principal capacity was fully allocated to the underlying retail customer(s) in a consistent manner and within 60-seconds of execution.

In this regard, whether the order is executed principally or as riskless principal, the Exchange will still have the ability to effectively enforce its rules. Indeed, the Exchange's Regulatory and Surveillance functions already monitor for Retail Orders that are entered as riskless principal as well as principal. Notably, for the full year 2024, 25.5% of all Retail Orders entered across each of Cboe's four equities exchanges, were entered as principal, compared to only 6.4% entered as riskless principal. Therefore, as a practical matter, the Exchange is accustomed to conducting surveillance of Retail Orders entered as principal, and the proposed amendment should not pose any additional issues.

Importantly, for the purpose of determining whether an order should qualify as a Retail Order, the Exchange believes that from a surveillance perspective, principal orders and riskless principal orders are essentially the same order type. In addition to how it monitors and surveils Retail Orders (discussed directly above), EDGX notes that there is no difference between a Retail Order entered as a riskless principal order that meets the requirements of FINRA Rule 5320.03, and a principal order, that meets the requirements of the proposed rule. As noted above, a riskless principal order is a transaction in which

a Member, after having received an order to buy (sell) a security, purchases (sells) the security as principal and, contemporaneously, satisfies the original order by selling (buying) as principal at the *same* price. A riskless principal order involves two orders, the execution of one being dependent upon the receipt of the execution of the other. As such, there is no “risk” in the interdependent transactions when completed. Notably, riskless principal orders are typically entered onto exchanges in a *principal* capacity, and the riskless principal leg of the transaction is reflected only via a corresponding non-media trade report to a FINRA Facility.<sup>15</sup> In this regard, the Exchange believes that the results of a riskless principal transaction and a principal transaction are the same: the customer will receive an execution while the involved Member acts as an intermediary to effect the transaction. However, instead of receiving the *same* Exchange execution price, the retail customer will now receive a *better* priced execution because the RMO is now able to commit capital to that order, as principal. Existing rule text does not permit this scenario because the current definition of Retail Order only permits an RMO to trade in an agency or riskless principal capacity. When trading as agent, the RMO is simply passing the execution back to its retail customer(s) at the price received on-Exchange. If trading as riskless principal, the RMO trades principally on the Exchange, but then allocates to the execution, at the *same* price, back to its retail customer in a riskless transaction.<sup>16</sup> In this regard, by trading principally, an RMO may instead use its financial

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<sup>15</sup> FINRA Members can report riskless principal transactions by submitting a single tape report to a FINRA Facility in the same manner as an agency transaction, marked with a “riskless principal” capacity indicator, excluding the mark-up or mark-down, commission-equivalent or other fee. Alternatively, members can report an OTC riskless principal transaction by submitting two (or more, as necessary) reports: (1) a tape report to reflect the initial leg of the transaction with a capacity of principal; and (2) a non-tape (regulatory or clearing-only) report to reflect the offsetting “riskless” leg of the transaction with a capacity of riskless principal.

<sup>16</sup> Id.

balance sheet and principal trading account to provide additional price improvement to a retail customer's order in a separate transaction. Here, the RMO is not permitted to execute this transaction in a riskless principal capacity, because the RMO is not providing its retail customer with the *same* execution price it received on the Exchange. By permitting the RMO to use a principal order, though, the RMO would be able to provide its retail customer with price improvement *in addition* to that already received on the Exchange.

*Existing RMO Application Process/Requirements & Proposed Policies and Procedures*

The Exchange also notes that the proposed amendment does not present any new or material risks that the Exchange has not already mitigated through its RMO application process for orders entered onto the Exchange as Retail Orders on behalf of retail customers. Currently, Rule 11.21(b)(1)-(6) sets forth an objective process by which a Member organization applies to become an RMO. First, to qualify as a Retail Member Organization, a Member must conduct a retail routing business or route retail orders on behalf of another broker-dealer.<sup>17</sup> To become an RMO, a Member is required to submit an application form,<sup>18</sup> supporting documentation (e.g., marketing literature, website screenshots, and other publicly disclosed materials) confirming that the applicant's order flow would meet the requirements of the Retail Order definition,<sup>19</sup> and an attestation<sup>20</sup> in

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<sup>17</sup> See Rule 11.21(b)(1).

<sup>18</sup> See Rule 11.21(b)(2)(A).

<sup>19</sup> See Rule 11.21(b)(2)(B).

<sup>20</sup> See, "Retail Member Organization - Broker-Dealer Customer Agreement", and "Broker-Dealer Customer Annual Attestation" of "Cboe EDGX Exchange, Inc., Retail Member Organization Application", available at: [https://cdn.cboe.com/resources/membership/EDGX\\_Retail\\_Member\\_Organization\\_Application.pdf](https://cdn.cboe.com/resources/membership/EDGX_Retail_Member_Organization_Application.pdf). Following approval of this proposal, the Exchange will make conforming edits to the attestation reflecting the changes to the definition of "Retail Order", as well as the amendments made to the Interpretations and Policies to Rule 11.21.

a form prescribed by the Exchange, that substantially all orders submitted as Retail Orders will qualify as such under the Rule.<sup>21</sup> After submission of these materials, various Exchange functions, including legal and operations, review the application to assess whether the applicant's order flow complies with Exchange rules.<sup>22</sup> Applicants are then notified, in writing, of the Exchange's decision.<sup>23</sup>

Furthermore, all RMOs must have in place policies and procedures reasonably designed to ensure that it will only designate orders as Retail Orders if all requirements of a Retail Order are met.<sup>24</sup> These policies and procedures must require the Member to (i) exercise due diligence before entering a Retail Order to ensure that entry as a Retail Order is in compliance with the requirements of the Rule, and (ii) monitor whether orders entered as Retail Orders meet the applicable requirements.<sup>25</sup> If an RMO does not itself conduct a retail business but routes Retail Orders on behalf of another broker-dealer, the RMO's supervisory procedures must be reasonably designed to ensure that the orders it receives from the other broker-dealer that are designated as Retail Orders meets the definition of a Retail Order.<sup>26</sup> In these cases, the RMO must (i) obtain an annual written representation, in a form acceptable to the Exchange, from each other broker-dealer that sends the RMO orders to be designated as Retail Orders that the entry of such orders as Retail Orders will be in compliance with the requirements of Rule 11.21; and (ii) monitor whether Retail Order flow routed on behalf of other such broker-dealers meets the

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<sup>21</sup> See Rule 11.21(b)(2)(C)

<sup>22</sup> See Rule 11.21(b)(3)

<sup>23</sup> Id.

<sup>24</sup> See Rule 11.21(b)(6)

<sup>25</sup> Id.

<sup>26</sup> Id.

applicable requirements.<sup>27</sup> Importantly, the Exchange's regulatory and surveillance functions provide appropriate oversight by the Exchange by monitoring for continued compliance with the terms of these provisions. If an RMO fails to abide by the Retail Order requirements, the Exchange in its sole discretion may disqualify a Member from its status as an RMO.<sup>28</sup> The proposed amendment will not eliminate or diminish the strength of the existing protections currently codified in Rule 11.21.

In addition, as noted further above, the Exchange has proposed requirements pursuant to proposed Rule 11.21(g) designed to ensure that Retail Orders entered in a principal capacity are in fact entered on behalf of bona fide retail customers, and that such principal orders comply with specific requirements. Namely, when entering a Retail Order onto the Exchange for execution in a principal capacity, an RMO must comply with the following requirements, which are similar to those required by FINRA Rule 5320.03's Riskless Principal Exception requirements : (i) the RMO must be in receipt of and actively managing, at the time of order entry onto the Exchange, a Retail Order it seeks to execute on behalf of a retail customer (ii) the Retail Order entered by an RMO as principal must solely be for the purpose of providing post-execution price improvement<sup>29</sup> to the retail customer(s) in addition to any price improvement received on the Exchange; (iii) the size of the principal order shall not be greater than that of the underlying order(s) entered on behalf of the retail customer(s); and (iv) the total number of shares executed

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<sup>27</sup> Id.

<sup>28</sup> See Rule 11.21(b)(d)(1).

<sup>29</sup> Should an RMO enter a Retail Order principally but elect not to provide post-execution price improvement the Exchange would expect that the RMO would allocate that execution back to their retail customer(s) in a riskless principal capacity, in which case such transaction must comply with existing Exchange Rule 11.21(a)(2) and FINRA Rule 5320.03.



in a principal capacity must be fully allocated to the underlying retail customer(s) in a consistent manner and within 60-seconds of execution

In conjunction with these requirements, the Exchange also proposes to amend Rule 11.21(b)(6), to codify the requirements that RMOs choosing to enter Retail Orders in a principal capacity must have in place policies and procedures reasonably designed to ensure compliance with the requirements of 11.21(g), and to ensure the RMO is able to, upon request, provide the Exchange with documentation evidencing compliance with such requirements. Moreover, if a Retail Member Organization does not itself conduct a retail business, but chooses to execute in a principal capacity Retail Orders it manages on behalf of another broker-dealer, the Retail Member Organization's supervisory procedures must be reasonably designed to ensure that the orders it receives from such other broker-dealer that are designated as Retail Orders meet the definition of a Retail Order. The Retail Member Organization must: (i) obtain an annual written representation, in a form acceptable to the Exchange, from each other broker-dealer that sends the Retail Member Organization orders to be designated as Retail Orders that entry of such orders as Retail Orders will be in compliance with the requirements of this Rule; and (ii) monitor whether Retail Order flow routed on behalf of such other broker-dealers meets the applicable requirements.

Finally, the Exchange believes it important to note that as Members of the Exchange, RMOs must be registered brokers or dealers. As registered brokers or dealers, RMOs are subject to a panoply of rules, such as FINRA Rule 2010 (Standards of Commercial Honor and Principles of Trade), EDGX Rule 2.2 (Obligation of Members and the Exchange), and EDGX Rule 3.1 (Business Conduct of Members). These rules

require, amongst other things, that as brokers or dealers, Members are required to conduct business with the highest standards of commercial honor, and obligate Members to comply with all Exchange rules, by-laws, and regulations.<sup>30</sup> While the Exchange has an obligation to maintain fair and orderly markets and carry out its duties as a self-regulatory organization, RMOs are also obligated to ensure that only orders that comply with Exchange rules are routed to the Exchange and designated as Retail Orders.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>31</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>32</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with

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<sup>30</sup> While the RMO application process discussed above does rely on information provided by the applicant, the Exchange believes that ultimately it must be allowed to rely on representations made by registered brokers or dealers that are obligated to conduct their securities business consistent with the highest standards of commercial honor, and in submitting their application, have attested to the accuracy of the information provided to the Exchange.

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

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

the Section 6(b)(5)<sup>33</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposed rule change is consistent with these principles because it would increase competition among execution venues, encourage additional on-exchange retail liquidity, and in turn, increase the opportunities for retail customers to receive even greater levels of price improvement from RMOs that trade principally and choose to commit additional capital to their Retail Orders. The Exchange notes that a significant percentage of the orders of individual customers are executed over the counter.<sup>34</sup> By providing RMOs with an additional order capacity in which they may submit their retail orders to the Exchange, EDGX believes that more retail flow may be directed to the Exchange and have the opportunity to execute on a regulated, transparent market. Indeed, even the Commission has noted that “a very large percentage of marketable (immediately executable) order flow of individual customers is ‘executed’ or ‘internalized’ by broker-dealers in the [over-the-counter-markets].”<sup>35</sup> The Commission has also noted that a review of the order flow of eight retail brokers revealed that nearly 100% of their customer market orders were routed to over-the-counter market makers, often pursuant to payment for order flow arrangements.<sup>36</sup> By making clear to retail broker-dealers that, subject to the conditions discussed herein, they can enter and

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<sup>33</sup> Id.

<sup>34</sup> Ninety-plus percent (90%) of retail marketable orders are routed to wholesalers and executed off-exchange. See Chair Gensler’s remarks, “Market Structure and the Retail Investors: Remarks Before the Piper Sandler Global Exchange Conference”, (June 2, 2022), available at: <https://www.sec.gov/news/speech/gensler-remarks-piper-sandler-global-exchange-conference-060822>).

<sup>35</sup> See Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594, 3600 (January 21, 2010) (“Concept Release on Equity Market Structure”).

<sup>36</sup> Id.

execute Retail Orders on the Exchange in a principal capacity, such market participants may be encouraged to seek on-Exchange price improvement opportunities. The Exchange believes that the proposed change is likely to increase the number of Retail Orders entered onto the Exchange. Based on feedback from Members that manage retail orders, they already trade retail orders on-exchange in a principal capacity. However, because Exchange rules do not currently permit the execution and allocation of a Retail Order in a principal capacity, such Members simply enter their principal retail orders as non-retail attested order flow – i.e., they do not enter Retail Orders as RMOs, onto the Exchange. As such, these Members' retail customer orders are not eligible to avail themselves to the benefits EDGX offers to retail firms and Retail Orders. By making clear that such Members can now enter such orders as Retail Orders, the Exchange believes the volume of Retail Orders entered onto the Exchange will increase. In turn, an increase in the number of Retail Orders submitted onto the Exchange will encourage more retail liquidity provision, thereby deepening EDGX's retail liquidity pool, fostering enhanced price discovery, and offering Retail Orders more price improvement opportunities as the number of liquidity providers competing to trade with Retail Orders increases.

The Exchange also believes that the proposed amendment to add principal orders to the definition of Retail Order, promotes just and equitable principles of trade and is not unfairly discriminatory. All RMOs are permitted to utilize the proposed principal order capacity and doing so is not mandatory. While some RMOs may choose not to provide additional price improvement to executions they receive on the Exchange, such possibility does not make the proposed amendment discriminatory. Indeed, to prevent all

RMOs from trading in a principal capacity to provide their retail customers with additional price improvement, simply because some RMOs may choose not to do so, only disadvantages the retail customer. Moreover, each RMO has its own rationale and strategies in how to provide their retail orders with best execution, and the proposed amendment to merely permit trading in a principal capacity should not be germane to a consideration of whether certain RMOs are better positioned to trade in this manner, than others.

Moreover, proposed Rule 11.21(g) and the proposed amendment to Rule 11.21(b)(6) are designed to prevent fraudulent and manipulative acts and practices, and to promote just and equitable principles of trade. Specifically, the proposed requirements under Rule 11.21(g) are designed to ensure that RMOs trade principally only on behalf of bona fide retail customers, and not the RMOs own trading account. Furthermore, the requirement that RMOs have in place policies and procedures reasonably designed to ensure compliance with Rule 11.21(g)(1) will also help to ensure that RMOs are cognizant of their regulatory obligations, thereby better ensuring their compliance with Rule 11.21(g). Additionally, Rule 11.21(b)(6)'s requirement that RMOs also have policies and procedures in place reasonably designed to ensure that RMOs can, upon request, provide the Exchange with documentation of their compliance with Rule 11.21(g) will help to ensure the Exchange can properly surveil and regulate its RMOs.

Finally, the Exchange also believes that this proposal is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. As noted above, while the proposed definition will help to ensure that only bona fide retail customers receive the benefits afforded to Retail Orders, the segmentation afforded Retail Orders is

not a novel concept in the securities market. The Commission has long recognized that U.S. capital markets should be structured with the interests of retail customers in mind<sup>37</sup> and recently proposed a series of rules designed, in part, to attempt to bring order flow back to the exchanges from off-exchange trading venues.<sup>38</sup>

Additionally, while certain RMOs may elect to trade principally and other RMOs may choose not to do so, the Exchange is not privy to such decision making and the Exchange does not dictate how RMOs may choose to enhance the execution quality of their Retail Orders. Just as some RMOs choosing to enter their Retail Orders onto the Exchange with more marketable or more conservative limit prices is non-discriminatory, the mere fact that the Exchange now seeks to permit an RMO to trade principally should not raise such concerns. Moreover, any RMO that satisfies the requirements of Rule 11.21(g) may enter Retail Orders onto the Exchange in a principal capacity, regardless of their size or trading volume. Likewise, trading principally is not a requirement to enter orders onto the Exchange as principal, and RMOs are free to do so, or not, consistent with their business models and order handling practices.

**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 intermarket competition that is not necessary or appropriate in furtherance of

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<sup>37</sup> See U.S. Securities and Exchange Commission, Strategic Plan, Fiscal Years 2018-2022, available at [https://www.sec.gov/files/SEC\\_Strategic\\_Plan\\_FY18-FY22\\_FINAL\\_0.pdf](https://www.sec.gov/files/SEC_Strategic_Plan_FY18-FY22_FINAL_0.pdf).

<sup>38</sup> See Securities Exchange Act Release No. 96495 (December 14, 2022), 88 FR 128 (January 3, 2023) ("Order Competition Rule"); Securities Exchange Act Release No. 96494 (December 14, 2022), 87 FR 80266 (December 29, 2022) ("Tick Size Proposal"); Securities Exchange Act Release No. 96496 (December 14, 2022), 88 FR 5440 (January 27, 2023) ("Regulation Best Execution"); Securities Exchange Act Release No. 96493 (December 14, 2022), 88 FR 3786 (January 20, 2023) ("Disclosure of Order Execution Information"). The Exchange notes that while such proposals have since been withdrawn by the Commission, the underlying principles of investor protection and protection of the interests of retail investors, remain a critical focus of the SEC, today.

the purposes of the Act. The Exchange believes the proposed amendment will help to enhance the submission of Retail Orders to the Exchange by providing RMOs with additional flexibility in how they choose to execute their retail customers' orders on the Exchange. In turn, greater overall order flow and trading opportunities benefits all market participants on the Exchange. An increase in RMO activity and liquidity providing orders will serve to enhance the Exchange's available liquidity. Deeper liquidity pools will, in turn, enhance price discovery, as well as price improvement opportunities for retail customers as liquidity providers compete for retail executions. Liquidity providers also benefit by being able to interact with retail order flow that is often executed off-exchange, and therefore generally inaccessible to those trading in the lit markets.

While the proposed definition will help to ensure that only bona fide retail customers receive the benefits afforded to Retail Orders, the segmentation afforded Retail Orders is not a novel concept in the securities market. The Commission has long recognized that U.S. capital markets should be structured with the interests of retail customers in mind<sup>39</sup> and has recently proposed a series of rules designed, in part, to attempt to bring order flow back to the exchanges from off-exchange trading venues.<sup>40</sup> In this regard, the proposed amendments should not result in any new or novel issues to be considered by the Commission or that have not already been contemplated by today's market participants. For example, many exchanges, including the Exchange's affiliate, Cboe BYX Exchange, Inc., offer retail price improvement programs designed to attract

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<sup>39</sup> Supra note 36.

<sup>40</sup> Supra note 37.

retail order flow to regulated markets and provide retail order flow with price improvement opportunities.<sup>41</sup> Additionally, as noted in Amendment 1 of EDGX's Retail Priority filing,<sup>42</sup> customer priority has a long tradition in the options market where orders entered on behalf of non-broker dealer public customers have historically been afforded priority over orders submitted by registered broker dealers. The aforementioned retail price improvement programs and Retail Priority program each provide benefits to Retail Orders not afforded to other customers by segmenting retail order flow from traditional order flow. The Exchange's proposal does not encourage additional segmentation, but rather seeks to enhance existing benefits to retail customers by codifying that RMOs may utilize a principal order type in order to provide additional post-execution price improvement to Retail Orders.

Additionally, the Exchange does not believe its proposal unfairly discriminates between Retail Orders – i.e., between Retail Orders that are executed principally, and Retail Orders executed in an agency or riskless principal capacity. While Retail Orders entered in a principal capacity must satisfy additional requirements compared to Retail Orders entered as agent or riskless principal, these requirements are designed to ensure that the benefits of the Exchange's Retail Order program accrue only to bona retail brokers and their retail customers. Moreover, treating Retail Orders entered principally in the same manner as Retail Orders entered as agent or riskless principal equally does not unfairly discriminate between Retail Orders. The choice to enter a Retail Order

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<sup>41</sup> See, e.g., Cboe BYX Exchange Rule 11.24 (Retail Price Improvement Program); NYSE National, Inc. Rule 7.44 (Retail Liquidity Program); Investors Exchange Inc. Rule 11.232 (Retail Price Improvement Program).

<sup>42</sup> See Securities Exchange Act Release No. 86280 (July 2, 2019), 84 FR 32808 (July 9, 2019) ("Notice of Amendment No. 1").



principally or as agent or riskless principal, does not provide a Retail Order with any additional on-Exchange benefits – i.e., whether entered as principal, riskless principal, or agent, the Retail Order will be handled in the same manner. The additional price improvement received by principal Retail Orders is fully accrued off-Exchange, when the RMO chooses to provide *additional* price improvement to their retail customers *post-execution on the Exchange*.

The Exchange further believes that the proposed rule change will increase intermarket competition by enabling the Exchange to better compete with other exchanges and off-exchange trading venues for retail order flow. The Commission has spoken about “increasing competition and enhancing the direct exposure of individual customer orders to a broader spectrum of market participants”<sup>43</sup> and the Exchange believes its proposed amendment to the definition of Retail Order will help to encourage RMOs to submit additional retail order flow to the Exchange. In turn, retail customers will have additional opportunities to receive executions on a transparent, regulated, national securities exchange in addition to the currently available off-exchange trading venues, and could also create additional incentives for regulated exchanges to develop additional liquidity programs designed at providing additional benefits to retail customers, thus promoting additional intermarket competition.

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>43</sup> See Order Competition Rule at 178.

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

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

- A. by order approve or disapprove such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be disapproved.

### **IV. Solicitation of Comments**

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

#### **Electronic Comments:**

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-CboeEDGX-2025-035 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-2025-035. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The

Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CboeEDGX-2025-035 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>44</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>44</sup> 17 CFR 200.30-3(a)(12).

## EXHIBIT 5

(additions are underlined; deletions are [bracketed])

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Rules of Cboe EDGX Exchange, Inc.

\* \* \* \* \*

Rule 11.21. Retail Orders.

(a) Definitions.

(1) (No change.)

(2) Retail Order. A “Retail Order” is an agency order, principal order (subject to requirements of Rule 11.21(g)), or riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person and is submitted to the Exchange by a Retail Member Organization, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. A Retail Order entered principally must also satisfy the requirements in 11.21(g).

(b) Retail Member Organization Qualifications and Application.

(1) – (5) (No change.)

(6) A Retail Member Organization must have written policies and procedures reasonably designed to assure that it will only designate orders as Retail Orders if all requirements of a Retail Order are met. Such written policies and procedures must require the Member to: (i) exercise due diligence before entering a Retail Order to assure that entry as a Retail Order is in compliance with the requirements of this Rule, and (ii) monitor whether orders entered as Retail Orders meet the applicable requirements. If a Retail Member Organization does not itself conduct a retail business but routes Retail Orders on behalf of another broker-dealer, the Retail Member Organization’s supervisory procedures must be reasonably designed to assure that the orders it receives from such other broker-dealer that are designated as Retail Orders meet the definition of a Retail Order. The Retail Member Organization must: (i) obtain an annual written representation, in a form acceptable to the Exchange, from each other broker-dealer that sends the Retail Member Organization orders to be designated as Retail Orders that entry of such orders as Retail Orders will be in compliance with the requirements of this Rule; and (ii) monitor whether Retail Order flow routed on behalf of such other broker-dealers meets the applicable requirements.

For orders entered in a principal capacity for the purposes of providing post-execution price improvement, in addition to that received on the Exchange, an Retail Member Organization

must have in place written policies and procedures reasonably designed to ensure the Retail Member Organization's compliance with the principal order requirements described in 11.21(g), below, as well to ensure the Retail Member Organization is able, upon request, to provide the Exchange with documentation of compliance with such requirements. If a Retail Member Organization does not itself conduct a retail business, but chooses to execute in a principal capacity Retail Orders it routes on behalf of another broker-dealer, the Retail Member Organization's supervisory procedures must be reasonably designed to ensure that the orders it receives from such other broker-dealer that are designated as Retail Orders meet the definition of a Retail Order. The Retail Member Organization must: (i) obtain an annual written representation, in a form acceptable to the Exchange, from each other broker-dealer that sends the Retail Member Organization orders to be designated as Retail Orders that entry of such orders as Retail Orders will be in compliance with the requirements of this Rule; and (ii) monitor whether Retail Order flow routed on behalf of such other broker-dealers meets the applicable requirements.

(c) – (f) (No change.)

(g) Retail Orders Entered as Principal. A Retail Order entered principally must also satisfy the following requirements: (i) the RMO must be in receipt of and actively managing, at the time of order entry onto the Exchange, a Retail Order it seeks to execute on behalf of a retail customer (ii) the Retail Order entered by an RMO as principal must solely be for the purpose of providing post-execution price improvement to the retail customer(s) in addition to any price improvement received on the Exchange; (iii) the size of the principal order shall not be greater than that of the underlying order(s) entered on behalf of the retail customer(s); and (iv) the total number of shares executed in a principal capacity must be fully allocated to the underlying retail customer(s) in a consistent manner and within 60-seconds of execution.

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