

inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeBZX-2019-083, and should be submitted on or before October 21, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>34</sup>

**Jill M. Peterson,**  
Assistant Secretary.

[FR Doc. 2019-21094 Filed 9-27-19; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736.

*Extension:*

Rule 12d3-1, SEC File No. 270-504, OMB Control No. 3235-0561.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the "Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension of the previously approved collection of information discussed below.

Section 12(d)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a) generally prohibits registered investment companies ("funds"), and companies controlled by funds, from purchasing securities issued by a registered investment adviser, broker, dealer, or underwriter ("securities-related businesses"). Rule 12d3-1 ("Exemption of acquisitions of securities issued by persons engaged in securities related businesses" (17 CFR 270.12d3-1)) permits a fund to invest up to five percent of its assets in securities of an issuer deriving more than fifteen percent of its gross revenues from securities-related businesses, but a fund may not rely on rule 12d3-1 to acquire securities of its own investment adviser or any affiliated person of its own investment adviser.

A fund may, however, rely on an exemption in rule 12d3-1 to acquire securities issued by its subadvisers in circumstances in which the subadviser would have little ability to take advantage of the fund, because it is not in a position to direct the fund's securities purchases. The exemption in rule 12d3-1 is available if (i) the subadviser is not, and is not an affiliated person of, an investment adviser that provides advice with respect to the portion of the fund that is acquiring the securities, and (ii) the advisory contracts of the subadviser, and any subadviser that is advising the purchasing portion of the fund, prohibit them from consulting with each other concerning securities transactions of the fund, and limit their responsibility in providing advice to providing advice with respect to discrete portions of the fund's portfolio.

Based on an analysis of fund filings, the staff estimates that approximately 216 fund portfolios enter into subadvisory agreements each year.<sup>1</sup> Based on discussions with industry representatives, the staff estimates that it will require approximately 3 attorney hours to draft and execute additional clauses in new subadvisory contracts in order for funds and subadvisers to be able to rely on the exemptions in rule 12d3-1. Because these additional clauses are identical to the clauses that a fund would need to insert in their subadvisory contracts to rely on rules 10f-3, 17a-10, and 17e-1 and because we believe that funds that use one such rule generally use all of these rules, we apportion this 3 hour time burden equally to all four rules. Therefore, we estimate that the burden allocated to rule 12d3-1 for this contract change would be 0.75 hours.<sup>2</sup> Assuming that all 216 funds that enter into new subadvisory contracts each year make the modification to their contract required by the rule, we estimate that the rule's contract modification requirement will result in 182 burden hours annually.<sup>3</sup>

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of

<sup>1</sup> Based on data from Morningstar Direct, as of December 31, 2018, there are 12,459 registered funds (open-end funds, closed-end funds, and exchange-traded funds), 4,615 of which have subadvisory relationships (approximately 37%). 583 new funds were established in 2018. 583 new funds  $\times$  37% = 216 funds.

<sup>2</sup> This estimate is based on the following calculation (3 hours  $\div$  4 rules = .75 hours).

<sup>3</sup> This estimate is based on the following calculation: (0.75 hours  $\times$  216 portfolios = 182 burden hours).

the costs of Commission rules. Complying with this collection of information requirement is necessary to obtain the benefit of relying on rule 12d3-1. Responses will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following website, [www.reginfo.gov](http://www.reginfo.gov). Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: [Lindsay.M.Abate@omb.eop.gov](mailto:Lindsay.M.Abate@omb.eop.gov); and (ii) Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549 or send an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov). Comments must be submitted to OMB within 30 days of this notice.

Dated: September 24, 2019.

**Jill M. Peterson,**  
Assistant Secretary.

[FR Doc. 2019-21084 Filed 9-27-19; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-87092; File No. SR-CboeBZX-2019-082]

### Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Applicable to Physical Connectivity

September 24, 2019.

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 September 10, 2019, Cboe BZX Exchange, Inc. (the "Exchange" or "BZX") filed with the Securities and Exchange Commission ("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

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

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

<sup>34</sup> 17 CFR 200.30-3(a)(12).

proposed rule change from interested persons.

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

The Exchange proposes a rule change to waive the fees for a single 1 gigabyte physical port in its secondary data center for Members that are registered as an LMM on the Exchange for the first twelve months following the Member establishing physical connectivity to the secondary data center.

The text of the proposed rule change is also available on the Exchange's website ([http://markets.cboe.com/us/equities/regulation/rule\\_filings/bzx/](http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/)), 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. Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange proposes to implement proposed changes to its fee schedule relating to physical connectivity fees in its secondary data center, effective September 10, 2019. Specifically, the Exchange is proposing to waive the fees for a single 1 gigabyte physical port that is connected solely to the secondary data center for the Exchange's cash equities trading platform ("BZX Equities") for Members that are registered as an LMM on the Exchange for the first twelve months following the Member establishing physical connectivity to the secondary data center.<sup>3</sup>

By way of background, a physical port is utilized by a Member or non-Member

<sup>3</sup> The Exchange notes that the waiver applies only to the BZX Equities secondary data center and to the extent that a Member otherwise subject to the waiver uses such physical connectivity to connect to the Exchange's equity options platform ("BZX Options") or any of the Exchange's affiliates, such Member will be subject to the applicable physical connectivity fees.

to connect to the Exchange at the data centers where the Exchange's servers are located. The Exchange currently maintains a presence in two third-party data centers: (i) The primary data center where the Exchange's business is primarily conducted on a daily basis, and (ii) a secondary data center, which is predominantly maintained for business continuity purposes. The Exchange currently assesses fees of \$2,000 per physical port for a 1 gigabyte circuit for Members and non-Members to connect to its secondary data center on a monthly basis.<sup>4</sup>

Pursuant to Regulation Systems Compliance and Integrity,<sup>5</sup> Exchange Rule 2.4(b)(2) requires all active Lead Market Makers ("LMMs"),<sup>6</sup> to connect to the Exchange's secondary data center and to participate in functional and performance testing on an annual basis<sup>7</sup> and, as such, in order to become an LMM on the Exchange, a Member would be required to pay all fees associated with connecting to the secondary data center.

LMMs play an important role in the Exchange's listing program by providing significant liquidity and enhanced market quality in BZX-listed securities. There is significant competition among listing venues to attract, retain, and incentivize liquidity provision by LMMs.<sup>8</sup> Increasing the number of LMMs on the Exchange and enhancing the competition among LMMs is particularly important because it further increases the pressure on LMMs to meet the market quality metrics applicable under the LMM Program and enhance market quality in all BZX-listed

<sup>4</sup> See Securities Exchange Act Release No. 83442 (June 14, 2018), 83 FR 28675 (June 20, 2018) (notice of filing and immediate effectiveness of proposed rule change related to physical port fees for BZX).

<sup>5</sup> See Securities Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72252 (December 5, 2014) ("SCI Adopting Release").

<sup>6</sup> As defined in Rule 11.8(e)(1)(B), the term "LMM" means a Market Maker registered with the Exchange for a particular LMM Security that has committed to maintain Minimum Performance Standards in the LMM Security.

<sup>7</sup> See Securities Exchange Act Release No. 76162 (October 15, 2015), 80 FR 63849 (October 21, 2015) (SR-BATS-2015-06) (notice of filing and immediate effectiveness of a proposed rule change to adopt Rule 2.4, Mandatory Participation in Testing of Backup Systems).

<sup>8</sup> The Exchange recently implemented a new LMM incentive program that provides payments to LMMs where they meet certain market quality metrics (the "LMM Program") rather than offering enhanced rebates on a transaction-by-transaction basis, as LMMs have traditionally been compensated, which it believes will help to incentivize Members to become LMMs on the Exchange and to foster competition among LMMs to become an LMM in all products listed on the Exchange, regardless of trading volume. See Securities Exchange Act Release No. 86213 (June 27, 2019), 84 FR 31951 (July 3, 2019).

securities.<sup>9</sup> More LMMs registered on the Exchange will result in more competition to become an LMM in new and existing products, including where an assigned LMM fails to meet the market quality metrics, all of which the Exchange believes will act to enhance market quality in BZX-listed securities and improve issuer and investor experience.

The Exchange is proposing to waive the fees for a Member that is a registered LMM shall have physical connectivity fees waived for a single 1 gigabyte physical port that is connected solely to the BZX Equities secondary data center for the first twelve months following the Member establishing such physical connectivity.<sup>10</sup> There are a number of costs, both related and unrelated to the Exchange, associated with becoming an LMM and the Exchange believes that this proposal to reduce the overall burden to become an LMM will help the Exchange compete to attract LMMs. The Exchange believes that the ability to attract new LMMs will benefit of its listing business, its issuers, and investors in BZX-listed securities.

##### Implementation Date

The Exchange proposes to implement these amendments to its fee schedule on September 10, 2019.

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>11</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>12</sup> in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange also notes that its listing business operates in a highly competitive market in which market participants, which includes both ETP issuers and LMMs, can readily transfer their listings or opt not to participate, respectively, if they deem fee levels, liquidity provision incentive programs, or any other factor at a particular venue to be insufficient or excessive. The proposed rule change reflects a

<sup>9</sup> As provided in Rule 11.8(e)(2)(C), where an LMM does not meet the market quality metrics for three out of four months, they are subject to losing their registration as an LMM in the applicable security.

<sup>10</sup> As noted above, the waiver applies only to the BZX Equities secondary data center and to the extent that a Member otherwise subject to the waiver uses such physical connectivity to connect to BZX Options or any of the Exchange's affiliates, such Member will be subject to the applicable physical connectivity fees.

<sup>11</sup> 15 U.S.C. 78f.

<sup>12</sup> 15 U.S.C. 78f(b)(4).

competitive pricing structure designed to incentivize Members to enroll and participate as LMMs on the Exchange, which the Exchange believes will enhance market quality in ETPs listed on the Exchange. As described above, the Exchange is proposing to waive certain physical connectivity fees for Members that are registered as an LMM on the Exchange for the first twelve months following the Member establishing physical connectivity to the secondary data center, which it believes will allow it to better compete to attract market participants to register as LMMs on the Exchange.

#### The Proposed Fee Waiver Is Reasonable

The Exchange believes that the proposal is a reasonable means to encourage Members to register as an LMM. By reducing the cost associated with the initial registration and participation as an LMM, Members will be more likely to participate in the LMM program. The Exchange believes that this will benefit the Exchange's listing program through enhanced competition among LMMs, which will also benefit issuers of securities listed on the Exchange, and, more broadly, investors through enhanced market quality in such securities.

#### The Proposed Fee Waiver Is Equitable and Not Unreasonably Discriminatory

The Exchange believes that the proposal represents an equitable allocation of reasonable dues, fees, and other charges and is not unreasonably discriminatory in that it applies uniformly to all similarly situated Members. Any Member that has not established physical connectivity to the secondary data center that becomes an LMM will be eligible for such waiver. While Members that are already connected to the secondary data center will not be eligible, they have already made the decision to connect to the secondary data center and presumably such costs were included in their calculation. Further, the proposal will only result in reduced fees for Members and will not result in any changes for Members that are already connected to the secondary data center.

The Exchange also believes that the proposal represents an equitable allocation of reasonable dues, fees, and other charges and is not unreasonably discriminatory as LMMs play an important role in the Exchange's listing program by providing significant liquidity and enhanced market quality in BZX-listed securities. As noted above, there is significant competition among listing venues to attract, retain, and incentivize liquidity provision by

LMMs. Increasing the number of LMMs on the Exchange and enhancing the competition among LMMs is particularly important because it further increases the pressure on LMMs to meet the market quality metrics applicable under the LMM Program and enhance market quality in all BZX-listed securities. More LMMs registered on the Exchange will result in more competition to become an LMM in new and existing products, including where an assigned LMM fails to meet the market quality metrics, all of which the Exchange believes will act to enhance market quality in BZX-listed securities and improve issuer and investor experience.

The Exchange is proposing to waive the fees for a single 1 gigabyte physical port in its secondary data center for Members that are registered as an LMM on the Exchange for the first twelve months following the Member establishing physical connectivity to the secondary data center. There are a number of costs, both related and unrelated to the Exchange, associated with becoming an LMM and the Exchange believes that this proposal to reduce the overall burden to become an LMM will help the Exchange compete to attract LMMs. The Exchange believes that the ability to attract new LMMs will benefit of its listing business, its issuers, and investors in BZX-listed securities.

Lastly, the Exchange believes the fees remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to Members.<sup>13</sup>

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. As discussed above, the Exchange believes that fees for connectivity and particularly for LMMs are constrained by the robust competition for order flow among listing venues and there is significant competition among listing venues to attract, retain, and incentivize liquidity provision by LMMs. The Exchange believes that this proposal will enhance the Exchange's ability to compete as a listing venue by incentivizing the registration of additional LMMs on the Exchange, resulting in additional competition among LMMs to the benefit of issuers and investors. The Exchange

does not believe that the proposed changes represent a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors.

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>14</sup> and paragraph (f) of Rule 19b-4<sup>15</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

#### IV. Solicitation of Comments

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

##### Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CboeBZX-2019-082 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-CboeBZX-2019-082. 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

<sup>13</sup> See e.g., NYSE Arca Equities Fees and Charges, NYSE Arca Marketplace: Other Fees and Charges, Connectivity Fees. See also, Nasdaq Phlx LLC Pricing Schedule, Section XI, Direct Connectivity to Phlx.

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f).

only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeBZX-2019-082, and should be submitted on or before October 21, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Jill M. Peterson,**  
Assistant Secretary.

[FR Doc. 2019-21091 Filed 9-27-19; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-87096; File No. SR-CboeEDGA-2019-012]

### Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Introduce a Liquidity Provider Protection Delay Mechanism on EDGA

September 24, 2019.

#### I. Introduction

On June 7, 2019, Cboe EDGA Exchange, Inc. ("EDGA" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange

Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to introduce a delay mechanism on EDGA. The proposed rule change was published for comment in the **Federal Register** on June 26, 2019.<sup>3</sup> On August 5, 2019, the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved.<sup>4</sup> The Commission received twenty-one comment letters from eighteen commenters on the proposed rule change, including a response from the Exchange.<sup>5</sup> This order institutes

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

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

<sup>3</sup> See Securities Exchange Act Release No. 86168 (June 20, 2019), 84 FR 30282 ("Notice").

<sup>4</sup> See Securities Exchange Act Release No. 86567, 84 FR 39385 (August 9, 2019).

<sup>5</sup> See Letters from: R.T. Leuchtkafer, dated July 12, 2019 ("Leuchtkafer Letter I"); Steve Crutchfield, Head of Market Structure, CTC Trading Group, LLC, dated July 15, 2019 ("CTC Letter"); Tyler Gellasch, Executive Director, Healthy Markets, dated July 16, 2019 ("Healthy Markets Letter"); Larry Tabb, Founder and Research Chairman, TABB Group, dated July 16, 2019 ("Tabb Group Letter"); Stephen John Berger, Managing Director, Global Head of Government and Regulatory Policy, Citadel Securities, dated July 16, 2019 ("Citadel Letter"); Mehmet Kinak, Vice President & Global Head of Systematic Trading & Market Structure, and Jonathan D. Siegel, Vice President & Senior Legal Counsel (Legislative & Regulatory Affairs), T. Rowe Price, dated July 16, 2019 ("T. Rowe Price Letter"); Adam Nunes, Head of Business Development, Hudson River Trading LLC, dated July 16, 2019 ("Hudson River Trading Letter"); Joanna Mallers, Secretary, FIA Principal Traders Group, dated July 16, 2019 ("FIA Letter"); Ray Ross, Chief Technology Officer, Clearpool, dated July 16, 2019 ("Clearpool Letter"); Eric Swanson, CEO, XTX Markets LLC (Americas), dated July 16, 2019 ("XTX Letter I"); John Thornton, Co-Chair, Hal S. Scott, President, and R. Glenn Hubbard, Co-Chair, Committee on Capital Markets Regulation, dated July 16, 2019 ("CMR Committee Letter"); Kirsten Wegner, Chief Executive Officer, Modern Markets Initiative, dated July 17, 2019 ("MMI Letter"); Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, dated July 18, 2019 ("SIFMA Letter"); Eric Swanson, CEO, XTX Markets LLC (Americas), dated July 31, 2019 ("XTX Letter II"); Mark D. Epley, Executive Vice President & Managing Director, General Counsel, and Jennifer W. Han, Associate General Counsel, Managed Funds Association, dated August 2, 2019 ("MFA Letter"); Hubert De Jesus, Managing Director, Global Head of Market Structure and Electronic Trading, and Joanne Medero, Managing Director, Global Public Policy, Black Rock, dated August 2, 2019 ("Black Rock Letter"); Rich Steiner, Head of Client Advocacy and Market Innovation, RBC Capital Markets, dated August 15, 2019 ("RBC Letter"); Adrian Griffiths, Assistant General Counsel, Cboe Global Markets, dated August 22, 2019 ("Exchange Response Letter"); R.T. Leuchtkafer, dated August 23, 2019 ("Leuchtkafer Letter II"); R.T. Leuchtkafer, dated September 9, 2019 ("Leuchtkafer Letter III"); Joshua Mollner, Assistant Professor, Kellogg School of Management, Northwestern University, and Markus Baldauf, Assistant Professor, Sauder School of Business, University of British Columbia, dated September 12, 2019 ("Mollner & Baldauf Letter") available at <https://www.sec.gov/comments/sr-cboeedga-2019-012/srboeedga2019012.htm>.

proceedings under Section 19(b)(2)(B) of the Exchange Act<sup>6</sup> to determine whether to approve or disapprove the proposed rule change.

#### II. Summary of the Proposal

EDGA proposes to adopt the Liquidity Provider Protection ("LP2") delay mechanism, which would delay all incoming executable orders for up to four milliseconds.<sup>7</sup> If an incoming executable order subject to the delay is no longer executable against orders resting on the EDGA Book (e.g., resting orders on the book are cancelled or modified such that they are no longer marketable against the delayed incoming order), such incoming order will be immediately released from the queue.<sup>8</sup>

The LP2 delay mechanism also would apply to the cancel, cancel/replace, or modification messages that are associated with liquidity taking orders.<sup>9</sup> The Exchange would apply such messages after the liquidity taking order is released from the delay mechanism.<sup>10</sup> At the end of the delay period, incoming orders, cancel, and cancel/replace messages subjected to the delay mechanism would be processed after the System has processed, if applicable, all messages in the security received by the Exchange during such delay period which could result in a message being delayed for longer than four milliseconds depending on the volume of messages being processed by the Exchange.<sup>11</sup>

Certain order types, or orders with instructions, that are not eligible for execution upon entry would become subject to the LP2 delay mechanism when a potential execution is triggered by a subsequent incoming order. For example, orders entered with either a Stop Price or Stop Limit Price instruction would not be executed until elected, and would only be subject to the delay mechanism after the order is converted to either a Market Order or Limit Order. Similarly, orders entered with a time-in-force instruction of Regular Hours Only would be subjected to the delay mechanism when entered into the EDGA Book after an opening or re-opening process.<sup>12</sup>

An incoming order that is not executable upon entry would not be subject to the delay mechanism. For example, orders with instructions that

<sup>6</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>7</sup> See Notice, 84 FR at 30284.

<sup>8</sup> See Notice, 84 FR at 30284.

<sup>9</sup> See *id.*

<sup>10</sup> See *id.*

<sup>11</sup> See Notice 84 FR at 30284, n. 11.

<sup>12</sup> See EDGA Rule 11.7 relating to the opening and re-opening process.

<sup>16</sup> 17 CFR 200.30-3(a)(12).