

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁸

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Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88774; File No. SR-CboeEDGX-2020-005]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend Certain Rules Within Rules 4.5 Through 4.16, Which Contains the Exchange's Compliance Rule ("Compliance Rule") Regarding the National Market System Plan Governing the Consolidated Audit Trail (the "CAT NMS Plan" or "Plan"), To Be Consistent with Certain Proposed Amendments to and Exemptions From the CAT NMS Plan as Well as To Facilitate the Retirement of Certain Existing Regulatory Systems

April 29, 2020.

I. Introduction

On January 22, 2020, Cboe EDGX Exchange, Inc. ("Cboe EDGX" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend the Exchange's compliance rules regarding the National Market System Plan Governing the Consolidated Audit Trail ("CAT NMS Plan").³ The proposed rule change was published for comment in the **Federal Register** on February 5, 2020.⁴ On March 20, 2020, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change, to May 5, 2020.⁵ The Commission received no comments on the proposal. This order institutes proceedings pursuant to

Exchange Act Section 19(b)(2)(B) to determine whether to approve or disapprove File No. SR-CboeEDGX-2020-005.⁶

II. Description of the Proposed Rule Change

The Exchange proposes to amend certain rules within Rules 4.5 through 4.16 of the Exchange's rulebook ("Compliance Rule"), which sets forth rules regarding Industry Member⁷ compliance with the CAT NMS Plan. Specifically, the proposed rule change would make the following changes to the Compliance Rule to be consistent with certain proposed amendments to and exemption requests submitted by the Participants⁸ of the CAT NMS Plan: (1) Revise data reporting requirements for the Firm Designated ID⁹ based on a proposed amendment to the CAT NMS Plan filed with the Commission;¹⁰ (2) amend the dates for required testing and reporting in the Compliance Rule for Industry Member reporting;¹¹ (3) amend

⁶ 15 U.S.C. 78(s)(b)(2)(B).

⁷ Industry Member means a member of a national securities exchange or a member of a national securities association. See CAT NMS Plan, *supra* note 3, at Section 1.1.

⁸ The Participants include BOX Exchange LLC, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe Exchange, Inc., Financial Industry Regulatory Authority, Inc., Investors' Exchange LLC, Long-Term Stock Exchange, Inc., Miami International Securities Exchange LLC, MIAAX Emerald, LLC, MIAAX PEARL, LLC, Nasdaq BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, Nasdaq PHLX LLC, The Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc.

⁹ As proposed, "Firm Designated ID" would mean a unique and persistent identifier for each trading account designated by Industry Members for purposes of providing data to the Central Repository, where each such identifier is unique among all identifiers from any given Industry Member; provided, however, such identifier may not be the account number for such trading account if the trading account is not a proprietary account. See proposed Exchange Rule 4.5.

¹⁰ See Notice, *supra* note 4, at 6640-41. See also Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair re: Notice of Filing of Amendment to the National Market System Plan Governing the Consolidated Audit Trail (April 14, 2020). The Commission has not approved or disapproved the changes proposed in this amendment.

¹¹ See Notice, *supra* note 4, at 6644-49. On February 19, 2020, the Participants submitted a request for exemptive relief from the reporting dates required by the CAT NMS Plan. See Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemption from Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to Industry Member Reporting Dates (Feb. 19, 2020). On April 20, 2020, the Commission granted limited exemptive relief to allow for the implementation of phased reporting for Industry Members. See Securities Exchange Act Release No. 88702 (April 20, 2020), 85 FR 23075 (April 24, 2020).

the rules to require Industry Members to submit trade reports for executions and cancellations for cancelled trades to the FINRA's Trade Reporting Facilities, FINRA's OTC Reporting Facility or FINRA's Alternative Display Facility;¹² (4) revise the timestamp granularity requirement to require Industry Members with order handling or execution systems that utilize time stamps in increments finer than milliseconds to report timestamps up to nanoseconds when reporting Industry Member data¹³ to the Central Repository;¹⁴ (5) revise the reporting requirements for circumstances in which an Industry Member uses an established trading relationship for an individual Customer, instead of an account, on the order reported to CAT;¹⁵ and (6) revise the CAT reporting

¹² See Notice, *supra* note 4, at 6649. On February 12, 2020, the Participants submitted a request for exemptive relief from the requirement in Sections 6.4(d)(ii)(A)(2) and (B) of the CAT NMS Plan to require Industry Members to record and report, if an order is executed, the SRO-Assigned Market Participant Identifier of the clearing broker, and if a trade is cancelled, the cancelled trade indicator. See Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemption from Certain Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to FINRA Facility Data Linkage (Feb. 12, 2020). If granted, the exemptive relief would revise CAT reporting requirements regarding cancelled trades and SRO-Assigned Market Participant Identifiers of clearing brokers, if applicable, in connection with order executions, as such information would be available from FINRA's trade reports submitted to CAT.

¹³ See Notice, *supra* note 4, at 6649. On February 3, 2020, the Participants filed a request for exemptive relief from the current CAT NMS Plan requirement to record and report Industry Member Data with time stamps consistent with their system, a requirement from which the Exchange requests an exemption. See Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemption from Certain Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to Granularity of Timestamps and Relationship Identifiers (Feb. 3, 2020). On April 8, 2020, the Commission granted the exemptive relief for timestamp granularity. See Securities Exchange Act Release No. 88608 (April 8, 2020), 85 FR 20743 (April 14, 2020).

¹⁴ The Central Repository, as defined in the CAT NMS Plan, means "the repository responsible for the receipt, consolidation, and retention of all information reported to the CAT pursuant to SEC Rule 613 and this Agreement." See CAT NMS Plan, *supra* note 3, at Section 1.1.

¹⁵ See Notice, *supra* note 4, at 6649-50. On February 3, 2020, the Participants filed a request for exemptive relief from the CAT NMS Plan requirement that Participants, through their Compliance Rules, require Industry Members to record and report to the Central Repository the account number, the date account opened, and the account type for individual customers in circumstances in which an Industry Member uses an established trading relationship for the individual customer. Instead, the Participant would require Industry Members to record and report to the Central Repository for the original receipt or origination of an order: (i) The relationship

²⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The CAT NMS Plan was approved by the Commission, as modified, on November 15, 2016. See Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016).

⁴ See Securities Exchange Act Release No. 88103 (January 30, 2020), 85 FR 6640 ("Notice").

⁵ See Securities Exchange Act Release No. 88445, 85 FR 17140 (March 26, 2020).

requirements so Industry Members would not be required to report to the Central Repository dates of birth, social security numbers, or account numbers for individuals.¹⁶

The Exchange also proposes to amend the Exchange's Compliance Rule to facilitate the retirement of certain existing regulatory systems, specifically the Financial Industry Regulatory Authority, Inc.'s ("FINRA") Order Audit Trail System, by adding additional data elements to the CAT reporting requirements for Industry Members,¹⁷ additional reporting requirements for alternative trading systems,¹⁸ and additional data elements related to OTC Equity Securities¹⁹ that FINRA currently receives from alternative trading systems that trade OTC Equity Securities.²⁰

III. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act²¹ to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission's analysis of

identifier instead of the account number, (ii) the "account type" as a "relationship", and (3) the account effective date instead of the "date account opened." See Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemption from Certain Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to Granularity of Timestamps and Relationship Identifiers (Feb. 3, 2020).

¹⁶ See Notice, *supra* note 4, at 6650. The Participants requested and have received exemptive relief from the requirement of Section 6.4(d)(ii)(C) of the CAT NMS Plan for the Participants, in their Compliance Rules, to require their members to provide dates of birth, account numbers and social security numbers for individuals to the CAT. See Securities Exchange Act Release No. 88393 (March 17, 2020), 85 FR 16152 (March 20, 2020). See also Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemptive Relief from Certain Provisions of the CAT NMS Plan related to Social Security Numbers, Dates of Birth and Account Numbers (Jan. 29, 2020).

¹⁷ See Notice, *supra* note 4, at 6641–42.

¹⁸ See Notice, *supra* note 4, at 6642–44.

¹⁹ OTC Equity Security, as defined in the CAT NMS Plan, means any equity security, other than an NMS Security, subject to prompt last sale reporting rules of a registered national securities association and reported to one of such association's equity trade reporting facilities. See CAT NMS Plan, *supra* note 3, at Section 1.1.

²⁰ *Id.* at 6644.

²¹ 15 U.S.C. 78s(b)(2)(B).

whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,²² the Commission is providing notice of the grounds for possible disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act,²³ which requires, among other things, that the rules of a national securities exchange be "designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade," and "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."²⁴ The Commission believes that several of the proposed rule changes are not consistent with the CAT NMS Plan or exemptive relief that has been granted as of the date of this Order.

IV. Commission's Solicitation of Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5)²⁵ or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4 under the Act,²⁶ any request for an opportunity to make an oral presentation.²⁷

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by May 26, 2020. Any

²² 15 U.S.C. 78s(b)(2)(B).

²³ 15 U.S.C. 78f(b)(5).

²⁴ 15 U.S.C. 78f(b)(5).

²⁵ 15 U.S.C. 78f(b)(5).

²⁶ 17 CFR 240.19b–4.

²⁷ Section 19(b)(2) of the Exchange Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

person who wishes to file a rebuttal to any other person's submission must file that rebuttal by June 9, 2020. 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. Please include File Numbers SR–CboeEDGX–2020–005 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–2020–005. 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 (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeEDGX–2020–005 and should be submitted on or before May 26, 2020. Rebuttal comments should be submitted by June 9, 2020.

²⁸ 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁸

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88776; File No. SR-NYSE-2020-17]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving a Proposed Rule Change To Amend Its Rules To Add New Rule 7.19

April 29, 2020.

I. Introduction

On March 10, 2020, New York Stock Exchange LLC (the “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to provide members certain optional risk settings under proposed Rule 7.19. The proposed rule change was published for comment in the *Federal Register* on March 18, 2020.³ The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

In order to assist member organizations’ efforts to manage their risk, the Exchange proposes to amend its rules to add new Rule 7.19 (Pre-Trade Risk Controls) to establish a set of pre-trade risk controls by which Entering Firms⁴ and their designated Clearing Firms⁵ may set credit limits and other pre-trade risk controls for an Entering Firm’s trading on the Exchange and authorize the Exchange to take action if those credit limits or other pre-trade risk controls are exceeded.⁶

Proposed Rule 7.19(a) would set forth the definitions that would be used for purposes of the Rule. In addition to the defined terms of “Entering Firm” and “Clearing Firm,” as described above, the Exchange proposes the following definitions:

- The term “Single Order Maximum Notional Value Risk Limit” would mean a pre-established maximum dollar amount for a single order before it can be traded.
- The term “Single Order Maximum Quantity Risk Limit” would mean a pre-established maximum number of shares that may be included in a single order before it can be traded.
- The term “Gross Credit Risk Limit” would mean a pre-established maximum daily dollar amount for purchases and sales across all symbols, where both buy and sell orders are counted as positive values. For purposes of calculating the Gross Credit Risk Limit, unexecuted orders in the Exchange Book,⁷ orders routed on arrival pursuant to Rule 7.37(a)(1), and executed orders are included.

Proposed Rule 7.19(b) would set forth the Pre-Trade Risk Controls that would be available to Entering Firms and Clearing Firms. Under proposed Rule 7.19(b)(1), an Entering Firm may select one or more of the following optional pre-trade risk controls with respect to its trading activity on the Exchange: (i) Gross Credit Risk Limits; (ii) Single Order Maximum Notional Value Risk Limits; and (iii) Single Order Maximum Quantity Risk Limits, which would collectively be referred to as the “Pre-Trade Risk Controls.”

In addition, under proposed Rule 7.19(b)(2)(A), an Entering Firm that does not self-clear may designate its Clearing Firm to (i) view any Pre-Trade Risk Controls set by the Entering Firm, or (ii) set one or more Pre-Trade Risk Controls on the Entering Firm’s behalf, or both. Proposed Rule 7.19(b)(2)(B) provides

add new Rule 7.19 relating to pre-trade risk controls on November 27, 2019. See Securities Exchange Act Release No. 87715 (December 11, 2019), 84 FR 68995 (December 17, 2020) (Notice of Filing) (SR-NYSE-2019-68) (“Original Filing”). The Exchange withdrew the Original Filing and filed this proposed rule change as its replacement. Comments received on the Original Filing are available on the Commission’s website at <https://www.sec.gov/comments/sr-nyse-2019-68/srnyse201968.htm>. This filing is substantially the same as the Original Filing and proposes the same functionality. It differs because it includes proposed Commentary .02 through .04, which provides additional detail specific to Floor Brokers and Designated Market Makers, and makes minor, clarifying changes to the proposed rule text as compared to the Original Filing.

⁷ The term “Exchange Book” is defined in Rule 1.1(k) to refer to the Exchange’s electronic file of orders, which contains all orders entered on the Exchange.

that an Entering Firm would be able to view any Pre-Trade Risk Controls that its Clearing Firm sets with respect to the Entering Firm’s trading activity on the Exchange. According to the Exchange, because both an Entering Firm and Clearing Firm (if so designated by the Entering Firm) would be able to access information about Pre-Trade Risk Controls, this mechanism would foster transparency between an Entering Firm and its Clearing Firm regarding which Pre-Trade Risk Control limits may have been set.⁸ For example, if an Entering Firm designates its Clearing Firm to view the Pre-Trade Risk Controls set by that Entering Firm, its Clearing Firm may determine that it does not need to separately set Pre-Trade Risk Controls on behalf of such Entering Firm.

Because the Entering Firm is the member organization that is entering orders on the Exchange, the Exchange will not take action based on a Clearing Firm’s instructions about the Entering Firm’s trading activities on the Exchange without first receiving consent from the Entering Firm. Accordingly, proposed Rule 7.19(b)(2)(C) would provide that if an Entering Firm designates a Clearing Firm to set Pre-Trade Risk Controls for the Entering Firm, the Entering Firm would be consenting to the Exchange taking certain prescribed actions (discussed further below) with respect to the Entering Firm’s trading activity as provided for in proposed Rules 7.19(c) and (d), described below. The Exchange would consider an Entering Firm to provide such consent by authorizing a Clearing Firm to enter Pre-Trade Risk Controls via the risk management tool that will be provided to Entering Firms in connection with this proposed rule change. Once such authorization is provided by the Entering Firm, the Clearing Firm would have access to the Pre-Trade Risk Controls that the Entering Firm designates. The proposed Rule makes clear that by designating a Clearing Firm to set limits on its trading activities, the Entering Firm will have authorized the Exchange to act pursuant to the Clearing Firm’s instructions if the limits set by the Clearing Firm are breached.

Proposed Rule 7.19(b)(3) would set forth how the Pre-Trade Risk Controls could be set or adjusted. Proposed Rule 7.19(b)(3)(A) would provide that Pre-Trade Risk Controls may be set before the beginning of a trading day and may be adjusted during the trading day. Proposed Rule 7.19(b)(3)(B) would provide that Entering Firms or Clearing Firms may set Pre-Trade Risk Controls

⁸ See Notice, *supra* note 3, at 15527.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 88376 (March 12, 2020), 85 FR 15526 (“Notice”).

⁴ The Exchange proposes to define the term “Entering Firm” to mean a member organization that either has a correspondent relationship with a Clearing Firm whereby it executes trades and the clearing function is the responsibility of the Clearing Firm or clears for its own account. See proposed Rule 7.19(a)(1).

⁵ The Exchange proposes to define the term “Clearing Firm” to mean a member organization that acts as principal for clearing and settling a trade, whether for its own account or for an Entering Firm. See proposed Rule 7.19(a)(2).

⁶ See Notice, *supra* note 3, at 15526. The Exchange initially filed a proposed rule change to