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For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

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[FR Doc. 2018–21681 Filed 10–4–18; 8:45 am]

BILLING CODE 8011–01–P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84327; File No. SR–CboeEDGX–2018–041]

### Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt a New Order Type Called the MidPoint Discretionary Order (“MDO”) Under Paragraph (g) of Exchange Rule 11.8 and To Amend the Definition of the Super Aggressive Instruction Under Paragraph (n)(2) of Exchange Rule 11.6

October 1, 2018.

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 19, 2018, Cboe EDGX Exchange, Inc. (the “Exchange” or “EDGX”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b–4(f)(6)(iii) thereunder,<sup>4</sup> which renders it effective upon filing with the Commission. 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

The Exchange is proposing to adopt a new order type called the MidPoint Discretionary Order (“MDO”) under paragraph (g) of Exchange Rule 11.8 and to amend the definition of the Super Aggressive instruction under paragraph (n)(2) of Exchange Rule 11.6.

The text of the proposed rule change is available at the Exchange’s website at [www.markets.cboe.com](http://www.markets.cboe.com), at the principal office of the Exchange, 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 parts 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 adopt a new order type known as the MDO under new paragraph (g) of Exchange Rule 11.8 and to amend the definition of the Super Aggressive instruction under paragraph (n)(2) of Exchange Rule 11.6.

##### Proposed MDOs on EDGX

MDOs are designed to exercise discretion to execute to the midpoint of the NBBO and provide price improvement to contra-side orders over the NBBO. The proposed MDO would function similarly to the MDO offered by EDGA,<sup>5</sup> but would also include certain aspects that mirror functionality currently available through the Discretionary Pegged Order and MPL–ALO Order offered by NYSE Arca, as well as the Discretionary Peg Order offered by IEX.<sup>6</sup> The core functionality

<sup>5</sup> See EDGA Rule 11.8(e).

<sup>6</sup> See NYSE Arca Rule 7.31–E(h)(3) (defining the Discretionary Pegged Order). See also Securities Exchange Act Release No. 78181 (June 28, 2016), 81 FR 43297 (July 1, 2016) (order approving the Discretionary Pegged Order). See NYSE Arca Rule 7.31–E(d)(3)(F). See IEX Rule 11.190(a)(3) (defining Pegged Orders and a non-displayed order which

of the proposed MDO, EDGA’s MDO, NYSE Arca’s Discretionary Pegged Order, and IEX’s Discretionary Peg Order would be the same—being pegged to the NBBO, as applicable, with discretion to execute to the midpoint of the NBBO.

*Proposed Operation.* An MDO would be defined as a Limit Order<sup>7</sup> that is executable at the National Best Bid (“NBB”) for an order to buy or the National Best Offer (“NBO”) for an order to sell while resting on the EDGX Book,<sup>8</sup> with discretion to execute at prices to and including the midpoint of the NBBO. Upon entry, an MDO will only execute against resting orders that include a Super Aggressive instruction<sup>9</sup> priced at the MDO’s pegged price if the MDO also contains a Displayed instruction<sup>10</sup> and against orders with a Non-Displayed Swap (“NDS”) instruction<sup>11</sup> priced at the MDO’s pegged price or within its discretionary range. As a result, an MDO will not act as a liquidity remover upon entry against resting orders at its pegged price or at any price within its discretionary range. Should a resting contra-side order within the MDO’s discretionary range not include an NDS instruction, the incoming MDO will be placed on the EDGX Book and its discretionary range shortened to equal the limit price of the contra-side resting order. Likewise, where an incoming order with a Post Only instruction<sup>12</sup> does not remove

may be pegged to the inside quote on the same side of the market with discretion to the midpoint of the NBBO, *i.e.*, Discretionary Peg orders). See also Securities Exchange Act Release No. 78101 (June 17, 2016), 81 FR 41141 (June 23, 2016) (order approving the IEX exchange application, which included IEX’s Discretionary Peg Orders and Discretionary Peg Order).

<sup>7</sup> See Exchange Rule 11.8(b). In sum, a Limit Order is an order to buy or sell a stated amount of a security at a specified price or better.

<sup>8</sup> See Exchange Rule 1.5(d).

<sup>9</sup> See Exchange Rule 11.6(n)(2).

<sup>10</sup> Pursuant to the terms of the Super Aggressive instruction, such orders execute against incoming orders with a Post Only instruction only when such orders also contain a Displayed instruction. See Exchange Rule 11.6(n)(7). As noted below, the Exchange also proposes to amend the definition of the Super Aggressive instruction to reflect the addition of the MDO order type. Further, although an order with a Super Aggressive instruction resting at the pegged price of an MDO should be a rare occurrence, because orders with a Super Aggressive instruction route to locking or crossing quotes at away Trading Centers and an MDO is pegged to the NBBO (*i.e.*, the locking price), it is possible to have an order with a Super Aggressive instruction at such price based on the Exchange’s matching and routing logic as well as the Exchange’s calculation of the NBBO and processing of quote updates. See, *e.g.*, Securities Exchange Act Release No. 74072 (January 15, 2015), 80 FR 3282 (January 22, 2015) (SR–EDGX–2015–02) (describing the Exchange’s calculation of the NBBO, including router feedback and other details).

<sup>11</sup> See Exchange Rule 11.6(n)(7).

<sup>12</sup> See Exchange Rule 11.6(n)(4).

<sup>14</sup> 17 CFR 200.30–3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b–4.

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

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

liquidity on entry against a resting MDO, the discretionary range of the resting MDO will be shortened to equal the limit price of the incoming contra-side order with a Post Only instruction. Shortening the MDO's discretionary range in such circumstances is intended to avoid the discretionary range extending past the contra-side order's limit price, which could create a price priority issue should a later order be entered and be eligible to execute against the resting MDO within its discretionary range but at a price that extends beyond the contra-side order with a Post Only instruction. Once resting on the EDGX Book, an MDO will only act as a liquidity provider against all incoming orders that are executable at the resting MDO's pegged price or at any price within the resting MDO's discretionary range.<sup>13</sup>

An MDO's pegged price and discretionary range would be bound by its limit price. For example, an MDO to buy or sell with a limit price that is less than the prevailing NBB or higher than the prevailing NBO, respectively, would be posted to the EDGX Book at its limit price. The pegged prices of an MDO are derived from the NBB or NBO, and cannot independently establish or maintain the NBB or NBO. An MDO will exercise the least amount of price discretion necessary from its pegged price to its discretionary price. An MDO in a stock priced at \$1.00 or more can only be executed in sub-penny increments when it executes at the midpoint of the NBBO.

Notwithstanding that an MDO may be a Limit Order and include a discretionary range, its operation and available modifiers would be limited to its description under proposed Rule 11.8(g). Exchange rules describe Discretionary Range as an instruction the User may attach to an order to buy (sell) a stated amount of a security at a specified, displayed or non-displayed ranked price with discretion to execute up (down) to another specified, non-displayed price.<sup>14</sup> The discretionary range of an MDO would not operate like the Discretionary Range instruction in certain respects. For instance, orders that include a Discretionary Range instruction may become a liquidity remover for fee purposes despite being posted to the EDGX Book (*i.e.*, a "liquidity swap") in certain scenarios that are outlined in Exchange Rule 11.6(d).<sup>15</sup> The Exchange does not

propose for MDOs executed within their discretionary range to engage in the liquidity swapping scenarios set forth under the description of the Discretionary Range instruction under Exchange Rule 11.6(d), including where an MDO's displayed or non-displayed ranked price is equal to an incoming order with a Post Only instruction that does not remove liquidity on entry pursuant to Exchange Rule 11.6(n)(4).<sup>16</sup>

While MDOs would function similarly to the MDO offered by EDGA,<sup>17</sup> it would also include certain aspects that mirror functionality currently available through the Discretionary Pegged Order and MPL-ALO Order offered by NYSE Arca, as well as the Discretionary Peg Order offered by IEX.<sup>18</sup> The core functionality of the proposed MDO, EDGA's MDO, NYSE Arca's Discretionary Pegged Order, and IEX's Discretionary Peg Order would be the same—being pegged to the NBBO, as applicable, with discretion to execute to the midpoint of the NBBO. The similarities and differences amongst these order types are explained below.

*Similarities to the EDGA MDO.* The following aspects of the proposed MDO's functionality are identical to functionality of MDOs on EDGA.<sup>19</sup> The proposed EDGX MDO's pegged price and discretionary range would be bound by its limit price. An MDO to buy or sell with a limit price that is less than the prevailing NBB or higher than the prevailing NBO, respectively, would be posted to the EDGX Book at its limit price. The pegged prices of an MDO would be derived from the NBB or NBO, and cannot independently establish or maintain the NBB or NBO. An MDO in a stock priced at \$1.00 or more would only be executed in sub-penny increments when it executes at the midpoint of the NBBO.<sup>20</sup>

are: (i) To the extent an order with a Discretionary Range instruction's displayed or non-displayed ranked price is equal to an incoming order with a Post Only instruction that does not remove liquidity on entry pursuant to Exchange Rule 11.6(n)(4), the order with a Discretionary Range instruction will remove liquidity against such incoming order; and (ii) any contra-side order with a time-in-force other than Immediate-or-Cancel or Fill-or-Kill and a price in the discretionary range but not at the displayed or non-displayed ranked price will be posted to the EDGX Book and then the Discretionary Order will remove liquidity against such posted order.

<sup>16</sup> *Id.*

<sup>17</sup> See EDGA Rule 11.8(e).

<sup>18</sup> See *supra* note 6.

<sup>19</sup> See EDGA Rule 11.8(e).

<sup>20</sup> Unlike the EDGA MDO, the proposed EDGX MDO would not execute upon entry at sub-penny prices pursuant to Exchange Rule 11.10(a)(4)(D) because EDGX MDOs will only be eligible for execution upon entry against orders with a Super Aggressive instruction at its pegged price or against orders with an NDS instruction priced at its pegged

price or within its discretionary range. Such execution will occur at the price of the contra-side order and not at a sub-penny increment. See, e.g., Securities Exchange Act Release No. 82087 (November 15, 2017), 82 FR 55472 (November 21, 2017) (Notice of Filing and Immediate Effectiveness of SR-BatsEDGA-2017-29) (describing, among other things, when an MDO on EDGA may execute at a non-midpoint or sub-penny midpoint).

<sup>21</sup> See EDGA Rule 11.8(e)(1).

<sup>22</sup> Each of these time-in-force instructions are defined in Exchange Rule 11.6(q).

<sup>23</sup> The terms Round Lot and Mixed Lot are defined in Exchange Rule 11.6(s). However, unlike on EDGA, MDOs may not be entered on EDGX as an Odd Lot. See EDGA Rule 11.8(e)(2). The term Odd Lot is defined in Exchange Rule 11.6(s).

<sup>24</sup> See Exchange Rule 11.6(h) for a description of the Minimum Execution Quantity instruction. The Exchange understands that EDGA plans to submit a proposed rule filing to allow non-displayed EDGA MDOs to also include a Minimum Execution Quantity instruction.

<sup>25</sup> The terms Early Trading Session, Pre-Opening Session, Regular Session, and Post-Closing Session are defined in Exchange Rule 1.5(ii), (s), (hh), and (r), respectively. See also EDGA Rule 11.8(e)(3).

<sup>26</sup> See Exchange Rule 1.5(ee).

<sup>27</sup> The terms Displayed and Non-Displayed are defined in Exchange Rule 11.6(e). See also EDGA Rule 11.8(e)(4).

<sup>28</sup> See Exchange Rule 11.6(a). See also EDGA Rule 11.8(e)(4).

<sup>29</sup> See Exchange Rule 11.6(a)(1).

<sup>30</sup> See, e.g., Exchange Rule 11.8(b)(4).

<sup>31</sup> See EDGA Rule 11.8(e)(5).

<sup>13</sup> See *infra* note 15 and accompanying text.

<sup>14</sup> See Exchange Rule 11.6(d).

<sup>15</sup> The scenarios under Exchange Rule 11.6(d) in which an order with a Discretionary Range may liquidity swap but the proposed MDO would not

of Regulation NMS under the Act (the "Limit Up-Limit Down Plan").<sup>32</sup> Pursuant to Exchange Rule 11.10(a)(3), an MDO to buy would be re-priced to the Upper Price Band<sup>33</sup> where the price of the Upper Price Band moves below an existing Protected Bid.<sup>34</sup> An MDO to sell will be re-priced to the Lower Price Band<sup>35</sup> where the price of the Lower Price Band moves above an existing Protected Offer.<sup>36</sup> MDOs will only execute at their pegged prices and not within their Discretionary Ranges when: (i) The price of the Upper Price Band equals or moves below an existing Protected Bid; or (ii) the price of the Lower Price Band equals or moves above an existing Protected Offer. When the conditions in (i) or (ii) of the preceding sentence no longer exist, MDOs will resume trading against other orders in their Discretionary Range and being pegged to the NBBO.

Pursuant to proposed paragraph (7) of Rule 11.8(g), any unexecuted portion of an MDO that is resting on the EDGX Book would receive a new time stamp each time its pegged price is automatically adjusted in response to changes in the NBBO.<sup>37</sup>

Proposed paragraph (8) of Rule 11.8(g) would describe the operation of MDOs during a locked or crossed market.<sup>38</sup> With respect to an MDO with either a Displayed instruction or a Non-Displayed instruction, when the EDGX Book is crossed by another market, the MDO's pegged price will be automatically adjusted to the current NBO (for bids) or the current NBB (for offers) with no discretion to the midpoint of the NBBO. If an MDO displayed on the Exchange would be a Locking Quotation or Crossing Quotation,<sup>39</sup> the displayed price of the order will be automatically adjusted by the System to one Minimum Price Variation below the current NBO (for bids) or to one Minimum Price Variation above the current NBB (for offers) with no discretion to execute to the midpoint of the NBBO.

*Differences with the EDGA MDO.* As highlighted above, the proposed MDO would operate identically to EDGA's MDO<sup>40</sup> in nearly all respects, however,

as proposed, it will function differently in two areas. These differences are based on functionality included as part of NYSE Arca's Discretionary Pegged Order and MPL-ALO Order as well as IEX's Discretionary Pegged Order<sup>41</sup> and are designed to provide Users with increased control over which price points their order may execute upon entry as well as when the order would act as a liquidity provider or remover once resting on the EDGX Book. These differences are: (i) The proposed EDGX MDO would only execute upon entry against resting orders that include a Super Aggressive instruction priced at the MDO's pegged price (if the MDO also contained a Displayed instruction) and against orders with an NDS instruction priced at the MDO's pegged price or within its discretionary range; and (ii) the proposed EDGX MDO would not engage in liquidity swapping behavior once resting on the EDGX Book as other orders with a Discretionary Range instruction may do, including the EDGA MDO. As a preliminary note, once posted to the EDGX Book, the proposed MDO would share the same core functionality as EDGA's MDO, NYSE Arca's Discretionary Pegged Order and IEX's Discretionary Peg Order—executable at the NBB for an order to buy or the NBO for an order to sell, with discretion to execute at prices to and including the midpoint of the NBBO. Additional similarities with NYSE Arca's Discretionary Pegged Order and MPL-ALO Order as well as IEX's Discretionary Pegged Order are explained below.

First, an EDGX MDO would only execute upon entry against resting orders that include a Super Aggressive instruction priced at the MDO's pegged price if the MDO also contains a Displayed instruction and against orders with an NDS instruction priced at the MDO's pegged price or within its discretionary range. This would allow the MDO to ensure it would act as a liquidity adder even when executing upon entry. Orders with either a Super Aggressive instruction or NDS instruction are willing to engage in a liquidity swap with an incoming order priced at its limit price.<sup>42</sup> In such case, an incoming MDO to buy (sell) would execute against an order to sell (buy) with either a Super Aggressive instruction or NDS instruction priced at the NBB (NBO). Similarly, an incoming MDO to buy (sell) would execute against an order to sell (buy) with an NDS instruction priced within its

discretionary range. In both cases, the incoming MDO would act as the liquidity adder and the resting order with either a Super Aggressive or NDS instruction would act as the liquidity remover. In contrast, on EDGA an incoming MDO with a Displayed instruction will also execute on entry within its discretionary range against an order with a Super Aggressive instruction, not just at the price of the NBB (for a sell MDO) or NBO (for a buy MDO).

The Exchange believes it is reasonable to execute resting orders with an NDS instruction within the incoming MDO's discretionary range but not execute orders with a Super Aggressive instruction within the incoming MDO's discretionary range due to the different purposes of each order instruction. Orders including the Super Aggressive instruction will route to an away Trading Center that displays an order that either locks or crosses the limit price of the Super Aggressive order. Pursuant to Rule 11.6(n)(2), orders with a Super Aggressive instruction will likewise execute against incoming orders with a Post Only instruction and a Displayed instruction that are priced equal to its limit price. In general, Users of the Super Aggressive instruction tend to use it for best execution purposes because the order instruction enables the order to be routed away or executed locally when an order is displayed at a price equal to or better than the order's limit price. Furthermore, a User submitting an order with a Super Aggressive instruction wishes to execute against displayed liquidity either at its price or better, and if priced within the discretionary range of an incoming MDO order, that MDO would be displayed not at the price of the order with a Super Aggressive instruction, but rather the NBB/NBO to which it is pegged. For best execution, the intention of a User submitting an order with a Super Aggressive instruction is to ensure an execution at the best available price of a displayed order on another Trading Center or against an incoming order that would have been displayed on the EDGX Book but for the execution and is willing to engage in a liquidity swap on the Exchange to ensure an execution. Conversely, an order with an NDS instruction is not routable and engages in a liquidity swap only to execute against an incoming order that would lock it. Orders with an NDS instruction and Super Aggressive instruction differ on how they interact with contra-side orders—orders with a Super Aggressive instruction execute against displayed liquidity only while

<sup>32</sup> See Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the "Limit Up-Limit Down Release"). See also EDGA Rule 11.8(e)(6).

<sup>33</sup> As defined in the Limit Up-Limit Down Plan.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> See EDGA Rule 11.8(e)(7).

<sup>38</sup> See EDGA Rule 11.8(e)(8).

<sup>39</sup> The terms Locking Quotation or Crossing Quotation are defined in Exchange Rule 11.6(g) and (c), respectively.

<sup>40</sup> See EDGA Rule 11.8(e).

<sup>41</sup> See *supra* note 6.

<sup>42</sup> See paragraphs (n)(2) and (7) of Exchange Rule 11.6.

an order with an NDS instruction will execute against an order that locks it, regardless of whether the contra-side order would have been displayed. Therefore, the Exchange believes it is reasonable to execute an incoming MDO against a resting order with an NDS instruction priced within its discretionary range as the NDS order is aggressively seeking to execute against incoming orders at its limit price and is willing to act as a liquidity remover to do so.

The above-proposed behavior is similar to the operation of NYSE Arca's MPL-ALO order, which also does not act as a liquidity remover upon entry.<sup>43</sup> Specifically, NYSE Arca's MPL-ALO order will only execute upon entry against a resting order that includes a Non-Display Remove modifier which, like the NDS and Super Aggressive instructions, enables that order to switch from a liquidity adder to a remover. This is also similar to NYSE Arca's ALO Order which will also only trade with resting contra-side orders that include a Non-Display Remove Modifier.<sup>44</sup>

Second, EDGA's MDO would perform a liquidity swap when executed within its Discretionary Range as set forth in EDGA Rule 11.6(d). The proposed EDGX MDO would not. However, not performing a liquidity swap within the discretionary range is identical to the operation of NYSE Arca's Discretionary Pegged Order.<sup>45</sup> The proposed MDO would also not liquidity swap at its pegged price once resting on the EDGX Book. This is similar to NYSE Arca's ALO Order.<sup>46</sup>

*Order Priority.* The Exchange also proposes to amend Exchange Rule 11.9 to describe the execution priority of the proposed MDO when it is resting on the EDGX Book. The proposed priority of MDOs on EDGX would be identical to the priority of MDOs on EDGA.<sup>47</sup> In general, where orders to buy (sell) are

entered into the System at the same price, the order clearly established as the first entered into the System at such particular price shall have precedence at that price, up to the number of shares of stock specified in the order. Under paragraph (a)(2)(A) of Rule 11.9, the System currently ranks equally priced trading interest resting on the EDGX Book in time priority in the following order: The portion of a Limit Order with a Displayed instruction; Limit Orders with a Non-Displayed instruction; orders with a Pegged and Non-Displayed instruction; the Reserve Quantity of Limit Orders; Limit Orders executed within their Discretionary Range; and Supplemental Peg Orders. For purposes of MDO priority, the Exchange proposes that the pegged price of an MDO, whether displayed or non-displayed, be treated like a Limit Order that is resting on the EDGX Book. Accordingly, the pegged prices of MDOs displayed on the EDGX Book will have the same priority as displayed Limit Orders. Likewise, the pegged price of an MDO that is not displayed will have the same priority as Limit Orders with a Non-Displayed instruction, and therefore will not be treated for priority purposes like other orders with a Pegged and Non-Displayed instruction. As such, the Exchange proposes to amend paragraph (a)(2)(D)(i) of Rule 11.9 to specify that the pegged prices of an MDO will be treated as a Limit Order for purposes of order priority under Exchange Rule 11.9(a)(2)(A). The Exchange proposes to amend paragraph (a)(2)(A)(v) of Rule 11.9 to specify that MDOs executed within their Discretionary Range maintain the same priority as Limit Orders executed within their Discretionary Range. The above proposed priority sequence is consistent with the priority of MDOs on EDGA.<sup>48</sup>

Paragraph (a)(2)(B) of Rule 11.9 sets forth separate priority for orders executed at the midpoint of the NBBO. Where orders to buy (sell) are priced at the midpoint of the NBBO, the order clearly established as the first shall have precedence at the mid-point of the NBBO, up to the number of shares of stock specified in the order. Orders at the midpoint of the NBBO resting on the EDGX Book are executed in following order: Limit Orders to which the Display-Price Sliding instruction has been applied; Limit Orders with a Non-Displayed instruction; Orders with a Pegged instruction; MidPoint Peg Orders; the Reserve Quantity of Limit Orders; and Limit Orders executed within their Discretionary Range. Like

proposed above for the general priority of orders, the Exchange proposes to amend paragraph (a)(2)(B)(vi) of Rule 11.9 to specify that MDOs executed within their Discretionary Range at the midpoint of the NBBO shall have the same priority as Limit Orders executed within their Discretionary Range.

*Examples.* The following examples illustrate the operation of the proposed MDO when resting on the EDGX Book. Assume the NBBO is \$10.00 by \$10.04. There is a displayed MDO to buy at \$10.02 on the EDGX Book that is pegged to the NBB at \$10.00 with discretion to execute to \$10.02, the midpoint of the NBBO. A Limit Order to buy at \$10.00 with a Displayed instruction is then entered. Next, a Limit Order to sell at \$10.00 with a Non-Displayed instruction is entered. The Limit Order to sell would execute against the MDO to buy at \$10.00, with the MDO exercising no discretion. The displayed MDO has time priority ahead of the displayed Limit order to buy. The pegged price of a displayed or non-displayed MDO has the same priority as displayed or non-displayed Limit Orders, respectively, that are resting on the EDGX Book at the same price.

Assume the same facts as above but that the MDO instead included a Non-Displayed instruction. In that case, the Limit Order to sell would execute as a liquidity remover against the displayed Limit Order to buy at \$10.00 because displayed orders always have priority over non-displayed orders at the same price.

The following example illustrates the operation of a resting MDO on the EDGX Book and an incoming Limit Order that also includes a Post Only instruction. Assume again the NBBO is \$10.00 by \$10.04 resulting in a midpoint of \$10.02. There is a resting MDO to buy at \$10.02 displayed on the EDGX Book that is pegged to the NBB at \$10.00 with discretion to execute to \$10.02, the midpoint of the NBBO. A Limit Order to sell at \$10.01 with a Non-Displayed instruction and Post Only instruction is then entered. No execution occurs. The MDO to buy resting on the EDGX Book would only act as a liquidity provider and the incoming order to sell with Post Only instruction will not remove liquidity. Therefore, the MDO to buy resting on the EDGX Book would have its discretionary range shortened from \$10.02 to \$10.01, which is the price of the incoming Limit Order to sell. The Limit Order with a Non-Displayed instruction to sell will be posted to the EDGX Book at \$10.01, its limit price.

The MDO's discretionary range is shortened to avoid the following priority issue that may result from an

<sup>43</sup> See NYSE Arca Rule 7.31-E(d)(3)(F) and (e)(2)(B)(iv) (stating that, unless the resting order includes a Non-Display Remove modifier which enable that order to switch from a liquidity adder to a remover, an ALO order will only trade with arriving contra-side interest).

<sup>44</sup> See NYSE Arca Rule 7.31-E(e)(2). The only time an ALO Order will execute upon entry is when the resting order includes the Non-Display Remove Modifier.

<sup>45</sup> See NYSE Arca Rule 7.31-E(h)(3) (the rule does not provide for a liquidity swap to occur within the order's discretionary range).

<sup>46</sup> See NYSE Arca Rule 7.31-E(e)(2) (stating that an ALO order will not remove liquidity from the NYSE Arca Book, and will be re-priced to avoid a locked or crossed market). An ALO order will only act as a liquidity taker where it crosses an order resting on the NYSE Arca Book. Because it is pegged to the NBBO, the proposed MDO would never cross an order resting on the EDGX Book.

<sup>47</sup> See generally EDGA Rule 11.9(a).

<sup>48</sup> See EDGA Rule 11.9(a)(2)(A)(vi) and (a)(2)(C)(i).

internally crossed market issue. Assume a Limit Order to sell at \$10.02 with a Non-Displayed instruction is subsequently entered. Absent the shortening of the buy MDO's discretionary range to \$10.01, the sell Limit Order at \$10.02 would have executed against the resting buy MDO with discretion to \$10.02, creating a priority issue for the first sell Limit Order that is ranked at \$10.01.

Assume the same facts as the preceding example, but that the first sell Limit Order with a Post Only instruction to sell was priced at \$9.99. In that case, the Limit Order to sell would execute against the resting MDO to buy at \$10.00 in accordance with Exchange Rule 11.6(n)(4), receiving one cent of price improvement. The MDO would remain the liquidity provider and the Limit Order to sell would act as the liquidity remover.

The following examples illustrate the operation of the proposed MDO upon entry. Assume again the NBBO is \$10.00 by \$10.04 resulting in a midpoint of \$10.02. There is a non-displayed order with an NDS instruction to sell at \$10.00 resting on the EDGX Book. An MDO to buy with a Displayed instruction is entered that, if posted to the EDGX Book, would be pegged to the NBB at \$10.00 with discretion to execute to \$10.02, the midpoint of the NBBO. In such case, the MDO to buy would execute against the resting order with an NDS instruction to sell at \$10.00 because the MDO's pegged price equals the limit price of the order with an NDS instruction. The incoming MDO would act as the liquidity adder and the order with an NDS instruction would act as the liquidity remover. The same result would occur if the order to sell resting on the EDGX Book included a Super Aggressive instruction rather than an NDS instruction. However, if the order to sell resting on the EDGX book did not include either a Super Aggressive instruction or NDS instruction, no execution would occur and the MDO order to buy would be posted to the EDGX Book at \$10.00 with its discretionary range shortened from \$10.02 to \$10.00, which is the price of the resting non-displayed order to sell.

Assume the same facts as the preceding example but that the non-displayed order with an NDS instruction to sell resting on the EDGX Book is priced at \$10.01 rather than \$10.00. The resting order with an NDS instruction to sell is priced within the discretionary range of the incoming MDO to buy. The MDO to buy would execute against the resting order with an NDS instruction to sell at \$10.01 because the MDO's discretionary range

includes a price equal to the limit price of the order with an NDS instruction. The incoming MDO would act as the liquidity adder and the order with an NDS instruction would act as the liquidity remover.

Assume instead that the non-displayed order to sell resting on the EDGX Book did not include an NDS instruction. No execution would occur and the order to sell would remain on the EDGX Book. The incoming MDO to buy would be posted to the EDGX Book at \$10.00 with its discretionary range shortened from \$10.02 to \$10.01, which is the price of the resting non-displayed order to sell. Like in an above example, the MDO's discretionary range is shortened to avoid the following priority issue that may result from an internally crossed market issue. Assume a Limit Order to sell at \$10.02 with a Non-Displayed instruction is subsequently entered. Absent the shortening of the buy MDO's discretionary range to \$10.01, the sell Limit Order at \$10.02 would have executed against the resting buy MDO with discretion to \$10.02, creating a priority issue for the first sell Limit Order that is ranked at \$10.01.

Assume instead that the order to sell at \$10.01 resting on the EDGX Book included a Super Aggressive instruction rather than an NDS instruction. No execution would occur because the order with a Super Aggressive instruction is priced within the discretionary range of the incoming MDO. The order with a Super Aggressive instruction would remain on the EDGX Book until it is eligible to be routed away or executed. The incoming MDO would be posted to the EDGX Book at \$10.00 with its discretionary range shortened from \$10.02 to \$10.01, which is the price of the resting non-displayed order to sell with a Super Aggressive instruction.

#### Proposed Amendment to Super Aggressive Instruction

In addition to the adoption of MDOs, the Exchange proposes to amend Rule 11.6(n)(2), which defines the Super Aggressive instruction. Specifically, the current definition states that when any order with a Super Aggressive instruction is locked by an incoming order with a Post Only instruction and a Displayed instruction that does not remove liquidity pursuant to Rule 11.6(n)(4), the order with a Super Aggressive instruction is converted to an executable order and will remove liquidity against such incoming order. Consistent with the proposed operation of MDOs, the Exchange proposes to add reference to MDOs with a Displayed

instruction as another order against which a resting order with a Super Aggressive instruction will interact, converting to an executable order and removing liquidity against such order.

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>49</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>50</sup> in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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.

The proposed MDO would remove impediments to and promote just and equitable principles of trade because it would provide Users with an optional order type that is designed to exercise discretion to execute to the midpoint of the NBBO, enhancing order execution opportunities at the Exchange that provide price improvement opportunities over the NBBO. The proposed rule change would also remove impediments to and perfect the mechanism of a free and open market and a national market system by potentially increasing liquidity at the NBBO and to midpoint of the NBBO on the Exchange, thereby improving execution opportunities for market participants at these price points and enhancing the quality of the EDGX Book. The Exchange designed the proposed order type to include functionality that is included as part of similar order types offered by other exchanges to provide Users with increased control over which price points their order may execute upon entry as well as when the order would act as a liquidity provider or remover once resting on the EDGX Book.

As proposed, MDOs on the Exchange would operate similarly to NYSE Arca's Discretionary Pegged Orders and IEX's Discretionary Peg Order, except that both of the IEX and NYSE Arca order types include "crumbling quote" functionality and neither order type is able to be displayed on the applicable exchange's order book.<sup>51</sup>

The EDGX proposed MDO also operates identically to EDGA's MDO,<sup>52</sup> except in two scenarios. These differences are: (i) The proposed EDGX

<sup>49</sup> 15 U.S.C. 78f(b).

<sup>50</sup> 15 U.S.C. 78f(b)(5).

<sup>51</sup> See *supra* note 6.

<sup>52</sup> See EDGA Rule 11.8(e).

MDO would only execute upon entry against resting orders that include a Super Aggressive instruction priced at the MDO's pegged price if the MDO also contains a Displayed instruction and against orders with an NDS instruction priced at the MDO's pegged price or within its discretionary range; and (ii) the proposed EDGX MDO would not engage in liquidity swapping behavior as other orders with a Discretionary Range instruction may do, including the EDGA MDO. Ensuring that an EDGX MDO will act as a liquidity adder even upon entry promotes just and equitable principles of trade because Users of the proposed EDGX MDO would have greater control over their orders in exchange for providing enhanced execution opportunities at prices more aggressive than the midpoint of the NBBO to incoming contra-side orders when the MDO is posted to the EDGX Book. The proposed MDO would share the same core functionality as EDGA's MDO, NYSE Arca's Discretionary Pegged Order and IEX's Discretionary Peg Order—executable at the NBB for an order to buy or the NBO for an order to sell, with discretion to execute at prices to and including the midpoint of the NBBO.

The proposed differences with the EDGA MDO are based on NYSE Arca's ALO Order, MPL-ALO order and Discretionary Pegged order as well as IEX's Discretionary Peg Order and are designed to provide Users with additional control over their order upon entry as well as certainty that their order would act as a liquidity provider. Specifically, the proposed behavior is similar to the operation of NYSE Arca's MPL-ALO order which will also not act as a liquidity remover upon entry.<sup>53</sup> NYSE Arca's MPL-ALO order will only execute upon entry against a resting order that includes a Non-Display Remove modifier which, like the NDS and Super Aggressive instructions, enables that order to switch from a liquidity adder to a remover. This is also similar to NYSE Arca's ALO Order which will only execute upon entry when the resting order includes the Non-Display Remove Modifier.<sup>54</sup>

The proposed operation of the EDGX MDO enables it to act as a liquidity provider while increasing its opportunities to rest on the EDGX Book and seek to execute against incoming orders at prices equal to or more

aggressive than the midpoint of the NBBO. Therefore, the EDGX MDO promotes just and equitable principles of trade by increasing the potential price improvement opportunities for incoming orders that may execute against a resting MDO within its discretionary range. The proposed rule change would facilitate transactions in securities and improve trading within the national market system.

The Exchange believes it is reasonable to execute resting orders with an NDS instruction within the incoming MDO's discretionary range but not execute orders with a Super Aggressive instruction within the incoming MDO's discretionary range due to the different purposes of each order instruction. As stated above, Users of the Super Aggressive instruction tend to use it for best execution purposes because the order instruction enables the order to be routed away or executed locally when an order is displayed at a price equal to or better than the order's limit price. Conversely, an order with an NDS instruction is not routable and only executes against an incoming order that would lock it. The User of the NDS instruction is generally agnostic to whether the order is displayed on an away Trading Center or priced at the NBBO. It simply seeks to execute against an order that is priced at its limit price and engages in a liquidity swap to do so, even if the contra-side interest contains a Non-Displayed instruction.

Under the proposal and in accordance with Exchange Rule 11.9(a)(2)(A), when MDOs execute at their pegged displayed price, they would have the same priority as that of displayed Limit Orders. Similarly, when MDOs execute at their non-displayed pegged price, they would have the same priority as that of non-displayed Limit Orders. When MDOs execute within their Discretionary Range in general or at the midpoint of the NBBO, the Exchange proposes that they maintain the same priority as a Limit Order executed within its Discretionary Range. The Exchange believes the proposed priority is consistent with the Act because it continues to provide priority to displayed orders on the Exchange and to orders that are designed to provide liquidity at a set price level, such as the mid-point of the NBBO. Lastly, the Exchange notes that the proposed priority is identical to the priority for MDOs on EDGA.<sup>55</sup>

The Exchange's proposed modification to the Super Aggressive instruction will ensure that the definition of such instruction is

consistent with the proposed functionality of the MDO order type, as described above.

For the reasons set forth above, the Exchange believes the proposal removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. On the contrary, the Exchange believes the proposed MDO promotes inter-market competition because it will enable the Exchange to offer functionality similar to that offered by NYSE Arca and IEX.<sup>56</sup> The proposed EDGX MDO will improve competition because it provides enhanced execution opportunities at prices equal to or more aggressive than the midpoint of the NBBO to incoming contra-side orders, improving the overall competitiveness of the Exchange. The Exchange also believes the proposed rule change will not impact intra-market competition because it will be available to all Users. Therefore, the Exchange does not believe the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

No comments were solicited or received on the proposed rule change.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>57</sup> and Rule 19b-4(f)(6) thereunder.<sup>58</sup>

<sup>56</sup> See *supra* note 6.

<sup>57</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>58</sup> 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule

<sup>53</sup> See NYSE Arca Rule 7.31-E(d)(3)(F) and (e)(2)(B)(iv) (stating that, unless the resting order includes a Non-Display Remove modifier which enables that order to switch from a liquidity adder to a remover, an ALO order will only trade with arriving contra-side interest).

<sup>54</sup> See NYSE Arca Rule 7.31-E(e)(2).

<sup>55</sup> See EDGA Rule 11.9(a)(2).

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>59</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>60</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative upon filing, noting that use of MDOs on the Exchange is optional, similar functionality is already offered by other market centers, and operative delay waiver would allow the Exchange to make the proposed functionality available to Exchange Users more promptly. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.<sup>61</sup>

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

#### IV. Solicitation of Comments

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

##### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CboeEDGX-2018-041 on the subject line.

change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

<sup>59</sup> 17 CFR 240.19b-4(f)(6).

<sup>60</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>61</sup> For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

##### *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-2018-041. 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-2018-041, and should be submitted on or before October 26, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>62</sup>

**Eduardo A. Aleman,**  
Assistant Secretary.

[FR Doc. 2018-21680 Filed 10-4-18; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>62</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84323; File No. SR-BOX-2018-33]

### Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule on the BOX Options Market LLC Facility To Revise Certain Qualification Thresholds and Fees in Sections I.B.1, Primary Improvement Order, and I.B.2, BOX Volume Rebate

October 1, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 20, 2018, BOX Exchange LLC (the "Exchange") 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 Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. 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 the Substance of the Proposed Rule Change

The Exchange is filing with the Securities and Exchange Commission ("Commission") a proposed rule change to amend the Fee Schedule on the BOX Market LLC ("BOX") options facility. Changes to the fee schedule pursuant to this proposal will be effective upon filing. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at <http://boxexchange.com>.

#### 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

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

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

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

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