

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2021–119 and CP2021–121]

New Postal Products**AGENCY:** Postal Regulatory Commission.**ACTION:** Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* August 10, 2021.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:**Table of Contents**

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I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (<http://www.prc.gov>). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance

with the requirements of 39 CFR 3011.301.¹

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s)*: MC2021–119 and CP2021–121; *Filing Title*: USPS Request to Add Priority Mail Contract 716 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: August 2, 2021; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative*: Kenneth R. Moeller; *Comments Due*: August 10, 2021.

This Notice will be published in the **Federal Register**.

Erica A. Barker,
Secretary.

[FR Doc. 2021–16810 Filed 8–5–21; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92545; File No. SR–PEARL–2021–35]

Self-Regulatory Organizations; MIAx PEARL, LLC; Notice of Filing of Proposed Rule Change To Amend Exchange Rule 2616, Priority of Orders

August 2, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on July 20, 2021, MIAx PEARL, LLC (“MIAx Pearl” or “Exchange”) 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 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 filing a proposal to amend Exchange Rule 2616, Priority of Orders, to provide that an order will receive a new timestamp when its position is modified via a Cancel/Replace message during a Short Sale Period.³

The text of the proposed rule change is available on the Exchange's website at <http://www.miaxoptions.com/rule-filings/pearl> at MIAx Pearl's principal office, and at the Commission's Public Reference Room.

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

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

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

1. Purpose

The purpose of the proposed rule change is to amend Exchange Rule 2616, Priority of Orders, to provide that an order will receive a new timestamp when its position is modified via a Cancel/Replace message during a Short Sale Period. The proposed rule change applies to orders in equity securities traded on the Exchange's equity trading platform (referred to herein as “MIAx Pearl Equities”).

Exchange Rule 2614(e)(3) provides that only the price, sell long, sell short, or short exempt indicator, Max Floor of an order with a Reserve Quantity,⁴ and size terms of the order may be changed by a Cancel/Replace Message. If a User desires to change any other terms of an existing order the existing order must be

¹ See Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

¹⁵ U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ Exchange Rule 2614(g)(3)(A) defines a Short Sale Period as the time when “a short sale price test restriction under Rule 201 of Regulation SHO” is in effect. 17 CFR 242.201.

⁴ See Exchange Rule 2614(c)(8).

cancelled and a new order must be entered. An order receives a new timestamp when that order receives a new price, its size is increased, or is cancelled in full and replaced by a new order. In addition, an order also receives a new timestamp when it is repriced pursuant to Exchange Rule 2614(g).⁵ For example, an order may be repriced pursuant to the Exchange's Display Price Sliding Process if it would be displayed at a price that would lock or cross the Protected Best Bid or Offer ("PBBO") of an away Trading Center.⁶ In such case, that order would receive a new timestamp.

Exchange Rule 2616(a)(5) currently provides that in the event an order has been cancelled or replaced in accordance with Exchange Rule 2614(e), such order only retains its timestamp if such modification involves a decrease in the size of the order, a change to the Max Floor of an order with a Reserve Quantity, or a change in position from (A) sell to sell short; (B) sell to sell short exempt; (C) sell short to sell; (D) sell short to sell short exempt; (E) sell short exempt to sell; and (F) sell short exempt to sell short. Any other modification to an order, including an increase in the size of the order and/or price change, will result in such order losing time priority as compared to other orders in the MIAX Pearl Equities Book⁷ and the timestamp for such order being revised to reflect the time of the modification.

The Exchange now proposes to provide that an order will also receive a new timestamp in one additional scenario where the order may not receive a new price. As proposed, an order would also receive a new timestamp when its position is changed via a Cancel/Replace message during a Short Sale Period. Specifically, the Exchange proposes to amend Exchange Rule 2616(a)(5) to provide that a change in position via a Cancel/Replace message from (A) sell to sell short; (B) sell to sell short exempt; (C) sell short to sell; (D) sell short to sell short exempt; (E) sell short exempt to sell; and (F) sell short exempt to sell short during a Short Sale Period will result in a change to the order's timestamp. Such modification to an order during a Short Sale Period will result in such order losing time priority as compared to other orders in the MIAX Pearl Equities

Book and the timestamp for such order being revised to reflect the time of the modification. The Exchange does not propose to change an order's timestamp where a position change is made via a Cancel/Replace message when a Short Sale Period is not in effect.

The need for proposed rule change became apparent as a result of technology changes related to the Exchange's recent implementation of the Reserve Quantity and Minimum Execution Quantity⁸ order instructions.⁹ As a result of the above technology changes and to ensure the ongoing resiliency of the System,¹⁰ the reevaluation of an order for execution as a result of a change to the order's position via a Cancel/Replace message during a Short Sale Period will result in that order receiving a new timestamp, including where the order's price remains unchanged.

The Exchange notes that an order will always receive a new timestamp where the order is re-priced, including where that order is re-priced pursuant to the Exchange's Short Sale Price Sliding Process due to a change in position via a Cancel/Replace message.¹¹ However, pursuant to the proposed rule change, a position change via a Cancel/Replace message during a Short Sale Period would now always result in the order receiving a new timestamp, regardless of whether the re-evaluation of the order results in the order being re-priced.

The proposed rule change reflects a necessary technology change that would ensure continued System resiliency and stability. The Exchange notes that the proposed rule change is designed to address a discrete and potentially limited scenario that a Short Sale Period must be in effect when the position change is made via a Cancel/Replace message. If a Short Sale Period is not in effect, an order would retain its timestamp when its position is changed via a Cancel/Replace message. The proposed rule change is no different than where an order may receive a new timestamp when it is not re-priced, such as when an order's size is increased via a Cancel/Replace message or an order is cancelled in full and replaced with a

new order. In both of these cases, the order would be provided a new timestamp and experience a loss in priority. The same would be true under the proposed rule change where an order would receive a new timestamp where its position is changed via a Cancel/Replace message during a Short Sale Period.

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Lastly, the Exchange proposes to make two clarifying changes to Exchange Rules 2614(e)(3) and 2616(a)(5). First, the Exchange proposes to add the word "Cancel" before the word "Replace" in Exchange Rule 2614(e)(3). This change is to use consistent terminology when referring to Cancel/Replace messages in the Exchange's rules. Second, the Exchange proposes to clarify within Exchange Rule 2616(a)(5) that an order is being modified by the Cancel/Replace message. In part, Exchange Rule 2616(a)(5) states that "[i]n the event an order has been cancelled or replaced in accordance with Exchange Rule 2614(e) above, . . .". The Exchange proposes to replace the phrase "cancelled or replaced" in Exchange Rule 2616(a)(5) with "modified via a Cancel/Replace message." Doing so would clarify within Exchange Rule 2616(a)(5) that the order is being modified, rather than cancelled and replaced with a new order. Neither of the above changes amend the meaning or operation of either rule. They are simply intended to clarify each rule and to ensure the use of consistent terminology across the Exchange's rulebook.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Section 6(b)(5),¹³ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The proposed rule change promotes just and equitable principles of trade because it is similar to other cases today where an order may lose priority when a modification is made via a Cancel/Replace message. For example,

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

⁸ See Exchange Rule 2614(c)(7).

⁹ See MIAX Pearl Equities—Reminder: Announces Further Expansion of its Equity Trading Platform with the Launch of the Minimum Execution Quantity and Reserve Quantity Order Instructions; Both Available July 1st 2021, available at <https://www.miaxoptions.com/alerts/2021/06/15/miax-pearl-equities-reminder-announces-further-expansion-its-equity-trading> (June 15, 2021).

¹⁰ The term "System" means the automated trading system used by the Exchange for the trading of securities. See Exchange Rule 100.

¹¹ See Exchange Rule 2614(g)(3) for a description of the Exchange's Short Sale Price Sliding Process.

⁵ See, e.g., Exchange Rule 2614(g) ("Repricing Processes to Comply with Regulatory Requirements").

⁶ See Exchange Rule 2614(g)(1) ("Display Price Sliding Process").

⁷ Exchange Rule 1901 defines the term "MIAX Pearl Equities Book" as "the electronic book of orders in equity securities maintained by the System."

increasing the size of an order will result in such order losing time priority as compared to other orders in the MIAX Pearl Equities Book and the timestamp for such order being revised to reflect the time of the modification.¹⁴ The System also re-evaluates the order for execution when an Equity Member¹⁵ increases the size of an order via a Cancel/Replace message. The same is true for a position change made pursuant to Exchange Rule 2614(e) during a Short Sale Period. For example, should an order's position be changed from long to short during a Short Sale Period, that order would become subject to the price restrictions of Regulation SHO¹⁶ and the System would evaluate whether the order may be executed or re-priced pursuant to the Exchange's Short Sale Price Sliding Process.¹⁷ Under the proposed rule change, this evaluation would result in the order receiving a new timestamp and loss in priority, even when that order is not re-priced. While the price of the order may not change, the position change during a Short Sale Period impacts whether the order is subject to the price restrictions of Regulation SHO and may or may not become eligible for execution. Therefore, like size change via a Cancel/Replace message may change the execution status of the order, the Exchange believes treating a position change made via a Cancel/Replace message in the same manner and updating the order's timestamp is reasonable and consistent with the Act because it also reflects a change in the execution status of the order.

Further, as stated above, Exchange Rule 2614(e)(3) provides that only the price, sell long, sell short, or short exempt indicator, Max Floor of an order with a Reserve Quantity, and size terms of the order may be changed by a Cancel/Replace Message. If a User desires to change any other terms of an existing order the existing order must be cancelled and a new order must be entered. This includes, for example, changes to the minimum quantity condition of an order with a Minimum Execution Quantity instruction.¹⁸ In such case, the existing order must be cancelled and new order entered with the revised minimum execution quantity. Like a position change during a Short Sale Period, the new order would be provided a new timestamp

and re-evaluated for execution based on the revised minimum execution quantity. Therefore, the proposed rule change promotes just and equitable principles of trade because it is similar to existing exchange functionality.

The proposed rule change promotes just and equitable principles of trade because it is consistent with the other exchanges' treatment of position changes and their impact on the order's priority. For example, Investors Exchange LLC ("IEX") Rule 11.190(d)(4) does not allow for a position change via a Cancel/Replace message and requires that if a "[u]ser desires to modify an invalid field on an order, the existing order must be canceled and a new order must be entered."¹⁹ Therefore, on IEX, a market participant must enter a new order where it seeks to change that order's position at all times, not just during a Short Sale Period. This is broader than the Exchange's proposal which is limited to position changes during a Short Sale Period. On IEX, the new order would receive a new timestamp, resulting in a priority loss. In addition, The Nasdaq Stock Market, LLC ("Nasdaq") Rule 4756(a)(3) provides that an order will be cancelled if the order's position is "redesignated as short during a Short Sale Period and the order is not priced at a Permitted Price or higher under Nasdaq Rule 4763(e)." This would require the replacement of the original order with a new order and a new timestamp, resulting in a priority loss.²⁰ Therefore, the Exchange's proposal is not novel and is similar to functionality provided for on other exchanges.

Unlike where an order retains its timestamp when a modification involves a decrease in the size of the order or a change to the Max Floor of an order with a Reserve Quantity, a change in the order's position during a Short Sale Period triggers compliance with additional regulatory requirements. In such case, the Exchange must assess whether the order is priced or may be executed in accordance with Regulation SHO. For example, an order whose position is changed from long to short during a Short Sale Period may not be priced at or above the national best bid and may either need to be repriced pursuant to the Exchange's Short Sale Price Sliding Process or cancelled based

on the Equity Member's instructions. Conversely, an order whose position is changed from short to long during a Short Sale Period would no longer be subject to the price restrictions of Regulation SHO and may now be eligible for execution or routing to an away market. An order marked short is not subject to the price restrictions of Regulation SHO when a Short Sale Period is not in effect. Therefore, allowing the order to retain its timestamp when a Short Sale Period is not in effect continues to promote just and equitable principles of trade because the execution status of the order remains unchanged.²¹

Notwithstanding the above, the proposed rule change also protects investors and the public interest because it does not change anything with regard to compliance with Regulation SHO, including Regulation SHO's order marking requirements and Equity Member's compliance with its applicable exceptions. Today, an Equity Member has the ability to modify their order's position via a Cancel/Replace message. The proposal does not change that. Today, Equity Members are required to mark their orders properly both upon entry and when modifying that order's position later via a Cancel/Replace message. This proposed rule change does not alter Equity Members obligations to continue to ensure that their orders are marked in accordance with the requirements of Regulation SHO and Exchange Rule 2623²² at all times, including when changing the order's position via a Cancel/Replace message when a Short Sale Period is or is not in effect. As they are required to do today, Equity Members must also continue to ensure that their order complies with any applicable exemption from Regulation SHO that they seek to avail themselves of, not only at the time of entry, but also at the time they change the order's position

²¹ This is also consistent with other exchanges' rules. See, e.g., Members Exchange, Inc. Rule 11.9(a)(4) and Cboe EDGX Exchange, Inc. Rule 11.9(a)(4).

²² Exchange Rule 26123 [sic] provides that "[a]ll short sale orders shall be identified as "short" or "short exempt" when entered into the System. If marked "short exempt," the Exchange shall execute, display and/or route a short sale order marked "short exempt" without regard to any short sale price test restriction in effect during a Short Sale Period, as defined in Exchange Rule 2614(g)(3)(A). The Exchange relies on the marking of an order as "short exempt" when handling such order, and thus, it is the entering Member's responsibility, not the Exchange's responsibility, to comply with the requirements of Regulation SHO relating to marking of orders as "short exempt." Exchange Rule 2603 also requires that Equity Members input accurate information into the System.

¹⁴ See Exchange Rule 2616(a)(5).

¹⁵ The term "Equity Member" is a Member authorized by the Exchange to transact business on MIAX Pearl Equities. See Exchange Rule 1901.

¹⁶ 17 CFR 242.201(1)(i) [sic].

¹⁷ Exchange Rule 2614(g)(3).

¹⁸ See Exchange Rule 2614(c)(7).

¹⁹ See IEX Rule 11.190(d)(4) (stating that "Symbol, side, execution instruction, order type, and TIF are considered invalid fields. If a User attempts modify an invalid field by submitting a Replace Message, the order amendment will be rejected by the Exchange. If a User desires to modify an invalid field on an order, the existing order must be canceled and a new order must be entered").

²⁰ See Nasdaq Rule 4756(a)(3).

via a Cancel/Replace message.²³ Again, nothing in this proposal alters a Member's obligations under Regulation SHO. The Exchange notes that the proposed rule change removes impediments to and perfects the mechanism of a free and open market and a national market system because it is designed to address a discrete and potentially limited scenario of a Short Sale Period being in effect when the a position change is made via a Cancel/Replace message. If a Short Sale Period is not in effect, an order would retain its timestamp when its position is changed via a Cancel/Replace message. This proposed rule change is narrowly focused to address only where an order would lose priority where its position is changed via a Cancel/Replace message during a Short Sale Period.

The proposed rule change would also remove impediments to and promote just and equitable principles of trade because it reflects a necessary technology change that would ensure continued System resiliency and stability. As a national securities exchange, the Exchange is subject to Regulation Systems Compliance and Integrity ("Reg. SCI").²⁴ Reg. SCI Rule 1001(a) requires that the Exchange establish, maintain, and enforce written policies and procedures reasonably designed to ensure (among other things) that its Reg. SCI systems have levels of capacity adequate to maintain the Exchange's operational capability and promote the maintenance of fair and orderly markets.²⁵ The proposed rule change is necessary to ensure the ongoing resiliency of the Exchange's infrastructure and underlying technology to ensure the Exchange continues to satisfy its requirements under Reg. SCI. The Exchange takes pride in the reliability and availability of its System. The proposed rule change is necessary due to technological complexity and to continue to ensure the System operates consistent with the Exchange's rules and in accordance with the Exchange's obligations under Reg. SCI.

Lastly, the proposed clarifying changes to Exchange Rules 2614(e)(3) and 2616(a)(5) removes impediments to and perfect a free and open market system because they simply clarify each rule and ensure the use of consistent terminology across the Exchange's rulebook. Neither of these changes amend the meaning or operation of either rule.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not being proposed for competitive reasons. As discussed above, the need for the proposed rule change became apparent when making technology changes related to the Exchange's upcoming implementation of the Reserve Quantity and Minimum Execution Quantity order instructions.²⁶ Further, this proposed rule change to cause an order to lose priority when the order's position is changed during a Short Sale Period via a Cancel/Replace message is no different than where an Equity Member seek to change the position of their order by cancelling that order and re-submitting a new order. In each case, the order will receive a new timestamp at the time the position was changed via a cancel or replace message.

Adjusting the order's timestamp due to a position change via a Cancel/Replace message during a Short Sale Period does not impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the Act. Equity Members may take into consideration that their order may experience a loss in priority when they change their order's position during a Short Sale Period when determining where to send their order for execution. Equity Members are free to consider this change as part of their overall experience on the Exchange, including the quality of executions and other functionality offerings, which are part of their order routing decisions.

Lastly, adjusting the order's timestamp due to a position change via a Cancel/Replace message during a Short Sale Period does not also impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the Act because it is similar to functionality on other exchanges.²⁷ Also, like above for intra-market competition, Equity Members may take into consideration that their order may experience a loss in priority when they change their order's position during a Short Sale Period when determining where to send their order for execution. Equity Members who make position changes during a Short Sale Period may consider the potential that their order may lose priority and

may choose to price their orders more aggressively.

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

Written comments were neither solicited nor received.

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

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

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

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-PEARL-2021-35 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-PEARL-2021-35. 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

²³ The Exchange will continue to surveil for compliance with Exchange Rules 2623 and 2603 as well as Regulation SHO.

²⁴ 17 CFR 242.1000-1007.

²⁵ 17 CFR 242.1001(a).

²⁶ See *supra* note 9.

²⁷ See *supra* notes 19 and 20.

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-PEARL-2021-35, and should be submitted on or before August 27, 2021.

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

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2021-16789 Filed 8-5-21; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92546; File Nos. SR-CBOE-2021-023; SR-CboeBYX-2021-009; SR-CboeBZX-2021-028; SR-CboeEDGA-2021-009; SR-CboeEDGX-2021-021; SR-C2-2021-007]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Cboe BYX Exchange, Inc.; Cboe BZX Exchange, Inc.; Cboe EDGA Exchange, Inc.; Cboe EDGX Exchange, Inc.; Cboe C2 Exchange, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1, To Amend the Sixth Amended and Restated Bylaws of Cboe Global Markets, Inc. To Implement Proxy Access

August 2, 2021.

I. Introduction

On April 16, 2021, each of Cboe Exchange, Inc. ("Cboe"), Cboe BYX Exchange, Inc. ("BYX"), Cboe BZX Exchange, Inc. ("BZX"), Cboe EDGA Exchange, Inc. ("EDGA"), and Cboe EDGX Exchange, Inc. ("EDGX"), and on April 26, 2021, Cboe C2 Exchange, Inc. ("C2" and together with Cboe, BYX, BZX, EDGA, and EDGX, the "Exchanges") 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 Sixth Amended and Restated Bylaws ("Bylaws") of their parent company, Cboe Global Markets, Inc. ("CGM"), to implement proxy access. The proposed rule changes were published for comment in the **Federal Register** on May 5, 2021.³ No comment letters were received in response to the proposals. On July 28, 2021, each of BYX, BZX, EDGA, EDGX and C2, and on July 29, 2021, Cboe filed Amendment No. 1 to the proposed rule changes (collectively, "Amendment Nos. 1").⁴ This order provides notice of filing of Amendment Nos. 1 and approves the proposed rule changes, as modified by Amendment Nos. 1, on an accelerated basis.

II. Description of the Proposed Rule Changes, as Modified by Amendment Nos. 1

The Exchanges state that CGM received a stockholder proposal submitted pursuant to Rule 14a-8 under the Act which requested that the Board of Directors of CGM ("Board") take steps to implement a "proxy access" bylaw provision to allow a stockholder, or group of stockholders, who comply with certain requirements, to nominate candidates for service on the Board and have those candidates included in

CGM's proxy materials.⁵ The Exchanges state that CGM has determined to take the stockholder's requested steps to implement proxy access and, accordingly, the Exchanges have submitted this proposal to adopt new Section 2.16 of the Bylaws.⁶ Subject to procedures and conditions set forth therein, and as further described below, proposed Section 2.16 of the Bylaws would generally permit a stockholder, or group of up to 20 stockholders, to nominate director nominees for the Board and have such director nominees included in CGM's annual meeting proxy materials, so long as the stockholder(s) have owned at least three percent of CGM's outstanding shares of capital stock continuously for at least three years.⁷ The proposal would limit the number of proposed director nominees to the greater of (i) two or (ii) 20% of the number of CGM directors in office (rounded down to the nearest whole number, but no less than two).⁸ The Exchanges note that the parent companies of other national securities exchanges have adopted substantively similar proxy access provisions, and the Exchanges state that they do not believe such provisions are materially different from the proxy access provision proposed by the Exchanges.⁹

Proposed Section 2.16 of the Bylaws

Specifically, proposed Section 2.16(a) of the Bylaws would require that, subject to the provisions of proposed Section 2.16, whenever the Board solicits proxies with respect to the election of directors at an annual meeting of stockholders, CGM must include in its proxy statement for such annual meeting, in addition to any persons nominated for election by or at

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release Nos. 91728 (April 29, 2021), 86 FR 24052 (SR-CBOE-2021-023); 91729 (April 29, 2021), 86 FR 24059 (SR-CboeBYX-2021-009); 91727 (April 29, 2021), 86 FR 24083 (SR-CboeBZX-2021-028); 91725 (April 29, 2021), 86 FR 24076 (SR-CboeEDGA-2021-009); 91724 (April 29, 2021), 86 FR 24044 (SR-CboeEDGX-2021-021); 91732 (April 29, 2021), 86 FR 24125 (SR-C2-2021-007) (collectively, "Notices").

⁴ In Amendment Nos. 1, the Exchanges clarified the circumstances under which proxy access nominees may be excluded from the proxy materials. Pursuant to proposed Section 2.16(j)(i) of the Bylaws, CGM would not be required to include a Stockholder Nominee in its proxy materials who would not be an independent director under Section 3.3 of the Bylaws, under the rules of the principal national securities exchange on which the outstanding capital stock of CGM is traded, any applicable rules of the Commission and any publicly disclosed standards used by the Board in determining and disclosing independence of CGM's directors, in each case as determined by the Board in its sole discretion. In Amendment Nos. 1, the Exchanges represented that any independence standards adopted by CGM's Board will apply uniformly to all director nominees, including Stockholder Nominees, and that any future independence standards adopted by the Board will comply with all applicable laws, rules, and regulations. Amendment Nos. 1 are available on the Commission's website at <http://www.sec.gov/rules/sro.shtml>.

⁵ See Notices, *supra* note 3, at 24052, 24059, 24083, 24076, 24045, and 24125, respectively. See also 17 CFR 240.14a-8 (establishing procedures pursuant to which stockholders of a public company may have their proposals placed alongside management's proposals in the company's proxy materials for presentation to a vote at a meeting of stockholders).

⁶ See Notices, *supra* note 3, at 24052, 24059-60, 24083-84, 24076, 24045, and 24125, respectively. The Exchanges also propose to make conforming changes to current Sections 2.10 and 2.11 of the Bylaws. See *id.* at 24052, 24059, 24083, 24076, 24045, and 24125, respectively. See also *infra* notes 45-46.

⁷ See proposed Bylaws Section 2.16.

⁸ See proposed Bylaws Section 2.16(c).

⁹ See Notices, *supra* note 3, at 24052, 24059-60, 24083-84, 24076, 24045, and 24125, respectively (citing to Securities Exchange Release Nos. 79357 (November 18, 2016), 81 FR 85283 (November 25, 2016) (SR-NASDAQ-2016-127; SR-BX-2016-051; SR-ISE-2016-22; SR-ISEGemini-2016-10; SR-ISEMercury-2016-16; SR-PHLX-2016-93; SR-BSECC-2016-001; SR-SCCP-2016-01); and 77782 (May 6, 2016), 81 FR 29600 (May 12, 2016) (SR-NYSE-2016-14; SR-NYSEArca-2016-25; SR-NYSEMKT-2016-20)).

²⁸ 17 CFR 200.30-3(a)(12).