

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. As discussed above, the proposed updates to the corporate documents and replacement of outdated or obsolete references removes impediments to and perfects the mechanism of a free and open market by removing confusion that may result from having these references in the governing documents following the Acquisition. The Exchange further believes that the proposal removes impediments to and perfects the mechanism of a free and open market by ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand the governing documents. The Exchange further believes that eliminating an obsolete reference would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased transparency, thereby reducing potential confusion. Removing such obsolete references will also further the goal of transparency and add clarity to the Exchange's rules.

*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 Exchange Act. The proposed rule change is not intended to address competitive issues but rather is concerned solely with updating the Exchange's rules to reflect the Acquisition and to remove obsolete references.

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

No written comments were solicited or received with respect to the proposed rule change.

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

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

the self-regulatory organization consents, the Commission will:

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

**IV. Solicitation of Comments**

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

*Electronic Comments*

- Use the Commission's Internet comment form (<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-NYSEMKT-2016-122 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-NYSEMKT-2016-122. 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 Web site (<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 Web site 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-

NYSEMKT-2016-122 and should be submitted on or before January 19, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>21</sup>

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

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BILLING CODE 8011-01-P

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-79666; File No. SR-MIAX-2016-47]

**Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Modify the Exchange's Connectivity Fees**

December 22, 2016

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 December 13, 2016, Miami International Securities Exchange LLC ("MIAX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule (the "Fee Schedule") to modify the Exchange's connectivity fees.

The text of the proposed rule change is available on the Exchange's Web site at [http://www.miaxoptions.com/filter/wotitle/rule\\_filing](http://www.miaxoptions.com/filter/wotitle/rule_filing), at MIAX'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

<sup>21</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.

statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to amend the Fee Schedule regarding connectivity to the Exchange.

Network Connectivity Fees

First, the Exchange proposes to amend Section 5(a) and (b) of the Fee Schedule to increase the connectivity fee for the 1 Gigabit ("Gb") fiber connection, the 10 Gb fiber connection, and the 10 Gb ultra-low latency ("ULL") fiber connection, which are charged to both Members<sup>3</sup> and Non-Members of the Exchange.

The Exchange currently offers various bandwidth alternatives for connectivity to the Exchange, consisting of a 10Gb ULL fiber connection, a 10Gb fiber connection and a 1Gb fiber connection. The 10Gb ULL offering uses a new ultra-low latency switch, which provides faster processing of messages sent to it in comparison to the switch used for the other types of connectivity. The Exchange currently assesses the following monthly network connectivity fees to both Members and non-Members for connectivity to the Exchange's Primary and Secondary Facility: (a) \$1,000 for the 1Gb connection; (b) \$5,000 for the 10 Gb connection; and (c) \$7,500.00 for the 10Gb ULL connection.

The Exchange proposes to increase the monthly network connectivity fees for such connections for both Members and non-Members as follows: (a) From \$1,000 to \$1,100 for the 1Gb connection; (b) from \$5,000 to \$5,500 for the 10Gb connection; and (c) from \$7,500 to \$8,500 for the 10Gb ULL connection. All of the foregoing network connectivity fees will continue to be pro-rated based on the number of trading days that the Member or non-Member has been credentialed to utilize any of the Exchange APIs in a production environment through the applicable connection, divided by the total number of trading days in such month multiplied by the monthly rate. The 1Gb and 10Gb connectivity fees to the

Disaster Recovery Facility assessable to both Members and non-Members shall remain unchanged.

The Exchange believes that the increase in the pricing of the Exchange's connectivity is reflective of the continued value that it provides and the increasing costs to the Exchange for providing and maintaining the necessary hardware and other infrastructure to support this technology. The Exchange notes that other exchanges have similar connectivity alternatives for their participants, including similar low-latency connectivity. For example, NASDAQ PHLX LLC ("PHLX"), NYSE Arca, Inc. ("Arca"), NYSE MKT LLC ("Amex") and the International Securities Exchange, LLC ("ISE") all offer a 1Gb, 10Gb and 10Gb low latency Ethernet connectivity alternative to each of their participants.<sup>4</sup> The Exchange further notes that PHLX, Arca and Amex each charge higher rates for such similar connectivity and that the Exchange's proposed connectivity fees are within the range of the fees charged by the ISE for similar connectivity alternatives.<sup>5</sup> The Exchange believes that it is appropriate to increase its fees charged for use of its connectivity to offset increasing costs associated with providing and maintaining the necessary hardware and other infrastructure to support this technology and also to more closely align its fees with the rates charged by competing options exchanges.

Port Fees

Second, the Exchange proposes to amend Section (5)(d)(i) of the Fee Schedule to increase the Financial Information Exchange ("FIX") Port fees assessable to Members. A FIX Port is an interface with MIAX systems that enables the Port user to submit simple and complex orders electronically to MIAX.

Currently, MIAX assesses monthly FIX Port fees on Members based upon the number of FIX Ports used by the Member submitting orders to the Exchange. The Exchange currently assesses a fee of \$500 per month for the first FIX Port, \$300 per month for each FIX Port 2 through 5; and \$100 per month for each additional FIX Port over 5. The FIX Ports include access to MIAX's primary and secondary data centers and its disaster recovery center.

Accordingly, the Exchange proposes to increase the fees charged to Members for use of FIX Ports. Specifically, the Exchange proposes to: (i) Increase the fee for the first FIX Port, from \$500 to \$550 per month; (ii) increase the fee for each FIX Port 2 through 5, from \$300 to \$350 per month; and (iii) increase the fee for each FIX Port over 5, from \$100 to \$150 per month. The Exchange notes that a competing exchange charges more for the use of similar ports.<sup>6</sup>

Finally, the Exchange proposes to amend Section 5(d)(ii) of the Fee Schedule to increase the fees for MIAX Express Interface ("MEI") Ports to Market Makers assessed for additional Limited Service Ports.<sup>7</sup> The MEI is a connection to MIAX systems that enables Market Makers to submit simple and complex electronic quotes to MIAX.

Currently, MIAX assesses monthly MEI Port Fees on Market Makers based upon the number of MIAX matching engines<sup>8</sup> used by the Market Maker. Market Makers are allocated two (2) Full Service MEI Ports<sup>9</sup> and two (2) Limited Service MEI Ports per matching engine to which they connect. The Exchange currently assesses the following MEI Port fees: (i) \$5,000 for Market Maker Assignments in up to 5 option classes or up to 10% of option classes by volume; (ii) \$10,000 for Market Maker Assignments in up to 10 option classes or up to 20% of option classes by volume; (iii) \$14,000 for Market Maker Assignments in up to 40 option classes or up to 35% of option classes by volume; (iv) \$17,500 for Market Maker Assignments in up to 100 option classes

<sup>6</sup> See NASDAQ PHLX LLC ("PHLX") Pricing Schedule, Section VII and The NASDAQ Options Market ("NOM") Pricing Schedule, Chapter XV, Section 3. Both PHLX and NOM assess members monthly an Order Entry Port Fee of \$650 per month per mnemonic.

<sup>7</sup> Limited Service MEI Ports provide Market Makers with the ability to send eQuotes and quote purge messages only, but not Market Maker Quotes, to the MIAX System. Limited Service MEI Ports are also capable of receiving administrative information. Market Makers initially receive two Limited Service MEI Ports per matching engine (as defined herein).

<sup>8</sup> A "matching engine" is a part of the MIAX electronic system that processes options quotes and trades on a symbol-by-symbol basis. Some matching engines will process option classes with multiple root symbols, and other matching engines will be dedicated to one single option root symbol (for example, options on SPY will be processed by one single matching engine that is dedicated only to SPY). A particular root symbol may only be assigned to a single designated matching engine. A particular root symbol may not be assigned to multiple matching engines.

<sup>9</sup> Full Service MEI Ports provide Market Makers with the ability to send Market Maker quotes, eQuotes, and quote purge messages to the MIAX System. Full Service MEI Ports are also capable of receiving administrative information. Market Makers are limited to two Full Service MEI Ports per matching engine.

<sup>3</sup> The term "Member" means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed "members" under the Exchange Act. See Exchange Rule 100.

<sup>4</sup> See NASDAQ PHLX LLC ("PHLX") Pricing Schedule, Section X(b); see also NYSE Amex Options ("Amex") Fee Schedule, Section V.B, and NYSE Arca Options ("Arca") Fees and Charges, p. 16; see further International Securities Exchange, LLC ("ISE") Schedule of Fees, Section VI.B.

<sup>5</sup> *Id.*

or up to 50% of option classes by volume; and (v) \$20,500.00 for Market Maker Assignments in over 100 option classes or over 50% of option classes by volume up to all option classes listed on MIAAX.<sup>10</sup> The Exchange also currently charges \$50 per month for each additional Limited Service MEI Port per matching engine for Market Makers over and above the two (2) Limited Service MEI Ports per matching engine that are allocated with the Full Service MEI Ports. The Full Service MEI Ports, Limited Service MEI Ports and the additional Limited Service MEI Ports all include access to MIAAX's primary and secondary data centers and its disaster recovery center.

Accordingly, the Exchange proposes to increase the fees charged to Market Makers for use of additional Limited Service MEI Ports. Specifically, the Exchange proposes to increase the fee for additional Limited Service MEI Ports from \$50 to \$100 per month. The Exchange notes that a competing exchange charges more for the use of similar ports.<sup>11</sup>

The Exchange proposes to implement the proposed changes to the Fee Schedule effective as of January 1, 2017.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act<sup>12</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>13</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act<sup>14</sup> in that it is designed to promote just and equitable principles of trade, 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 and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

### Network Connectivity Fees

The Exchange believes that its proposal is consistent with Section

6(b)(4) of the Act because the fees assessed for connectivity allow the Exchange to cover the costs associated with providing and maintaining the necessary hardware and other infrastructure to support this technology. The Exchange believes that the proposal to increase the fees for connectivity alternatives is fair, equitable and not unreasonably discriminatory because the increased fees are assessed equally among all users of the applicable connections.

As discussed above, PHLX and ISE each offer different connections with respect to latency, and NYSE Arca, Inc. and NYSE Amex both offer similar connectivity alternatives.<sup>15</sup> Despite this, PHLX, Arca and Amex charge a higher fee than the Exchange currently charges for similar connections and ISE's fees are within the range of that of the proposed fees of the Exchange.<sup>16</sup> For these reasons, the Exchange believes the proposed increase in the fees for the fiber connectivity to the Exchange is reasonable and not unfairly discriminatory.

The Exchange also believes that its proposal is consistent with Section 6(b)(5) of the Act<sup>17</sup> because all MIAAX participants have the opportunity to subscribe to the Exchange's connections. There is also no differentiation among MIAAX participants with regard to the fees charged for these services.

### Port Fees

The Exchange believes that its proposal to increase the FIX Port fees is consistent with Section 6(b)(4) of the Act and is reasonable, equitable and not unfairly discriminatory because Members are free to add or remove FIX Ports and will only be charged for the amount of FIX Ports that are utilized. The proposed fee is fair and equitable and not unreasonably discriminatory because it applies equally to all Members regardless of type.

The Exchange also believes that its proposal is consistent with Section 6(b)(5) of the Act<sup>18</sup> because all similarly situated Members, with the same number of FIX Ports, will be subject to the same fee, and access to the Exchange is offered on terms that are not unfairly discriminatory. The Exchange believes that the proposed fees are reasonable in that the rates are within the range of those charged by competing options exchanges.

The Exchange believes that its proposal to increase the fee for additional Limited Service MEI Ports is consistent with Section 6(b)(4) of the Act and is reasonable, equitable and not unfairly discriminatory because Market Makers are free to add or remove additional Limited Service MEI Ports and will only be charged for the number of additional Limited Service MEI Ports that are utilized.

The Exchange also believes that its proposal is consistent with Section 6(b)(5) of the Act<sup>19</sup> because it will be uniformly applied to all Market Makers. All similarly situated Market Makers, with the same number of additional Limited Service MEI Ports, will be subject to the same fee, and access to the Exchange is offered on terms that are not unfairly discriminatory. The Exchange believes that the proposed fees are reasonable in that the rates are within the range of those charged by other competing options exchanges.

### 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. On the contrary, the Exchange believes that the proposed changes should increase both intermarket and intramarket competition. Specifically, the Exchange believes that the changes will promote competition by increasing the connectivity fees to become more within the range of comparable fees assessed by other competing exchanges.<sup>20</sup>

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. The Exchange believes that the proposed changes reflect this competitive environment. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market liquidity.

### 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.

<sup>10</sup> See MIAAX Fee Schedule, Section 5(d)(ii).

<sup>11</sup> See PHLX Pricing Schedule, Section VII. PHLX assesses specialists and market makers an Active SQF Port Fee of \$1,250 per month, with such total port fees capped at \$42,000 per month. See also NOM Pricing Schedule, Chapter XV, Section 3. NOM assesses Market Makers a monthly SQF Port Fee per port of \$500 for the use of 21 Ports or more.

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

<sup>13</sup> 15 U.S.C. 78f(b)(4).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

<sup>15</sup> See *supra* note 4.

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

<sup>17</sup> 15 U.S.C. 78f(b)(5).

<sup>18</sup> 15 U.S.C. 78f(b)(5).

<sup>19</sup> 15 U.S.C. 78f(b)(5).

<sup>20</sup> See *supra* notes 4, 6 and 11.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>21</sup> and Rule 19b-4(f)(2)<sup>22</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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-MIAX-2016-47 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-MIAX-2016-47. 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 Web site (<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 Web site viewing and printing in the Commission's Public

Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MIAX-2016-47, and should be submitted on or before January 19, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>23</sup>

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

[FR Doc. 2016-31481 Filed 12-28-16; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79664; File No. SR-ISEGemini-2016-16]

### Self-Regulatory Organizations; ISE Gemini, LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To Permit Nasdaq Execution Services, LLC To Become an Affiliated Member of the Exchange To Perform Certain Routing and Other Functions

December 22, 2016.

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 December 9, 2016, ISE Gemini, LLC ("ISE Gemini" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change. On December 20, 2016, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the Form 19b-4, and Exhibit 1 thereto, in their entirety. On December 20, 2016, the Exchange filed Amendment No. 2 to the proposed rule change.<sup>3</sup> The proposed rule change, as modified by Amendment Nos. 1 and 2,

<sup>23</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> Amendment No. 2 amended the description of one of the inbound routing conditions that would apply. Specifically, the Exchange modified the third condition to specify that the report that FINRA will provided to the Exchange's chief regulatory officer on a quarterly basis will quantify all alerts, of which the Exchange or FINRA (rather than solely FINRA) are aware, that identify Nasdaq Execution Services, LLC as a participant that has potentially violated Commission or Exchange rules.

is described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment Nos. 1 and 2, from interested persons.

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

The Exchange proposes to (1) permit the Exchange to receive inbound orders in options routed through Nasdaq Execution Services, LLC ("NES") from certain affiliated exchanges, as described in detail below, by establishing procedures designed to prevent potential informational advantages resulting from the affiliation with NES; and (2) grant the Exchange an exemption to permit NES, an affiliate of the Exchange, to become a Member of the Exchange in order to perform certain routing an [sic] other functions on behalf of the Exchange.

### 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 the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The purpose of the filing is to permit ISE Gemini to receive inbound orders in options routed through Nasdaq Execution Services, LLC ("NES") from certain affiliated exchanges, as described herein and establish procedures designed to prevent potential informational advantages resulting from the affiliation between ISE Gemini and NES. The Exchange requests approval to permit NES, an affiliate of the Exchange, to become a Member of the Exchange in order to perform inbound routing on behalf of the Exchange. The Exchange is also filing to permit ISE Gemini to route outbound orders through NES either directly or indirectly through a third

<sup>21</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>22</sup> 17 CFR 240.19b-4(f)(2).