

Exchange has not received any written comments from members or other interested parties.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>17</sup> and paragraph (f) of Rule 19b-4 thereunder.<sup>18</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.

### 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-2018-032 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CboeEDGX-2018-032. 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-2018-032 and should be submitted on or before September 10, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

**Robert W. Errett,**

*Deputy Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-83844; File No. SR-NYSEArca-2018-40]

#### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change Regarding Investments of the REX BKCM ETF

August 14, 2018.

On June 26, 2018, NYSE Arca, Inc. ("NYSE Arca") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change relating to investments of the REX BKCM ETF. The proposed rule change was published for comment in the **Federal Register** on July 3, 2018.<sup>3</sup> The Commission has received no comments on the proposed rule change.

Section 19(b)(2) of the Act<sup>4</sup> provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the

proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The Commission is extending this 45-day time period. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,<sup>5</sup> designates October 1, 2018, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR-NYSEArca-2018-40).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2018-17831 Filed 8-17-18; 8:45 am]

BILLING CODE 8011-01-P

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-83847; File No. SR-MIAX-2018-23]

#### Self-Regulatory Organizations: Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by Miami International Securities Exchange LLC To Amend Its Fee Schedule

August 14, 2018.

Pursuant to the provisions of 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 August 7, 2018, Miami International Securities Exchange LLC ("MIAX Options" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a 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").

The text of the proposed rule change is available on the Exchange's website at

<sup>19</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> See Securities Exchange Act Release No. 83546 (June 28, 2018), 83 FR 31214 (July 3, 2018).

<sup>4</sup> 15 U.S.C. 78s(b)(2).

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

<sup>6</sup> 17 CFR 200.30-3(a)(31).

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

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

<sup>17</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>18</sup> 17 CFR 240.19b-4(f).

<http://www.miaxoptions.com/rule-filings>, 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 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 to modify certain aspects of the following fees that apply to MIAX Options Market Makers:<sup>3</sup> (i) The Monthly Trading Permit fees; and (ii) the MEI Port fees. The Exchange also proposes to amend the list of MIAX Select Symbols<sup>4</sup> contained in the Priority Customer Rebate Program<sup>5</sup> of the Exchange's Fee Schedule to delete an obsolete reference.

The Exchange issues Trading Permits that confer the ability to transact on the Exchange.<sup>6</sup> Currently, the Exchange assesses the following monthly fees for MIAX Options Market Maker Trading Permits: (i) \$7,000 for Market Maker Assignments in up to 10 option classes or up to 20% of option classes by volume; (ii) \$12,000 for Market Maker

Assignments in up to 40 option classes or up to 35% of option classes by volume; (iii) \$17,000 for Market Maker Assignments in up to 100 option classes or up to 50% of option classes by volume; and (iv) \$22,000.00 for Market Maker Assignments in over 100 option classes or over 50% of option classes by volume up to all option classes listed on MIAX Options.<sup>7</sup> For the calculation of these monthly Trading Permit fees, the number of classes is defined as the greatest number of classes the Market Maker was assigned to quote in on any given day within the calendar month and the class volume percentage is based on the total national average daily volume in classes listed on MIAX Options in the prior calendar quarter.<sup>8</sup> Newly listed option classes are excluded from the calculation of the monthly Market Maker Trading Permit fee until the calendar quarter following their listing, at which time the newly listed option classes will be included in both the per class count and the percentage of total national average daily volume.

The Exchange assesses Market Makers the monthly Trading Permit fee based on the greatest number of classes listed on MIAX Options that the Market Maker was assigned to quote on any given day within a calendar month and the applicable fee rate that is the lesser of either the per class basis or percentage of total national average daily volume measurement. Members receiving Trading Permits during the month will be assessed Trading Permit fees according to this schedule, except that the calculation of the Trading Permit fee for the first month in which the Trading Permit is issued will be pro-rated based on the number of trading days occurring after the date on which the Trading Permit was in effect during that first month divided by the total number of trading days in such month multiplied by the monthly rate.

The Exchange recently modified the Trading Permit fees to provide lower fees to Market Makers that execute less volume than a certain volume threshold in certain Trading Permit Tier levels.<sup>9</sup> In

<sup>7</sup> See the Fee Schedule, Section 3(b).

<sup>8</sup> The Exchange will use the following formula to calculate the percentage of total national average daily volume that the Market Maker assignment is for purposes of the Market Maker trading permit fee for a given month:

Market Maker assignment percentage of national average daily volume = [total volume during the prior calendar quarter in a class in which the Market Maker was assigned]/[total national volume in classes listed on MIAX Options in the prior calendar quarter].

<sup>9</sup> See Securities Exchange Act Release No. 82868 (March 13, 2018), 83 FR 12063 (March 19, 2018) (SR-MIAX-2018-08).

particular, for Market Makers that fall within the following Trading Permit fee levels, which represent the 3rd or 4th levels of the fee table: (i) Market Maker Assignments in up to 100 option classes or up to 50% of option classes by volume, or (ii) Market Maker Assignments in over 100 option classes or over 50% of option classes by volume up to all option classes listed on MIAX Options; and whose total monthly Market Maker executed volume during the relevant month is less than 0.075% of the total monthly executed volume reported by OCC in the market maker account type for MIAX-listed option classes for that month, the Exchange assesses a Trading Permit fee of \$15,500 instead of the fee otherwise applicable to such level.<sup>10</sup>

The Exchange now proposes to further modify its Trading Permit fees by lowering the monthly Market Maker executed volume threshold requirement from less than 0.075% to less than 0.060% of total monthly executed volume reported by OCC in the Market Maker account type for MIAX-listed option classes for that month, and which fall within the 3rd or 4th levels of the fee table. Accordingly, the Exchange proposes for these Monthly Trading Permit Fee levels, if the Market Maker's total monthly executed volume during the relevant month is less than 0.060% of the total monthly executed volume reported by OCC in the Market Maker account type for MIAX-listed option classes for that month, then the fee will be \$15,500 instead of the fee otherwise applicable to such level. This is a proposed change to the Trading Permit fees for Market Makers that fall within the 3rd or 4th levels of the fee table.

The proposed adjustment to the threshold is based on an assessment of recent Market Maker volume trends on the Exchange. Specifically, the Exchange determined that, due to lower total monthly executed volume executed by certain larger-scale Market Makers, certain larger-scale Market Makers could potentially receive the lower fees, which lower fees were intended only to apply to smaller-scale Market Makers. Therefore, the Exchange

<sup>10</sup> For example, if Market Maker 1 elects to quote the top 40 option classes which consist of 58% of the total national average daily volume in the prior calendar quarter, the Exchange would assess \$12,000 to Market Maker 1 for the month which is the lesser of 'up to 40 classes' and 'over 50% of classes by volume up to all classes listed on MIAX.' If Market Maker 2 elects to quote the bottom 1000 option classes which consist of 10% of the total national average daily volume in the prior quarter, the Exchange would assess \$7,000 to Market Maker 2 for the month which is the lesser of 'over 100 classes' and 'up to 20% of classes by volume.'

<sup>3</sup> The term "Market Makers" refers to "Lead Market Makers," "Primary Lead Market Makers" and "Registered Market Makers" collectively. See Exchange Rule 100.

<sup>4</sup> The term "MIAX Select Symbols" means options overlying AAL, AAPL, AIG, AMAT, AMD, AMZN, BA, BABA, BB, BIDU, BP, C, CAT, CBS, CELG, CLF, CVX, DAL, EBAY, EEM, FB, FCX, GE, GILD, GLD, GM, GOOGL, GPRO, HAL, HTZ, INTC, IWM, JCP, JNJ, JPM, KMI, KO, MO, MRK, NFLX, NOK, NQ, ORCL, PBR, PFE, PG, QCOM, QQQ, RIG, S, SPY, T, TSLA, USO, VALE, VXX, WBA, WFC, WMB, WY, X, XHB, XLE, XLF, XLP, XOM, and XOP.

<sup>5</sup> See Section 1(a)(iii) of the Fee Schedule for a complete description of the Program.

<sup>6</sup> There is no limit on the number of Trading Permits that may be issued by the Exchange; however, the Exchange has the authority to limit or decrease the number of Trading Permits it has determined to issue provided it complies with the provisions set forth in Rule 200(a) and Section 6(c)(4) of the Exchange Act. See 15 U.S.C. 78(f)(c)(4). For a complete description of MIAX Options Trading Permits, see MIAX Rule 200.

believes that it is reasonable, equitable, and not unfairly discriminatory to adjust the monthly Market Maker executed volume threshold requirement from less than 0.075% to less than 0.060% of total monthly executed volume reported by OCC in the Market Maker account type for MIAX-listed option classes for that month, so that such lower fees will continue to apply to only smaller-scale Market Makers. The Exchange believes that by continuing to offer lower fees to Market Makers that execute less volume than a certain volume threshold in certain Trading Permit Tier levels, the Exchange will retain and attract smaller-scale Market Makers, which are an integral component of the option industry marketplace, but have been decreasing in number in recent years, due to industry consolidation and lower market maker profitability. Since these smaller-scale Market Makers execute less volume overall, the Exchange believes it is reasonable and appropriate to offer such Market Makers (that are willing to quote the majority or entirety of the market) lower fees.

Similarly, the Exchange also proposes to modify its MEI Port fees assessable to Market Makers. Currently, MIAX Options assesses monthly MEI Port fees on Market Makers based upon the number of classes or class volume accessed by the Market Maker. Market Makers are allocated two (2) Full Service MEI Ports<sup>11</sup> and two (2) Limited Service MEI Ports per matching engine<sup>12</sup> to which they connect. The Exchange currently assesses the following MEI Port fees: (a) \$5,000 for Market Maker Assignments in up to 5 option classes or up to 10% of option classes by volume; (b) \$10,000 for Market Maker Assignments in up to 10 option classes or up to 20% of option classes by volume; (c) \$14,000 for Market Maker Assignments in up to 40 option classes or up to 35% of option classes by volume; (d) \$17,500 for Market Maker Assignments in up to 100

<sup>11</sup> Full Service MEI Ports provide Market Makers with the ability to send Market Maker quotes, eQuotes, and quote purge messages to the MIAX Options 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>12</sup> A "matching engine" is a part of the MIAX Options 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.

option classes or up to 50% of option classes by volume; and (e) \$20,500 for Market Maker Assignments in over 100 option classes or over 50% of option classes by volume up to all option classes listed on MIAX Options.<sup>13</sup> The Exchange also currently charges \$100 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 the Exchange's Primary and Secondary data centers and its Disaster Recovery center. For the calculation of the monthly MEI Port fees that apply to Market Makers, the number of classes is defined as the greatest number of classes the Market Maker was assigned to quote in on any given day within the calendar month and the class volume percentage is based on the total national average daily volume in classes listed on MIAX Options in the prior calendar quarter.<sup>14</sup> Newly listed option classes are excluded from the calculation of the monthly MEI Port fee until the calendar quarter following their listing, at which time the newly listed option classes will be included in both the per class count and the percentage of total national average daily volume.

The Exchange assesses Market Makers the monthly MEI Port fees based on the greatest number of classes listed on MIAX Options that the Market Maker was assigned to quote on any given day within a calendar month and the applicable fee rate that is the lesser of either the per class basis or percentage of total national average daily volume measurement.

The Exchange recently modified the MEI Port fees to provide lower fees to Market Makers that execute less volume than a certain volume threshold in certain MEI Port fee levels.<sup>15</sup> In particular, for Market Makers that fall within the following MEI Port fee levels, which represent the 4th or 5th levels of the fee table: Market Makers that have (i) Assignments in up to 100 option classes or up to 50% of option classes by volume, or (ii) Assignments in over

100 option classes or over 50% of option classes by volume up to all option classes listed on MIAX Options; and whose total monthly Market Maker executed volume during the relevant month is less than 0.075% of the total monthly executed volume reported by OCC in the market maker account type for MIAX-listed option classes for that month, the Exchange assesses a fee of \$14,500 instead of the fee otherwise applicable to such level.<sup>16</sup>

The Exchange now proposes to further modify its MEI Port fees by lowering the monthly volume threshold requirement from less than 0.075% to less than 0.060% of total monthly Market Maker executed volume reported by OCC in the Market Maker account type for MIAX-listed option classes for that month, and which fall within the 4th or 5th levels of the fee table. Accordingly, the Exchange proposes for these MEI Port Fee levels, if the Market Maker's total monthly executed volume during the relevant month is less than 0.060% of the total monthly executed volume reported by OCC in the Market Maker account type for MIAX-listed option classes for that month, then the fee will be \$14,500 instead of the fee otherwise applicable to such level. This is a proposed change to the MEI Port fees for Market Makers that fall within the 4th or 5th levels of the fee table.

The proposed adjustment to the threshold is based on an assessment of recent Market Maker volume trends on the Exchange. Specifically, the Exchange determined that, due to lower total monthly executed volume executed by certain larger-scale Market Makers, certain larger-scale Market Makers could potentially receive the lower fees, which lower fees were intended only to apply to smaller-scale Market Makers. Therefore, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to adjust the monthly Market Maker executed volume threshold requirement from less than 0.075% to less than 0.060% of total monthly executed volume reported by OCC in the Market Maker account type for MIAX-listed option classes for that month, so that such lower fees will continue to apply

<sup>13</sup> See the Fee Schedule, Section 5(d)(ii).

<sup>14</sup> The Exchange will use the following formula to calculate the percentage of total national average daily volume that the Market Maker assignment is for purposes of the MEI Port fee for a given month:

Market Maker assignment percentage of national average daily volume = [total volume during the prior calendar quarter in a class in which the Market Maker was assigned] / [total national volume in classes listed on MIAX Options in the prior calendar quarter].

<sup>15</sup> See *supra* note 9.

<sup>16</sup> For example, if Market Maker 1 elects to quote the top 40 option classes which consist of 58% of the total national average daily volume in the prior calendar quarter, the Exchange would assess \$14,000 to Market Maker 1 for the month which is the lesser of 'up to 40 classes' and 'over 50% of classes by volume up to all classes listed on MIAX.' If Market Maker 2 elects to quote the bottom 1000 option classes which consist of 10% of the total national average daily volume in the prior quarter, the Exchange would assess \$5,000 to Market Maker 2 for the month which is the lesser of 'over 100 classes' and 'up to 10% of classes by volume.'

to only smaller-scale Market Makers. The Exchange believes that by continuing to offer lower fees to Market Makers that execute less volume than a certain volume threshold in certain MEI Port fee levels, the Exchange will retain and attract smaller-scale Market Makers, which are an integral component of the option industry marketplace, but have been decreasing in number in recent years, due to industry consolidation and lower market maker profitability. Since these smaller-scale Market Makers execute less volume overall, the Exchange believes it is reasonable and appropriate to offer such Market Makers (that are willing to quote the majority or entirety of the market) lower fees.

The Exchange also proposes to amend the list of MIAAX Select Symbols contained in the Priority Customer Rebate Program of the Exchange's Fee Schedule to delete an obsolete reference. Specifically, the Exchange proposes to delete the symbol "NQ" associated with NQ Mobile Inc. The Exchange notes that, as a result of a recent corporate action, NQ changed its name, trading symbol, CUSIP, and business model. The company is now known as Link Motion Inc. ("LKM").<sup>17</sup> The Exchange determined not to replace NQ with LKM, for business reasons. Therefore, NQ should be removed from the list of MIAAX Select Symbols. By removing NQ from the list of MIAAX Select Symbols, it will help to ensure that there is no confusion amongst market participants and will clarify that LKM is not a MIAAX Select Symbol.

The Exchange initially filed the proposal on July 31, 2018 (SR-MIAAX-2018-17). That filing was withdrawn and replaced with the current filing (SR-MIAAX-2018-23).

## 2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act<sup>18</sup> in general, and furthers the objectives of Section 6(b)(4) and 6(b)(5) of the Act<sup>19</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Exchange 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>20</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 customer, issuers, brokers and dealers.

The Exchange believes that the proposed modification to the Trading Permit fees is consistent with Section 6(b)(4) of the Act in that it is reasonable, equitable and not unfairly discriminatory. The proposed modification to the Trading Permit fees is reasonable in that, by continuing to offer lower fees to Market Makers that execute less volume than a certain volume threshold in certain Trading Permit Tier levels, the Exchange will retain and attract smaller-scale Market Makers, which are an integral component of the option industry marketplace, but have been decreasing in number in recent years, due to industry consolidation and lower market maker profitability. Since these smaller-scale Market Makers execute less volume overall, the Exchange believes it is reasonable and appropriate to offer such Market Makers (that are willing to quote the majority or entirety of the market) lower fees. The Exchange also believes that its proposal is consistent with Section 6(b)(5) of the Act because it will be uniformly applied to all Market Makers that execute less volume on the Exchange, as determined and measured by a uniform, objective, quantitative volume amount. The Exchange notes that the proposed changes to Trading Permit fees apply only to the two highest tiers on the Fee Schedule. The Exchange believes that this is consistent with Section 6(b)(5) of the Act because it will allow for smaller-scale Market Makers, that execute less volume overall, to still be incentivized to quote the majority or entirety of the market, without paying the higher fees, which would be assessed to a Market Maker with a total monthly executed volume during the relevant month of greater than the proposed 0.060% of the total monthly executed volume reported by OCC in the market maker account type for MIAAX-listed option classes for that month. The proposed Trading Permit fees are fair and equitable and not unreasonably discriminatory because they apply equally to all similarly situated Market Makers regardless of type and access to the Exchange is offered on terms that are not unfairly discriminatory.

The Exchange also believes that the proposed modification to the Trading Permit fees is reasonable in that it is based on an assessment of recent Market Maker volume trends on the Exchange.

Specifically, the Exchange determined that, due to lower total monthly executed volume executed by certain larger-scale Market Makers, certain larger-scale Market Makers could potentially receive the lower fees, which lower fees were intended only to apply to smaller-scale Market Makers.

Therefore, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to adjust the monthly Market Maker executed volume threshold requirement from less than 0.075% to less than 0.060% of total monthly executed volume reported by OCC in the Market Maker account type for MIAAX-listed option classes for that month, so that such lower fees will continue to apply to only smaller-scale Market Makers. The Exchange believes that by continuing to offer lower fees to Market Makers that execute less volume than a certain volume threshold in certain Trading Permit Tier levels, the Exchange will retain and attract smaller-scale Market Makers, which are an integral component of the option industry marketplace, but have been decreasing in number in recent years, due to industry consolidation and lower market maker profitability. Since these smaller-scale Market Makers execute less volume overall, the Exchange believes it is reasonable and appropriate to offer such Market Makers (that are willing to quote the majority or entirety of the market) lower fees.

The Exchange believes that the proposed modification to the MEI Port fees is consistent with Section 6(b)(4) of the Act in that it is reasonable, equitable and not unfairly discriminatory. The proposed modification to the MEI Port fees is reasonable in that, by continuing to offer lower fees to Market Makers that execute less volume than a certain volume threshold in certain MEI Port fee levels, the Exchange will retain and attract smaller-scale Market Makers, which are an integral component of the option industry marketplace, but have been decreasing in number in recent years, due to industry consolidation and lower market maker profitability. Since these smaller-scale Market Makers execute less volume overall, the Exchange believes it is reasonable and appropriate to offer such Market Makers (who are willing to quote the majority or entirety of the market) lower fees. The Exchange also believes that its proposal is consistent with Section 6(b)(5) of the Act because it will be uniformly applied to all Market Makers that execute less volume on the Exchange, as determined and measured by a uniform, objective, quantitative volume amount. The Exchange notes

<sup>17</sup> The change became effective on March 14, 2018.

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

<sup>19</sup> 15 U.S.C. 78f(b)(4)(5).

<sup>20</sup> 15 U.S.C. 78f(b)(5).

that the proposed changes to MEI Port fees apply only to the two highest tiers of the Fee Schedule. The Exchange believes that this is consistent with Section 6(b)(5) of the Act because it will allow for smaller-scale Market Makers, that execute less volume overall, to still be incentivized to quote the majority or entirety of the market, without paying the higher fees, which would be assessed to a Market Maker with a total monthly executed volume during the relevant month of greater than the proposed 0.060% of the total monthly executed volume reported by OCC in the market maker account type for MIA X-listed option classes for that month. The proposed MEI Port fees are fair and equitable and not unreasonably discriminatory because they apply equally to all similarly situated Market Makers regardless of type and access to the Exchange is offered on terms that are not unfairly discriminatory.

The Exchange also believes that the proposed modification to the MEI Port fees is reasonable in that it is based on an assessment of recent Market Maker volume trends on the Exchange. Specifically, the Exchange determined that, due to lower total monthly executed volume executed by certain larger-scale Market Makers, certain larger-scale Market Makers could potentially receive the lower fees, which lower fees were intended only to apply to smaller-scale Market Makers. Therefore, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to adjust the monthly Market Maker executed volume threshold requirement from less than 0.075% to less than 0.060% of total monthly executed volume reported by OCC in the Market Maker account type for MIA X-listed option classes for that month, so that such lower fees will continue to apply to only smaller-scale Market Makers. The Exchange believes that by continuing to offer lower fees to Market Makers that execute less volume than a certain volume threshold in certain MEI Port fee levels, the Exchange will retain and attract smaller-scale Market Makers, which are an integral component of the option industry marketplace, but have been decreasing in number in recent years, due to industry consolidation and lower market maker profitability. Since these smaller-scale Market Makers execute less volume overall, the Exchange believes it is reasonable and appropriate to offer such Market Makers (that are willing to quote the majority or entirety of the market) lower fees.

Furthermore, the proposal to delete the symbol NQ from the list of MIA X Select Symbols contained in the Priority

Customer Rebate Program is consistent with Section 6(b)(4) of the Act because the proposed change will benefit investors by providing them an accurate, up-to-date list of MIA X Select Symbols contained in the Priority Customer Rebate Program on the Fee Schedule. The Exchange believes that the credit for transactions in the select symbols is reasonably designed because it continues to incentivize providers of Priority Customer order flow to send that Priority Customer order flow to the Exchange in order to receive a credit in a manner that enables the Exchange to improve its overall competitiveness and strengthen its market quality for all market participants. Additionally, the Exchange believes that its decision not to list the symbol LKM, which replaced NQ, is reasonably designed to increase the competitiveness of the Exchange with other options exchange in that the Exchange does not believe the symbol LKM should be included as a higher volume symbol in the MAIX Select Symbol program. The Exchange also believes that its proposal is consistent with Section 6(b)(5) of the Act because it will apply equally to all Priority Customer orders in the select symbols. All similarly situated Priority Customer orders in the select symbols are subject to the same rebate schedule, and access to the Exchange is offered on terms that are not unfairly discriminatory. In addition, the Program is equitable and not unfairly discriminatory because, while only Priority Customer order flow qualifies for the Program, an increase in Priority Customer order flow will bring greater volume and liquidity, which benefit all market participants by providing more trading opportunities and tighter spreads.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule changes will increase both intermarket and intramarket competition by continuing to enable smaller-scale Market Makers that are willing to quote the entire marketplace (or a substantial amount of the entire marketplace) access to the Exchange at a lower fee. By continuing to offer lower fees to Market Makers that execute less volume than a certain volume threshold at certain fee levels, the Exchange believes that it will retain and attract smaller-scale Market Makers, which are an integral component of the option industry marketplace, but have been

decreasing in number in recent years, due to industry consolidation and lower market maker profitability. Since these smaller-scale Market Makers execute less volume overall, the Exchange believes it is reasonable and appropriate to offer such Market Makers lower fees. The Exchange also believes that removing the symbol NQ from the MIA X Select Symbols and not replacing it with symbol LKM will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change will increase both intermarket and intramarket competition by providing investors an accurate, up-to-date list of MIA X Select Symbols contained in the Priority Customer Rebate Program on the Fee Schedule and by continuing to provide increased incentives only for higher volume symbols that the Exchange believes will increase the competitiveness of the Exchange with other options exchange that also offer increased incentives to higher volume symbols.

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 and to attract order flow to the Exchange. The Exchange believes that the proposed rule changes reflect this competitive environment because they modify the Exchange's fees in a manner that continues to encourage market participants to register as Market Makers on the Exchange, to provide liquidity and to attract order flow. 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.

### **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

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

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

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-2018-23 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-MIAX-2018-23. 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-MIAX-2018-23, and should be submitted on or before September 10, 2018.

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

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-83837; File No. SR-NYSEArca-2018-59]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rules 6.4-O and 6.4A-O

August 14, 2018.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 ("Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on August 3, 2018, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") 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 self-regulatory organization. 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 proposes to amend Rules 6.4-O and 6.4A-O. The proposed rule change is available on the Exchange's website at [www.nyse.com](http://www.nyse.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 self-regulatory organization 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 those 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 the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The purpose of this filing is to amend Rules 6.4-O (Series of Options Open for Trading) and 6.4A-O (Select Provisions of the Options Listing Procedures Plan)—or OLPP—to conform to recently approved changes to the OLPP.<sup>4</sup>

The Exchange, which is one of the Participant Exchanges<sup>5</sup> to the OLPP, currently has rules that are designed to incorporate the requirements of the OLPP. All Participant Exchanges have similar such (essentially uniform) rules to ensure consistency and compliance with the OLPP. The Exchange proposes to modify such rules to reflect the recent updates as described below.

##### Addition of Long-Term Equity Options ("LEAPS")

First, the OLPP has been amended to change the earliest date on which new January LEAPS on equity options, options on Exchange Traded Funds ("ETF"), or options on Trust Issued Receipts ("TIR") may be added to a single date (from three separate months).<sup>6</sup> As noted in the OLPP Notice, in the past there were operational concerns related to adding new January LEAPS series for all options classes on which LEAPS were listed on a single trading day.<sup>7</sup> And, the addition of new series in a pre-electronic trading environment was a manual process. To

<sup>4</sup> See Securities Exchange Act Release Nos. 82235 (December 7, 2017), 82 FR 58668 (December 13, 2017) (order approving the Fourth Amendment to the OLPP); 81893 (October 18, 2017), 82 FR 49249 ("OLPP Notice").

<sup>5</sup> In addition to the Exchange, the "Participant Exchanges" are: Chicago Board Options Exchange, Incorporated (now known as Cboe Exchange, Inc.), on behalf of the BATS Exchange, Inc. (now known as Cboe BZX Exchange, Inc.); Box Options Exchange, LLC; C2 Exchange, Incorporated (now known as Cboe C2 Exchange, Inc.); EDGX Exchange, Inc. (now known as Cboe EDGX Exchange, Inc.); Miami International Securities Exchange, LLC; MIAX PEARL, LLC; Nasdaq BX, Inc.; Nasdaq GEMX, LLC; Nasdaq ISE, LLC; Nasdaq MRX, LLC; Nasdaq Options Market, LLC; Nasdaq PHILX, LLC; and NYSE American, LLC.

<sup>6</sup> The Exchange proposes to modify Rule 6.4-O(d) to include the title Long-Term Equity Option Series (LEAPS), to consolidate LEAPS requirements into one paragraph, and to delete extraneous references to LEAPS in current paragraphs (d) and (e) to Rule 6.4-O. See proposed Rule 6.4-O(d). Consistent with this change, the Exchange also proposes to retitle current paragraph (f) as (e). See proposed Rule 6.4-O(f).

<sup>7</sup> See *supra* n. 4, 82 FR 49249, at 49249.

<sup>23</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.