

circuit breaker pilot. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

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

No written comments were either solicited or received.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>19</sup> and Rule 19b-4(f)(6) thereunder.<sup>20</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>21</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>22</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange asked that the Commission waive the 30 day operative delay so that the proposal may become operative immediately upon filing. Extending the Pilot Rules' effectiveness to the close of business on March 18, 2022 will extend the protections provided by the Pilot Rules, which would otherwise expire in less than 30 days. Waiver of the operative delay would therefore permit uninterrupted continuation of the MWCB pilot while the Commission reviews the NYSE's proposed rule change to make the Pilot Rules permanent. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.<sup>23</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the

public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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-FINRA-2021-027 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-FINRA-2021-027. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. 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-FINRA-

2021-027 and should be submitted on or before November 9, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>24</sup>

**J. Matthew DeLesDernier,**  
*Assistant Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-93306; File No. SR-MIAX-2021-42]

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

October 13, 2021.

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 September 30, 2021, Miami International Securities Exchange LLC ("MIAX" 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 <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

<sup>19</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>20</sup> 17 CFR 240.19b-4(f)(6).

<sup>21</sup> 17 CFR 240.19b-4(f)(6).

<sup>22</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>23</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>24</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.

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 (i) the MIAX Price Improvement Mechanism ("PRIME") Fees table and accompanying notes; and (ii) the MIAX Complex Price Improvement Mechanism ("cPRIME") Fees table. The Exchange proposes to implement the fee changes effective October 1, 2021.

Background

PRIME is a process by which a Member<sup>3</sup> may electronically submit for execution an order it represents as agent (an "Agency Order") against principal interest and/or solicited interest. The Member that submits the Agency Order ("Initiating Member") agrees to guarantee the execution of the Agency Order by submitting a contra-side order representing principal interest or solicited interest ("Contra-Side Order"). When the Exchange receives a properly designated Agency Order for Auction processing, a request for response ("RFR") detailing the option, side, size and initiating price is broadcasted to MIAX participants up to an optional designated limit price. Members may submit responses to the RFR, which can be either an Auction or Cancel ("AOC") order<sup>4</sup> or an AOC eQuote.<sup>5</sup> The PRIME mechanism is used for orders on the

<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> An Auction-or-Cancel or "AOC" order is a limit order used to provide liquidity during a specific Exchange process (such as the Opening Imbalance process described in Rule 503) with a time in force that corresponds with that event. AOC orders are not displayed to any market participant, are not included in the MBBO and therefore are not eligible for trading outside of the event, may not be routed, and may not trade at a price inferior to the away markets. See Exchange Rule 516(b)(4).

<sup>5</sup> AOC eQuote An Auction or Cancel or "AOC" eQuote is a quote submitted by a Market Maker to provide liquidity in a specific Exchange process (such as the Opening Imbalance Process described in Rule 503) with a time in force that corresponds with the duration of that event and will automatically expire at the end of that event. AOC eQuotes are not displayed to any market participant, are not included in the MBBO and therefore are not eligible for trading outside of the event. An AOC eQuote does not automatically cancel or replace the Market Maker's previous Standard quote or eQuote. See Exchange Rule 517(a)(2)(ii).

Exchange's Simple Order Book.<sup>6</sup> The Exchange notes that for Complex Orders<sup>7</sup> on the Strategy Book,<sup>8</sup> the Exchange's cPRIME<sup>9</sup> mechanism operates in the same manner for processing and execution of cPRIME Orders that is used for PRIME Orders on the Simple Order Book.

Exchange Rule 518(b)(7) defines a cPRIME Order as a type of complex order that is submitted for participation in a cPRIME Auction and trading of cPRIME Orders is governed by Rule 515A, Interpretation and Policies.<sup>10</sup> cPRIME Orders are processed and executed in the Exchange's PRIME [sic] mechanism, the same mechanism that the Exchange uses to process and execute simple PRIME orders, pursuant to Exchange Rule 515A.<sup>11</sup> A cPRIME Auction is the price-improvement mechanism of the Exchange's System pursuant to which an Initiating Member electronically submits a complex Agency Order into a cPRIME Auction. The Initiating Member, in submitting an Agency Order, must be willing to either (i) cross the Agency Order at a single price against principal or solicited interest, or (ii) automatically match against principal or solicited interest, the price and size of a RFR that is broadcast to MIAX participants up to an optional designated limit price. Such responses are defined as cPRIME AOC

<sup>6</sup> The "Simple Order Book" is the Exchange's regular electronic book of orders and quotes. See Exchange Rule 518(a)(15).

<sup>7</sup> A "complex order" is any order involving the concurrent purchase and/or sale of two or more different options in the same underlying security (the "legs" or "components" of the complex order), for the same account, in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purposes of executing a particular investment strategy. Mini-options may only be part of a complex order that includes other mini-options. Only those complex orders in the classes designated by the Exchange and communicated to Members via Regulatory Circular with no more than the applicable number of legs, as determined by the Exchange on a class-by-class basis and communicated to Members via Regulatory Circular, are eligible for processing. See Exchange Rule 518(a)(5).

<sup>8</sup> The "Strategy Book" is the Exchange's electronic book of complex orders and complex quotes. See Exchange Rule 518(a)(17).

<sup>9</sup> "cPRIME" is the process by which a Member may electronically submit a "cPRIME Order" (as defined in Rule 518(b)(7)) it represents as agent (a "cPRIME Agency Order") against principal or solicited interest for execution (a "cPRIME Auction"), subject to the restrictions set forth in Exchange Rule 515A, Interpretation and Policy .12. See Exchange Rule 515A.

<sup>10</sup> See Securities Exchange Act Release No. 81131 (July 12, 2017), 82 FR 32900 (July 18, 2017) (SR-MIAX-2017-19) (Order Granting Approval of a Proposed Rule Change to Amend MIAX Options Rules 515, Execution of Orders and Quotes; 515A, MIAX Price Improvement Mechanism ("PRIME") and PRIME Solicitation Mechanism; and 518, Complex Orders).

<sup>11</sup> *Id.*

Responses or cPRIME eQuotes. The PRIME mechanism is used for orders on the Exchange's Simple Order Book. The cPRIME mechanism is used for Complex Orders on the Exchange's Strategy Book, with the cPRIME mechanism operating in the same manner for processing and execution of cPRIME Orders that is used for PRIME Orders on the Simple Order Book.

Responder to PRIME Auction Fee

The Exchange proposes to amend the Fee Schedule to modify the transaction fees for Members that participate in the PRIME Auction. Specifically, the Exchange proposes to amend the Responder to PRIME Auction Fee, Per Contract Fee for Non-Penny Classes, in the PRIME Fees table. Currently, the Exchange charges a fee of \$0.99 for all Origins (Priority Customer,<sup>12</sup> Public Customer<sup>13</sup> that is not a Priority Customer, MIAX Market Maker,<sup>14</sup> Non-MIAX Market Maker, Non-Member Broker-Dealer, and Firm). The Exchange now proposes to increase the Responder fee for Non-Penny Classes from \$0.99 to \$1.10 per contract for all Origins in the PRIME Fees table.

The purpose of adjusting the per contract Responder fee for Non-Penny Classes in the PRIME Fees table for all Origins is for business and competitive reasons. In order to attract order flow the Exchange initially set its PRIME rebates and fees so that they were meaningfully higher/lower than other options exchanges that provide a comparable price improvement mechanism. The Exchange now believes that it is appropriate to further adjust these fees so that they are more in line with other exchanges,<sup>15</sup> but remain competitive such that it should enable the Exchange to continue to attract order

<sup>12</sup> The term "Priority Customer" means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 290 orders in listed options per day on average during a calendar month for its own beneficial account(s). See Exchange Rule 100.

<sup>13</sup> The term "Public Customer" means a person that is not a broker or dealer in securities. See Exchange Rule 100.

<sup>14</sup> The term "Market Makers" refers to "Lead Market Makers", "Primary Lead Market Makers" and "Registered Market Makers" collectively. See Exchange Rule 100.

<sup>15</sup> The Exchange notes that BOX Options has a \$1.15 responder fee in Non-Penny classes. See BOX Options Fee Schedule as of September 1, 2021, Section I. Electronic Transaction Fees, B. PIP and COPIP Transactions at <https://boxoptions.com/regulatory/fee-schedule/>. The Exchange also notes that Nasdaq MRX has a responder fee of \$1.10 in Non-Penny classes. See Nasdaq MRX Options 7 Pricing Schedule, Section 3. Regular Order Fees and Rebates, A. PIM Pricing for Regular and Complex Orders at <https://listingcenter.nasdaq.com/rulebook/mrx/rules/mrx-options-7>.

flow to PRIME Auctions and to also maintain market share.

#### Priority Customer PRIME Break-Up Credit

The Exchange proposes to amend the Fee Schedule to modify the PRIME Break-up Credit per contract credit for Non-Penny Classes for the Priority Customer Origin in PRIME. Currently, the Exchange provides Priority Customers a PRIME break-up credit of \$0.60 per contract for Non-Penny Classes in a PRIME Auction. The Exchange now proposes to adopt an alternative Priority Customer PRIME break-up credit of \$0.69, instead of \$0.60, per contract for Non-Penny Classes when the order breakup percentage is greater than 40%. Orders in this segment with order break-up percentages of 40% or less will continue to receive the \$0.60 per contract break-up credit. The Exchange proposes to add new footnote “\*” after the PRIME Fee table that will provide the following: MIAX will apply an enhanced PRIME Break-up credit of \$0.69 per contract to the EEM that submitted a PRIME Order in Non-Penny Classes that is submitted to the PRIME Auction that trades with PRIME AOC Responses and/or PRIME Participating Quotes or Orders, if the PRIME Order experiences a break-up of greater than forty percent (40%).

The decision to offer an alternative enhanced Priority Customer Break-up credit is based on an analysis of current revenue and volume levels and is designed to encourage Priority Customer order flow to PRIME Auctions.

#### Remove Discounted PRIME Response Fee for PCRFP Tier 3 or Higher

Next, the Exchange proposes to remove the discounted PRIME Response fee for standard options in Penny Classes and discounted PRIME Response fee for standard options in Non-Penny Classes for Members or their Affiliates that qualifies for Priority Customer Rebate Program (“PCRFP”) volume tier 3 or higher.

Currently MIAX will assess the Responder to PRIME Auction Fee to: (i) A PRIME AOC Response that executes against a PRIME Order, and (ii) a PRIME Participating Quote or Order that executes against a PRIME Order. MIAX will apply the PRIME Break-up credit to the EEM that submitted the PRIME Order for agency contracts that are submitted to the PRIME Auction that trade with a PRIME AOC Response or a PRIME Participating Quote or Order that trades with the PRIME Order. Transaction fees in mini-options will be 1/10th of the standard per contract fee

or rebate described in the table above for the PRIME Auction. MIAX will assess the standard transaction fees to a PRIME AOC Response if it executes against unrelated orders. Any Member or its Affiliate<sup>16</sup> that qualifies for Priority Customer Rebate Program volume tiers 3 or higher and submits a PRIME AOC Response that is received during the Response Time Interval and executed against the PRIME Order, or a PRIME Participating Quote or Order that is received during the Response Time Interval and executed against the PRIME Order, will be assessed a Discounted PRIME Response Fee of \$0.46 per contract for standard options in Penny Program classes. Any Member or its Affiliate that qualifies for Priority Customer Rebate Program (“PCRFP”) volume tiers 3 or higher and submits a PRIME AOC Response that is received during the Response Time Interval and executed against the PRIME Order, or a PRIME Participating Quote or Order that is received during the Response Time Interval and executed against the PRIME Order, will be assessed a Discounted PRIME Response Fee of \$0.95 per contract for standard options in non-Penny Program classes.

The Exchange now proposes to remove both the Discounted PRIME Response Fee of \$0.46 per contract for standard options in Penny Classes and

<sup>16</sup> The term “Affiliate” means (i) an affiliate of a Member of at least 75% common ownership between the firms as reflected on each firm’s Form BD, Schedule A, (“Affiliate”), or (ii) the Appointed Market Maker of an Appointed EEM (or, conversely, the Appointed EEM of an Appointed Market Maker). An “Appointed Market Maker” is a MIAX Market Maker (who does not otherwise have a corporate affiliation based upon common ownership with an EEM) that has been appointed by an EEM and an “Appointed EEM” is an EEM (who does not otherwise have a corporate affiliation based upon common ownership with a MIAX Market Maker) that has been appointed by a MIAX Market Maker, pursuant to the following process. A MIAX Market Maker appoints an EEM and an EEM appoints a MIAX Market Maker, for the purposes of the Fee Schedule, by each completing and sending an executed Volume Aggregation Request Form by email to [membership@miaxoptions.com](mailto:membership@miaxoptions.com) no later than 2 business days prior to the first business day of the month in which the designation is to become effective. Transmittal of a validly completed and executed form to the Exchange along with the Exchange’s acknowledgement of the effective designation to each of the Market Maker and EEM will be viewed as acceptance of the appointment. The Exchange will only recognize one designation per Member. A Member may make a designation not more than once every 12 months (from the date of its most recent designation), which designation shall remain in effect unless or until the Exchange receives written notice submitted 2 business days prior to the first business day of the month from either Member indicating that the appointment has been terminated. Designations will become operative on the first business day of the effective month and may not be terminated prior to the end of the month. Execution data and reports will be provided to both parties. See Fee Schedule, note 1.

the Discounted PRIME Response Fee of \$0.95 per contract for standard options in Non-Penny Classes, and will remove the portion that describes the discounted fees from the accompanying footnotes. The purpose of this change is for business and competitive reasons.

#### Responder to cPRIME Auction Fee

The Exchange proposes to amend the Fee Schedule to modify the transaction fees for Members that participate in the cPRIME Auction. Specifically, the Exchange proposes to amend the per contract Responder fee for Non-Penny Classes in a cPRIME Auction for all Origins in the cPRIME Fees table. Currently, the Exchange charges a Responder fee of \$0.99 per contract for Non-Penny Classes in all Origins for a cPRIME Auction. The Exchange now proposes to increase the Responder fee to \$1.10 per contract for Non-Penny Classes for all Origins in a cPRIME Auction.

The purpose of adjusting the per contract Responder fee for Non-Penny Classes for all Origins is for business and competitive reasons. In order to attract order flow the Exchange initially set its cPRIME rebates and fees so that they were meaningfully higher/lower than other options exchanges that provide a comparable complex order price improvement mechanism. The Exchange now believes that it is appropriate to further adjust these fees so that they are more in line with other exchanges,<sup>17</sup> but will remain competitive such that it should enable the Exchange to continue to attract complex order flow to cPRIME Auctions and also maintain market share.

#### 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) of the Act<sup>19</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act 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

<sup>17</sup> See *supra* note 15.

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

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

discrimination between customers, issuers, brokers and dealers.

The Exchange believes that its proposal provides for the equitable allocation of reasonable dues and fees and is not unfairly discriminatory for the following reasons. The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>20</sup> There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, for the month of September 2021, no single exchange has more than approximately 12%–13% of the market share of executed volume of multiply-listed equity and exchange-traded fund (“ETF”) options trades as of September 21, 2021.<sup>21</sup> Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, as of September 21, 2021, the Exchange had a market share of approximately 5.47% of executed volume of multiply-listed equity and ETF options for the month of September 2021.<sup>22</sup>

The Exchange believes that the ever-shifting market shares among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to transaction and/or non-transaction fee changes. For example, on February 28, 2019, the Exchange’s affiliate, MIAX PEARL, LLC (“MIAX Pearl”), filed with the Commission a proposal to increase Taker fees in certain Tiers for options transactions in certain Penny classes for Priority Customers and decrease Maker rebates in certain Tiers for options transactions in Penny classes for Priority Customers (which fee was to be

effective March 1, 2019).<sup>23</sup> MIAX Pearl experienced a decrease in total market share between the months of February and March of 2019, after the fees were in effect. Accordingly, the Exchange believes that the MIAX Pearl March 1, 2019, fee change may have contributed to the decrease in the MIAX Pearl’s market share and, as such, the Exchange believes competitive forces constrain options exchange transaction fees and market participants can shift order flow based on fee changes instituted by the exchanges.

Accordingly, competitive forces constrain the Exchange’s transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. In response to the competitive environment, the Exchange offers specific rates and credits in its fee schedule, like those of other options exchanges’, which the Exchange believes provides incentives to Members to increase order flow of certain qualifying orders.

The Exchange believes its proposal to amend its Responder fees for Non-Penny Classes for all Origins in PRIME and cPRIME Auctions is reasonable, equitably allocated and not unfairly discriminatory because these changes are for business and competitive reasons. In order to attract order flow the Exchange initially set its rebates and fees for its PRIME and cPRIME Auctions so that they were meaningfully higher/lower than other options exchanges that provide a comparable price improvement mechanisms. The Exchange now believes that it is appropriate to further adjust these fees so that they are more in line with those of other exchanges,<sup>24</sup> but will remain competitive and should enable the Exchange to continue to attract order flow to PRIME and cPRIME Auctions and also maintain market share.

The Exchange also believes that its proposal to amend the Responder fees for Non-Penny Classes for all Origins in PRIME and cPRIME Auctions is not unfairly discriminatory as all Origins that respond to a PRIME or cPRIME Auction will be assessed an identical fee and access to the Exchange is offered on terms that are not unfairly discriminatory. The Exchange believes it is equitable and not unfairly discriminatory to increase the Responder fee as certain other option exchanges that offer similar price improvement functionality charge

similar fees.<sup>25</sup> The Exchange believes that it is appropriate to increase the fees so that they are more in line with other exchanges,<sup>26</sup> and will still remain competitive such that they should enable the Exchange to continue to attract order flow to its PRIME and cPRIME Auctions and maintain market share.

The Exchange believes its proposal to offer an enhanced PRIME Break-up Credit for Non-Penny Classes for Priority Customers is reasonable, equitably allocated and not unfairly discriminatory because this change is for business and competitive reasons. The Exchange believes that its proposal will encourage Priority Customer order flow to PRIME Auctions. Increased Priority Customer order flow benefits all market participants because it continues to attract liquidity to the Exchange by providing more trading opportunities. This attracts Market Makers and other liquidity providers, thus, facilitating price improvement in the auction process, signaling additional corresponding increase in order flow from other market participants, and, as a result, increasing liquidity on the Exchange.

As noted above, the Exchange operates in a highly competitive market. The Exchange is only one of several options venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. The Exchange believes that the proposed fees are reasonable, equitable, and not unfairly discriminatory in that at least one competing options exchange offers similar fees and credits in connection with similar price improvement auctions.<sup>27</sup>

The Exchange believes its proposal to remove the discounted PRIME Responder fees for Penny and Non-Penny Classes for Members who achieve Tier 3 or higher in the PCRFP is reasonable, equitably allocated and not unfairly discriminatory because these changes are for business and competitive reasons. In order to attract order flow, the Exchange initially set its rebates and fees so that they were meaningfully higher/lower than other options exchanges that provide a comparable price improvement mechanism. The Exchange conducted an internal review and analysis of fees and rebates and determined that it was appropriate to

<sup>25</sup> See *id.*

<sup>26</sup> See *id.*

<sup>27</sup> The Cboe Exchange provides for a \$0.60 per contract credit in Non-Penny classes. See Cboe Fee Schedule, “Break-Up Credits,” available at [https://cdn.cboe.com/resources/membership/Cboe\\_FeeSchedule.pdf](https://cdn.cboe.com/resources/membership/Cboe_FeeSchedule.pdf).

<sup>20</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

<sup>21</sup> See MIAX’s “The Market at a Glance”, available at <https://www.miaxoptions.com/> (last visited September 21, 2021).

<sup>22</sup> See *id.*

<sup>23</sup> See Securities Exchange Act Release No. 85304 (March 13, 2019), 84 FR 10144 (March 19, 2019) (SR-PEARL-2019-07).

<sup>24</sup> See *supra* note 15.

remove the discounted PRIME Response fees so that all PRIME response fees are more line with other exchanges,<sup>28</sup> but will still remain highly competitive such that it should enable the Exchange to continue to attract order flow to PRIME Auctions and also maintain market share.

In addition, The Exchange believes that its proposal is consistent with Section 6(b)(5) of the Act<sup>29</sup> because it perfects the mechanisms of a free and open market and a national market system and protects investors and the public interest because an increase in Priority Customer order flow will bring greater volume and liquidity to the Exchange, which benefits all market participants by providing more trading opportunities and tighter spreads. To the extent Priority Customer order flow is increased by this proposal, market participants will increasingly compete for the opportunity to trade on the Exchange including sending more orders and provided narrower and larger-sized quotations in the effort to trade with such Priority Customer order flow.

The Exchange believes that increasing the Responder fees for PRIME and cPRIME Auctions is equitable and not unfairly discriminatory because the proposed fees will apply equally to all Origins that respond to PRIME and cPRIME Auctions. The Exchange believes that the application of this fee is equitable and not unfairly discriminatory because the fee is identical for all market participants that respond to PRIME and cPRIME Auctions.

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

In accordance with Section 6(b)(8) of the Act,<sup>30</sup> the Exchange does not believe that the proposed rule change will impose any burden on intra-market or inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that its proposal will impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because its proposal to amend its Responder fees for PRIME and cPRIME Auctions is uniform and will be applied equally to all Origins that respond to PRIME and cPRIME Auctions.

The Exchange does not believe its proposal to remove the discounted PRIME Response fees for Penny and

Non-Penny Classes for Members who achieve Tier 3 or higher in the PCRCP will impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange conducted an internal review and analysis of fees and rebates and determined that it was appropriate to remove the discounted PRIME Response fees so that all PRIME response fees are more line with other exchanges,<sup>31</sup> but will still remain highly competitive such that it should enable the Exchange to continue to attract order flow to PRIME Auctions and also maintain market share. The removal of these fees will impact all Priority Customers equally.

The Exchange believes its proposal to offer an enhanced PRIME Break-up Credit for Non-Penny Classes for Priority Customers is reasonable, equitably allocated and not unfairly discriminatory because this change is for business and competitive reasons. The Exchange believes that its proposal will encourage additional Priority Customer order flow to PRIME Auctions. Increased Priority Customer order flow benefits all market participants because it continues to attract liquidity to the Exchange by providing more trading opportunities and tighter spreads.

The Exchange does not believe that its proposal will impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because, as noted above, other competing options exchanges currently have similar rebates in place in connection with similar price improvement auctions.<sup>32</sup> Additionally, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they participate on and direct their order flow to, including 15 other options exchanges, many of which offer substantially similar price improvement auctions. Based on publicly available information, no single options exchange has more than 12–13% of the market share.<sup>33</sup> Therefore, no exchange possesses significant pricing power in the execution of option order flow. Participants can readily choose to send their orders to other exchanges if they deem fee levels at those other exchanges to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the

securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>34</sup> The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit states as follows: “[N]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’ . . .”<sup>35</sup> Accordingly, the Exchange does not believe its proposed fee changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

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>36</sup> and Rule 19b-4(f)(2)<sup>37</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

<sup>28</sup> See *supra* note 15.

<sup>29</sup> 15 U.S.C. 78f(b)(4).

<sup>30</sup> 15 U.S.C. 78f(b)(8).

<sup>31</sup> See *supra* note 15.

<sup>32</sup> See *supra* note 15.

<sup>33</sup> See *supra* note 21.

<sup>34</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

<sup>35</sup> *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

<sup>36</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>37</sup> 17 CFR 240.19b-4(f)(2).

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-2021-42 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-2021-42. 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-2021-42, and should be submitted on or before November 9, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>38</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-93297; File No. SR-CboeEDGX-2021-042]

### Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt a Rule Regarding the Allowance of Off-Exchange Transactions by a Member Acting as Agent Otherwise Than on EDGX in Accordance With Rule 19c-1 Under the Securities Exchange Act of 1934

October 13, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on October 8, 2021, Cboe EDGX Exchange, Inc. (the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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

Cboe EDGX Exchange, Inc. (the "Exchange" or "EDGX") proposes to adopt a rule regarding the allowance of off-exchange transactions by a Member acting as agent otherwise than on EDGX in accordance with Rule 19c-1 under the Securities Exchange Act of 1934 (the "Act").<sup>5</sup> The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website ([http://markets.cboe.com/us/options/regulation/rule\\_filings/edgx/](http://markets.cboe.com/us/options/regulation/rule_filings/edgx/)), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

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

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

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

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

<sup>5</sup> See 17 CFR 240.19c-1.

#### 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 adopt a rule regarding off-exchange transactions by a Member acting as agent. Rule 19c-1 and Rule 19c-3 under the Act<sup>6</sup> describe rule provisions that each national securities exchange must include in its Rules regarding the ability of members to engage in transactions off an exchange. While the Exchange already incorporates the required provision in Rule 19c-3 under the Act into Rule 13.6, and its stated policies and practices are consistent with these provisions of the Act, the Exchange Rules do not currently include the provisions in Rule 19c-1 under the Act. Therefore, the proposed rule change adopts this provision in new Rule 13.6(a)<sup>7</sup> in accordance with Rule 19c-1 under the Act. Specifically, proposed Rule 13.6(a) (in accordance with Rule 19c-1 under the Act) provides that no rule, stated policy, or practice of this Exchange shall prohibit or condition, or be construed to prohibit or condition, or otherwise limit, directly or indirectly, the ability of any Member acting as agent to effect any transaction otherwise than on this Exchange with another person (except when such Member also is acting as agent for such other person in such transaction) in any equity security listed on this Exchange or to which unlisted trading privileges on this Exchange have been extended.

###### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange

<sup>6</sup> See 17 CFR 240.19c-1 and § 240.19c-3.

<sup>7</sup> The proposed rule change also updates the provision in current Rule 13.6 (which incorporate Rule 19c-3 under the Act) to be Rule 13.6(b).

<sup>38</sup> 17 CFR 200.30-3(a)(12).