

any item or subject listed on the agenda for the open session above. Additionally, the public will be given the option to join the public comment session and participate via teleconference. Registration of speakers at the public comment period is required. Should you wish to participate via teleconference, you will be required to give your first and last name, a valid email address to send an invite and a phone number to reach you should a technical issue arise. Speakers may register online at <https://www.surveymonkey.com/r/BOG-02-08-2022>. No more than three minutes shall be allotted to each speaker. The time allotted to each speaker will be determined after registration closes. Registration for the public comment period, either in person or via teleconference, will end on February 6 at 5 p.m. ET. Participation in the public comment period is governed by 39 CFR 232.1(n).

CONTACT PERSON FOR MORE INFORMATION: Michael J. Elston, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260-1000. Telephone: (202) 268-4800.

Michael J. Elston,
Secretary.

[FR Doc. 2022-01874 Filed 1-26-22; 11:15 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-94039; File No. SR-MIAX-2022-05]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Professional Rebate Program

January 24, 2022.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) ¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 13, 2022, 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 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 change the Professional Rebate Program so that it applies only to orders that add liquidity to the Exchange. The Exchange initially filed this proposal on January 3, 2022 (SR-MIAX-2022-02) and withdrew such filing on January 13, 2022. The Exchange proposes to implement the fee change effective January 13, 2022.

The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is one of 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than approximately 13% of the market share of executed volume of multiply-listed equity and exchange-traded fund (“ETF”) options trades as of January 11, 2022, for the month of January 2022.³ Therefore, no exchange possesses significant pricing power in the

execution of multiply-listed equity and ETF options order flow. More specifically, as of January 11, 2022, the Exchange has a total market share of 5.41% of all equity options volume, for the month of January 2022.⁴

The Exchange currently offers a Professional Rebate Program (the “Program”) as defined in the Fee Schedule. Under the Program, the Exchange will credit each Member⁵ the per contract amount resulting from any contracts executed from an order submitted by a Member for the account(s) of a (i) Public Customer⁶ that is not a Priority Customer;⁷ (ii) Non-MIAX Market Maker; (iii) Non-Member Broker-Dealer; or (iv) Firm (for purposes of the Professional Rebate Program, “Professional”) which is executed electronically on the Exchange in all multiply-listed option classes (excluding, in simple or complex as applicable, mini-options, QCC⁸ and cQCC Orders,⁹ PRIME¹⁰ and cPRIME Orders,¹¹ PRIME and cPRIME AOC Responses,¹² PRIME and cPRIME

⁴ See *id.*

⁵ 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.

⁶ The term “Public Customer” means a person that is not a broker or dealer in securities. See Exchange Rule 100.

⁷ 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 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). See Exchange Rule 100.

⁸ Qualified Contingent Cross Order. A Qualified Contingent Cross Order is comprised of an originating order to buy or sell at least 1,000 contracts, or 10,000 mini-option contracts, that is identified as being part of a qualified contingent trade, as that term is defined in Interpretations and Policies .01 of Rule 516, coupled with a contra-side order or orders totaling an equal number of contracts. A Qualified Contingent Cross Order is not valid during the opening rotation process described in Rule 503. See Exchange Rule 516(j).

⁹ A Complex Qualified Contingent Cross or “cQCC” Order is comprised of an originating complex order to buy or sell where each component is at least 1,000 contracts that is identified as being part of a qualified contingent trade, as defined in Rule 516, Interpretations and Policies .01, coupled with a contra-side complex order or orders totaling an equal number of contracts. Trading of cQCC Orders is governed by Rule 515(h)(4). See Exchange Rule 518(b)(6).

¹⁰ PRIME is a process by which a Member may electronically submit for execution (“Auction”) an order it represents as agent (“Agency Order”) against principal interest, and/or an Agency Order against solicited interest. See Exchange Rule 515A(a).

¹¹ A Complex PRIME or “cPRIME” Order is a complex order (as defined in Rule 518(a)(5)) that is submitted for participation in a cPRIME Auction. Trading of cPRIME Orders is governed by Rule 515A, Interpretations and Policies .12. See Exchange Rule 518(b)(7).

¹² An Auction-or-Cancel or “AOC” order is a limit order used to provide liquidity during a specific

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See MIAX's “The Market at a Glance”, available at <https://www.miaxoptions.com/> (last visited January 11, 2022).

Contra-side Orders, and executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in MIAX Rule 1400 (collectively, for purposes of the Professional Rebate Program, “Excluded Contracts”), provided the Member achieves certain Professional volume increase percentage thresholds in the month relative to the fourth quarter of 2015, as described in the table above.

The percentage thresholds in each tier are based upon the increase in the total volume submitted by a Member and executed for the account(s) of a Professional on MIAX (not including Excluded Contracts) during a particular month as a percentage of the total volume reported by the Options Clearing Corporation (OCC) in MIAX classes during the same month (the “Current Percentage”), less the greater of (x) total volume submitted by that Member and executed for the account(s) of a Professional on MIAX (not including Excluded Contracts) during the fourth quarter of 2015 as a percentage of the total volume reported by OCC in MIAX classes during the fourth quarter of 2015, and (y) 0.065% (the “Baseline Percentage”). Volume for transactions in both simple and complex orders will be aggregated to determine the appropriate volume tier threshold applicable to each transaction. For purposes of determining the

Baseline Percentage for any Member that did not execute any contracts for the account(s) of a Professional on MIAX in the fourth quarter of 2015, the Baseline Percentage shall be 0.065%.

The Member’s percentage increase will be calculated as the Current Percentage less the Baseline Percentage. Members will receive rebates for contracts submitted by such Member on behalf of a Professional(s) that are executed within a particular percentage tier based upon that percentage tier only, and will not receive a rebate for such contracts that applies to any other tier. The increase in volume percentage will be recorded for, and credits will be delivered to, the Member that submits the order to MIAX on behalf of the Professional. Volume for both simple and complex orders will be aggregated to determine the appropriate volume tier threshold applicable to each transaction. MIAX will aggregate the contracts resulting from Professional orders transmitted and executed electronically on MIAX from Members and their Affiliates¹³ for purposes of the thresholds described in the table above. A Member may request to receive its credit under the Program as a separate direct payment.

For Simple Orders¹⁴ the per contract credit of \$0.10 for Tier 1 will apply to percentage thresholds from above 0.00% up to 0.005%. Next, the per contract credit of \$0.15 for Tier 2 will apply only to percentage thresholds from above

0.005% up to 0.020%, beginning with the first contract executed in Tier 2, but will not apply to contracts executed in Tier 1, to which the \$0.10 per contract credit applied. Thereafter, the per contract credit of \$0.20 for Tier 3 will apply to percentage thresholds from above 0.020%, beginning with the first contract executed in Tier 3, but will not apply to contracts executed in Tier 1, to which the \$0.10 per contract credit applied, and will not apply to contracts executed in Tier 2, to which the \$0.15 per contract credit applied.

For Complex Orders¹⁵ the per contract credit of \$0.03 for Tier 1 will apply to percentage thresholds from above 0.00% up to 0.005%. Next, the per contract credit of \$0.05 for Tier 2 will apply only to percentage thresholds from above 0.005% up to 0.020%, beginning with the first contract executed in Tier 2, but will not apply to contracts executed in Tier 1, to which the \$0.03 per contract credit applied. Thereafter, the per contract credit of \$0.07 for Tier 3 will apply to percentage thresholds from above 0.020%, beginning with the first contract executed in Tier 3, but will not apply to contracts executed in Tier 1, to which the \$0.03 per contract credit applied, and will not apply to contracts executed in Tier 2, to which the \$0.05 per contract credit applied.

The below table reflects the current Professional Rebate Program in the Fee Schedule.

PROFESSIONAL REBATE PROGRAM

Type of market participants eligible for rebate	Tier	Percentage thresholds of volume increase in multiply-listed options (except Excluded Contracts) for the Current Month Compared to Fourth Quarter 2015	Per contract credit (except Excluded Contracts) for Simple Orders	Per contract credit (except Excluded Contracts) for Complex Orders
<i>Public Customer that is Not a Priority Customer</i>	1	Above 0.00%–0.005%	\$0.10	\$0.03
<i>Non-MIAX Market Maker</i>	2	Above 0.005%–0.020% ...	0.15	0.05

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).

¹³ For purposes of the MIAX Options Fee Schedule, 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). See MIAX Options Exchange Fee Schedule.

¹⁴ A Simple Order is an order on the Exchange’s regular electronic book of orders and quotes. See Exchange Rule 518(a)(15).

¹⁵ 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. A complex order can also be a “stock-option order” as described further, and subject to the limitations set forth, in Interpretations and Policies .01 of this Rule. A stock-option order is an order to buy or sell a stated number of units of an underlying security (stock or Exchange Traded Fund Share (“ETF”)) or a security convertible into the underlying stock

(“convertible security”) coupled with the purchase or sale of options contract(s) on the opposite side of the market representing either (i) the same number of units of the underlying security or convertible security, or (ii) the number of units of the underlying stock necessary to create a delta neutral position, but in no case in a ratio greater than eight-to-one (8.00), where the ratio represents the total number of units of the underlying security or convertible security in the option leg to the total number of units of the underlying security or convertible security in the stock leg. Only those stock-option 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).

PROFESSIONAL REBATE PROGRAM—Continued

Type of market participants eligible for rebate	Tier	Percentage thresholds of volume increase in multiply-listed options (except Excluded Contracts) for the Current Month Compared to Fourth Quarter 2015	Per contract credit (except Excluded Contracts) for Simple Orders	Per contract credit (except Excluded Contracts) for Complex Orders
<i>Non-Member Broker-Dealer Firm</i>	3	Above 0.020%	0.20	0.07

The Exchange now proposes to revise the Program to make the credit available only to those orders (both simple and complex) that add liquidity to the Exchange. The purpose of this change is to encourage Members to direct greater Professional trade volume to the Exchange that adds liquidity. Increased Professional volume will provide for greater liquidity, which benefits all market participants. The practice of incentivizing increased order flow in order to attract liquidity is, and has been, commonly practiced in the options markets. The Program similarly intends to attract Professional order flow, which will increase liquidity, thereby providing greater trading opportunities and tighter spreads for other market participants and causing a corresponding increase in order flow from such other market participants.

The specific volume increase thresholds of the Program's tiers are not changing under this proposal and were set based upon business determinations and an analysis of volume levels. The volume increase thresholds are intended to encourage firms that route some Professional orders to the Exchange to increase the number of such orders that are sent to the Exchange to achieve the next threshold and to provide incentive for new participants to send Professional orders as well. Increasing the number of such orders sent to the Exchange will in turn provide tighter and more liquid markets, and therefore attract more business overall. Similarly, the different credit rates at the different tier levels were based on an analysis of revenue and volume levels and are intended to provide increasing rewards for increasing the volume of trades sent to and executed on the Exchange. The specific amounts of the tiers and rates were set in order to encourage suppliers of Professional order flow to reach for higher tiers.

The purpose of calculating the Baseline Percentage as the total volume submitted by that Member and executed for the account(s) of a Professional on MIAX (not including Excluded Contracts) during the fourth quarter of 2015 as a percentage of the total volume

reported by OCC in MIAX classes during the fourth quarter of 2015 is to maintain a constant measuring methodology based upon a sample of the most current market conditions available over a meaningful period of time (e.g., three months), which should help Members submitting orders designated as Professional (as defined above) better understand the volume thresholds that will result in higher rebate amounts.

The Exchange will continue to leave certain Excluded Contracts (specifically, Non-Priority Customer to Non-Priority Customer orders, QCC Orders, PRIME Orders, PRIME AOC Responses, and PRIME Contra-side Orders) out of the calculation of the Current and Baseline percentages measuring contracts executed on MIAX and accordingly from the calculation of the percentage thresholds of volume increase. The Exchange believes that it is unnecessary and redundant to offer an incentive where both sides of the trade are submitted and executed by the same Member that submits such orders on behalf of Professionals.

Executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in MIAX Rule 1400 are excluded from the calculation because the execution of such orders occurs on away markets. Providing rebates to Professional executions that occur on other trading venues would be inconsistent with the proposal. Therefore, such volume is excluded from the Program in order to promote the underlying goal, which is to increase liquidity and execution volume on the Exchange.

The Exchange also excludes mini-options from the calculation of the percentage thresholds of volume increase. Mini-options contracts are excluded from the Program because the cost to the Exchange to process quotes, orders and trades in mini-options is the same as for standard options. This, coupled with the lower per-contract transaction fees charged to other market participants, makes it impractical to

offer Members a credit for Professional mini-option volume that they transact.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act¹⁶ in general, and furthers the objectives of Section 6(b)(4) of the Act¹⁷ in particular, in that it is an equitable allocation of reasonable dues, 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 Act¹⁸ 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.

As discussed above the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels to be excessive or incentives to be insufficient, and the Exchange represents only a small percentage of the overall 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 self-regulatory organization ("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."¹⁹

The Exchange believes that the ever-shifting market shares among the exchanges from month to month

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(4).

¹⁸ 15 U.S.C. 78f(b)(5).

¹⁹ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

demonstrates that market participants can shift order flow or discontinue or reduce use of certain categories of products, in response to transaction and non-transaction fee changes.

Accordingly, competitive forces constrain the Exchange's transaction fees and rebates, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. The Exchange believes the proposal reflects a reasonable and competitive pricing structure which will continue to incentivize market participants to direct liquidity adding orders to the Exchange, which the Exchange believes would enhance liquidity and market quality on the exchange to the benefit of all Members.

The Exchange believes that amending the Program to provide a per contract rebate only to liquidity adding orders and to no longer provide a per contract rebate to those orders that remove liquidity from the Exchange is reasonable, equitable and not unfairly discriminatory as the Program is available to all Members and all similarly situated market participants are subject to the same rebate structure under the Program, and access to the Exchange is offered on terms that are not unfairly discriminatory. The Exchange's proposal is intended to encourage participants to submit more orders that add liquidity to the Exchange, thus enhancing liquidity on the Exchange. Increased liquidity benefits all market participants by providing more trading opportunities and tighter spreads. The Exchange believes the Program, as amended, will continue to encourage liquidity and support the quality of price discovery, thereby promoting market transparency and improving investor protection.

The Exchange believes that the proposed change to its Program is reasonably designed to incentivize Members to submit orders which add liquidity to the Exchange, which facilitates increased trading opportunities, tighter spreads, and overall enhanced market quality to the benefit of all market participants. The Exchange further believes the proposed change is reasonable as incentive programs have been widely adopted by exchanges, including the Exchange, and are reasonable, equitable, and not unfairly discriminatory because they are open to all members on an equal basis and provide additional benefits or discounts that are reasonably related to an exchange's market quality. In particular, the Exchange believes its proposal to provide a per contract credit only to liquidity adding orders and to

not provide a per contract credit to liquidity removing orders is reasonable, equitable, and not unfairly discriminatory for these same reasons, as it provides Members with an additional incentive to submit liquidity adding orders to the Exchange in order to qualify for a rebate under the Program.

The Exchange believes its proposal to offer certain per contract credits to simple and complex orders that add liquidity under the Program is consistent with Section 6(b)(4) of the Act²⁰ because it applies equally to all participants. The Exchange's proposal is intended to encourage participants to submit more orders to the Exchange that add liquidity, thus enhancing liquidity and removing impediments to and perfecting the mechanisms of a free and open market and a national market system. Additionally, if a Member does not satisfy the requirements of the Program then they will simply not receive the rebate offered by the Program for that month.

For the reasons discussed above, the Exchange submits that the proposal satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act²¹ in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to unfairly discriminate between customers, issuers, brokers, or dealers.

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 change would increase both intermarket and intramarket competition by incentivizing Members to direct orders for the account(s) of Professionals to the Exchange, which should enhance the quality of the Exchange's markets and increase the volume of contracts traded here. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market liquidity. Enhanced market quality and increased transaction volume that results from the anticipated increase in order flow directed to the Exchange will benefit all market participants and improve competition on the Exchange. 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 change reflects this competitive environment because it encourages market participants to direct their customer order flow, to provide liquidity, and to attract additional transaction volume, to the Exchange. Given the robust competition for volume among options markets, many of which offer the same products, implementing a volume based rebate program for orders that add liquidity to attract order flow like the one being proposed in this filing is consistent with the above-mentioned goals 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,²² and Rule 19b-4(f)(2)²³ 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

²⁰ 15 U.S.C. 78f(b)(4).

²¹ 15 U.S.C. 78f(b)(4) and (5).

²² 15 U.S.C. 78s(b)(3)(A)(ii).

²³ 17 CFR 240.19b-4(f)(2).

• Send an email to rule-comments@sec.gov. Please include File Number SR–MIAX–2022–05 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–2022–05. 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–2022–05 and should be submitted on or before February 18, 2022.

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

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2022–01702 Filed 1–27–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94031]

Order Granting Application by The Nasdaq Stock Market LLC for an Exemption Pursuant to Section 36(a) of the Exchange Act From the Rule Filing Requirements of Section 19(b) of the Exchange Act With Respect to Certain Rules Incorporated by Reference

January 24, 2022.

The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) has filed with the Securities and Exchange Commission (“Commission”) an application for an exemption under Section 36(a)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)¹ from the rule filing requirements of Section 19(b) of the Exchange Act² with respect to certain rules of the Financial Industry Regulatory Authority, Inc. (“FINRA”), Cboe Exchange, Inc. (“Cboe”), and New York Stock Exchange LLC (“NYSE”), that the Exchange seeks to incorporate by reference.³ Section 36 of the Exchange Act, subject to certain limitations, authorizes the Commission to conditionally or unconditionally exempt any person, security, or transaction, or any class thereof, from any provision of the Exchange Act or rule thereunder, if necessary or appropriate in the public interest and consistent with the protection of investors.

The Exchange has requested, pursuant to Rule 0–12 under the Exchange Act,⁴ that the Commission grant the Exchange an exemption from the rule filing requirements of Section 19(b) of the Exchange Act for changes to the Exchange's rules that are effected solely by virtue of a change to a cross-referenced FINRA, Cboe, or NYSE rule. Specifically, the Exchange requests that it be permitted to incorporate by reference changes made to the FINRA, Cboe, and NYSE rules that are cross-referenced in the Exchange's rules identified below, without the need for the Exchange to file separately similar proposed rule changes pursuant to Section 19(b) of the Exchange Act:⁵

• General 9, Section 1(b) (Prohibition Against Trading Ahead of Customer Orders) cross-references FINRA Rule 5320 (except for FINRA Rule 5320.02(b)

and the reference to FINRA Rule 6420 in FINRA Rule 5320).

• General 9, Section 1(c) (Front Running Policy) cross-references FINRA Rule 5270.

• General 9, Section 1(f) (Confirmation of Callable Common Stock) cross-references FINRA Rule 2232.

• General 9, Section 1(h) (Interfering With the Transfer of Customer Accounts in the Context of Employment Disputes) cross-references FINRA Rule 2140.

• General 9, Section 2 (Customers' Securities or Funds) cross-references FINRA Rule 2150.

• General 9, Section 3 (Communications with the Public) cross-references FINRA Rule 2210 (except for FINRA Rule 2210(c)).

• General 9, Section 5 (Telemarketing) cross-references FINRA Rule 3230.

• General 9, Section 6 (Forwarding of Proxy and Other Issuer-Related Materials) cross-references FINRA Rule 2251.

• General 9, Section 7 (Disclosure of Financial Condition, Control Relationship with Issuer and Participation or Interest in Primary or Secondary Distribution) cross-references FINRA Rules 2261, 2262, and 2269.

• General 9, Section 8 (SIPC Information) cross-references FINRA Rule 2266.

• General 9, Section 9 (Fairness Opinions) cross-references FINRA Rule 5150.

• General 9, Section 10(a) (Recommendations to Customers (Suitability)) cross-references FINRA Rule 2111 (except for the references to FINRA Rule 2114 in FINRA Rule 2111).

• General 9, Section 10(c) (Know Your Customer) cross-references FINRA Rule 2090.

• General 9, Section 11 (Best Execution and Interpositioning) cross-references FINRA Rule 5310 (except for the references to FINRA Rule 2121 and its supplementary material in FINRA Rule 5310).

• General 9, Section 12 (Customer Account Statements) cross-references FINRA Rule 2231.

• General 9, Section 13 (Margin Disclosure Statement) cross-references FINRA Rule 2264.

• General 9, Section 14 (Approval Procedures for Day-Trading Accounts) cross-references FINRA Rules 2130 and 2270.

• General 9, Section 15 (Borrowing From or Lending to Customers) cross-references FINRA Rule 3240.

• General 9, Section 16 (Charges for Services Performed) cross-references FINRA Rule 2122.

¹ 15 U.S.C. 78mm(a)(1).

² 15 U.S.C. 78s(b).

³ See Letter from Angela S. Dunn, Principal Associate General Counsel, Nasdaq, to J. Matthew DeLesDernier, Assistant Secretary, Commission, dated January 20, 2022 (“Exemptive Request”).

⁴ 17 CFR 240.0–12.

⁵ See Exemptive Request, *supra* note 3, at 5.

²⁴ 17 CFR 200.30–3(a)(12).