

alternative trading systems.<sup>14</sup> The Exchange represents a small percentage of the overall market. Based on publicly available information, no single equities exchange has more than 20% market share, and no exchange group has more than 22% market share.<sup>15</sup> Indeed, while trade through and best execution obligations may require a firm to access the Exchange, no firm is compelled to be a Member of the Exchange in order to participate in the Exchange and may freely choose to participate on the Exchange without holding a Membership. If the proposed fee is unattractive to members, it is likely that the Exchange will lose membership and market share as a result. As a result, the Exchange carefully considers any increases to its fees in concert, balancing the utility in remaining competitive with other exchanges and with alternative trading systems exempted from compliance with the statutory standards applicable to exchanges, including the requirement to regulate their members, and in covering costs described in the filing that are associated with maintaining its equities market and its regulatory programs to ensure that the Exchange remains an efficient and well-regulated marketplace. In addition to this the Exchange notes that other exchanges currently have trading rights fees in place,<sup>16</sup> which have been previously filed with the Commission.

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.” 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 stated 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’. . . .” Accordingly, the Exchange does not believe its proposed fee change imposes 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*

The Exchange neither solicited nor received comments on the proposed rule change.

**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<sup>18</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 will institute proceedings to determine whether the proposed rule change 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-CboeEDGX-2019-050 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.

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

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

All submissions should refer to File Number SR-CboeEDGX-2019-050. 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-2019-050 and should be submitted on or before September 10, 2019.

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

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2019-17847 Filed 8-19-19; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-86663; File No. SR-MIAX-2019-34]**

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

August 14, 2019.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4

<sup>19</sup> 17 CFR 200.30-3(a)(12).

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

<sup>14</sup> See U.S. Securities and Exchange Commission Alternative Trading Systems (“ATS”) List (June 30, 2019), available at <https://www.sec.gov/foia/docs/atstlist.htm>.

<sup>15</sup> See Cboe Global Markets U.S. Equities Market Volume Summary (July 31, 2019), available at [https://markets.cboe.com/us/equities/market\\_share](https://markets.cboe.com/us/equities/market_share).

<sup>16</sup> See *supra* note 5.

thereunder,<sup>2</sup> notice is hereby given that on July 31, 2019, 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”).

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on August 1, 2019.

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 (i) increase the amount of the per contract credit assessable to Agency Orders (defined below) in a PRIME Auction (“PRIME Agency Order Credit”) for Members<sup>3</sup> in Tiers 2, 3 and 4 of the Priority Customer Rebate Program (“PCR”) <sup>4</sup> and (ii) lower the

separate, additional PRIME Agency Order Credit that is also available for Priority Customer <sup>5</sup> PRIME Agency Orders executed over a monthly threshold of 0.60% of the Options Clearing Corporation (“OCC”) customer volume for Members who are in PCR Tier 3 or higher.

##### **Background**

PRIME is a process by which a Member 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 or an AOC eQuote. The PRIME mechanism is used for orders on the 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. The Exchange is not proposing to amend the PCR rebates for cPRIME orders at this time.

The Priority Customer rebate payment is calculated from the first executed contract at the applicable threshold per contract credit with rebate payments made at the highest achieved volume tier for each contract traded in that month. The percentage thresholds are calculated based on the percentage of national customer volume in multiply-listed options classes listed on MIAX entered and executed over the course of the month (excluding QCC and cQCC Orders, Priority Customer-to-Priority Customer Orders, C2C and cC2C Orders, PRIME and cPRIME AOC Responses, PRIME and cPRIME Contra-side Orders, and PRIME and cPRIME Orders for which both the Agency and Contra-side Order are Priority Customers). Volume for transactions in both simple and complex orders are aggregated to determine the appropriate volume tier threshold applicable to each transaction. Volume is recorded for and credits are delivered to the Member that submits the order to MIAX. MIAX aggregates the contracts resulting from Priority Customer orders transmitted and executed electronically on MIAX from Members and their Affiliates for purposes of the thresholds described in the PCR table.

##### **Proposed Rule Change**

Pursuant to the PCR, the Exchanges assesses an Agency Order Credit for PRIME Agency Orders. The Exchange

Customer order transmitted by that Member which is executed electronically on the Exchange in all multiply-listed option classes (excluding, in simple or complex as applicable, QCC and cQCC Orders, mini-options, Priority Customer-to-Priority Customer Orders, C2C and cC2C Orders, PRIME and cPRIME AOC Responses, PRIME and cPRIME Contra-side Orders, PRIME and cPRIME Orders for which both the Agency and Contra-side Order are Priority Customers, 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 Exchange Rule 1400), provided the Member meets certain percentage thresholds in a month as described in the PCR table. See Fee Schedule, Section 1(a)iii.

<sup>5</sup> “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 accounts(s). A “Priority Customer Order” means an order for the account of a Priority Customer. See Exchange Rule 100.

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

<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> Under the PCR, MIAX credits each Member the per contract amount resulting from each Priority

currently credits each Member \$0.10 per contract for each Priority Customer order submitted into the PRIME Auction as a PRIME Agency Order in all Tiers. The Exchange proposes to increase the PRIME Agency Order Credit for Members who achieve the volume thresholds applicable to Tiers 2, 3 and 4 from \$0.10 to \$0.11 per contract.

The Exchange also proposes to lower the additional PRIME Agency Order Credit for Priority Customer PRIME Agency Orders executed over a threshold of 0.60% of OCC customer volume for Members who are in PCRP Tier 3 or higher. Currently, any Member or its Affiliate<sup>10</sup> that qualifies for PCRP volume Tiers 3 or higher will be credited an additional \$0.02 per contract for each Priority Customer order executed in the PRIME Auction as a PRIME Agency Order over a threshold of above 0.60% of national customer volume in multiply-listed options classes listed on MIAX during the relevant month (excluding QCC and cQCC Orders, mini-options, Priority Customer-to-Priority Customer Orders, C2C and cC2C Orders, cPRIME Agency Orders, PRIME and cPRIME AOC Responses, PRIME and cPRIME Contra-side Orders, PRIME and cPRIME Orders for which both the Agency and Contra-side Order are Priority Customers, 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). Volume is recorded for and credits are delivered to the Member Firm that submits the order to MIAX. The current potential \$0.02 per contract credit is in addition to the current credit of \$0.10 per contract for all Tiers that applies to PRIME Agency Order transactions for Priority Customer orders.

The Exchange now proposes to lower the additional PRIME Agency Order Credit for Priority Customer PRIME Agency Orders over a threshold of 0.60% of OCC customer volume for Members who are in PCRP Tier 3 or higher from \$0.02 per contract to \$0.01 per contract. The newly proposed additional \$0.01 per contract credit, for Members that achieve PCRP Tier 3 or higher and the described threshold, will be added to the newly proposed PRIME Agency Order Credit of \$0.11 per contract for Members in Tiers 3 or 4 for PRIME Agency Order transactions for Priority Customer orders.

The Exchange believes these proposed changes (which increase certain credit amounts from \$0.10 per contract to \$0.11 per contract, and decrease the additional credit amount from \$0.02 per contract to \$0.01 per contract) will encourage market participants to submit more Priority Customer PRIME Agency Orders and therefore increase Priority Customer order flow, resulting in increased liquidity which benefits all Exchange participants by providing more trading opportunities and tighter spreads.

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.”<sup>11</sup> There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has exceeded approximately 18% of the market share of executed volume of multiply-listed equity and exchange-

traded fund (“ETF”) options trades as of July 25, 2019, for the month of July 2019.<sup>12</sup> Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, for all of June 2019, the Exchange had a total market share of 3.73% of all equity options volume.<sup>13</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 (as further described below), or discontinue or reduce use of certain categories of products, in response to transaction and non-transaction fee changes. For example, on March 1, 2019, the Exchange filed with the Commission an immediately effective filing to decrease certain credits assessable to Members pursuant to the PCRP.<sup>14</sup> The Exchange experienced a decrease in total market share between the months of February and March of 2019. Accordingly, the Exchange believes that the March 1, 2019 fee change may have contributed to the decrease in the Exchange’s market share and, as such, the Exchange believes competitive forces constrain options exchange transaction and non-transaction fees.

The Exchange cannot predict with certainty whether any Priority Customers would avail themselves of the proposed fee change, but the Exchange believes that between two and four Members may achieve the applicable Tier volume thresholds to receive the proposed increased PRIME Agency Order Credit for Members in Tiers 2, 3 and 4 of the PCRP. Similarly, the Exchange cannot predict with certainty whether any Member will achieve the separate, additional PRIME Agency Order Credit that is also available for Priority Customer PRIME Agency Orders executed over a monthly threshold of 0.60% of OCC customer volume for Members in PCRP Tier 3 or higher, but the Exchange believes that no Member will be currently impacted as no Member currently reaches such threshold.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act<sup>15</sup>

<sup>12</sup> The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available at: <https://www.theocc.com/market-data/volume/default.jsp>.

<sup>13</sup> See *id.*

<sup>14</sup> See Securities Exchange Act Release No. 85301 (March 13, 2019), 84 FR 10166 (March 19, 2019) (SR-MIAX-2019-09).

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

<sup>10</sup> For purposes of the 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). 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, Section 1(a)(i).

<sup>11</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>16</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 discrimination between customers, issuers, brokers and dealers.

The Exchange believes its proposal to increase the PRIME Agency Order Credit for Members in Tiers 2, 3 and 4 of the PCRP and to lower the separate, additional PRIME Agency Order Credit that is also available for Priority Customer Orders executed over a monthly threshold of 0.60% of OCC customer volume for Members who are in PCRP Tier 3 or higher provides for the equitable allocation of reasonable dues and fees and is not unfairly discriminatory for the following reasons. First, 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>17</sup> There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has exceeded approximately 18% of the market share of executed volume of multiply-listed equity and ETF options trades as of July 25, 2019, for the month of July 2019.<sup>18</sup> Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, for all of June 2019, the Exchange had a total market share of 3.73% for all equity options volume.<sup>19</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 March 1, 2019, the Exchange filed with the Commission an immediately effective filing to decrease certain credits assessable to Members pursuant to the PCRP.<sup>20</sup> The Exchange experienced a decrease in total market share between the months of February and March of 2019. Accordingly, the Exchange believes that the March 1, 2019 fee change may have contributed to the decrease in the Exchange’s market share and, as such, the Exchange believes competitive forces constrain options exchange transaction and non-transaction fees and market participants can shift order flow based on fee changes instituted by the exchanges.

Second, the Exchange believes its proposal to increase the PRIME Agency Order Credit for Members in Tiers 2, 3 and 4 of the PCRP and to lower the additional PRIME Agency Order Credit for Priority Customer orders over a threshold of 0.60% of OCC customer volume for Members who are in PCRP Tier 3 or higher is an equitable allocation of reasonable dues and fees pursuant to Section 6(b)(4) of the Act<sup>21</sup> because the proposed changes are designed to incentivize overall Priority Customer order flow. The Exchange believes that with the proposed changes, providers of Priority Customer order flow will be incentivized to send that Priority Customer order flow to the Exchange in order to obtain the highest volume threshold and receive credits in a manner that enables the Exchange to improve its overall competitiveness and strengthen its market quality for all market participants. The Exchange believes that increased Priority Customer order flow will attract liquidity providers, which in turn should make the MIAX marketplace an attractive venue where Market Makers may submit narrow quotations with greater size, deepening and enhancing the quality of the MIAX marketplace. This should provide more trading opportunities and tighter spreads for other market participants and result in a corresponding increase in order flow from such other market participants. Additionally, the Exchange believes that for competitive and business reasons, it is appropriate to lower the additional PRIME Agency Order Credit for Priority

Customer PRIME Agency Orders over a threshold of 0.60% of OCC customer volume for Members who are in PCRP Tier 3 or higher from \$0.02 to \$0.01. As the Exchange previously noted, no Member currently achieves this threshold and, as such, the Exchange believes that by lowering this additional credit while increasing the PRIME Agency Order Credit for Members in Tiers 2, 3 and 4 of the PCRP, will incentivize order flow to the Exchange, providing more liquidity, to the benefit of all market participants, because it will likely result in a net increase in credits paid to Members.

The Exchange believes that the proposed rule changes would be an equitable allocation of reasonable dues and fees and would not permit unfair discrimination between market participants. The Exchange cannot predict with certainty whether any Priority Customers would avail themselves of the proposed fee change, but the Exchange believes that between two and four Members may achieve the applicable Tier volume thresholds to receive the proposed increased PRIME Agency Order Credit for Members in Tiers 2, 3 and 4 of the PCRP. Similarly, the Exchange cannot predict with certainty whether any Member will achieve the separate, additional PRIME Agency Order Credit that is also available for Priority Customer PRIME Agency Orders executed over a monthly threshold of 0.60% of OCC customer volume for Members in PCRP Tier 3 or higher, but the Exchange believes that no Member will be currently impacted as no Member currently reaches such threshold.

The Exchange also believes its proposal is consistent with Section 6(b)(5) of the Act<sup>22</sup> and is designed to prevent fraudulent and manipulative acts and practices, promotes just and equitable principles of trade, fosters cooperation and coordination with persons engaged in regulating, clearing, setting, processing information with respect to, and facilitating transaction in securities, removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest; and is not designed to permit unfair discrimination. This is because the Exchange believes the proposed changes will incentivize Priority Customer order flow and an increase in Priority Customer order flow will bring greater volume and liquidity, which benefits all market participants by providing more trading opportunities and tighter

<sup>16</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>17</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

<sup>18</sup> See *supra* note 12.

<sup>19</sup> See *id.*

<sup>20</sup> See *supra* note 14.

<sup>21</sup> 15 U.S.C. 78f(b)(4).

<sup>22</sup> 15 U.S.C. 78f(b)(1) and (b)(5).

spreads. To the extent Priority Customer order flow is increased by the proposal, market participants will increasingly compete for the opportunity to trade on the Exchange including sending more orders and providing narrower and larger-sized quotations in the effort to trade with such Priority Customer order flow. Further, based on the current Tier volume thresholds achieved by the Exchange's Members and the potential changes going forward as a result of the proposed fee change, the Exchange believes that the proposed increase to certain credit amounts from \$0.10 per contract to \$0.11 per contract and proposed decrease to the additional credit amount from \$0.02 per contract to \$0.01 per contract may not result in any Member receiving a lower credit amount per contract, and may result in two to four Members receiving a higher credit amount per contract.

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

In accordance with Section 6(b)(8) of the Act,<sup>23</sup> the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all market participants. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders.

#### *Intra-Market Competition*

The Exchange does not believe that other market participants at the Exchange would be placed at a relative disadvantage by the proposed changes to increase the PRIME Agency Order Credit for Members in Tiers 2, 3 and 4 of the PCRP and to lower the additional PRIME Agency Order Credit for Priority Customer PRIME Agency Orders over a threshold of 0.60% of OCC customer volume for Members who are in PCRP Tier 3 or higher. The proposed changes are designed to attract additional order flow to the Exchange. Accordingly, the Exchange believes that increasing the PRIME Agency Order Credit for Members in Tiers 2 through 4 of the PCRP and lowering the additional PRIME Agency Order Credit for Priority Customer orders over a threshold of

0.60% of OCC customer volume for Members in PCRP Tier 3 or higher will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act because it will continue to encourage Priority Customer order flow and 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. Further, based on the current Tier volume thresholds achieved by the Exchange's Members and the potential changes going forward as a result of the proposed fee change, the Exchange believes that the proposed increase to certain credit amounts from \$0.10 per contract to \$0.11 per contract and proposed decrease to the additional credit amount from \$0.02 per contract to \$0.01 per contract may not result in any Member receiving a lower credit amount per contract, and may result in two to four Members receiving a higher credit amount per contract.

#### *Inter-Market Competition*

The Exchange 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. There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has exceeded approximately 18% of the market share of executed volume of multiply-listed equity and ETF options trades as of July 25, 2019, for the month of July 2019.<sup>24</sup> Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, for all of June 2019, the Exchange had a total market share of 3.73% for all equity options volume.<sup>25</sup> In such an environment, the Exchange must continually adjust its transaction and non-transaction fees to remain competitive with other exchanges and to attract order flow. The Exchange believes that the proposed rule changes reflect this competitive environment because they modify the Exchange's fees in a manner that encourages market participants to provide Priority Customer liquidity and to send order flow to the Exchange. To the extent this is achieved, all the Exchange's market participants should benefit from the improved market quality.

#### *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>26</sup> and Rule 19b-4(f)(2)<sup>27</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

### **IV. Solicitation of Comments**

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

#### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MIAX-2019-34 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-2019-34. 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

<sup>23</sup> 15 U.S.C. 78f(b)(8).

<sup>24</sup> See *supra* note 12.

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

<sup>26</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>27</sup> 17 CFR 240.19b-4(f)(2).

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-2019-34 and should be submitted on or before September 10, 2019.

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

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2019-17858 Filed 8-19-19; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-86660; File No. SR-CboeEDGA-2019-007]

### Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Clarify Portions of its Rules Under Chapter 14 (Securities Traded) Related To the Applicability of Certain Disclosure Requirements

August 14, 2019.

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 July 31, 2019, Cboe EDGA Exchange, Inc. (the "Exchange" or "EDGA") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III 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 EDGA Exchange, Inc. (the "Exchange" or "EDGA") proposes to clarify portions of its rules under Chapter 14 (Securities Traded) related to the applicability of certain disclosure requirements. 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/equities/regulation/rule\\_filings/edga/](http://markets.cboe.com/us/equities/regulation/rule_filings/edga/)), at the Exchange's Office of the Secretary, 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 clarify portions of the rules under Chapter 14 (Securities Traded) related to the applicability of certain disclosure requirements.

Currently, under Rule 14.1 (Unlisted Trading Privileges), Rule 14.2 (Investment Company Units), and Rule 14.8 (Portfolio Depositary Receipts) a Member is required to provide to all purchasers a written description of the terms and characteristics of the applicable securities (or a "product description"). In addition, Members also have a separate prospectus delivery requirement under Section 24(d) of the Investment Company Act of 1940 ("1940 Act"). A Member, however, is not required to send a Section 24(d) prospectus for a security if such security is subject of an order by the Securities and Exchange Commission

("Commission") exempting it from Section 24(d) prospectus delivery requirements, and is not otherwise subject to prospectus delivery requirements under the Securities Act of 1933 ("1933 Act"). As such, the Exchange provides rules requiring Members to deliver a product description for securities exempt from the prospectus delivery requirements. The Exchange notes that a product description is a written description of the terms and characteristics of a security in a form prepared or approved by the Exchange, whereas a prospectus is a legal document required by and filed with the Commission which contains detailed disclosures about a security.

Currently, Rule 14.1(c)(3)(A), Rule 14.2(d)(1), and Rule 14.8(j)(1) provide govern the written description requirements for derivative securities traded under unlisted trading privileges ("UTP Derivative Securities"), series of Investment Company Units, and series of Portfolio Depositary Receipts, respectively. As written, these subparagraphs under their respective Rules do not make it explicit to Members that the product description requirement is applicable only to prospectus-exempt products. Furthermore, current Rules 14.2(d)(1) and 14.8(j)(1) do not contain a provision (like that of 14.1(c)(3)(B)) that the Exchange will inform its Members by means of an information circular when the product description delivery requirements apply. Therefore, in order to provide Members with better understanding of the provisions in connection with these requirements, the Exchange now proposes to amend its rules to explicitly state that the product description delivery requirements apply only to the respective products that are exempt from the 1940 Act prospectus delivery requirements and are not otherwise subject to the prospectus delivery requirements under the 1933 Act. The Exchange also proposes to add language to Rule 14.2(d)(1) and Rule 14.8(j)(1) to inform Members that the Exchange will announce the applicability of the product description delivery requirements to particular series of Portfolio Depositary Receipts or Investment Company Units via information circular. This change is intended to provide clarity to Members regarding when and how the Exchange will notify Members of their product delivery obligations. The Exchange notes that Rule 14.1(c)(3)(B) currently provides that the Exchange informs its Members of the application of product description delivery requirements

<sup>28</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> 15 U.S.C. 78s(b)(3)(A)(iii).

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