

table and the effectiveness of the Committee.⁴⁹

In response, NASDAQ states its belief that providing additional price improvement opportunities for retail investors is a “critical component of its best execution obligations.”⁵⁰ In its supplemental response letter, NASDAQ states that, in all routing of orders, when one routing destination is chosen over another, there is always a possibility that an execution will be missed.⁵¹ The Commission notes, however, that NASDAQ believes that any chance of an RTFY order missing a better price at the Exchange is “miniscule.”⁵² The Commission notes that, according to NASDAQ, some routing destinations agree to a guaranteed minimum price improvement per share for RTFY orders, some focus more on the average price improvement, and others are unsure of what the level of price improvement will be, but provide assurances that they will compete vigorously with their execution quality.⁵³ Consequently, NASDAQ believes that the competition for RTFY orders, and thus the resulting execution quality, will be better than what is experienced today.⁵⁴

The Commission notes that, with respect to commenters’ concerns regarding the RTFY routing table and the Committee, NASDAQ states that—as with all other routing options, other than Directed Orders—the RTFY routing table will be monitored and approved by the Committee.⁵⁵ According to NASDAQ, the use of a best execution committee is not novel, and such committees are widely-used at many broker-dealers.⁵⁶ In addition, the Committee is subject to FINRA oversight, as well as oversight by NASDAQ Inc.’s internal audit group, which reports to the audit committee of the Board of Directors of NASDAQ Inc.⁵⁷ According to NASDAQ, the Committee reviews the performance of routing destinations on a regular basis

for all routing and the same will be true for RTFY.⁵⁸ If the Committee determines that a particular routing destination is underperforming based on the various parameters, such as price improvement, fill rate, and latency, the Committee may either remove that destination altogether or lower its priority within the routing table.⁵⁹ According to NASDAQ, this process ensures that these destinations will compete aggressively with each other in order to receive RTFY orders.⁶⁰

Based on the foregoing, the Commission believes that the proposed rule change is consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁶¹ that the proposed rule change (SR-NASDAQ-2015-112) be and hereby is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶²

Brent J. Fields,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76717; File No. SR-MIAX-2015-73]

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

December 21, 2015.

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

⁵⁸ See NASDAQ Supplemental Response, *supra* note 7, at 2.

⁵⁹ See *id.* NASDAQ notes that missed executions often may be due to latency in away destinations systems. See *id.* at 3. According to NASDAQ, because latency is one of the parameters that the Committee considers in its regular reviews of routing destinations, destinations causing undue latency that may lead to missed executions or inferior execution prices would lose their priority within the routing table or be removed altogether. See *id.* NASDAQ also notes that, if the Committee determines that a particular routing destination is not providing sufficient price improvement opportunities, then that destination will likely be removed from the RTFY routing table. See NASDAQ Response, *supra* note 5, at 4.

⁶⁰ See NASDAQ Supplemental Response, *supra* note 7, at 2. NASDAQ states that, in the past, the Committee has moved venues down within the routing table due, in part, to unsatisfactory fill rate, unsatisfactory price improvement, and/or unsatisfactory latency profile. See *id.*

⁶¹ 15 U.S.C. 78s(b)(2).

⁶² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

thereunder,² notice is hereby given that on December 14, 2015, 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 Web site at http://www.miaxoptions.com/filter/wotitle/rule_filing, at MIAX’s principal office, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to amend the Fee Schedule to modify the transaction fees for Members that participate in the price improvement auction (“PRIME Auction” or “PRIME”) pursuant to Rule 515A.³ Specifically, the Exchange proposes to: (i) Increase the fee for a PRIME AOC Response⁴ from \$0.49 per

² 17 CFR 240.19b-4.

³ See Exchange Rule 515A. See also Securities Exchange Act Release Nos. 75408 (July 9, 2015) 80 FR 41530 (July 15, 2015)(SR-MIAX-2015-45); 72943 (August 28, 2014), 79 FR 52785 (September 4, 2014) (SR-MIAX-2014-45); MIAX Options Fee Schedule, Section (1)(a)(iv).

⁴ See Exchange Rule 515A(a)(2)(i). When the Exchange receives a properly designated Agency Order for auction processing, a Request for Responses (“RFR”) detailing the option, side, size, and initiating price will be sent to all subscribers of the Exchange’s data feeds. Members may submit

⁴⁹ See Themis Letter and Shatto Letter, *supra* note 4.

⁵⁰ See NASDAQ Response, *supra* note 5, at 4. Moreover, NASDAQ reiterates that it will not accept any negotiated payment for order flow. See NASDAQ Supplemental Response, *supra* note 7, at 1-2.

⁵¹ See NASDAQ Supplemental Response, *supra* note 7, at 2.

⁵² See *id.* at 3.

⁵³ See *id.* at 2.

⁵⁴ See *id.*

⁵⁵ See NASDAQ Response, *supra* note 5, at 3. NASDAQ notes that many factors are weighed when making best execution determinations, and that price improvement opportunities for retail investors are an “integral component of such decisions by both the Committee and by retail order firms.” See *id.*

⁵⁶ See *id.*

⁵⁷ See *id.* at 3-4.

contract to \$0.50 per contract for standard options in Penny Pilot classes; (ii) increase the fee for a PRIME AOC Response from \$0.94 per contract to \$0.99 per contract for standard options in non-Penny Pilot classes; and (iii) continue to provide for additional incentives of \$0.04 per contract for achieving certain Priority Customer Rebate Program volume tiers. The Exchange also proposes technical clarifying amendments to the Fee Schedule, as described below.

Currently, the Exchange assesses PRIME AOC Responses \$0.49 per contract for standard options in Penny Pilot classes and \$0.94 per contract in non-Penny Pilot classes. The Exchange now proposes to modify these fees that apply to PRIME AOC Responses. Specifically, the Exchange proposes to: (i) Increase the fee for a PRIME AOC Response from \$0.49 per contract to \$0.50 per contract for standard options in Penny Pilot classes; and (ii) increase the fee for a PRIME AOC Response from \$0.94 per contract to \$0.99 per contract for standard options in non-Penny Pilot classes. The Exchange will continue to assess the standard transaction fees to a PRIME AOC Response if they execute against unrelated orders.

The Exchange currently offers Members that submit PRIME AOC Responses the opportunity to reduce transaction fees by \$0.04 per contract in standard options if the Member or its affiliates of at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A, qualifies in a given month for Priority Customer Rebate Program volume tiers 3 or 4 in the Fee Schedule.

Currently, any Member or its affiliates of at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A, that qualifies for Priority Customer Rebate Program volume tiers 3 or 4 are assessed a PRIME AOC Response fee of \$0.45 per contract for standard options in Penny Pilot classes. In addition, any Member or its affiliates of at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A, that qualifies for Priority Customer Rebate Program volume tiers 3 or 4 are assessed a PRIME AOC Response fee of \$0.90 per contract for standard options in non-Penny Pilot classes.

In order to continue to offer Members or their affiliates of at least 75% common ownership between the firms

as reflected on each firm's Form BD, Schedule A, that qualifies for Priority Customer Rebate Program volume tiers 3 or 4 ("qualifying Members") the opportunity to reduce transaction fees by \$0.04 per contract in standard options, the Exchange is proposing to modify the reduced fees to \$0.46 per contract for standard options in Penny Pilot classes, and to \$0.95 per contract for standard options in non-Penny Pilot classes for such qualifying Members.

The Exchange believes that these incentives will continue to encourage Members to transact a greater number of contracts on the Exchange. The Exchange notes that these incentives will operate identically to the Priority Customer Rebate Program incentives that apply to any Member or its affiliates of at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A that qualifies for Priority Customer Rebate Program volume tiers 3 or 4 in other types of transaction fees.⁵

The Exchange is also proposing technical clarifying amendments to the Fee Schedule. Specifically, the headings in the table in Section 1) a) iv) of the Fee Schedule will be amended from: (i) "PRIME Order" to "PRIME Order Fee," (ii) "Responder to PRIME Auction" to "Responder to PRIME Auction Fee," and (iii) "PRIME Break-up" to "PRIME Break-up Credit." These changes are intended to clarify and more specifically label the various columns in the table for investors using it.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act⁶ in general, and furthers the objectives of Section 6(b)(4) of the Act⁷ in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and issuers and other persons using its facilities.

The Exchange's proposal to increase the transaction fees for certain participants that submit PRIME AOC Responses is reasonable because the Exchange's fees will remain competitive with fees at other options exchanges.⁸ The Exchange's proposal to increase the transaction fees for certain participants in the PRIME Auction is equitable and not unfairly discriminatory because the increase applies equally to all such participants. The Exchange believes that the transaction fees for PRIME AOC

Responses will not deter market participants from providing price improvement.

The Exchange's proposal to offer qualifying PRIME Auction participants the opportunity to reduce transaction fees by \$0.04 per contract in standard options, provided certain criteria are met, is reasonable because the Exchange desires to offer all such market participants an opportunity to lower their transaction fees. The Exchange's proposal to offer qualifying PRIME Auction participants the opportunity to reduce transaction fees by \$0.04 per contract in standard options, provided certain criteria are met, is equitable and not unfairly discriminatory because the Exchange will offer all market participants a means to reduce transaction fees by qualifying for volume tiers in the Priority Customer Rebate Program. The Exchange believes that continuing to offer all such market participants the opportunity to lower transaction fees by transacting Priority Customer order flow in turn benefits all market participants. To the extent that there are higher transaction fees assessed on market participants without Priority Customer order flow, the Exchange believes that this is appropriate because the proposal creates incentives for Members to direct additional order flow to the Exchange and thus provide additional liquidity that enhances the quality of its markets and increases the volume of contracts traded on MIAX. 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 believes that the proposal to allow the aggregation of trading activity of separate Members or its affiliates for purposes of the fee reduction is fair, equitable and not unreasonably discriminatory. The Exchange believes the proposed rule change is reasonable because it would allow aggregation of the trading activity of separate Members or its affiliates for purposes of the fee reduction only in very narrow circumstances, namely, where the firm is an affiliate, as defined herein. The Exchange believes that all such market participants should have the opportunity to lower transaction fees by transacting additional Priority Customer order flow, which in turn benefits all market participants.

The Exchange believes that the technical clarifying amendments to the

RFR responses consisting of an Auction or Cancel ("AOC") order or an AOC eQuote. Such responses cannot cross the disseminated MIAX Best Bid or Offer ("MBO") on the opposite side of the market from the response.

⁵ See MIAX Options Fee Schedule.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4).

⁸ See e.g., NYSE Amex Options Fee Schedule; International Securities Exchange LLC Schedule of Fees; BOX Options Exchange Fee Schedule.

Fee Schedule ensure that the Fee Schedule is transparent regarding the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities, and are thus consistent with the Act.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed change will enhance the competitiveness of the Exchange relative to other exchanges that offer their own electronic price improvement mechanism.

The Exchange believes that the proposed fees do not impact intra-market competition notwithstanding that the proposed per contract fees assessed to participants in the PRIME Auction that respond to an Agency Order (for purposes of this discussion, "responders") are greater than the per contract fees assessed to participants that begin the auction process by submitting an Agency Order (for purposes of this discussion, "initiators"). Initiators guarantee execution of the entire Agency Order in full, either at a single price or at multiple prices using the "auto-match" option.⁹ Responders may elect not to respond at all, or may elect to respond only at a single price, and are not required to guarantee the execution of the entire order at any price. Because of this guarantee, initiators are assuming greater risk and are providing more liquidity in the Exchange's markets. The Exchange believes therefore that it is reasonable, equitable and not unfairly discriminatory, and consequently not a burden on competition, to charge responders and initiators differently, as proposed. The Exchange believes that these market participants understand that the price-improving benefits, based on their experience with PRIME, and on electronic price improvement mechanisms on other markets, justify the transaction fees associated with the PRIME Auction, based upon the disparity in risk assumed in the PRIME Auction process.

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 establishes a fee structure in a manner that encourages market participants to submit their order flow, to provide liquidity, and to attract additional transaction volume to the Exchange.

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,¹⁰ and Rule 19b-4(f)(2)¹¹ 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. Please include File Number SR-MIAX-2015-73 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.
- All submissions should refer to File Number SR-MIAX-2015-73. This file number should be included on the subject line if email is used. To help the Commission process and review your

comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 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 will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MIAX-2015-73 and should be submitted on or before January 19, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Brent J. Fields,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76712; File No. SR-EDGA-2015-47]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rule 11.6(n)(1), Routing/Posting Instructions, To Amend the Aggressive Instruction

December 21, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 16, 2015, EDGA Exchange, Inc. (the "Exchange" or "EDGA") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁹ See Exchange Rule 515A(a)(2)(i)(A).

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

¹¹ 17 CFR 240.19b-4(f)(2).