

NASDAQ-2016-183 and should be submitted on or before January 20, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>31</sup>

**Robert W. Errett,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79685; File No. SR-MIAX-2016-48]

### Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Modify the Exchange's Other Market Participant Transaction Fees

December 23, 2016.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 15, 2016, Miami International Securities Exchange LLC ("MIAX Options" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule (the "Fee Schedule").

The text of the proposed rule change is available on the Exchange's Web site at [http://www.miaxoptions.com/filter/wotitle/rule\\_filing](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 the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange proposes to amend its Fee Schedule to increase the fees charged to Exchange Members<sup>3</sup> for simple and complex order executions in standard options classes in the Penny Pilot Program<sup>4</sup> ("Penny Pilot") for Firms.<sup>5</sup> Specifically, the Exchange proposes to increase the fees charged to Members for simple and complex order executions in standard options in the Penny Pilot for Firms from \$0.45 to \$0.47 per contract executed. The Exchange believes that this proposed fee increase is reasonable, equitable and not unfairly discriminatory because it makes the transaction fee consistent among the Exchange's market participants who are not Priority Customers<sup>6</sup> or MIAX Options Market Makers<sup>7</sup> by charging all such participants the same rate for transactions for simple and complex order executions in standard options in the Penny Pilot. The Exchange has historically kept the Firm transaction fee at a lower rate than the transaction fee for other market participants who are not Priority Customers or MIAX

<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> See Securities Exchange Act Release Nos. 78080 (June 15, 2016), 81 FR 40377 (June 21, 2016) (SR-MIAX-2016-16); 79432 (November 30, 2016), 81 FR 87990 (December 6, 2016) (SR-MIAX-2016-45).

<sup>5</sup> A "Firm" transaction fee is assessed on a MIAX Options Electronic Exchange Member "EEM" that enters an order that is executed for an account identified by the EEM for clearing in the Options Clearing Corporation ("OCC") "Firm" range. See Fee Schedule, Section 1(a)jii.

<sup>6</sup> The term "Priority Customer" means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). A "Priority Customer Order" means an order for the account of a Priority Customer. See Exchange Rule 100.

<sup>7</sup> The term "Market Makers" refers to Lead Market Makers ("LMMs"), Primary Lead Market Makers ("PLMMs"), and Registered Market Makers ("RMMs") collectively. See Exchange Rule 100. A Directed Order Lead Market Maker ("DLMM") and Directed Primary Lead Market Maker ("DPLMM") is a party to a transaction being allocated to the LMM or PLMM and is the result of an order that has been directed to the LMM or PLMM. See Fee Schedule note 2.

Options Market Makers, primarily as a competitive measure to attract Firm order flow. The Exchange believes that this measure is no longer necessary, and thus believes it is appropriate to increase the Firm transaction fee rate to the same rate charged for other market participants who are not Priority Customers or MIAX Options Market Makers. This proposed change brings the Exchange's Firm transaction fee in line and comparable with similar fees of other competing options exchanges.<sup>8</sup>

In addition, the Exchange proposes to continue to offer Members the opportunity to reduce their Firm transaction fees by \$0.02 per executed contract resulting from simple order executions in standard options in the Penny Pilot.<sup>9</sup> In order to accomplish this reduction, any Member, including any Affiliate<sup>10</sup> of the Member, that qualifies for the Priority Customer Rebate Program ("PCRP") volume tiers 3 or higher,<sup>11</sup> will be assessed a reduced Firm transaction fee of \$0.45 per contract resulting from simple order executions in standard options in the Penny Pilot. The Exchange believes that this continuing incentive will encourage Members to send their Firm order flow to the Exchange.

The Exchange proposes to implement the proposed change to the Fee Schedule effective as of January 1, 2017.

##### 2. Statutory Basis

The Exchange proposes to amend its Fee Schedule to increase the fees charged to Exchange Members<sup>12</sup> for simple and complex order executions in standard options classes in the Penny Pilot Program<sup>13</sup> ("Penny Pilot") for

<sup>8</sup> See, for example, NASDAQ PHLX LLC Pricing Schedule, Section II.

<sup>9</sup> See Securities Exchange Release Nos. 72988 (September 4, 2014), 79 FR 53808 (September 10, 2014) (SR-MIAX-2014-46); 72989 (September 4, 2014), 79 FR 53792 (September 10, 2014) (SR-MIAX-2014-47); 74478 (March 11, 2015), 80 FR 13938 (March 17, 2015) (SR-MIAX-2015-16); 76674 (December 17, 2015), 80 FR 79986 (December 23, 2015) (SR-MIAX-2015-70); 79157 (October 28, 2016), 81 FR 75885 (November 1, 2016) (SR-MIAX-2016-38).

<sup>10</sup> For purposes of the MIAX Options Fee Schedule, the term "Affiliate" means 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"). See Fee Schedule note 1.

<sup>11</sup> Under the PCRP, a Member receives certain transaction fee discounts provided the Member meets certain percentage thresholds in a month as described in the PCRP table. See Fee Schedule, Section 1(a)(iii).

<sup>12</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>13</sup> See Securities Exchange Act Release Nos. 78080 (June 15, 2016), 81 FR 40377 (June 21, 2016)

<sup>31</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.

Firms.<sup>14</sup> Specifically, the Exchange proposes to increase the fees charged to Members for simple and complex order executions in standard options in the Penny Pilot for Firms from \$0.45 to \$0.47 per contract executed. The Exchange believes that this proposed fee increase is reasonable, equitable and not unfairly discriminatory because it makes the transaction fee consistent among the Exchange's market participants who are not Priority Customers<sup>15</sup> or MIAX Options Market Makers<sup>16</sup> by charging all such participants the same rate for transactions for simple and complex order executions in standard options in the Penny Pilot. The Exchange has historically kept the Firm transaction fee at a lower rate than the transaction fee for other market participants who are not Priority Customers or MIAX Options Market Makers, primarily as a competitive measure to attract Firm order flow. The Exchange believes that this measure is no longer necessary, and thus believes it is appropriate to increase the Firm transaction fee rate to the same rate charged for other market participants who are not Priority Customers or MIAX Options Market Makers. This proposed change brings the Exchange's Firm transaction fee in line and comparable with similar fees of other competing options exchanges.<sup>17</sup>

In addition, the Exchange proposes to continue to offer Members the opportunity to reduce their Firm transaction fees by \$0.02 per executed contract resulting from simple order executions in standard options in the Penny Pilot.<sup>18</sup> In order to accomplish

(SR-MIAX-2016-16); 79432 (November 30, 2016), 81 FR 87990 (December 6, 2016) (SR-MIAX-2016-45).

<sup>14</sup> A "Firm" transaction fee is assessed on a MIAX Options Electronic Exchange Member "EEM" that enters an order that is executed for an account identified by the EEM for clearing in the Options Clearing Corporation ("OCC") "Firm" range. See Fee Schedule, Section 1)a)ii.

<sup>15</sup> The term "Priority Customer" means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). A "Priority Customer Order" means an order for the account of a Priority Customer. See Exchange Rule 100.

<sup>16</sup> The term "Market Makers" refers to Lead Market Makers ("LMMs"), Primary Lead Market Makers ("PLMMs"), and Registered Market Makers ("RMMs") collectively. See Exchange Rule 100. A Directed Order Lead Market Maker ("DLMM") and Directed Primary Lead Market Maker ("DPLMM") is a party to a transaction being allocated to the LMM or PLMM and is the result of an order that has been directed to the LMM or PLMM. See Fee Schedule note 2.

<sup>17</sup> See, for example, NASDAQ PHLX LLC Pricing Schedule, Section II.

<sup>18</sup> See Securities Exchange Release Nos. 72988 (September 4, 2014), 79 FR 53808 (September 10,

this reduction, any Member, including any Affiliate<sup>19</sup> of the Member, that qualifies for the Priority Customer Rebate Program ("PCRP") volume tiers 3 or higher,<sup>20</sup> will be assessed a reduced Firm transaction fee of \$0.45 per contract resulting from simple order executions in standard options in the Penny Pilot. The Exchange believes that this continuing incentive will encourage Members to send their Firm order flow to the Exchange.

The Exchange proposes to implement the proposed change to the Fee Schedule effective as of January 1, 2017.

### 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 proposal is similar to the transaction fees found on other options exchanges; therefore, the Exchange believes the proposal is consistent with robust competition by increasing the intermarket competition for order flow from market participants. The proposal aligns the fees of market participants who are not Priority Customers or MIAX Options Market Makers on the Exchange, as well as aligns such fees assessable to Members to those charged by other exchanges for the same market participant type. 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. The

2014) (SR-MIAX-2014-46); 72989 (September 4, 2014), 79 FR 53792 (September 10, 2014) (SR-MIAX-2014-47); 74478 (March 11, 2015), 80 FR 13938 (March 17, 2015) (SR-MIAX-2015-16); 76674 (December 17, 2015), 80 FR 79986 (December 23, 2015) (SR-MIAX-2015-70); 79157 (October 28, 2016), 81 FR 75885 (November 1, 2016) (SR-MIAX-2016-38).

<sup>19</sup> For purposes of the MIAX Options Fee Schedule, the term "Affiliate" means 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"). See Fee Schedule note 1.

<sup>20</sup> Under the PCRP, a Member receives certain transaction fee discounts provided the Member meets certain percentage thresholds in a month as described in the PCRP table. See Fee Schedule, Section (1)(a)(iii).

Exchange believes that the proposal reflects this competitive environment.

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

Written comments were neither solicited nor received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>21</sup> and Rule 19b-4(f)(2)<sup>22</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission 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-2016-48 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-2016-48. 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

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

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

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 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; 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-2016-48, and should be submitted on or before January 20, 2017.

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

**Robert W. Errett,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79684; File No. SR-NSX-2016-16]

### Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change in Connection With the Proposed Acquisition of the Exchange by NYSE Group, Inc.

December 23, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Exchange Act" or "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on December 22, 2016, National Stock Exchange, Inc. ("NSX" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>23</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.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Exchange Act")<sup>3</sup> and Rule 19b-4 thereunder,<sup>4</sup> National Stock Exchange, Inc. ("NSX" or the "Exchange") proposes, in connection with the proposed acquisition of the Exchange by NYSE Group, Inc. ("NYSE Group"), to: (1) Amend the Amended and Restated Certificate of Incorporation of National Stock Exchange, Inc. ("Certificate of Incorporation"), and the Third Amended and Restated Bylaws of National Stock Exchange, Inc. ("Bylaws") and make certain conforming amendments to the cover page, Table of Contents and first page of the Exchange's rulebook as well as Rules 2.10, 5.7, and the Schedule of Fees and Rebates; and (2) amend certain organizational documents of NYSE Group, NYSE Holdings LLC ("NYSE Holdings"), Intercontinental Exchange Holdings, Inc. ("ICE Holdings"), and Intercontinental Exchange, Inc. ("ICE").

The text of the proposed rule change is available on the Exchange's Web site at [www.nsx.com](http://www.nsx.com), at the Exchange'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 self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

##### 1. Purpose

On December 14, 2016, ICE entered into an agreement with the Exchange pursuant to which its wholly-owned subsidiary NYSE Group would acquire all of the outstanding capital stock of the Exchange (the "Acquisition"). As a result of the Acquisition, the Exchange would be renamed NYSE National, Inc. ("NYSE National") and would be

operated as a wholly-owned subsidiary of NYSE Group. NYSE Group is a wholly-owned subsidiary of NYSE Holdings, which is in turn 100% owned by ICE Holdings. ICE, a public company listed on the New York Stock Exchange LLC (the "NYSE"), owns 100% of ICE Holdings.

Following the Acquisition, the Exchange would continue to be registered as a national securities exchange and as a separate self-regulatory organization ("SRO"). As such, the Exchange would continue to have separate rules, membership rosters, and listings that would be distinct from the rules, membership rosters, and listings of the three other registered national securities exchanges and SROs owned by NYSE Group, namely, the NYSE, NYSE MKT LLC ("NYSE MKT"), and NYSE Arca, Inc. ("NYSE Arca") (together, the "NYSE Exchanges").

In connection with the Acquisition and as discussed more fully below, the Exchange proposes to amend its Certificate of Incorporation and Bylaws and make certain conforming amendments to the headings on the cover page, Table of Contents and first page of the Exchange's rulebook as well as Rules 2.10, 5.7, and the Schedule of Fees and Rebates. Generally, the amendments would reflect the Exchange's proposed new ownership and, in certain cases, align the Exchange's governance provisions to those of other NYSE Exchanges that the Commission has already approved, as described in greater detail below.

The Exchange also proposes amendments to the following organizational documents of NYSE Group and its intermediary and ultimate parent entities:

- ICE bylaws and director independence policy,
- ICE Holdings bylaws and certificate of incorporation,
- NYSE Holdings operating agreement, and
- NYSE Group bylaws and certificate of incorporation.

These proposed changes would reflect the proposed new ownership of the Exchange by the NYSE Group, and, indirectly, ICE.<sup>5</sup>

The Exchange would effect the changes described herein following approval of this rule filing no later than February 28, 2017, on a date determined by its Board.

<sup>5</sup> The NYSE Exchanges describe these proposed revisions in the NYSE, NYSE MKT and NYSE Arca companion rule filings related to the Acquisition. See SR-NYSE-2016-90; SR-NYSEMKT-2016-122; SR-NYSEArca-2016-167.

<sup>3</sup> 15 U.S.C. 78s(b)(1).

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