

OPRA is not currently proposing an increase in either of these caps.<sup>8</sup>

At current usage rates, these changes in OPRA's fees would result in an increase in its revenues of approximately \$1,500,000 on an annual basis if the changes do not cause any Subscribers to hit their applicable fee caps and do not cause any Vendors to discontinue providing access to current OPRA data to their Subscribers. (OPRA believes that these factors are likely to cause the actual increase in OPRA's revenue to be less than this amount.) OPRA believes that increasing its Usage-based Vendor Fees will restore a more appropriate balance to the relationship between its revenues derived from Professional Subscriber Device-based Fees on the one hand and Usage-based Vendor Fees on the other hand, and that an increase in its revenues resulting from these fee increases will represent an appropriate contribution to covering the overall costs of OPRA and its member exchanges to which these fees may properly be applied.

The text of the proposed amendment to the OPRA Plan is available at OPRA, the Commission's Public Reference Room, <http://opradata.com>, and on the Commission's Web site at [www.sec.gov](http://www.sec.gov).

## II. Implementation of the OPRA Plan Amendment

Pursuant to paragraph (b)(3)(i) of Rule 608 of Regulation NMS under the Act, OPRA designated this amendment as establishing or changing fees or other charges collected on behalf of all of the OPRA participants in connection with access to or use of OPRA facilities. In order to give persons subject to these fees advance notice of the changes, OPRA proposes to provide notice of the changes to OPRA Vendors on or about May 1, 2013, and to put the changes into effect on June 1, 2013.

The Commission may summarily abrogate the amendment within sixty days of its filing and require refiling and approval of the amendment by Commission order pursuant to Rule 608(b)(2) under the Act<sup>9</sup> if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or the maintenance of fair and orderly

<sup>8</sup> The cap for Nonprofessional Subscribers is at an amount equal to OPRA's Nonprofessional Subscriber Fee. OPRA recently increased its Nonprofessional Subscriber Fee, and increased the cap for Nonprofessional Subscribers at that time. (See File No. SR-OPRA-2012-02, Release No. 34-66564 (March 9, 2012)). Because the cap for Professional Subscribers is stated with reference to OPRA's Professional Subscriber Device-Based Fee, it adjusts automatically in lockstep with the Professional Subscriber Device-Based Fee.

<sup>9</sup> 17 CFR 242.608(b)(2).

markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.

## III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed OPRA Plan amendment 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 No. SR-OPRA-2013-01 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-OPRA-2013-01. 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 plan amendment that are filed with the Commission, and all written communications relating to the proposed plan amendment 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 such filing also will be available for inspection and copying at the principal office of OPRA. 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-OPRA-2013-01 and should be submitted on or before May 22, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

Kevin M. O'Neill,  
Deputy Secretary.

[FR Doc. 2013-10236 Filed 4-30-13; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69450; File No. SR-NASDAQ-2013-031]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change To Amend the Attestation Requirement of Rule 4780 To Allow a Retail Member Organization To Attest That "Substantially All" Orders Submitted to the Retail Price Improvement Program Will Qualify as "Retail Orders"

April 25, 2013.

On February 19, 2013, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to allow Retail Member Organizations ("RMOs") to attest that "substantially all," rather than all, orders submitted to the Retail Price Improvement Program qualify as "Retail Orders." The proposed rule changes were published for comment in the **Federal Register** on March 11, 2013.<sup>3</sup> To date, the Commission has received one comment on the proposal.<sup>4</sup> The Exchange submitted a response to the comment on April 24, 2013.<sup>5</sup>

Section 19(b)(2) of the Act<sup>6</sup> provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the

<sup>10</sup> 17 CFR 200.30-3(a)(29).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 69039 (March 5, 2013), 78 FR 15392.

<sup>4</sup> See Letter to the Commission from Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association (SIFMA), dated March 11, 2013.

<sup>5</sup> See Letter to the Commission from Jonathan F. Cayne, Associate General Counsel, NASDAQ OMX, dated April 24, 2013.

<sup>6</sup> 15 U.S.C. 78s(b)(2).

proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is April 25, 2013.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period to take action on the proposed rule change so that it has sufficient time to consider the Exchange's proposal, which would lessen the attestation requirements of RMOs that submit "Retail Orders" eligible to receive potential price improvement through the Retail Price Improvement Program, and to consider the comment letter that has been submitted in connection with the proposed rule change, along with the Exchange's response.

Accordingly, pursuant to Section 19(b)(2) of the Act,<sup>7</sup> the Commission designates June 9, 2013 as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File Number SR-NASDAQ-2013-031).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Kevin M. O'Neill,**  
*Deputy Secretary.*

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69457; File No. SR-MIAX-2013-17]

### Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Increase the Position and Exercise Limits for Options on iShares MSCI Emerging Markets Index Fund

April 25, 2013.

Pursuant to 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 April 16, 2013, Miami International Securities Exchange LLC ("MIAX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II 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 its rules to increase the position and exercise limits for options on iShares MSCI Emerging Markets Index Fund ("EEM").

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 Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The purpose of the proposed rule change is to amend Rule 307, Interpretations and Policies .01 and Rule 309, Interpretations and Policies .01 to increase position and exercise limits, respectively, for EEM options.

Position limits for exchange-traded fund ("ETFs") options, such as EEM

options, are determined pursuant to Rule 307 and vary according to the number of outstanding shares and trading volume during the most recent six-month trading period of the underlying stock or ETF. The largest in capitalization and most frequently traded stocks and ETFs have an option position limit of 250,000 contracts (with adjustments for splits, re-capitalizations, etc.) on the same side of the market; smaller capitalization stocks and ETFs have position limits of 200,000, 75,000, 50,000 or 25,000 contracts (with adjustments for splits, re-capitalizations, etc.) on the same side of the market. The current position limit for EEM options is 250,000 contracts. The purpose of the proposed rule change is to amend Rules 307 and 309 to increase the position and exercise limits for EEM options to 500,000 contracts. As discussed below, EEM is an actively-traded ETF and there is precedent for establishing position limits for options on actively-traded ETFs. Position limit levels for actively-traded ETFs are set forth in Rule 307, Interpretations and Policies .01.<sup>3</sup>

This proposed increase in position and exercise limits for EEM options has been adopted by the Chicago Board Options Exchange, Incorporated ("CBOE"), BOX Options Exchange LLC ("BOX"), International Securities Exchange, LLC ("ISE"), NASDAQ OMX PHLX, LLC ("PHLX"), NYSE MKT LLC ("NYSE Amex Options"), and NYSE Arca, Inc. ("NYSE Arca").<sup>4</sup>

In support of this proposed rule change, the following trading statistics compare EEM to IWM and SPY, which are both actively-traded ETF options with exceptions to the standard position and exercise limits. As shown on the table below, the average daily volume in 2012 for EEM was 49.4 million shares compared to 45.7 million shares for IWM and 143 million shares for SPY. The total shares outstanding for EEM was 1,182 million compared to 220 million shares for IWM and 820.5 million shares for SPY. Further, the fund market cap for EEM was \$52.19 billion compared to \$18.35 billion for IWM and \$125.63 billion for SPY.

<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</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> Rule 307, Interpretations and Policies .01, provides for exceptions to standard position limits as follows: put or call option contracts overlying the PowerShares QQQ Trust ("QQQ"), for which the position limit is currently 900,000 contracts on the same side of the market; options overlying the Standard and Poor's Depository Receipts® Trust

("SPY"), which currently does not have any position limits; options overlying the iShares® Russell 2000® Index Fund ("IWM"), for which the position limit is currently 500,000 contracts on the same side of the market; and options overlying the Diamonds Trust ("DIA"), for which the position limit is currently 300,000 contracts on the same side of the market.

<sup>4</sup> See Securities Exchange Act Release No. 68086 (October 23, 2012), 77 FR 65600 (October 29, 2012) (SR-CBOE-2012-066); Securities Exchange Act Release No. 68478 (December 19, 2012), 77 FR

76132 (December 26, 2012) (SR-BOX-2012-023); Securities Exchange Act Release No. 68398 (December 11, 2012), 77 FR 74700 (December 17, 2012) (SR-ISE-2012-093); Securities Exchange Act Release No. 68293 (November 27, 2012), 77 FR 71644 (December 3, 2012) (SR-Phlx-2012-132); Securities Exchange Act Release No. 68358 (December 5, 2012), 77 FR 73708 (December 11, 2012) (SR-NYSEMKT-2012-071); and Securities Exchange Act Release No. 68359 (December 5, 2012), 77 FR 73716 (December 11, 2012) (SR-NYSEArca-2012-132).