

Section 6 of the Act¹⁹ and the rules and regulations thereunder applicable to a national securities exchange.²⁰ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,²¹ which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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.

The Commission believes that NSX's proposed new order type will offer Users the option of interacting with marketable orders on the NSX's Book without having to incur the delays associated with the order delivery service. Accordingly, the Commission finds that the proposed rule change is consistent with the Act as it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market, and protects investors and the public interest. The Commission further believes that NSX's proposed new definitions will provide clarity when referring to the Auto-Ex Mode of order interaction and the Auto-Ex order type, which will further the Act's goal of promoting just and equitable principles of trade.

The Commission received two comment letters on the proposed rule change. Both commenters asserted that the proposed order type raises concerns under Regulation NMS.²² Specifically, one commenter stated that the proposed Auto-Ex Only order is inconsistent with the underlying policy goals of Rule 611 of Regulation NMS ("Order Protection Rule")²³ by designating that only certain "protected quotations" are in fact protected.²⁴ NSX responded to this concern by explaining that the proposed Auto-Ex Only order would not trade-through a protected quotation established by an order submitted via

Order Delivery Mode.²⁵ According to the Exchange, Blade would reject any Auto-Ex Only order when there is an order that was entered via Order Delivery Mode that has price/time priority resting on the NSX Book. Based on the Exchange's representations, the Commission does not believe that the Auto-Ex Only order is inconsistent with Rule 611 of Regulation NMS because an Auto-Ex Only order will not trade-through a protected quotation in violation of Rule 611.

In addition, one of the commenters stated that the proposed new order type is inconsistent with Rule 610(a) of Regulation NMS ("Access to Quotations Rule"),²⁶ which prohibits an exchange from imposing discriminatory terms that prevent or inhibit any person from obtaining efficient access to such quotations, by preventing orders submitted through Order Delivery Mode from interacting with Auto-Ex Only orders.²⁷ NSX responded to this commenter's concern by stating that the Auto-Ex Only order would not prevent or inhibit any person from obtaining access to a displayed quotation.²⁸ The Exchange further explained that Users could access a displayed quotation by submitting an intermarket sweep order or by submitting an Auto-Ex Only order to gain access to orders in the Exchange's displayed quotations that are entered using the Auto-Ex Mode.²⁹ The Commission does not believe that the Auto-Ex Only order is inconsistent with the Access to Quotations Rule because it does not prevent or inhibit a market participant from gaining access to a displayed quotation.

Both commenters also noted concerns regarding the complexity of the U.S. equity market structure, and one commenter stated that the NSX's proposal would unnecessarily continue the trend of complexity for its sake, without justification as to how the proposal would serve the larger investing public.³⁰ The same commenter believes that the NSX's proposal adds to the proliferation of order types, with the potential to cause investor confusion without serving any identifiable policy objective other than to allow market participants to bypass quotations that are otherwise entitled to trade-through protection under Regulation NMS simply because of the manner in which the quotations were

entered.³¹ The other commenter asserted that the proposed order type adds another layer of complexity to an already overly complex market structure.³² The Commission believes that the NSX's proposed Auto-Ex Only order will benefit Users by offering them the option of interacting with marketable orders on the NSX's Book without having to incur the delays associated with the order delivery service and will not cause investor confusion or significantly add to the complexity of the existing market structure.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,³³ that the proposed rule change (SR-NSX-2013-02) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁴

Kevin M. O'Neill,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69518; File No. SR-MIAX-2013-18]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Priority Customer Size

May 6, 2013.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 24, 2013, 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

¹ See SIFMA Letter, *supra* note 4, at 3.

² See Driscoll Letter, *supra* note 4, at 2. The commenter went on to question whether the current market structure needs an order delivery function and whether the current criteria under which order delivery operates is appropriate. *Id.* at 2-4. This concern is beyond the scope of the proposed rule change and the Commission's consideration of such proposed rule change.

³ 15 U.S.C. 78s(b)(2).

⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹⁹ 15 U.S.C. 78f.

²⁰ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²¹ 15 U.S.C. 78f(b)(5).

²² See SIFMA Letter and Driscoll Letter, *supra* note 4.

²³ 17 CFR 242.611. Rule 611(a)(1) requires trading centers to, among other things, establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trade-throughs on that trading center of protected quotations in NMS stocks.

²⁴ See SIFMA Letter, *supra* note 4, at 2.

²⁵ See NSX Response, *supra* note 5, at 2.

²⁶ 17 CFR 242.610(a).

²⁷ See SIFMA Letter, *supra* note 4, at 2-3.

²⁸ See NSX Response, *supra* note 5, at 2.

²⁹ See *id.*

³⁰ See Driscoll Letter, *supra* note 4, at 1-2 and SIFMA Letter, *supra* note 4, at 3.

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 Exchange Rule 506, Collection and Dissemination of Quotations, by adopting new Exchange Rule 506(c)(ii) to state that the Exchange will make available to subscribers of its MIAX Top of Market ("ToM") data feed the quantity of Priority Customer (defined below) contracts included in the MIAX Best Bids and Offers ("MBBOs") disseminated by the Exchange.

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 purpose of the proposed rule change is to make available to subscribers of its ToM market data product³ the quantity of Priority Customer (defined below) contracts included in the MBBO disseminated by the Exchange in order to provide additional transparency to ToM subscribers regarding the disseminated MBBO. The Exchange does not intend to charge additional fees for the inclusion of Priority Customer size in the aggregate size component of ToM at this time.

Currently, the ToM is a direct data feed that includes: the Exchange's best bid and offer, with aggregate size and last sale information on the MIAX system; opening imbalance condition

information; opening and intra-day routing information; Expanded Quote Range information; Post-Halt Notification; and Liquidity Refresh condition information.⁴ The ToM data feed includes data that is identical to the data sent to the processor for the Options Price Reporting Authority ("OPRA"). The ToM and OPRA data leave the MIAX system at the same time, as required under Section 5.2(c)(iii)(B) of the Limited Liability Company Agreement of the Options Price Reporting Authority LLC (the "OPRA Plan"), which prohibits the dissemination of proprietary information on any more timely basis than the same information is furnished to the OPRA System for inclusion in OPRA's consolidated dissemination of options information.

The Exchange now proposes to make available additional information in the ToM data feed that specifies the quantity of Priority Customer⁵ contracts that are included in the aggregate size of the MBBO. Information regarding the quantity of Priority Customer interest included in the size of the MBBO may provide market participants transparency as to how orders would be allocated when the Priority Customer Overlay⁶ is in effect. When the Priority Customer Overlay is in effect, Priority Customer Orders on the Exchange generally have priority over Professional Interest and all Market Maker interest at the same price. The Exchange believes that the additional information regarding the quantity of Priority Customers contracts may provide certain ToM subscribers an additional tool to use when making routing, quotation, price and size decisions regarding where they should send orders and quotes, and the nature of such orders and quotes (*i.e.*, price and size).

As stated above, the Exchange is not proposing at this time to assess additional fees for the inclusion of

⁴ See *id.*

⁵ 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 accounts(s). See Exchange Rule 100.

⁶ The Exchange generally uses a pro-rata allocation model, and deploys certain "Priority Overlays" on a class-by-class basis. One such Priority Overlay is the Priority Customer Overlay. When the Priority Customer Overlay is in effect, the highest bid and lowest offer have priority except that Priority Customer Orders have priority over Professional Interest and all Market Maker interest at the same price. If there are two or more Priority Customer Orders for the same options series at the same price, priority is afforded to such Priority Customer Orders in the sequence in which they are received by the System. See Exchange Rule 514(d)(1).

Priority Customer size as a component of the information included in the ToM market data product. The Exchange notes that it would file a 19b-4 Rule Filing prior to assessing additional fees for the Priority Customer size component of the information included in the ToM market data product.

Because of the technology changes associated with this rule proposal, the Exchange will announce the implementation date of the proposal in an Exchange Circular to be published no later than 30 days after the publication of the notice in the **Federal Register**. The implementation date will be no later than 30 days following publication of the Exchange Circular announcing publication of the notice in the **Federal Register**.

2. Statutory Basis

MIAX believes that its proposed rule change is consistent with Section 6(b)⁷ of the Act in general, and furthers the objectives of Section 6(b)(5)⁸ of the Act in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest, and it is not designed to permit unfair discrimination among customers, brokers, or dealers.

The addition of Priority Customer size as a component of the information included in the ToM product is designed to promote just and equitable principles of trade by providing ToM subscribers with market data that should enable them to make informed decisions on trading in MIAX options by using the ToM data to assess current market conditions that directly affect such decisions. The proposal removes impediments to, and is designed to further perfect, the mechanisms of a free and open market and a national market system by making the MIAX market more transparent and accessible to market participants making routing decisions concerning their options orders, and concerning the nature of their quotes.

The ToM market data product is also designed to protect investors and the public interest by providing market data to subscribers that offers market participants additional information in

³ See Securities Exchange Act Release No. 69007 (February 28, 2013), 78 FR 14617 (March 6, 2013) (SR-MIAX-2013-05).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

order to make decisions concerning their orders and/or quotes.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

MIAX operates within a highly competitive market in which market participants can readily send order flow to other competing venues if, among other things, they deem allocation rules at a particular venue to be unreasonable or disproportionate. The proposed rule change is intended to offer market participants additional information and transparency in the marketplace, and therefore enhances competition among exchanges by further enabling market participants to make informed order routing and quoting decisions.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(6)¹⁰ 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.

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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-2013-18 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-MIAX-2013-18. 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 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 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-2013-18 and should be submitted on or before May 31, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Kevin M. O'Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69522; File No. SR-BX-2013-034]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Its Schedule of Fees and Rebates for Execution of Orders for Securities Priced at \$1 or More Under Rule 7018

May 6, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 30, 2013, NASDAQ OMX BX, Inc. ("BX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the 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 proposes changes to its schedule of fees and rebates for execution of orders for securities priced at \$1 or more under Rule 7018. While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on May 1, 2013. The text of the proposed rule change is also available on the Exchange's Web site at <http://nasdaqomxbx.cchwallstreet.com>, at the principal office of the Exchange, 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

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.