

annual burden of 348 hours and \$156,600.

PBGC is soliciting public comments to—

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodologies and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

Issued in Washington, DC.

**Hilary Duke,**

*Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation.*

[FR Doc. 2020-04848 Filed 3-9-20; 8:45 am]

**BILLING CODE 7709-02-P**

**POSTAL SERVICE**

**Product Change—Priority Mail Negotiated Service Agreement**

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice* March 10, 2020.

**FOR FURTHER INFORMATION CONTACT:** Sean Robinson, 202-268-8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on March 5, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 595 to Competitive Product List*. Documents

are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2020-98, CP2020-103.

**Sean Robinson,**

*Attorney, Corporate and Postal Business Law.*

[FR Doc. 2020-04886 Filed 3-9-20; 8:45 am]

**BILLING CODE 7710-12-P**

**POSTAL SERVICE**

**International Product Change—Priority Mail Express International, Priority Mail International & First-Class Package International Service Agreement**

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a Priority Mail Express International, Priority Mail International & First-Class Package International Service contract to the list of Negotiated Service Agreements in the Competitive Product List in the Mail Classification Schedule.

**DATES:** Date of notice: March 10, 2020.

**FOR FURTHER INFORMATION CONTACT:** Christopher C. Meyerson, (202) 268-7820.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on March 3, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 1 to Competitive Product List*.

Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2020-97 and CP2020-101.

**Christopher C. Meyerson,**

*Attorney, Corporate and Postal Business Law.*

[FR Doc. 2020-04798 Filed 3-9-20; 8:45 am]

**BILLING CODE 7710-12-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-88315; File No. SR-NASDAQ-2019-091]

**Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Adopt a New Rule Concerning Nasdaq's Ability To Request Information From a Listed Company Regarding the Number of Unrestricted Publicly Held Shares in Certain Circumstances and Halt Trading in the Company's Security Upon the Request, and in Certain Circumstances Request a Plan To Increase the Number of Unrestricted Publicly Held Shares to an Amount That Is Higher Than the Applicable Publicly Held Shares Requirement**

March 4, 2020.

**I. Introduction**

On November 22, 2019, The Nasdaq Stock Market LLC ("Nasdaq" or the "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 adopt a rule specifying Nasdaq's ability to request information from a listed company regarding the number of unrestricted publicly held shares when Nasdaq observes unusual trading characteristics in a security or a company announces an event that may cause a contracting in the number of unrestricted publicly held shares, halt trading in such company's securities upon such a request, and potentially request a listed company to increase its number of unrestricted publicly held shares. The proposed rule change was published for comment in the **Federal Register** on December 12, 2019.<sup>3</sup> On January 24, 2020, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> the Commission designated a longer period within which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.<sup>5</sup> The Commission

<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. 87677 (December 6, 2019), 84 FR 67974 (December 12, 2019) ("Notice").

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> See Securities Exchange Act Release No. 88028 (January 24, 2020), 85 FR 5500 (January 30, 2020). The Commission designated March 11, 2020, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

received no comment letters on the proposed rule change. This order institutes proceedings under Section 19(b)(2)(B) of the Act<sup>6</sup> to determine whether to approve or disapprove the proposed rule change.

## II. Description of the Proposal

Nasdaq's current continued listing standards require a listed company to maintain a minimum number of Publicly Held Shares,<sup>7</sup> without excluding Restricted Securities<sup>8</sup> from such calculation.<sup>9</sup> In contrast, for initial listing, Nasdaq's current rules, as amended in 2019,<sup>10</sup> require that a company seeking to be listed on Nasdaq have, among other things, a minimum number of Unrestricted Publicly Held Shares.<sup>11</sup>

Nasdaq has proposed to adopt new Rule 5120, which would provide that, while Nasdaq would not ordinarily consider the number of Unrestricted Publicly Held Shares of a listed company's security, Nasdaq may request information from a company regarding the number of Unrestricted Publicly Held Shares if (1) Nasdaq observes unusual trading characteristics in the security; or (2) the company has announced an event that may cause a contraction in the number of Unrestricted Publicly Held Shares.<sup>12</sup>

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

<sup>7</sup> "Publicly Held Shares" is defined as "shares not held directly or indirectly by an officer, director or any person who is the beneficial owner of more than 10 percent of the total shares outstanding." See Rule 5005(a)(35).

<sup>8</sup> "Restricted Securities" is defined as "securities that are subject to resale restrictions for any reason, including but not limited to, securities: (1) Acquired directly or indirectly from the issuer or an affiliate of the issuer in unregistered offerings such as private placements or Regulation D offerings; (2) acquired through an employee stock benefit plan or as compensation for professional services; (3) acquired in reliance on Regulation S, which cannot be resold within the United States; (4) subject to a lockup agreement or a similar contractual restriction; or (5) considered 'restricted securities' under Rule 144." See Rule 5005(a)(37).

<sup>9</sup> See proposed Rule 5120. See also Notice, *supra* note 3, 84 FR at 67974. For the continued listing requirements relating to Publicly Held Shares, see Rules 5450(b)(1)(B), (2)(B), and (3)(B), 5460(a)(1), 5550(a)(4), 5555(a)(3), and 5565(a).

<sup>10</sup> See Securities Exchange Act Release No. 86314 (July 5, 2019), 84 FR 33102 (July 11, 2019) (SR-NASDAQ-2019-009) (approving Nasdaq's proposal to, among other things, require that Restricted Securities be excluded from Nasdaq's calculation of Publicly Held Shares for purposes of meeting initial listing requirements).

<sup>11</sup> "Unrestricted Publicly Held Shares" is defined as "Publicly Held Shares that are Unrestricted Securities." See Rule 5005(a)(45). "Unrestricted Securities" is defined as "securities that are not Restricted Securities." See Rule 5005(a)(46). For the initial listing requirements relating to Unrestricted Publicly Held Shares, see Rules 5315(e)(2), 5405(a)(2), 5415(a)(1), 5505(a)(2), 5510(a)(3), and 5520(g)(3).

<sup>12</sup> See proposed Rule 5120.

Proposed Rule 5120 also sets forth that pursuant to Nasdaq's authority under Rule 4120(a)(5),<sup>13</sup> Nasdaq may halt trading in the security in connection with such a request.<sup>14</sup> When considering whether a security has unusual trading characteristics, the proposed rule provides that Nasdaq may review volume, price movements, spread, and the presence or absence of any news.<sup>15</sup> Furthermore, the proposed rule specifies the events that may cause a contraction in the number of Unrestricted Publicly Held Shares, thereby possibly triggering a request for additional information, to include reverse stock splits, tender offers, stock buybacks, or entering into contractual agreements such as standstills or lockups.<sup>16</sup>

Further, proposed Rule 5120 provides that if information provided by the company or otherwise obtained by Nasdaq indicates that the number of Unrestricted Publicly Held Shares for the security is below the applicable Publicly Held Shares requirement for continued listing of the security, Nasdaq generally would use its authority under Rule 5101<sup>17</sup> to apply more stringent criteria and request a plan to increase the number of Unrestricted Publicly Held Shares to an amount that is higher than the applicable Publicly Held Shares requirement.<sup>18</sup> Such a plan would generally be required to be provided within 45 calendar days of the request, as provided in the Rule 5800 Series.<sup>19</sup>

<sup>13</sup> Rule 4120(a)(5) provides that Nasdaq "may halt trading in a security listed on Nasdaq when Nasdaq requests from the issuer information relating to: (A) Material news; (B) the issuer's ability to meet Nasdaq listing qualification requirements, as set forth in the Listing Rule 5000 Series; or (C) any other information which is necessary to protect investors and the public interest."

<sup>14</sup> See proposed Rule 5120.

<sup>15</sup> See proposed Rule 5120.

<sup>16</sup> See proposed Rule 5120.

<sup>17</sup> Rule 5101 states, in part, that Nasdaq "has broad discretionary authority over the initial and continued listing of securities in Nasdaq . . . [and] may use such discretion to . . . apply additional or more stringent criteria for the initial or continued listing of particular securities, or suspend or delist particular securities based on any event, condition, or circumstance that exists or occurs that makes initial or continued listing of the securities on Nasdaq inadvisable or unwarranted in the opinion of Nasdaq, even though the securities meet all enumerated criteria for initial or continued listing on Nasdaq."

<sup>18</sup> See proposed Rule 5120.

<sup>19</sup> See proposed Rule 5120. Nasdaq has proposed to make conforming changes to Rule 5810(c)(2)(A) to add a deficiency under proposed Rule 5120 to the list of deficiencies for which a company may submit to the Exchange's Listing Qualifications Department a plan to regain compliance. Nasdaq has also proposed to make other conforming and non-substantive changes to Rule 5810(c)(2). See proposed Rule 5810(c)(2). In addition, Nasdaq has proposed non-substantive changes to Rule

In support of its proposal, Nasdaq stated that it believes that its previously revised initial listing standards do not sufficiently address listed companies that may have Restricted Securities, which could potentially result in a security that is illiquid.<sup>20</sup> Nasdaq noted that illiquid securities may trade infrequently and in a more volatile manner, change hands at a price that may not reflect their true market value, and may be more susceptible to price manipulation.<sup>21</sup> According to Nasdaq, the proposal would enhance transparency<sup>22</sup> and ensure that securities listed on Nasdaq are liquid and have sufficient freely tradeable shares to meet investor demand, thereby reducing trading volatility and price manipulation.<sup>23</sup>

## III. Proceedings To Determine Whether To Approve or Disapprove SR-NASDAQ-2019-091 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act to determine whether the proposal should be approved or disapproved.<sup>24</sup> Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change, as discussed below. Institution of disapproval proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved.

Pursuant to Section 19(b)(2)(B) of the Act, the Commission is providing notice

5810(c)(3)(A) (which deals with a company's failure to meet the continued listing requirement for minimum bid price) to revise the phrase "market value of publicly held shares" to utilize the terms "Market Value" and "Publicly Held Shares," which are defined in Rule 5005(a). See proposed Rule 5810(c)(3)(A)(i) and (ii).

<sup>20</sup> See Notice, *supra* note 3, 84 FR at 67974. For example, Nasdaq stated that companies that were not required to meet the newer initial listing requirements may still have Restricted Securities that are not freely tradeable, and a listed company may conduct a transaction that decreases its number of Unrestricted Publicly Held Shares. See *id.*

<sup>21</sup> See Notice, *supra* note 3, 84 FR at 67974. Nasdaq stated that it has observed problems with a small number of listed companies that have a large number of Restricted Securities, and that such companies may not have sufficient liquidity to meet investor demand, particularly upon announcement of material news, which may result in unusual trading characteristics, such as extreme price movements and unusually large bid-ask spreads. See *id.*

<sup>22</sup> According to Nasdaq, its existing rules would currently allow it to apply additional criteria to a listed company that satisfies all of the continued listing requirements where there are indications that there is insufficient liquidity in the security to support fair and orderly trading. See Notice, *supra* note 3, 84 FR at 67974, n.7 (citing Rule 5101).

<sup>23</sup> See Notice, *supra* note 3, 84 FR at 67975.

<sup>24</sup> 15 U.S.C. 78s(b)(2)(B).

of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis and input concerning the proposed rule change's consistency with the Act<sup>25</sup> and, in particular, with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.<sup>26</sup>

Nasdaq is proposing to adopt a new rule to specifically permit it to request additional information from a listed company regarding its number of Unrestricted Publicly Held Shares if Nasdaq observes unusual trading characteristics in a listed company's security or if the listed company has announced an event that may cause a contraction in the number of Unrestricted Publicly Held Shares. Nasdaq acknowledges that its continued listing standards currently require a minimum number of Publicly Held Shares, but not a minimum number of Unrestricted Publicly Held Shares. Nasdaq specifies, in the proposed rule, that in considering whether there are unusual trading characteristics in a security for purposes of requesting additional information on the number of Unrestricted Publicly Held Shares, Nasdaq may review volume, price movements, spread, and the presence or absence of any news. However, Nasdaq does not state how these broad factors would be considered in its determination of whether there are unusual trading characteristics to trigger a request for additional information, other than to note that the "unusual trading characteristics" it has observed in the past include "extreme price movements" and "unusually large bid ask spreads."<sup>27</sup> In any case, whether unusual trading characteristics, however determined, would cause Nasdaq to request additional information from a listed company on the number of Unrestricted Publicly Held Shares appears to be subject to wide discretion under the proposed rule.

Similarly, under the proposed rule, Nasdaq may also request information on the number of Unrestricted Publicly Held Shares if the listed company has announced an event that may cause a contraction in the number of such unrestricted shares, such as a reverse stock split, tender offer, or stock buyback. The Exchange has not provided any specific explanation of when such events would or would not

trigger a request for the number of Unrestricted Publicly Held Shares, but rather just provided that such events "may" trigger such a request, with the result that this provision also appears to be subject to wide discretion by Nasdaq.

Upon Nasdaq requesting additional information on the number of Unrestricted Publicly Held Shares, the proposed rule then states that if the information indicates the number of such unrestricted shares are below the applicable minimum number of Publicly Held Shares continued listing standard, Nasdaq generally will use its authority under Rule 5101 to apply more stringent criteria and request a plan to increase the number of Unrestricted Publicly Held Shares to an amount that is higher than the applicable minimum number of Publicly Held Shares continued listing standard. Nasdaq does not provide any information in its filing regarding when it generally will or will not use its authority to request such a plan.

Moreover, should Nasdaq ask the listed company to provide a plan to increase the minimum number of Unrestricted Publicly Held Shares, Nasdaq provides no guidance on how it would determine such minimum number, with the result that this provision appears to be subject to wide discretion by Nasdaq as well.

Nasdaq stated that its proposal is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers because, while the proposed changes will only apply to securities exhibiting unusual trading characteristics and companies that announce an event that may cause a contraction in the number of Unrestricted Publicly Held Shares, Nasdaq will apply this standard to all such securities listed on Nasdaq.<sup>28</sup> As discussed above, however, the Exchange's proposal provides it wide discretion both (1) to determine whether to request additional information from a listed company on the number of Unrestricted Publicly Held Shares; and (2) if it does so, and that number is less than the minimum number of Publicly Held Shares, to establish the more stringent requirements with respect to the minimum number of Unrestricted Publicly Held Shares. Accordingly, the Commission believes there are questions as to whether the proposal is consistent with Section 6(b)(5) of the Act and its requirement, among other things, that the rules of a national securities exchange not be designed to permit unfair discrimination.

The Commission notes that under the Commission's Rules of Practice, the

"burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization ['SRO'] that proposed the rule change."<sup>29</sup> The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,<sup>30</sup> and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the applicable rules and regulations.<sup>31</sup>

For these reasons, the Commission believes it is appropriate to institute proceedings pursuant to Section 19(b)(2)(B) of the Act to determine whether the proposal should be approved or disapproved.

#### IV. Commission's Solicitation of Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written view of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.<sup>32</sup>

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by March 31, 2020. Any person who wishes to file a rebuttal to any other person's submission must file

<sup>29</sup> Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

<sup>30</sup> See *id.*

<sup>31</sup> See *id.*

<sup>32</sup> Section 19(b)(2) of the Exchange Act, as amended by the Securities Act Amendments of 1975, Public Law 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

<sup>25</sup> 15 U.S.C. 78f(b)(5).

<sup>26</sup> *Id.*

<sup>27</sup> See Notice, *supra* note 3, 84 FR at 67974.

<sup>28</sup> See Notice, *supra* note 3, 84 FR at 67975-76.

that rebuttal by April 14, 2020. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal which are set forth in the Notice,<sup>33</sup> in addition to any other comments they may wish to submit about the proposed rule change.

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-NASDAQ-2019-091 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-NASDAQ-2019-091. 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 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. 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-NASDAQ-2019-091 and should be submitted on or before March 31, 2020. Rebuttal comments should be submitted by April 14, 2020.

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

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2020-04790 Filed 3-9-20; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-88323; File No. SR-CboeEDGA-2020-005]**

### **Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Amend EDGA Rule 11.8(e), Which Describes the Handling of MidPoint Discretionary Orders Entered on the Exchange**

March 5, 2020.

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 February 28, 2020, Cboe EDGA Exchange, Inc. (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 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**

Cboe EDGA Exchange, Inc. ("EDGA" or the "Exchange") is filing with the Securities and Exchange Commission (the "Commission") a proposed rule change to amend EDGA Rule 11.8(e), which describes the handling of MidPoint Discretionary Orders entered on the Exchange. 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

A MidPoint Discretionary Order ("MDO") is a limit order to buy that is pegged to the national best bid ("NBB"), with discretion to execute at prices up to and including the midpoint of the national best bid or offer ("NBBO"), or a limit order to sell that is pegged to the national best offer ("NBO"), with discretion to execute at prices down to and including the midpoint of the NBBO.<sup>3</sup> The purpose of the proposed rule change is to amend EDGA Rule 11.8(e) to introduce two optional instructions that Users would be able to include on MDOs entered on the Exchange. First, the Exchange would allow Users to enter MDOs with an offset to the NBBO, similar to orders entered with a Primary Peg Instruction today.<sup>4</sup> Second, the Exchange would allow Users to enter MDOs that include a Quote Depletion Protection ("QDP") instruction that would disable discretion for a limited period in certain circumstances where the best bid or offer displayed on the EDGA Book is executed or cancelled below one round lot. The Exchange believes that both of these features would enhance the usefulness of MDOs to members and investors, and would allow the exchange to better compete with other national securities exchanges that currently offer order types that include similar features.

##### Offset Instruction

As explained, MDOs are pegged to the same side of the NBBO, with discretion to execute at prices to and including the midpoint of the NBBO. An MDO is therefore similar to an order entered with both a Primary Peg instruction and an instruction to exercise discretion to the NBBO midpoint. It is also similar to certain order types offered by other national securities exchanges, including Discretionary Peg Orders offered by the Investors Exchange LLC ("IEX").<sup>5</sup>

<sup>3</sup> See EDGA Rule 11.8(e).

<sup>4</sup> See EDGA Rule 11.6(j)(2).

<sup>5</sup> See IEX Rule 11.190(b)(10). Discretionary Peg Orders on IEX are posted at the less aggressive of

<sup>33</sup> See Notice, *supra* note 3.

<sup>34</sup> 17 CFR 200.30-3(a)(57).

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

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