

*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-NYSEArca-2021-61. 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 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. 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-NYSEArca-2021-61 and should be submitted on or before August 16, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

**J. Matthew DeLesDernier,**  
*Assistant Secretary.*

[FR Doc. 2021-15811 Filed 7-23-21; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92448; File No. SR-MIAX-2021-34]

### Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule for the Complex PRIME Agency Order Credit

July 20, 2021.

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 July 12, 2021, 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 website at <http://www.miaxoptions.com/rule-filings>, 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 (i) modify the Priority Customer Rebate Program ("PCRP")<sup>3</sup> as it pertains to per contract credits for complex PRIME ("cPRIME")<sup>4</sup> Agency Orders for Priority Customers; and (ii) to remove the per contract credit cap for cPRIME Agency Orders for Priority Customers and the associated waiver of same which was in effect until June 30, 2021. The Exchange initially filed this proposal on July 1, 2021 (SR-MIAX-2021-33) and withdrew such filing on July 12, 2021. The Exchange proposes to implement the fee change effective July 12, 2021.

##### Background

Exchange Rule 518(b)(7) defines a cPRIME Order as a type of complex order<sup>5</sup> that is submitted for participation in a cPRIME Auction and trading of cPRIME Orders is governed by Rule 515A, Interpretation and

<sup>3</sup> Under the PCRP, MIAX Options credits each Member the per contract amount resulting from each Priority Customer order transmitted by that Member which is executed electronically on the Exchange in all multiply-listed option classes (excluding, in simple or complex as applicable, QCC and cQCC Orders, mini-options, Priority Customer-to-Priority Customer Orders, C2C and cC2C Orders, PRIME and cPRIME AOC Responses, PRIME and cPRIME Contra-side Orders, PRIME and cPRIME Orders for which both the Agency and Contra-side Order are Priority Customers, and executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in Exchange Rule 1400), provided the Member meets certain percentage thresholds in a month as described in the Priority Customer Rebate Program table. See Fee Schedule, Section (1)(a)iii.

<sup>4</sup> "cPRIME" is the process by which a Member may electronically submit a "cPRIME Order" (as defined in Rule 518(b)(7)) it represents as agent (a "cPRIME Agency Order") against principal or solicited interest for execution (a "cPRIME Auction"), subject to the restrictions set forth in Exchange Rule 515A, Interpretation and Policy .12. See Exchange Rule 515A.

<sup>5</sup> A "complex order" is any order involving the concurrent purchase and/or sale of two or more different options in the same underlying security (the "legs" or "components" of the complex order), for the same account, in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purposes of executing a particular investment strategy. A complex order can also be a "stock-option" order, which is an order to buy or sell a stated number of units of an underlying security coupled with the purchase or sale of options contract(s) on the opposite side of the market, subject to certain contingencies set forth in the proposed rules governing complex orders. For a complete definition of a "complex order," see Exchange Rule 518(a)(5). See also Securities Exchange Act Release No. 78620 (August 18, 2016), 81 FR 58770 (August 25, 2016) (SR-MIAX-2016-26).

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

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

<sup>19</sup> 17 CFR 200.30-3(a)(12).

Policies .12.<sup>6</sup> cPRIME Orders are processed and executed in the Exchange's PRIME mechanism, the same mechanism that the Exchange uses to process and execute simple PRIME orders, pursuant to Exchange Rule 515A.<sup>7</sup> PRIME is a process by which a Member<sup>8</sup> may electronically submit for execution an order it represents as agent (an "Agency Order") against principal interest and/or solicited interest. The Member that submits the Agency Order ("Initiating Member") agrees to guarantee the execution of the Agency Order by submitting a contra-side order representing principal interest or solicited interest ("Contra-Side Order"). When the Exchange receives a properly designated Agency Order for Auction processing, a request for response ("RFR") detailing the option, side, size and initiating price is broadcasted to MIAX participants up to an optional designated limit price. Members may submit responses to the RFR, which can be either an Auction or Cancel ("AOC") order<sup>9</sup> or an AOC eQuote.<sup>10</sup> A cPRIME Auction is the price-improvement mechanism of the Exchange's System pursuant to which an Initiating Member electronically submits a complex Agency Order into a cPRIME Auction. The Initiating Member, in submitting an Agency Order, must be willing to either (i) cross the Agency Order at a single price against principal or solicited interest, or (ii) automatically match against principal or solicited interest,

the price and size of a RFR that is broadcast to MIAX participants up to an optional designated limit price. Such responses are defined as cPRIME AOC Responses or cPRIME eQuotes. The PRIME mechanism is used for orders on the Exchange's Simple Order Book.<sup>11</sup> The cPRIME mechanism is used for Complex Orders<sup>12</sup> on the Exchange's Strategy Book,<sup>13</sup> with the cPRIME mechanism operating in the same manner for processing and execution of cPRIME Orders that is used for PRIME Orders on the Simple Order Book.

#### Removal of Contract Cap

In conjunction with the implementation of cPRIME Orders on the Exchange, the Exchange amended its Priority Customer Rebate Program to establish a per contract credit rate for cPRIME Agency Orders for Priority Customers.<sup>14</sup> The Exchange limited the cPRIME Agency Order Credit to be payable only to the first 1,000 contracts per leg for each cPRIME Agency Order in all tiers under the PCRCP in its filing on August 1, 2018.<sup>15</sup> On February 28, 2020, the Exchange amended the Fee Schedule to waive the 1,000 contract cap per leg for cPRIME Agency Order rebates for all tiers under the PCRCP from March 1, 2020, until May 31, 2020.<sup>16</sup> The Exchange subsequently extended the waiver from June 1, 2020, until June 30, 2021, in a series of filings beginning June 2020.<sup>17</sup> The Exchange now

proposes to remove footnote "\*" in Section (1)(a)(iii) of the Fee Schedule in its entirety to remove the per contract credit cap of 1,000 contracts and to also eliminate the waiver of the contract cap per leg for cPRIME Agency Order rebates for all tiers under the PCRCP.

#### cPRIME Agency Order per Contract Credit

In conjunction with the removal of the per credit cap of 1,000 contracts as described above, the Exchange now proposes to adopt a new table under the PCRCP for cPRIME Agency Orders for Priority Customers where the max leg of the order is greater than 1,000 contracts. The table will provide a tiered agency credit rate for cPRIME Agency Orders for Priority Customers dependent upon the break-up percentage and the largest leg of the order being greater than 1,000 contracts for Members in PCRCP Tiers 1–4, unless the Member is eligible to receive the alternative cPRIME Agency Order Credit amount for cPRIME Agency Orders in Tier 4 of the PCRCP,<sup>18</sup> in which case those orders will earn a credit of \$0.12.

Orders that have a max leg size of 1,000 contracts or less will continue to receive the agency credit described in PCRCP Tier 1–4, unless the Member is eligible to receive the alternative cPRIME Agency Order Credit amount for cPRIME Agency Orders in Tier 4 of the PCRCP, in which case the order will earn a per contract credit of \$0.12.<sup>19</sup> The Exchange proposes to adopt new footnote "\*" to state that for cPRIME Agency Orders with a max leg size of 1,000 contracts or less, the Exchange will assess the credits as described in the Priority Customer Rebate Program table for Tiers 1–4 regardless of the Order Break-up percentage. Additionally, the break-up credits described in section (1)(a)(vi) of the Fee Schedule will continue to apply.

The table will provide a per contract agency credit based upon the break-up percentage of the order. Specifically, orders with a break-up % of 0–10% will earn a credit of \$0.05 per contract; orders with a break-up percentage

the waiver period from December 31, 2020, until March 31, 2021; and 91505 (April 8, 2021), 86 FR 19677 (April 14, 2021) (SR–MIAX–2021–07) (Extending the waiver period from April 1, 2021, until June 30, 2021).

<sup>18</sup> Under the PCRCP, any Member or its Affiliate that qualifies for Priority Customer Rebate Program tier 4 and executes Priority Customer standard, non-paired complex volume at least equal to or greater than three (3) times their Priority Customer cPRIME Agency Order volume, on a monthly basis, will receive a credit of \$0.12 per contract for cPRIME Agency Orders instead of the credit otherwise applicable to such orders in tier 4.

<sup>19</sup> *Id.*

<sup>6</sup> See Securities Exchange Act Release No. 81131 (July 12, 2017), 82 FR 32900 (July 18, 2017) (SR–MIAX–2017–19) (Order Granting Approval of a Proposed Rule Change to Amend MIAX Options Rules 515, Execution of Orders and Quotes; 515A, MIAX Price Improvement Mechanism ("PRIME") and PRIME Solicitation Mechanism; and 518, Complex Orders).

<sup>7</sup> *Id.*

<sup>8</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>9</sup> An Auction-or-Cancel or "AOC" order is a limit order used to provide liquidity during a specific Exchange process (such as the Opening Imbalance process described in Rule 503) with a time in force that corresponds with that event. AOC orders are not displayed to any market participant, are not included in the MBBO and therefore are not eligible for trading outside of the event, may not be routed, and may not trade at a price inferior to the away markets. See Exchange Rule 516(b)(4).

<sup>10</sup> An Auction or Cancel or "AOC" eQuote is a quote submitted by a Market Maker to provide liquidity in a specific Exchange process (such as the Opening Imbalance Process described in Rule 503) with a time in force that corresponds with the duration of that event and will automatically expire at the end of that event. AOC eQuotes are not displayed to any market participant, are not included in the MBBO and therefore are not eligible for trading outside of the event. An AOC eQuote does not automatically cancel or replace the Market Maker's previous Standard quote or eQuote. See Exchange Rule 517(a)(2)(ii).

<sup>11</sup> The "Simple Order Book" is the Exchange's regular electronic book of orders and quotes. See Exchange Rule 518(a)(15).

<sup>12</sup> See *supra* note 6. Mini-options may only be part of a complex order that includes other mini-options. Only those complex orders in the classes designated by the Exchange and communicated to Members via Regulatory Circular with no more than the applicable number of legs, as determined by the Exchange on a class-by-class basis and communicated to Members via Regulatory Circular, are eligible for processing. See Exchange Rule 518(a)(5).

<sup>13</sup> The "Strategy Book" is the Exchange's electronic book of complex orders and complex quotes. See Exchange Rule 518(a)(17).

<sup>14</sup> See Securities Exchange Act Release No. 81372 (August 10, 2017) 82 FR 38964 (August 16, 2017) (SR–MIAX–2017–40).

<sup>15</sup> See Securities Exchange Act Release No. 83797 (August 8, 2018), 83 FR 40373 (August 14, 2018) (SR–MIAX–2018–22).

<sup>16</sup> See Securities Exchange Act Release No. 88349 (March 10, 2020), 85 FR 14995 (March 16, 2020) (SR–MIAX–2020–05).

<sup>17</sup> See Securities Exchange Act Release Nos. 89035 (June 9, 2020), 85 FR 36249 (June 15, 2020) (SR–MIAX–2020–12) (Extending the waiver period from June 1, 2020, until July 31, 2020); 89530 (August 12, 2020), 85 FR 50845 (August 18, 2020) (SR–MIAX–2020–26) (Extending the waiver period from July 31, 2020, until August 31, 2020); 89771 (September 4, 2020), 85 FR 55873 (September 10, 2020) (SR–MIAX–2020–28) (Extending the waiver period from August 31, 2020, until December 31, 2020); 90818 (December 29, 2020), 86 FR 350 (January 5, 2021) (SR–MIAX–2020–40) (Extending

greater than 10% to, and including 20%, will earn a per contract credit of \$0.06; orders with a break-up percentage greater than 20% to, and including 30%, will earn a per contract credit of \$0.07; orders with a break-up percentage greater than 30% to, and including 40%, will earn a per contract credit of \$0.08; orders with a break-up percentage greater than 40% will earn a per contract credit of \$0.10, unless the Member is eligible to receive the alternative cPRIME Agency Order Credit amount for cPRIME Agency Orders in Tier 4 of the PCRCP, in which case the order will earn a per contract credit of \$0.12.<sup>20</sup>

For example, if the cPRIME Agency Order has two legs (one for 400 contracts) and the other for 1,200 contracts) and trades 30% with an AOC Response, the order would receive an agency credit of \$0.07 per contract for all legs of the order, as the max leg of the order was greater than 1,000 contracts and 30% of the order was broken up. The portion of the order that was broken up will also receive the agency credit of \$0.07 per contract.

The decision to offer tiered cPRIME agency credits and to remove the credit cap is based on an analysis of current revenue and volume levels and is designed to encourage Priority Customer order flow to the Exchange.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act<sup>21</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>22</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, 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 and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes its proposal provides for the equitable allocation of reasonable dues and fees and is not unfairly discriminatory for the following reasons. The Exchange operates in a highly competitive market in which market participants can readily direct

order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 options venues to which market participants may direct their order flow. Based on publicly available information, no single options exchange has more than 16% of the market share.<sup>23</sup> Thus, in such a low-concentrated and highly competitive market, no single options exchange possess significant pricing power in the execution of option order flow.

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue use of certain categories of products, in response to fee changes. For example, on March 1, 2019, the Exchange filed with the Commission an immediately effective filing to decrease certain credits assessable to Members pursuant to the PCRCP.<sup>24</sup> The Exchange experienced a decrease in total market share between the months of February and March of 2019. Accordingly, the Exchange believes that the March 1, 2019, fee change may have contributed to the decrease in the Exchange's market share and, as such, the Exchange believes competitive forces constrain options exchange transaction and non-transaction fees.

Accordingly, competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. In response to the competitive environment, the Exchange offers specific rates and credits in its fees schedule, like those of other options exchanges' fees schedules, which the Exchange believes provides incentives to Members to increase order flow of certain qualifying orders.

The Exchange believes that its proposal to remove the 1,000 contract cap limitation per leg of cPRIME Agency Orders and the associated waiver of same, and the proposed per contract credit rebate table will encourage Priority Customer order flow to auctions. Increased Priority Customer order flow benefits all market participants because it continues to attract liquidity to the Exchange by providing more trading opportunities. This attracts Market Makers and other liquidity providers, thus, facilitating

price improvement in the auction process, signaling additional corresponding increase in order flow from other market participants, and, as a result, increasing liquidity on the Exchange.

The Exchange believes that its proposal to adopt a tiered approach to rebates for cPRIME Agency Orders for Priority Customers is consistent with Section 6(b)(4) of the Act in that the proposal is reasonable, equitable and not unfairly discriminatory. As noted above, the Exchange operates in a highly competitive market. The Exchange is only one of several options venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. The Exchange believes that the proposed fees are reasonable, equitable, and not unfairly discriminatory in that competing options exchanges offer similar fees and credits in connection with similar price improvement auctions.<sup>25</sup>

cPRIME Agency Orders for Priority Customers that have a max leg size of 1,000 contracts or less will continue to receive the agency credit described in PCRCP Tier 1–4, unless the Member is eligible to receive the alternative cPRIME Agency Order Credit amount for cPRIME Agency Orders in Tier 4 of the PCRCP, in which case the order will earn a per contract credit of \$0.12.<sup>26</sup> The Exchange believes that establishing a 1,000 contract threshold is not new or novel as other exchanges have different pricing and rates (*i.e.*, caps) for volume over 1,000 contracts.<sup>27</sup>

The Exchange's proposal to adopt a new table to provide a tiered credit rate for cPRIME Agency Orders for Priority Customers whose largest leg size is greater than 1,000 contracts is consistent with Section 6(b)(4) of the Act<sup>28</sup> because it applies equally to all participants of the PCRCP. The Exchange believes that the proposed rebate structure is fair, equitable and not unreasonably discriminatory. The PCRCP is reasonably designed because it will continue to provide an incentive to providers of Priority Customer order flow to send that Priority Customer order flow to the Exchange to receive a credit in a manner that enables the Exchange to improve its overall competitiveness and strengthen its market quality for all participants. The

<sup>25</sup> See Cboe Fee Schedule, "Break-Up Credits," available at [https://cdn.cboe.com/resources/members\\_hip/Cboe\\_FeeSchedule.pdf](https://cdn.cboe.com/resources/members_hip/Cboe_FeeSchedule.pdf).

<sup>26</sup> See *supra* note 18.

<sup>27</sup> See Cboe Fees Schedule, p.2; see also NYSE American Fee Schedule, p. 18, footnote 2 under Section I.G.

<sup>28</sup> 15 U.S.C. 78f(b)(4).

<sup>20</sup> See *supra* note 18.

<sup>21</sup> 15 U.S.C. 78f(b).

<sup>22</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>23</sup> See [https://www.cboe.com/us/options/market\\_share/](https://www.cboe.com/us/options/market_share/).

<sup>24</sup> See Securities Exchange Act Release No. 85301 (March 13, 2019), 84 FR 10166 (March 19, 2019) (SR-MIAX-2019-09).

Exchange conducted an internal analysis of fees and rebates associated with cPRIME Agency Orders and determined the proposed applicable rates at each Order Break-up %. For pricing and competitive reasons the Exchange determined that the agency credit for Order Break-ups from 0%–40% would be tiered, and that Order Break-ups of greater than 40% would receive a standard agency credit of \$0.10, unless the Member is eligible to receive the alternative cPRIME Agency Order Credit amount for cPRIME Agency Orders in Tier 4 of the PCRP, in which case the order will earn a per contract credit of \$0.12.<sup>29</sup>

In addition, The Exchange believes that its proposal is consistent with Section 6(b)(5) of the Act<sup>30</sup> because it perfects the mechanisms of a free and open market and a national market system and protects investors and the public interest because an increase in Priority Customer order flow will bring greater volume and liquidity to the Exchange, which benefits all market participants by providing more trading opportunities and tighter spreads. To the extent Priority Customer order flow is increased by this proposal, market participants will increasingly compete for the opportunity to trade on the Exchange including sending more orders and provided narrower and larger-sized quotations in the effort to trade with such Priority Customer order flow.

The Exchange believes that providing rebates for Priority Customers that submit cPRIME Agency Orders is equitable and not unfairly discriminatory because the proposed rebate schedule will apply equally to all cPRIME Agency Orders for Priority Customers. The Exchange believes that the application of the rebate is equitable and not unfairly discriminatory because, as stated above, Priority Customer order flow enhances liquidity on the Exchange, in turn providing more trading opportunities and attracting other market participants, thus, facilitating tighter spreads, increased order flow and trading opportunities to the benefit of all market participants. Moreover, the options industry has a long history of providing preferential pricing to Priority Customer orders, and the Exchange's current fees schedule currently does so in many places, as does the fee structure of at least one other exchange.<sup>31</sup>

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

In accordance with Section 6(b)(8) of the Act,<sup>32</sup> the Exchange does not believe that the proposed rule change will impose any burden on intra-market or intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, as discussed above, the Exchange believes that the proposed change would encourage the submission of additional liquidity to price improvement auctions, thereby promoting market depth, price discovery and transparency and enhancing order execution and price improvement opportunities for all Members. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."<sup>33</sup>

The Exchange does not believe that its proposal will impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes will apply uniformly to all eligible Priority Customer orders. The proposed change is designed to attract additional order flow to the Exchange. The Exchange believes that this proposal will continue to encourage Members to submit cPRIME Agency Orders for Priority Customers, which will increase liquidity and benefit all market participants by providing more trading opportunities and tighter spreads. The Exchange notes the fact that preferential pricing to Priority Customers is a long-standing options industry practice. The proposed rebate changes serve to enhance Priority Customer order flow to the Exchange's Price Improvement Mechanism, which, as a result, facilitates increased liquidity and execution opportunities to the benefit of all market participants.

The Exchange also does not believe that its proposal will impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because, as noted above, at least one other competing options exchange<sup>34</sup> currently has similar rebates in place in connection with similar price improvement auctions. Additionally, and as previously discussed, the Exchange operates in a highly

competitive market. Members have numerous alternative venues that they participate on and direct their order flow to, including 15 other options exchanges, many of which offer substantially similar price improvement auctions. Based on publicly available information, no single options exchange has more than 16% of the market share.<sup>35</sup> Therefore, no exchange possesses significant pricing power in the execution of option order flow. Participants can readily choose to send their orders to other exchanges if they deem fee levels at those other exchanges to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."<sup>36</sup> The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit states as follows: "[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers' . . ."<sup>37</sup> Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Accordingly, the Exchange believes that the proposed changes will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because it will continue to encourage order flow, which provides greater volume and liquidity, benefiting all market participants by providing more

<sup>29</sup> See *supra* note 23.

<sup>30</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

<sup>31</sup> *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

<sup>32</sup> 15 U.S.C. 78f(b)(8).

<sup>33</sup> See Securities Exchange Act Release No. 51808, 70 FR 37495, 37498–99 (June 29, 2005) (S7–10–04) (Final Rule).

<sup>34</sup> See *supra* note 27.

<sup>29</sup> See *supra* note 18.

<sup>30</sup> 15 U.S.C. 78f(b)(4).

<sup>31</sup> See *supra* note 27.

trading opportunities and tighter spreads.

*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>38</sup> and Rule 19b-4(f)(2)<sup>39</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-2021-34 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-2021-34. 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 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. 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-MIAX-2021-34, and should be submitted on or before August 16, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>40</sup>

**J. Matthew DeLesDernier,**  
*Assistant Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-92446; File No. SR-NYSE-NAT-2021-15]

**Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Rules To Add New Subparagraph (i)(4) to Rule 7.31**

July 20, 2021.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on July 6, 2021, NYSE National, Inc. ("NYSE National" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to

<sup>40</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

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 to its rules to add new subparagraph (i)(4) to Rule 7.31 (Orders and Modifiers) regarding orders designated as "Retail Orders." The proposed rule change is available on the Exchange's website at [www.nyse.com](http://www.nyse.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 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 the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend its rules to add new subparagraph (i)(4) to Rule 7.31 (Orders and Modifiers) to add a description of a Retail Order modifier.

Proposed Rule Change

The Exchange proposes to amend Rule 7.31 to add new subparagraph (i)(4) to provide for ETP Holders<sup>4</sup> to designate an order with a retail modifier ("Retail Order"). The Exchange proposes that the new "Retail Order" modifier would be used only for purposes of such orders being eligible for different rates on its Schedule of Fees and Rebates ("Fee Schedule"), and is not proposing to add a retail price-improvement program for orders designated as "Retail Orders" pursuant to proposed Rule 7.31(i)(4). Instead, by adding the proposed Retail Modifier to proposed Rule 7.31(i)(4) now, the Exchange will have flexibility in the future to amend its Fee Schedule to add rates designated for "Retail Orders."

<sup>4</sup> See Rules 1.1(h) (definition of ETP) & (i) (definition of ETP Holder).

<sup>38</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>39</sup> 17 CFR 240.19b-4(f)(2).