

liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

(14) The Fund's investments, including derivatives, will be consistent with the Fund's investment objective and will not be used to enhance leverage (although certain derivatives may result in leverage). That is, while the Fund will be permitted to borrow as permitted under the 1940 Act, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*i.e.*, 2Xs and 3Xs) of the Fund's primary broad-based securities benchmark index (as defined in Form N-1A).

(15) Investments in derivative instruments will be made in accordance with the 1940 Act and consistent with the Fund's investment objective and policies. To limit the potential risk associated with such transactions, the Fund will segregate or "earmark" assets determined to be liquid by the Adviser in accordance with procedures established by the Trust's Board of Trustees and in accordance with the 1940 Act (or, as permitted by applicable regulation, enter into certain offsetting positions) to cover its obligations under derivative instruments. These procedures have been adopted consistent with Section 18 of the 1940 Act and related Commission guidance. In addition, the Fund will include appropriate risk disclosure in its offering documents, including leveraging risk. Leveraging risk is the risk that certain transactions of the Fund, including the Fund's use of derivatives, may give rise to leverage, causing the Fund to be more volatile than if it had not been leveraged.<sup>37</sup>

The Exchange also represents that all statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares of the Fund on the Exchange.

<sup>37</sup>To mitigate leveraging risk, the Adviser will segregate or "earmark" liquid assets or otherwise cover the transactions that may give rise to such risk.

The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements.<sup>38</sup> If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Equities Rule 5.5(m).

This approval order is based on all of the Exchange's representations, including those set forth above and in the Notice,<sup>39</sup> Amendment Nos. 1, 2 and 3 to the proposed rule change,<sup>40</sup> and the Exchange's description of the Fund. The Commission notes that the Fund and the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600 to be listed and traded on the Exchange on an initial and continued basis.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment Nos. 1, 2, and 3 thereto, is consistent with Section 6(b)(5) of the Act<sup>41</sup> and the rules and regulations thereunder applicable to a national securities exchange.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>42</sup> that the proposed rule change (SR-NYSEArca-2016-82), as modified by Amendment Nos. 1, 2, and 3 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>43</sup>

**Robert W. Errett,**

*Deputy Secretary.*

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<sup>38</sup>The Commission notes that certain other proposals for the listing and trading of Managed Fund Shares include a representation that the exchange will "surveil" for compliance with the continued listing requirements. *See, e.g.*, Securities Exchange Act Release No. 78005 (Jun. 7, 2016), 81 FR 38247 (Jun. 13, 2016) (SR-BATS-2015-100). In the context of this representation, it is the Commission's view that "monitor" and "surveil" both mean ongoing oversight of a fund's compliance with the continued listing requirements. Therefore, the Commission does not view "monitor" as a more or less stringent obligation than "surveil" with respect to the continued listing requirements.

<sup>39</sup> *See supra* note 3.

<sup>40</sup> *See supra* notes 4, 7, and 8.

<sup>41</sup> 15 U.S.C. 78f(b)(5).

<sup>42</sup> *Id.*

<sup>43</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79687; File No. SR-NASDAQ-2016-183]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change To Shorten the Settlement Cycle From T+3 to T+2

December 23, 2016.

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 December 22, 2016, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "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 proposes to amend Nasdaq Rules 11140 (Transactions in Securities "Ex-Dividend," "Ex-Rights" or "Ex-Warrants"), 11150 (Transactions "Ex-Interest" in Bonds Which Are Dealt in "Flat"), 11210 (Sent by Each Party), 11320 (Dates of Delivery), 11620 (Computation of Interest), and IM-11810 (Sample Buy-In Forms), to conform to the Commission's proposed amendment to SEA Rule 15c6-1(a) to shorten the standard settlement cycle for most broker-dealer transactions from three business days after the trade date ("T+3") to two business days after the trade date ("T+2") and the industry-led initiative to shorten the settlement cycle from T+3 to T+2.<sup>3</sup>

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaq.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

<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. 78962 (September 28, 2016), 81 FR 69240 (October 5, 2016) (Amendment to Securities Transaction Settlement Cycle) (File No. S7-22-16) ("SEC Proposing Release").

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

###### SEC Proposing Release

On September 28, 2016, the Commission proposed amending SEA Rule 15c6-1(a) to shorten the standard settlement cycle for most broker-dealer transactions from T+3 to T+2 on the basis that the shorter settlement cycle would reduce the risks that arise from the value and number of unsettled securities transactions prior to the completion of settlement, including credit, market, and liquidity risk directly faced by U.S. market participants.<sup>4</sup> The proposed rule amendment was published for comment in the **Federal Register** on October 5, 2016.<sup>5</sup>

###### Background

In 1995, the standard U.S. trade settlement cycle for equities, municipal and corporate bonds, and unit investment trusts, and financial instruments composed of these products was shortened from five business days after the trade date ("T+5") to T+3.<sup>6</sup> Accordingly, Nasdaq and other self-regulatory organizations ("SROs")

amended their respective rules to conform to the T+3 settlement cycle.<sup>7</sup> Since that time, the SEC and the financial services industry have continued to explore the idea of shortening the settlement cycle even further.<sup>8</sup>

In April 2014, the Depository Trust & Clearing Corporation ("DTCC") published its formal recommendation to shorten the standard U.S. trade settlement cycle to T+2 and announced that it would partner with market participants and industry organizations to devise the necessary approach and timelines to achieve T+2.<sup>9</sup>

In an effort to improve the overall efficiency of the U.S. settlement system by reducing the attendant risks in T+3 settlement of securities transactions, and to align U.S. markets with other major global markets that have already moved to T+2, DTCC, in collaboration with the financial services industry, formed an Industry Steering Committee ("ISC") and an industry working group and sub-working groups to facilitate the move to T+2.<sup>10</sup> In June 2015, the ISC published a White Paper outlining the activities and proposed time frames that would be required to move to T+2 in the U.S.<sup>11</sup> Concurrently, the Securities Industry and Financial Markets Association ("SIFMA") and the Investment Company Institute ("ICI") jointly submitted a letter to SEC Chair White, expressing support of the financial services industry's efforts to shorten the settlement cycle and identifying SEA Rule 15c6-1(a) and several SRO rules that they believed would require amendments for an effective transition to T+2.<sup>12</sup> In March

2016, the ISC announced the industry target date of September 5, 2017 for the transition to a T+2 settlement cycle to occur.<sup>13</sup>

###### Proposed Rule Change

In light of the SEC Proposing Release that would amend SEA Rule 15c6-1(a) to require standard settlement no later than T+2 and similar proposals from other SROs,<sup>14</sup> Nasdaq is proposing changes to its rules pertaining to securities settlement by, among other things, amending the definition of "standard" settlement as occurring on T+2. SEA Rule 15c6-1(a) currently establishes "standard" settlement as occurring no later than T+3 for all securities, other than an exempt security, government security, municipal security, commercial paper, bankers' acceptances, or commercial bills.<sup>15</sup> Nasdaq is proposing changes to rules pertaining to securities settlement to support the industry-led initiative to shorten the standard settlement cycle to two business days. Most of the rules that Nasdaq has identified for these changes are successors to provisions under the legacy NASD Rules of Fair Practice and NASD Uniform Practice Code ("UPC") that were amended when the Commission adopted SEA Rule 15c6-1(a), which established T+3 as the standard settlement cycle.<sup>16</sup> As such, Nasdaq is proposing to amend Nasdaq Rules 11140 (Transactions in Securities "Ex-Dividend," "Ex-Rights" or "Ex-Warrants"), 11150 (Transactions "Ex-Interest" in Bonds Which Are Dealt in "Flat"), 11320 (Dates of Delivery), and 11620 (Computation of Interest). In addition, Nasdaq is proposing to amend

Schott Stevens, President and CEO, ICI, dated September 16, 2015 (expressing her strong support for industry efforts to shorten the trade settlement cycle to T+2 and commitment to developing a proposal to amend SEA Rule 15c6-1(a) to require standard settlement no later than T+2).

<sup>13</sup> See ISC Media Alert: "US T+2 ISC Recommends Move to Shorter Settlement Cycle on September 5, 2017" (March 7, 2016).

<sup>14</sup> See, e.g., Securities Exchange Act Release No. 77744 (April 29, 2016), 81 FR 26851 (May 4, 2016) (Order Approving File No. SR-MSRB-2016-04).

<sup>15</sup> See *supra* note 7.

<sup>16</sup> The legacy NASD rules that were changed to conform to the move from T+5 to T+3 included Section 26 (Investment Companies) of the Rules of Fair Practice, and Section 5 (Transactions in Securities "Ex-Dividend," "Ex-Rights" or "Ex-Warrants"), Section 6 (Transactions "Ex-Interest" in Bonds Which Are Dealt in "Flat"), Section 12 (Dates of Delivery), Section 46 (Computation of Interest) and Section 64 (Acceptance and Settlement of COD Orders) of the UPC. See Securities Exchange Act Release No. 35507 (March 17, 1995), 60 FR 15616 (March 24, 1995) (Order Approving File No. SR-NASD-94-56). See also Notice to Members 95-36 (May 1995) (enumerating the various sections under the NASD Rules of Fair Practice and UPC that were amended to implement T+3 settlement for securities transactions).

<sup>4</sup> See Securities and Exchange Commission Press Release 2016-200: "SEC Proposes Rule Amendment to Expedite Process for Settling Securities Transactions" (September 28, 2016).

<sup>5</sup> See *supra* note 3.

<sup>6</sup> In 1993, the Commission adopted SEA Rule 15c6-1 which became effective in 1995. See Securities Exchange Act Release Nos. 33023 (October 6, 1993), 58 FR 52891 (October 13, 1993) and 34952 (November 9, 1994), 59 FR 59137 (November 16, 1994). SEA Rule 15c6-1(a) provides, in relevant part, that "a broker or dealer shall not effect or enter into a contract for the purchase or sale of a security (other than an exempted security, government security, municipal security, commercial paper, bankers' acceptances, or commercial bills) that provides for payment of funds and delivery of securities later than the third business day after the date of the contract unless otherwise expressly agreed to by the parties at the time of the transaction." 17 CFR 240.15c6-1(a). Although not covered by SEA Rule 15c6-1, in 1995, the Commission approved the Municipal Securities Rulemaking Board's rule change requiring transactions in municipal securities to settle by T+3. See Securities Exchange Act Release No. 35427 (February 28, 1995), 60 FR 12798 (March 8, 1995) (Order Approving File No. SR-MSRB-94-10).

<sup>7</sup> See, e.g., Securities Exchange Act Release No. 35507 (March 17, 1995), 60 FR 15616 (March 24, 1995) (Order Approving File No. SR-NASD-94-56); Securities Exchange Act Release No. 35506 (March 17, 1995), 60 FR 15618 (March 24, 1995) (Order Approving File No. SR-NYSE-94-40); and Securities Exchange Act Release No. 35553 (March 31, 1995), 60 FR 18161 (April 10, 1995) (Order Approving File No. SR-Amex-94-57).

<sup>8</sup> See, e.g., Securities Industry Association ("SIA"), "SIA T+1 Business Case Final Report" (July 2000); Concept Release: Securities Transactions Settlement, Securities Exchange Act Release No. 49405 (March 11, 2004), 69 FR 12922 (March 18, 2004); and Depository Trust & Clearing Corporation, "Proposal to Launch a New Cost-Benefit Analysis on Shortening the Settlement Cycle" (December 2011).

<sup>9</sup> See DTCC, "DTCC Recommends Shortening the U.S. Trade Settlement Cycle" (April 2014).

<sup>10</sup> The ISC includes, among other participants, DTCC, the Securities Industry and Financial Markets Association and the Investment Company Institute.

<sup>11</sup> See "Shortening the Settlement Cycle: The Move to T+2" (June 18, 2015).

<sup>12</sup> See Letter from ICI and SIFMA to Mary Jo White, Chair, SEC, dated June 18, 2015. See also Letter from Mary Jo White, Chair to Kenneth E. Bentsen, Jr., President and CEO, SIFMA, and Paul

Nasdaq Rules 11210 (Sent by Each Party) and IM-11810 (Sample Buy-In Forms) to conform provisions, where appropriate, to the T+2 settlement cycle.<sup>17</sup>

The details of the proposed rule change are described below.

(1) Nasdaq Rule 11140 (Transactions in Securities “Ex-Dividend,” “Ex- Rights” or “Ex-Warrants”)

Rule 11140(b)(1) provides that for dividends or distributions, and the issuance or distribution of warrants, that are less than 25 percent of the value of the subject security, if definitive information is received sufficiently in advance of the record date, the date designated as the “ex-dividend date” shall be the second business day preceding the record date if the record date falls on a business day, or the third business day preceding the record date if the record date falls on a day designated by Nasdaq Regulation as a non-delivery date. Nasdaq is proposing to shorten the time frames in Rule 11140(b)(1) by one business day.

(2) Nasdaq Rule 11150 (“Ex-Interest” in Bonds Which Are Dealt in “Flat”)

Rule 11150(a) prescribes the manner for establishing “ex-interest dates” for transactions in bonds or other similar evidences of indebtedness which are traded “flat.” Such transactions are “ex-interest” on the second business day preceding the record date if the record date falls on a business day, on the third business day preceding the record date if the record date falls on a day other than a business day, or on the third business day preceding the date on which an interest payment is to be made if no record date has been fixed. Nasdaq is proposing to shorten the time frames in Rule 11150(a) by one business day.

(3) Nasdaq Rule 11210 (Sent by Each Party)

Paragraphs (c) and (d) of Rule 11210 set forth the “Don’t Know” (“DK”) voluntary procedures for using “DK Notices” or other forms of notices, respectively. Depending upon the notice used, a confirming member may follow the “DK” procedures when it sends a comparison or confirmation of a trade (other than one that clears through the National Securities Clearing Corporation (“NSCC”) or other registered clearing agency), but does not receive a comparison or confirmation or a signed “DK” from the contra-member by the

close of four business days following the trade date of the transaction (“T+4”). The procedures generally provide that after T+4, the confirming member shall send a “DK Notice” (or similar notice) to the contra-member. The contra-member then has four business days after receipt of the confirming member’s notice to either confirm or “DK” the transaction.

Nasdaq is proposing to amend paragraphs (c) and (d) of Rule 11210 to provide that the “DK” procedures may be used by the confirming member if it does not receive a comparison or confirmation or signed “DK” from the contra-member by the close of one business day following the trade date of the transaction, rather than the current T+4.<sup>18</sup> In addition, Nasdaq is proposing amendments to paragraphs (c)(2)(A), (c)(3), and (d)(5) of Rule 11210 to adjust the time in which a contra-member has to respond to a “DK Notice” (or similar notice) from four business days after the contra-member’s receipt of the notice to two business days.

(4) Nasdaq Rule 11320 (Dates of Delivery)

Rule 11320 prescribes delivery dates for various transactions. Paragraph (b) states that for a “regular way” transaction, delivery must be made on, but not before, the third business day after the date of the transaction. Nasdaq is proposing to amend Rule 11320(b) to change the reference to third business day to second business day. Paragraph (c) provides that in a “seller’s option” transaction, delivery may be made by the seller on any business day after the third business day following the date of the transaction. Nasdaq is proposing to amend Rule 11320(c) to change the reference to third business day to second business day.

(5) Nasdaq Rule 11620 (Computation of Interest)

In the settlement of contracts in interest-paying securities other than for cash, Rule 11620(a) requires the calculation of interest at the rate specified in the security up to, but not including, the third business day after the date of the transaction. The proposed amendment would shorten the

time frame to the second business day. In addition, the proposed amendment would make non-substantive technical changes to the title of paragraph (a).

(6) Nasdaq Rule IM-11810 (Sample Buy-In Forms)

Rule IM-11810(i)(1)(A) sets forth the fail-to-deliver and liability notice procedures where a securities contract is for warrants, rights, convertible securities or other securities which have been called for redemption; are due to expire by their terms; are the subject of a tender or exchange offer; or are subject to other expiring events such as a record date for the underlying security and the last day on which the securities must be delivered or surrendered is the settlement date of the contract or later.<sup>19</sup>

Under Rule IM-11810(i)(1)(A), the receiving member delivers a liability notice to the owing counterparty. The liability notice sets a cutoff date for the delivery of the securities by the counterparty and provides notice to the counterparty of the liability attendant to its failure to deliver the securities in time. If the owing counterparty, or delivering member, delivers the securities in response to the liability notice, it has met its delivery obligation. If the delivering member fails to deliver the securities on the expiration date, it will be liable for any damages that may accrue thereby.

Rule IM-11810(i)(1)(A) further provides that when both parties to a contract are participants in a registered clearing agency that has an automated liability notification service, transmission of the liability notice must be accomplished through such system.<sup>20</sup> When the parties to a contract are not both participants in a registered clearing agency that has an automated liability notification service, such notice must be issued using written or comparable

<sup>19</sup> Rule IM-11810(i) is the successor to legacy NASD UPC Section 59(i) (Failure to Deliver and Liability Notice Procedures). When this provision was added to NASD’s existing close-out procedures in 1984, it was drafted to be similar to the liability notice provisions adopted by the NSCC so that members that were also participants in NSCC could use the same procedures for both ex-clearing and NSCC cleared transactions, thereby simplifying members’ back office procedures.

<sup>20</sup> In 2007, NYSE Rule 180 was amended to require that when the parties to a failed contract were both participants in a registered clearing agency that had an automated service for notifying a failing party of the liability that will be attendant to a failure to deliver and the contract was to be settled through the facilities of that registered clearing agency, the transmission of the liability notification must be accomplished through the use of the registered clearing agency’s automated liability notification system. See Securities Exchange Act Release No. 55132 (January 19, 2007), 72 FR 3896 (January 26, 2007) (Order Approving File No. SR-NYSE-2006-57).

<sup>17</sup> Nasdaq Rules 11210 and IM-11810 are successors to legacy NASD UPC Section 9 (Sent by Each Party) and 59 (“Buying-in”), respectively, which remained unchanged during the transition from T+5 to T+3. See *supra* note 17 [sic].

<sup>18</sup> As stated above, the time frames in Rule 11210 remained unchanged during the transition from T+5 to T+3. In light of the industry-led initiative to shorten the standard settlement cycle and the SEC Proposing Release to amend SEA Rule 15c6-1(a) to establish T+2 as the standard settlement for most broker dealer transactions, the Exchange believes that the current time frames in Rule 11210 are more protracted than necessary even in a T+3 environment and as such, the Exchange is proposing to amend these time frames to reflect more current industry practices.

electronic media having immediate receipt capabilities not later than one business day prior to the latest time and the date of the offer or other event in order to obtain the protection provided by the Rule.<sup>21</sup>

Given the proposed shortened settlement cycle, Nasdaq is proposing to amend Rule IM-11810(i)(1)(A) in situations where both parties to a contract are not participants of a registered clearing agency with an automated notification service, by extending the time frame for delivery of the liability notice. Rule IM-11810(i)(1)(A) would be amended to provide that in such cases, the receiving member must send the liability notice to the delivering member as soon as practicable but not later than two hours prior to the cutoff time set forth in the instructions on a specific offer or other event to obtain the protection provided by the Rule. Nasdaq believes that extending the time given to the receiving member to transmit liability notifications will maintain the efficiency of the notification process while mitigating the possible overuse of such notifications.

Currently, Nasdaq understands that the identity of the counterparty, or delivering member, becomes known to the receiving member by mid-day on the business day after trade date (“T+1”), and by that time, the receiving member will generally also know which transactions are subject to an event identified in Rule IM-11810(i)(1)(A) that would prompt the receiving member to issue a liability notice to the delivering member. Nasdaq believes that the receiving member regularly issues liability notices to the seller or other parties from which the securities involved are due when the security is subject to an event identified in Rule IM-11810(i)(1)(A) during the settlement cycle as a way to mitigate the risk of a potential fail-to-deliver. In the current T+3 settlement environment, the one business day time frame gives the receiving member the requisite time needed to identify the parties involved and undertake the liability notification process.

However, Nasdaq believes that the move to a T+2 settlement environment will create inefficiencies in the liability notification process under Rule IM-

11810(i)(1)(A) when both parties to a contract are not participants in a registered clearing agency with an automated notification service. The shorter settlement cycle, with the loss of one business day, would not afford the receiving member sufficient time to: (1) ascertain that the securities are subject to an event listed in Rule IM-11810(i)(1)(A) during the settlement cycle; (2) identify the delivering member and other parties from which the securities involved are due; and (3) determine the likelihood that such parties may fail to deliver. Where the receiving member has sufficient time (e.g., one business day after), it can transmit liability notices as needed to the right parties. However, as a consequence of the shortened settlement cycle, the receiving member would be compelled to issue liability notices proactively to all potentially failing parties as a matter of course to preserve its rights against such parties without the benefit of knowing which transactions would actually necessitate the delivery of such notice. This would create a significant increase in the volume of liability notices members send and receive, many of which may be unnecessary. Members would then have to manage this overabundance of liability notices, increasing the possibility of errors, which would adversely impact the efficiency of the process. Therefore, Nasdaq believes its proposal to extend the time for the receiving member to deliver a liability notice when the parties to a contract are not both participants in a registered clearing agency with an automated notification service would help alleviate the potential burden on the liability notification process in a T+2 settlement environment.

#### Implementation

Nasdaq will announce the effective date of the proposed rule change in an Equity Regulatory Alert, which date would correspond with the industry-led transition to a T+2 standard settlement, and the effective date of the Commission’s proposed amendment to SEA Rule 15c6-1(a) to require standard settlement no later than T+2.<sup>22</sup>

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>23</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>24</sup> in particular, in that it is designed to promote just and equitable principles of

trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change supports the supports [sic] the industry-led initiative to shorten the settlement cycle to two business days. Moreover, the proposed rule change is consistent with the SEC’s proposed amendment to SEA Rule 15c6-1(a) to require standard settlement no later than T+2. Nasdaq believes that the proposed rule change will provide the regulatory certainty to facilitate the industry-led move to a T+2 settlement cycle. As noted herein, upon approval, Nasdaq will announce the effective date of the proposed rule change in an Equity Regulatory Alert, which date would correspond with the industry-led transition to a T+2 standard settlement, and the effective date of the Commission’s proposed amendment to SEA Rule 15c6-1(a) to require standard settlement no later than T+2.

#### 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. The proposed rule change makes changes to rules pertaining to securities settlement and is intended to facilitate the implementation of the industry-led transition to a T+2 settlement cycle. Moreover, the proposed rule changes are consistent with the SEC’s proposed amendment to SEA Rule 15c6-1(a) to require standard settlement no later than T+2. Accordingly, Nasdaq believes that the proposed changes do not impose any burdens on the industry in addition to those necessary to implement amendments to SEA Rule 15c6-1(a) as described and enumerated in the SEC Proposing Release.<sup>25</sup>

These conforming changes include changes to rules that specifically establish the settlement cycle as well as rules that establish time frames based on settlement dates, including for certain post-settlement rights and obligations. Nasdaq believes that the proposed changes set forth in the filing are necessary to support a standard settlement cycle across the U.S. for secondary market transactions in equities, corporate and municipal bonds, unit investment trusts, and financial instruments composed of these

<sup>21</sup> While Rule IM-11810 has undergone amendments over the years, the one-day time frame in paragraph (j) has remained unchanged. The one-day time frame also appears in comparable provisions of other SROs. See, e.g., NSCC Rules & Procedures, Procedure X (Execution of Buy-Ins) (Effective August 10, 2016); NYSE Rule 282.65 (Fail to Deliver and Liability Notice Procedures). See also infra note 28 and accompanying text.

<sup>22</sup> See *supra* note 3.

<sup>23</sup> 15 U.S.C. 78f(b).

<sup>24</sup> 15 U.S.C. 78f(b)(5).

<sup>25</sup> See *supra* note 3.

products, among other things.<sup>26</sup> A standard U.S. settlement cycle for such products is critical for the operation of fair and orderly markets.

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

A previous version of the proposed rule change was published for comment in Equity Regulatory Alert 2016-4 on May 18, 2016. Two comments were received in response to the Regulatory Alert.<sup>27</sup> A copy of the Regulatory Alert is attached as Exhibit 2a. A list of comments is attached as Exhibit 2b [sic] and copies of the comment letters received in response to the Regulatory Notice are attached as Exhibits 2c [sic].

Both of the letters received expressed support for the industry led move to T+2 stating, among other benefits, that the move will align U.S. markets with international markets that already work in the T+2 environment, improve the overall efficiency and liquidity of the securities markets, and the stability of the financial system by reducing counterparty risk and pro-cyclical and liquidity demands, and decreasing clearing capital requirements. SIFMA also provided their view on the proposed amendments to two rules under the Nasdaq Rule 11800 Series (Buying In).

**Nasdaq Rule IM-11810(i)—Sample Buy-In Forms**

In its comment letter, SIFMA raised a concern with the one-day time frame in Rule IM-11810(i)(1)(A), asserting that the requirement for the delivering member to deliver a liability notice to the receiving member no later than one business day prior to the latest time and the date of the offer or other event in order to obtain the protection provided by the Rule may no longer be appropriate in a T+2 environment in some situations such as where the delivery obligation is transferred to another party as a result of continuous net settlement, settlements outside of the NSCC, and settlements involving a third party that is not a Nasdaq member firm. SIFMA noted that NYSE Rule 180 (Failure to Deliver) includes a similar requirement for NYSE member firms that are participants in a registered

clearing agency to transmit liability notification through an automated notification service and proposed amending Rule IM-11810(i)(1)(A) to omit the reference to a notification time frame, which would align with NYSE Rule 180.<sup>28</sup> In the alternative, SIFMA proposed amending Rule IM-11810(i)(1)(A) to require that the liability notice be delivered in a "reasonable amount of time" ahead of the settlement obligation in light of facts and circumstances. SIFMA maintained that under either proposed amendment to paragraph (j), the delivering member would be liable for any damages caused by its failure to deliver in a timely fashion.

While Nasdaq did not initially propose amendments to Rule IM-11810 for the T+2 initiative,<sup>29</sup> in light of SIFMA's concern regarding Rule IM-11810(i)(1)(A), Nasdaq is proposing to amend the Rule to provide that, where both parties to a contract are not participants of a registered clearing agency with an automated notification service, the receiving member must send the liability notice to the delivering member as soon as practicable but not later than two hours prior to the cutoff time set forth in the instructions on a specific offer or other event to obtain the protection provided by the Rule.<sup>30</sup>

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission

<sup>28</sup> See NYSE Rule 180 (Failure to Deliver) providing in part that "[w]hen the parties to a contract are both participants in a registered clearing agency which has an automated service for notifying a failing party of the liability that will be attendant to a failure to deliver and that contract was to be settled through the facilities of said registered clearing agency, the transmission of the liability notification must be accomplished through use of said automated notification service." Nasdaq notes that NYSE Rule 180 does not address the transmission of the liability notification for parties to a contract that are not both participants in a registered clearing agency (or non-participants). The transmission of the liability notification for non-participants is addressed under NYSE Rule 282.65 (Failure to Deliver and Liability Notice Procedures). See *supra* note 22.

<sup>29</sup> See Equity Regulatory Alert 2016-4.

<sup>30</sup> Nasdaq expects similar amendments to other comparable SRO provisions in NYSE Rule 282.65 (Fail to Deliver and Liability Notice Procedures) and FINRA Rule 11810 (Buying-in), and NSCC Rules & Procedures, Procedure X (Execution of Buy-Ins) to address SIFMA's concern about the one-day notification time frame.

shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be 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-NASDAQ-2016-183 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-2016-183. 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-

<sup>26</sup> See *supra* note 3.

<sup>27</sup> See Letter from Martin A. Burns, Chief Industry Operations Officer, Investment Company Institute to John Zecca, Senior Vice President, Marketwatch dated June 8, 2016 ("ICI"); letter from Thomas F. Price, Managing Director, Operations, Securities Industry and Financial Markets Association, to John Zecca, Senior Vice President Market Watch dated June 8, 2016 ("SIFMA").

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

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

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

[FR Doc. 2016-31679 Filed 12-29-16; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

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

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

December 23, 2016.

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

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

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

The text of the proposed rule change is available on the Exchange's Web site at [http://www.miaxoptions.com/filter/wotitle/rule\\_filing](http://www.miaxoptions.com/filter/wotitle/rule_filing), at MIAX's principal office, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these

statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

##### 1. Purpose

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

<sup>3</sup> The term "Member" means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed "members" under the Exchange Act. See Exchange Rule 100.

<sup>4</sup> See Securities Exchange Act Release Nos. 78080 (June 15, 2016), 81 FR 40377 (June 21, 2016) (SR-MIAX-2016-16); 79432 (November 30, 2016), 81 FR 87990 (December 6, 2016) (SR-MIAX-2016-45).

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

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

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

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

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

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

##### 2. Statutory Basis

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

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

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

<sup>10</sup> For purposes of the MIAX Options Fee Schedule, the term "Affiliate" means an affiliate of a Member of at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A ("Affiliate"). See Fee Schedule note 1.

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

<sup>12</sup> The term "Member" means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed "members" under the Exchange Act. See Exchange Rule 100.

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

<sup>31</sup> 17 CFR 200.30-3(a)(12).

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

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