limit access to its services, (i) to give persons in any proceeding an opportunity to be heard upon the specific grounds for the denial, prohibition, or limitation, and (ii) to keep a record of those proceedings.[156]

As noted above, commenters raised concerns as to whether the Proposed Rules are consistent with the requirements to provide ''fair procedures,'' ''notice'' and ''an opportunity to be heard.'' The Commission believes that question remain as to whether the Proposed Rules are consistent with the requirements of the Exchange Act.

Section 19(b)(2)(B) of the Act provides that proceedings to determine whether to approve or disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. The time for conclusion of the proceedings may be extended for up to an additional 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding or if the self-regulatory organization consents to the extension.

VII. Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the concerns identified above, as well as any others they may have with the Proposed Rules, as amended. In particular, the Commission invites the written views of interested persons concerning whether the Proposed Rules, as modified by Amendment Nos. 1 and 2, are inconsistent with Sections 17A(b)(3)(H) and 17A(b)(5) or any other provision of the Exchange Act, or the rules and regulations thereunder.

Although there do not appear to be any issues relevant to approval or disapproval which 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.[157] Interested persons are invited to submit written data, views, and arguments on or before April 15, 2014. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal on or before April 29, 2014. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–DTC–2013–11 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–DTC–2013–11. 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 filings also will be available for inspection and copying at the principal office of DTC and on DTC's Web site at *http://dtcc.com/en/legal/sec-rule-filings.aspx.* 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–DTC–2013–11 and should be submitted on or before April 15, 2014. If comments are received, any rebuttal comments should be submitted on or before April 29, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[158]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–06459 Filed 3–24–14; 8:45 am]

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[156] 15 U.S.C. 78q–1(b)(5).

[157] Section 19(b)(2) of the Exchange Act, as amended by the Securities Acts Amendments of 1975, Public Law 94–29, 89 Stat. 97 (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 Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[158] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71747; File No. SR–EDGX–2014–05]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing of Proposed Rule Change To Adopt a New Order Type Called the Mid-Point Discretionary Order

March 19, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on March 7, 2014, EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''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 solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to proposes to [sic] amend: (i) Rule 11.5(c) to add a new order type called the Mid-Point Discretionary Order; and (ii) Rule 11.8(a)(2)(D) to reflect the priority of Mid-Point Discretionary Orders.

The text of the proposed rule change is available on the Exchange's Internet Web site at *www.directedge.com,* at the Exchange's principal office, and at the Public Reference Room of the Commission.

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 these statements may be examined at the places specified in Item IV below.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

The self-regulatory organization 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: (i) Rule 11.5(c) to add a new order type called the Mid-Point Discretionary Order; and (ii) Rule 11.8(a)(2)(D) to reflect the priority of Mid-Point Discretionary Orders. The proposed Mid-Point Discretionary Order is designed to increase displayed liquidity on the Exchange while also providing Members the opportunity to achieve price-improvement by enabling the order to execute at prices up to and including the mid-point of the National Best Bid or Offer (''NBBO'').[3]

Proposed Mid-Point Discretionary Order, Rule 11.5(c)(14)

The Exchange proposes to amend Rule 11.5(c) to add a new order type called the Mid-Point Discretionary Order, which is based on and would operate similarly to the Mid-Point Discretionary Order on the EDGA Exchange, Inc. (''EDGA'').[4] Like the EDGA Mid-Point Discretionary Order, the proposed EDGX Mid-Point Discretionary Order would be a limit order that is displayed and pegged to the NBBO with discretion to execute at prices to and including the mid-point of the NBBO. Therefore, like the EDGA Mid-Point Discretionary Order, the EDGX Mid-Point Discretionary Order would include two components: (i) A displayed price which is pegged to the NBBO; and (ii) a discretionary range within which it may generally execute at prices to and including the mid-point of the NBBO.[5] The displayed price of a Mid-Point Discretionary Order to buy would be displayed at and pegged to the national best bid (''NBB'').[6] Conversely, the displayed price of a Mid-Point Discretionary Order to sell would be displayed at and pegged to the national best offer (''NBO'').[7]

The displayed prices of Mid-Point Discretionary Orders would be re-priced to track changes in the NBBO and would receive a new time stamp each time they are re-priced. The displayed price and discretionary range of a Mid-Point Discretionary Order would maintain the same time stamp, even where the displayed price is unchanged but the discretionary range changed due to a change in the mid-point of the NBBO. Like all discretionary order types, a Mid-Point Discretionary Order's sole time stamp would be the one assigned to the displayed portion of the order. A Mid-Point Discretionary Order's time stamp would only change when the displayed price is adjusted to track changes in the NBBO to which it is pegged.

Mid-Point Discretionary Orders would not independently establish or maintain the NBB or NBO; rather, the displayed prices of Mid-Point Discretionary Orders would be derived from the then-current NBB or NBO. A Mid-Point Discretionary Order would be cancelled if no NBBO exists, or, as discussed more fully below, a trading halt is declared by the listing market. The proposed Mid-Point Discretionary Order would be able to join the Exchange BBO when the Exchange BBO equals the NBBO and EDGX Book is locked or crossed by another market. If the proposed Mid-Point Discretionary Order displayed on the Exchange would create a locked or crossed market, the price of the order will be automatically adjusted by the System to one minimum price variation below the current NBO (for bids) or to one minimum price variation above the current NBB (for offers) with no discretion to execute to the mid-point of the NBBO.

As explained below, Mid-Point Discretionary Orders would not be eligible to execute against resting Discretionary Orders,[8] including contra-side Mid-Point Discretionary Orders. Mid-Point Discretionary Orders would only be eligible to execute at the mid-point of the NBBO against Mid-Point Match Orders [9] and incoming liquidity-removing orders when their limit price is equal to the mid-point of the NBBO. Mid-Point Discretionary Orders in stocks priced at $1.00 or more would only be executed in sub-penny increments when they execute at the mid-point of the NBBO against contra-side Mid-Point Match Orders.

Mid-Point Discretionary Orders may include a limit price that would specify the highest or lowest prices at which Mid-Point Discretionary Orders to buy or sell would be eligible to be executed. For example, if a Mid-Point Discretionary Order to buy is entered with a limit price that is less than the prevailing mid-point of the NBBO it would have discretion to buy only up to its limit price, not the mid-point of the NBBO. A Mid-Point Discretionary Order to buy with a limit price that is greater than the prevailing NBBO would have discretion to buy up to the mid-point of the NBBO and not to its limit price. Absent a limit price that is less than the prevailing mid-point of the NBBO, a Mid-Point Discretionary Order would retain its discretion to execute at prices up to and including the mid-point of the NBBO.[10]

As explained in more detail below, like other discretionary order types, Exchange Rule 11.8(a)(2) would require that the discretionary range of a Mid-Point Discretionary Order be given lower priority than non-displayed limit orders and the reserve quantity of Reserve Orders.[11] In addition, Mid-Point Discretionary Orders would not be eligible for routing pursuant to Exchange Rule 11.9(b)(2).

The Exchange also proposes to address how a Mid-Point Discretionary Order would comply with the National Market System Plan, also known as Limit Up/Limit Down (''LULD''), established pursuant to Rule 608 of the Exchange Act, to address extraordinary market volatility (the ''LULD Plan'').[12] In sum, the LULD Plan sets forth procedures that provide for market-wide LULD requirements that are designed to prevent trades in individual NMS Stocks from occurring outside of specified price bands. The price bands would consist of a Lower Price Band and an Upper Price Band for each NMS Stock. Under the LULD Plan, the Exchange is required to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the display of offers below the

[3] Exchange Rule 1.5(o) defines ''NBBO'' as ''the national best bid or offer.'' *See also* Rule 600(b)(42) of Regulation NMS under the Securities Exchange Act of 1934.

[4] *See* EDGA Rule 11.5(c)(17). Securities Exchange Act Release No. 67226 (June 20, 2012), 77 FR 38113 (June 26, 2012) (SR–EDGA–2012–22) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt the Mid-Point Discretionary Order).

[5] As discussed further below, the Exchange notes that the proposed Mid-Point Discretionary Order would not include a discretionary range where: (i) The NBBO is locked or crossed; (ii) for a buy (sell) order, its limit price is equal to or less (greater) than the NBB (NBO); or (iii) the price of the Upper Price Band equals or moves below an existing Protected Bid or the Lower Price Band equals or moves above an existing Protected Offer.

[6] Exchange Rule 1.5(o) defines ''NBB'' as ''the national best bid.''

[7] Exchange Rule 1.5(o) defines ''NBO'' as ''the national best offer.''

[8] *See* Exchange Rule 11.5(c)(13).

[9] Exchange Rule 11.5(c)(7).

[10] The Exchange notes that a Mid-Point Discretionary Order's discretion to trade up to and including the mid-point of the NBBO may be limited where the only available contra-side liquidity at the mid-point is represented by Mid-Point Discretionary Orders, or Non-Displayed Orders resting on the EDGX Book.

[11] Exchange Rule 11.5(c)(1).

[12] *See* Appendix A to Securities Exchange Act Release No. 67091 (May 31, 2012) 77 FR 33498 (June 6, 2012).

Lower Price Band and bids above the Upper Price Band for an NMS Stock. Like the EDGA Mid-Point Discretionary Order, the proposed EDGX Mid-Point Discretionary Orders will only execute at their displayed prices and not within their discretionary ranges when: (i) The price of the Upper Price Band equals or moves below an existing Protected Bid; or (ii) the price of the Lower Price Band equals or moves above an existing Protected Offer in accordance with Exchange Rule 11.9(a)(3). Mid-Point Discretionary Orders will resume trading against other orders in their discretionary range when the conditions in (i) or (ii) of the preceding sentence no longer exist.[13] For example, assume the NBBO is $10.00 × $10.10 and the Price Bands are $9.00 × $10.10. A Mid-Point Discretionary Order to buy is entered and is displayed at $10.00, the NBB, with discretion to $10.05, the mid-point of the NBBO. The Price Bands change to $9.00 × $9.95. The NBBO is updated to $9.95 × $10.10. The displayed price of the Mid-Point Discretionary Order is re-priced to $9.95, the new NBB, with no discretionary range, since the price of the Upper Price Band equals the NBB.

Furthermore, to comply with the LULD Plan, a Mid-Point Discretionary Order to buy would be re-priced to the Upper Price Band and not the Protected Bid where the price of the Upper Price Band moves below an existing Protected Bid. Likewise, a Mid-Point Discretionary Order to sell would be re-priced to the Lower Price Band and not the Protected Offer where the price of the Lower Price Band moves above an existing Protected Offer. When the above conditions no longer exist, Mid-Point Discretionary Orders will resume being displayed at and pegged to the NBBO. For example, assume the NBBO is $10.00 × $10.10 and the Price Bands are $9.00 × $10.10. A Mid-Point Discretionary Order to buy is entered and is displayed at $10.00, the NBB, with discretion to $10.05, the mid-point of the NBBO. The Price Bands change to $9.00 × $9.99. The displayed price of the Mid-Point Discretionary Order is re-priced to $9.99, the Upper Price Band, with no discretionary range, since the price of the Upper Price Band moved below the NBB of $10.00. The Price Bands then change to $9.00 × $10.10. The Mid-Point Discretionary Order to buy would be displayed at $10.00, the NBB, with discretion to $10.05, the mid-point of the NBBO.

While the proposed EDGX Mid-Point Discretionary Order is based on and would operate similarly to the EDGA Mid-Point Discretionary Order, the proposed EDGX Mid-Point Discretionary Order would differ from the EDGA Mid-Point Discretionary Order in four areas. The main reason for these differences is based on the different fee structures on EDGA and EDGX. EDGA maintains a taker-maker model where Members receive rebates for removing liquidity and pay a fee for adding liquidity.[14] EDGX maintains a maker-taker model where Members pay a fee for removing liquidity and receive a rebate for adding liquidity.[15]

First, unlike the EDGA Mid-Point Discretionary Order, the proposed EDGX Mid-Point Discretionary Order would not be eligible to execute immediately upon entry in the System[16] at its displayed price.[17] Instead, the proposed EDGX Mid-Point Discretionary Order would be eligible to execute at its displayed price only after it has been posted to the EDGX Book.[18] For example, assume the NBBO is $10.00 × $10.01. A Discretionary Order to buy at $10.00 with discretion to $10.01 is entered on the EDGX Book. A Mid-Point Discretionary Order to sell with a limit price of $10.01 would not execute against the resting Discretionary Order to buy that is displayed at $10.00 with discretion to $10.01. Instead, the Mid-Point Discretionary Order to sell would be posted to the EDGX Book and displayed at $10.01, the NBO, with no discretionary range because it is at its limit price. A second Discretionary Order to buy at $10.00 with discretion to $10.01 is entered. The second Discretionary Order to buy is willing to act as a liquidity remover and pay a fee. Therefore, similar to functionality on other exchanges,[19] the second Discretionary Order to buy would execute against the Mid-Point Discretionary Order to sell at $10.01.

If the Exchange would allow for the execution of a Mid-Point Discretionary Order at its displayed price immediately upon entry into the System, the order would not receive a rebate and instead would be subject to the applicable rates for removing liquidity from the EDGX Book. Therefore, to avoid being charged a fee, the proposed EDGX Mid-Point Discretionary Order would not be eligible to execute at its displayed price immediately upon entry in the System. In contrast, on EDGA, incoming Mid-Point Discretionary Orders may immediately execute upon entry and will receive a rebate for doing so. The Exchange believes that this approach is designed to accomplish the twin goals in implementing this order type—increasing both displayed liquidity and liquidity at the mid-point of the NBBO—by posting Mid-Point Discretionary Orders at their displayed prices on the EDGX Book with discretion to execute to and including the mid-point of the NBBO. The Exchange does not believe that its proposal is unique in its application of the Exchange's pricing model to the design of the functionality. For example, under the New York Stock Exchange, LLC (''NYSE'') Retail Liquidity Program, a Type 1 Retail Order, will interact only with available contra-side Retail Price Improvement (''RPI'') Orders and will not interact with, but instead will by-pass other available contra-side interest, including hidden orders priced better than RPI Orders, in the NYSE's systems.[20] The Exchange believes that, in order to provide the Retail Order a rebate, the NYSE by-passes non-RPI Orders resting on the NYSE's system because those resting orders are also expecting a rebate.[21] Therefore, the NYSE permits Type 1 Retail Orders to by-pass resting contra-side interest in favor of the RPI Order.[22]

In addition, a Mid-Point Discretionary Order not executing at its displayed price upon arrival is similar to post-only midpoint eligible orders offered by other exchanges.[23] Other exchanges also

[13] *See* Securities Exchange Act Release No. 69002 (February 27, 2013), 78 FR 14394 (March 5, 2013) (SR–EDGA–2013–08) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend EDGA Rules 1.5, 11.5, 11.8, 11.9 and 11.14 in Connection With the Implementation of the National Market System Plan to Address Extraordinary Market Volatility).

[14] *See* EDGA Fee Schedule *available at http://www.directedge.com/Trading/EDGAFeeSchedule.aspx.*

[15] *See* EDGX Fee Schedule *available at http://www.directedge.com/Trading/EDGXFeeSchedule.aspx.*

[16] Exchange Rule 1.5(cc) defines ''System'' as ''the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away.''

[17] The Exchange notes that the proposed Mid-Point Discretionary Order would be permitted to execute at the mid-point of the NBBO upon entry into the System.

[18] Exchange Rule 1.5(d) defines ''EDGX Book'' as the ''System's electronic file of orders.''

[19] *See infra* notes 20 thru 28.

[20] *See* NYSE Rule 107C(k)(1).

[21] On NYSE, Retail Orders that remove liquidity receive a rebate while RPI Orders would pay a fee. *See* NYSE Fee Schedule *available at https://usequities.nyx.com/markets/nyse-equities/trading-fees* (last visited January 29, 2014).

[22] *See also* Securities Exchange Act Release No. 67347 (July 3, 2012), 77 FR 40673 (July 10, 2012) (SR–NYSE–2011–55) (Order approving the NYSE's Retail Liquidity Program on a pilot basis).

[23] *See* NYSE Rules 13(e) (providing that the NYSE's Mid-Point Passive Liquidity (''MPL'') Order may include an ''Add Liquidity Only'' (''ALO'') modifier which would prohibit the order from executing upon arrival even if marketable). *See* Securities Exchange Act Release No. 71330 (January 16, 2014), 79 FR 3895 (January 23, 2014) (SR–

Continued

permit otherwise marketable orders to post directly to that exchange and execute against later arriving orders. For example, the NYSE permits MPL–ALO Orders to not execute upon arrival even if marketable.[24] The NYSE always considers the MPL–ALO the liquidity provider, and, therefore, it would never interact with a contra-side MPL–ALO order.[25] Similarly, NYSE Arca, Inc. (''NYSE Arca'') prohibits an MPL–ALO Order from executing against an incoming MPL–ALO Order.[26] In both cases, the MPL–ALO Order would execute against later arriving contra-side mid-point liquidity ahead of the resting contra-side MPL–ALO Order. In addition, on the Chicago Board Options Exchange, Incorporated (''CBOE''), if a Silent Post-Mid Seeker Order ''is to trade upon its arrival into the system (thereby 'removing' liquidity), it will not trade, but instead rest until another order comes in for it to trade against.'' [27] Finally, BATS Exchange, Inc. (''BATS'') allows display-eligible Post Only orders to rest at prices that lock non-displayed interest, making such non-displayed interest temporarily non-executable and allowing the contra-side Post Only order to execute against later arriving orders notwithstanding such non-displayed interest.[28]

Second, Mid-Point Discretionary Orders would also not be eligible to execute against resting Discretionary Orders, including contra-side Mid-Point Discretionary Orders. For example, assume the NBBO is $10.00 × $10.02. A Discretionary Order to buy at $10.00 with discretion to $10.01 is entered on the EDGX Book. A Mid-Point Discretionary Order to buy is also entered and displayed at $10.00, the NBB, with discretion to $10.01, the mid-point of the NBBO. A Mid-Point Discretionary Order to sell would not execute against the Discretionary Order to buy or the Mid-Point Discretionary to buy at $10.01, the mid-point of the NBBO.[29] Instead, the Mid-Point Discretionary Order to sell would be posted to the EDGX Book and displayed at $10.02, the NBO, with discretion to execute to $10.01, the mid-point of the NBBO. The Exchange is proposing these restrictions so that it may offer a low cost pricing structure for the EDGX Mid-Point Discretionary Order. On EDGA, a Mid-Point Discretionary Order may execute against resting Discretionary Orders, including contra-side Mid-Point Discretionary Orders, because both orders would pay a fee. However, on EDGX, if the Exchange were to allow Mid-Point Discretionary Orders to execute against each other, the provider of liquidity would receive a rebate while the taker of liquidity would be charged no fee. Members electing to use the proposed Mid-Point Discretionary Order would forego the above described execution opportunities to receive the associated low cost pricing structure. Members willing to pay a fee for broader execution opportunities at the mid-point of the NBBO could instead choose to utilize Mid-Point Match Orders.

Third, Mid-Point Discretionary Orders would only be eligible to execute at the mid-point of the NBBO against Mid-Point Match Orders and incoming liquidity-removing orders when their limit price is equal to the mid-point of the NBBO.[30] Members utilizing these order types are explicitly adding liquidity at the mid-point of the NBBO and, thereby, provide the benefit of price improving liquidity to Users. Restricting the orders against which a Mid-Point Discretionary Order may execute to those orders that are designed to explicitly add liquidity at the mid-point of the NBBO is a reasonable means by which to encourage Members to add committed mid-point liquidity. In addition, these restrictions also enable the Exchange to offer a low cost pricing structure for the EDGX Mid-Point Discretionary Order because both Mid-Point Match Orders and incoming liquidity-removing orders would be charged a fee, enabling the Exchange to provide a rebate or no fee to the proposed Mid-Point Discretionary Order.

Fourth, on EDGA, in the event a trading halt is declared by the listing market, a resting Mid-Point Discretionary Orders would be eligible for execution once the trading halt is lifted by the listing market. Conversely, on EDGX, in the event a trading halt is declared by the listing market, any Mid-Point Discretionary Orders resting on the EDGX Book would be immediately cancelled. As described above, the approach taken by EDGX is a result of its maker-taker fee structure and serves to avoid a situation where Mid-Point Discretionary Order would be assessed a take fee when the market re-opens. As discussed above in regard to execution of Mid-Point Discretionary Orders upon entry into the System, this approach is

NYSE–2013–71) (Order Approving the MPL Order stating that the proposed MPL Order could provide market participants with better control of their execution costs). An MPL order with an ALO modifier (''MPL–ALO order'') is always considered the liquidity providing order, and, therefore, would never interact with a contra-side MPL–ALO order. *See* Securities Exchange Act Release No. 71488 (February 5, 2014), 79 FR 8215 (February 11, 2014) (SR–NYSE–2014–07) (providing that, ''[i]f triggered to trade, an MPL–ALO Order will be eligible to trade with both arriving and resting contra-side interest, but will not trade with a contra-side MPL–ALO Order''). Executions would be allocated amongst the arriving and resting contra-side interest in accordance with NYSE Rule 72. *Id.* Once posted, the NYSE's MPL–ALO Order would be considered a ''liquidity provider'' and be eligible to receive a rebate. *See* Liquidity Indicator 2 in the NYSE Fee Schedule *available at https://usequities.nyx.com/markets/nyse-equities/trading-fees* (last visited January 29, 2014). *See* the Nasdaq Stock Market LLC (''Nasdaq'') Rule 4751(f)(11) (Mid-Point Peg Post Only Order). Nasdaq's Mid-Point Peg Post Only Order may also not execute upon arrival even if marketable. *See* example 1 in *http://www.nasdaqtrader.com/content/productsservices/trading/MPPO_factsheet.pdf* (describing Nasdaq's Mid-Point Peg Post Only Order functionality).

[24] *See* NYSE Rules 13(e) (providing that the NYSE's MPL Order may include an ALO modifier which would prohibit the order from executing upon arrival even if marketable). *See* Securities Exchange Act Release No. 71330 (January 16, 2014), 79 FR 3895 (January 23, 2014) (SR–NYSE–2013–71) (Order Approving the MPL Order stating that the proposed MPL Order could provide market participants with better control of their execution costs).

[25] *See* Securities Exchange Act Release No. 71488 (February 5, 2014), 79 FR 8215 (February 11, 2014) (SR–NYSE–2014–07) (providing that, ''[i]f triggered to trade, an MPL–ALO Order will be eligible to trade with both arriving and resting contra-side interest, but will not trade with a contra-side MPL–ALO Order''). Once posted, the NYSE's MPL Order would be considered a ''liquidity provider'' and be eligible to receive a rebate. *See* Liquidity Indicator 2 in the NYSE Fee Schedule *available at https://usequities.nyx.com/markets/nyse-equities/trading-fees* (last visited January 29, 2014).

[26] *See* NYSE Arca Rules 7.31(h)(5) and (nn). NYSE Arca permits a member to elect that a marketable MPL–ALO Order interact with a resting MPL–ALO Order. *See also* Securities Exchange Act Release No. 67652 (August 14, 2012), 77 FR 50189 (August 20, 2012) (SR–NYSEArca–2012–83). If both the resting interest and the incoming MPL–ALO Order are designated to interact, the incoming MPL–ALO Order would be considered the liquidity taker and subject to applicable fees. *Id.; see also* Liquidity Indicator 2 in the NYSE Fee Schedule *available at https://usequities.nyx.com/markets/nyse-equities/trading-fees* (last visited January 29, 2014).

[27] *See* CBOE Rule 51.8(g)(12); Securities Exchange Act Release No. 67548 (July 31, 2012), 77 FR 46783 (August 6, 2012) (SR–CBOE–2012–49). *See also* Nasdaq Rule 4751(f)(11) (Mid-Point Peg Post Only Order). Nasdaq's Mid-Point Peg Post Only Order may also not execute upon arrival even if marketable. *See* example 1 in *http://www.nasdaqtrader.com/content/productsservices/trading/MPPO_factsheet.pdf* (describing Nasdaq's Mid-Point Peg Post Only Order functionality).

[28] *See* Securities Exchange Act Release No. 64475 (May 12, 2011), 76 FR 28830 (May 18, 2011) (Notice of Filing of Proposed Rule Change by BATS Exchange, Inc. to Amend BATS Rule 11.9, Entitled ''Orders and Modifiers'' and BATS Rule 11.13, Entitled ''Order Execution''); *see also* Securities Exchange Act Release No. 64754 (June 27, 2011), 76 FR 38712 (July 1, 2011) (Order Approving a Proposed Rule Change to Amend BATS Rule 11.9, Entitled ''Orders and Modifiers'' and BATS Rule 11.13, Entitled ''Order Execution'').

[29] As discussed above, the proposed EDGX Mid-Point Discretionary Order would not be eligible to execute immediately upon entry in the System at its displayed price, but would be permitted upon entry to execute at the mid-point of the NBBO. *See supra* note 17.

[30] For a description of the proposed order interaction, *see infra,* Example No. 2 under the heading ''Mid-Point Discretionary Orders Entered with Limit Prices'' and the first example under the heading ''Sub-Penny Executions''.

also consistent with the treatment of a Mid-Point Discretionary Order that contains a post only instruction at its displayed price.

Examples

The following examples demonstrate how a Mid-Point Discretionary Order would operate in various scenarios.

Mid-Point Discretionary Orders Entered Without Limit Prices

Example No. 1. Assume the NBBO is $10.00 × $10.03, resulting in a mid-point of $10.015. A Mid-Point Discretionary Order to buy 100 shares is entered without a limit price. The Mid-Point Discretionary Order would be displayed at $10.00, the NBB, with discretion to buy up to $10.015, the mid-point of the NBBO.

• A contra-side market order or marketable limit order to sell 100 shares at $10.00 would execute against the Mid-Point Discretionary Order to buy at $10.00 for 100 shares.

• A contra-side limit order to sell 100 shares at $10.01 would execute against the Mid-Point Discretionary Order to buy at $10.01 for 100 shares.

• A contra-side limit order to sell 100 shares at $10.02 would not execute against the Mid-Point Discretionary Order to buy because the Mid-Point Discretionary Order had discretion to buy only up to the mid-point of the NBBO of $10.015. The limit order to sell would be displayed at $10.02, resulting in a new NBBO mid-point of $10.01.

Example No. 2. Assume the NBBO is $10.00 × $10.03, resulting in a mid-point of $10.015. A Mid-Point Discretionary Order to buy 100 shares is entered without a limit price. The Mid-Point Discretionary Order would be displayed at $10.00, the NBB, with discretion to buy up to $10.015, the mid-point of the NBBO.[31]

• Assume the NBBO changes to $10.01 × $10.06, resulting in a new NBBO mid-point of $10.035. The displayed price of the Mid-Point Discretionary Order would be adjusted to $10.01, the NBB, with discretion to buy up to $10.035, the new NBBO mid-point.

• If the NBBO changes once again to $10.03 × $10.05 resulting in a new NBBO mid-point of $10.04, the displayed price of the Mid-Point Discretionary Order would be adjusted to $10.03, the new NBB, with discretion to buy up to $10.04, the new NBBO mid-point.

Example No. 3. Assume the NBBO is $10.00 × $10.03, resulting in a NBBO mid-point of $10.015. A Mid-Point Discretionary Order is entered to buy 100 shares without a limit price. The Mid-Point Discretionary Order would be displayed at $10.00, the NBB, with discretion to buy up to $10.015, the mid-point of the NBBO. Assume further that the EDGX Book contains two other displayed orders to buy 100 shares each at $10.00, both with time priority over the Mid-Point Discretionary Order. Assume further that there is a displayed resting order to buy at $9.99 on the EDGX Book, and no other market is publishing a bid at $10.00.

• A contra-side market order to sell 200 shares would execute against the two buy orders with time priority over the Mid-Point Discretionary Order at $10.00. The Mid-Point Discretionary Order to buy would remain on the EDGX Book and be re-price at $9.99 because it could not independently establish or maintain the NBB or NBO—rather, its displayed price would be derived from the NBB and NBO.[32]

• The Mid-Point Discretionary Order would be displayed at $9.99 with discretion to trade up to $10.01 (assuming the NBO remained at $10.03), and the resting buy order at $9.99 would maintain time priority over the Mid-Point Discretionary Order.

Mid-Point Discretionary Orders Entered With Limit Prices

The following examples demonstrate how a Mid-Point Discretionary Order entered with a limit price would operate:

Example No. 1. Assume the NBBO is $10.00 × $10.03, resulting in an NBBO mid-point of $10.015. A Mid-Point Discretionary Order is entered to buy 100 shares with a limit price of $10.03. The Mid-Point Discretionary Order would be displayed at $10.00, the NBB, with discretion to buy up to $10.015, the mid-point of the NBBO.

• A contra-side market order or marketable limit order to sell 100 shares at $10.00 would execute against the Mid-Point Discretionary Order to buy at $10.00 for 100 shares.

• A contra-side limit order to sell 100 shares at $10.01 would execute against the Mid-Point Discretionary Order to buy at $10.01 for 100 shares.

• A contra-side limit order to sell 100 shares at $10.02 would not execute against the Mid-Point Discretionary Order to buy because the Mid-Point Discretionary Order had discretion to buy only up to the mid-point of the NBBO of $10.015. The limit order to sell would be displayed at $10.02, resulting in a new NBBO mid-point of $10.01.

Example No. 2. Assume the NBBO is $10.00 × $10.04, resulting in a NBBO mid-point of $10.02. A Mid-Point Discretionary Order is entered to buy 100 shares with a limit price of 10.03. The Mid-Point Discretionary Order would be displayed at $10.00, the NBB, with discretion to buy up to $10.02, the mid-point of the NBBO.

• A contra-side limit order to sell 100 shares at $10.02 would execute against the Mid-Point Discretionary Order to buy at the NBBO mid-point of $10.02 for 100 shares.

• A contra-side limit order to sell 100 shares at $10.01 would execute against the Mid-Point Discretionary Order to buy at $10.01 for 100 shares.

Example No. 3. Assume the NBBO is $10.01 × $10.06, resulting in a NBBO mid-point of $10.035. A Mid-Point Discretionary Order is entered to buy 100 shares with a limit price of 10.03. The Mid-Point Discretionary Order to buy would be displayed at $10.01, the NBB, with discretion to buy up to $10.03, and not the NBBO mid-point of 10.035, because the NBBO mid-point would be higher than the Mid-Point Discretionary Order's limit price of $10.03.

• A contra-side limit order to sell 100 shares at $10.03 would execute against the Mid-Point Discretionary Order to buy at $10.03.

• A contra-side limit order to sell 100 shares at $10.02 would execute against the Mid-Point Discretionary Order to buy at $10.02.

Example No. 4. Assume the NBBO is $10.03 × $10.05, resulting in a NBBO mid-point of $10.04. A Mid-Point Discretionary Order is entered to buy 100 shares with a limit price of 10.03. The displayed price of the Mid-Point Discretionary Order to buy would be $10.03, its limit price and the current NBB. Therefore, the Mid-Point Discretionary Order would not have discretion to trade up to the NBBO mid-point of $10.04 because that exceeds its limit price of $10.03.

• If the NBBO changed to $10.04 × $10.06, resulting in a new NBBO mid-point of $10.05, the Mid-Point Discretionary Order to buy would be posted to the EDGX Book at its limit price of $10.03 and be displayed as a limit order with no discretion because the NBB and the NBBO mid-point exceed its limit price of $10.03.

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[31] This example is designed to illustrate that the displayed price of a Mid-Point Discretionary Order entered without a limit price would continue to move in tandem with, and be displayed at, changes in the NBB (for buy orders) and the NBO (for sell orders). The Mid-Point Discretionary Order would receive a new time stamp each time it is re-priced.

[32] This example assumes that no other market is displaying a quote at the NBBO. A Mid-Point Discretionary Order that would independently establish or maintain the NBBO would be cancelled back to the Member.

• However, if the NBBO again changed to $10.02 × $10.03, then the Mid-Point Discretionary Order would again be displayed at $10.02, the NBB, with discretion to trade up to $10.025, the new NBBO mid-point.

Example No. 5. Assume from Example No. 4 above that the NBBO remains $10.04 × $10.06, with a NBBO mid-point of $10.05, and the Mid-Point Discretionary Order to buy continues to be posted to the EDGX Book and displayed at its limit price of $10.03. The EDGX Book contains a displayed order to buy 100 shares at $10.04 and two separate displayed orders to buy 100 shares each at $10.03 with time priority over the Mid-Point Discretionary Order. Assume further that there is also a displayed order to buy 100 shares at $10.02 on the EDGX Book, and no other market is publishing a bid at either $10.03 or $10.04.

• A contra-side market order to sell 300 shares would execute first against the buy order on the book at $10.04, and then against the two buy orders on the book with time priority over the Mid-Point Discretionary Order at $10.03. The Mid-Point Discretionary Order to buy at $10.03 would remain on the EDGX Book. This execution would result in a new NBBO of $10.03 × $10.06. However, the Mid-Point Discretionary Order would be re-priced to $10.02 because it could not independently establish or maintain an NBB or NBO—rather, its displayed price would be derived from the then current NBB and NBO. The Mid-Point Discretionary Order would be displayed at $10.02 with discretion to trade up to $10.03, its limit price (assuming the NBO remained at $10.06). The Mid-Point Discretionary Order would receive a new time stamp with time priority behind the resting buy order at $10.02.

Operation of the Mid-Point Discretionary Order during a Locked or Crossed Market

Example No. 1. Assume the NBBO is $10.03 × $10.03 resulting in a locked market. The Exchange BBO is $10.00 × $10.03. A Mid-Point Discretionary Order to buy with a limit price of $10.04 is entered. Because the Mid-Point Discretionary Order would cross the NBO of $10.03, it is displayed on the EDGX Book at $10.02, one minimum price variation away from the NBO with no discretionary range. The Exchange BBO is now adjusted to $10.02 × $10.03.

Example No. 2. Assume the NBBO is $10.03 × $10.03 resulting in a locked market. The Exchange BBO is $10.00 × $10.03. A Mid-Point Discretionary Order to buy with a limit price of $10.02 is entered. The Mid-Point Discretionary Order is posted to the EDGX Book at $10.02 with no discretionary range. The Exchange BBO is updated to $10.02 × $10.03.

Example No. 3. Assume the NBBO is $10.03 × $10.03 resulting in a locked market. The Exchange BBO is $10.00 (400 shares) × $10.03 (100 shares).[33] A Mid-Point Discretionary Order to sell with a limit price of $10.02 is entered. The Mid-Point Discretionary Order joins the Exchange NBO and is posted to the EDGX Book at $10.03 because it does not independently establish the NBO and there are displayed sell orders on the EDGX Book. The Exchange BBO is updated to $10.00 (400 shares) × $10.03 (200 shares).

Example No. 4. Assume the NBBO is $10.04 × $10.03 resulting in a crossed market. The Exchange BBO is $10.00 × $10.03. A Mid-Point Discretionary Order to buy with a limit price of $10.04 is entered. Because the Mid-Point Discretionary Order would cross the NBO of $10.03, it displayed on the EDGX Book at $10.02, one minimum price variation away from the NBO with no discretionary range. The Exchange BBO is now adjusted to $10.02 × $10.03.

Example No. 5. Assume the NBBO is $10.05 × $10.02 resulting in a crossed market. The Exchange BBO is $10.00 × $10.02. A Mid-Point Discretionary Order to buy with a limit price of $10.01 is entered. The Mid-Point Discretionary Order is posted to the EDGX Book at $10.01 because it does not lock or cross the NBO. The Exchange BBO is updated to $10.01 × $10.02.

Example No. 6. Assume the NBBO is $10.05 × $10.03 resulting in a crossed market. The Exchange BBO is $10.00 (400 shares) × $10.03 (100 shares).[34] A Mid-Point Discretionary Order to sell with a limit price of $10.03 is entered. The Mid-Point Discretionary Order joins the Exchange NBO and is posted to the EDGX Book at $10.03 because it does not independently establish the NBO and there are displayed sell orders on the EDGX Book. The Exchange BBO is updated to $10.00 (400 shares) × $10.03 (200 shares).

Sub-Penny Executions

Mid-Point Discretionary Orders in stocks priced at $1.00 or more would only be executed in sub-penny increments when they execute at the mid-point of the NBBO against contra-side Mid-Point Match Orders. Mid-Point Discretionary Orders are not eligible to execute against contra-side Mid-Point Discretionary Orders at the mid-point of the NBBO. Mid-Point Discretionary Orders would execute against all other order types solely in whole penny increments. Mid-Point Discretionary Orders would not be displayed or ranked in sub-penny increments.

Example No. 1. Assume the NBBO is $10.00 × $10.03, resulting in a NBBO mid-point of $10.015. A Mid-Point Discretionary Order is entered to buy 100 shares with a limit price of $10.02. The Mid-Point Discretionary Order would be displayed at $10.00, the NBB, with discretion to buy up to $10.015, the mid-point of the NBBO.

• A contra-side Mid-Point Match order sell 100 shares would execute against the Mid-Point Discretionary Order to buy at the NBBO mid-point of $10.015.

• Alternatively, a contra-side Mid-Point Discretionary Order to sell 100 shares would be displayed at $10.03, the NBO, with discretion to sell to $10.015, the mid-point of the NBBO. The Mid-Point Discretionary Order to sell would not execute against the Mid-Point Discretionary Order to buy at the NBBO mid-point of $10.015 because Mid-Point Discretionary Orders are not eligible to execute against contra-side Mid-Point Discretionary Orders at the mid-point of the NBBO.

Example No. 2. Assume the NBBO is $10.00 × $10.03, resulting in a NBBO mid-point of $10.015. A Mid-Point Discretionary Order is entered to buy 100 shares with a limit price of $10.02. The Mid-Point Discretionary Order would be displayed at $10.00, the NBB, with discretion to buy up to $10.015, the mid-point of the NBBO. Assume the NBBO changes to $10.02 × $10.05, resulting in a new NBBO mid-point of $10.035.

• The Mid-Point Discretionary Order to buy would be displayed at $10.02, the NBB, with no discretion to trade above $10.02 to the NBBO mid-point of $10.035 because its limit price prevents executions above $10.02. A contra-side Mid-Point Match Order to sell 100 shares is entered but would not execute against the Mid-Point Discretionary Order to buy at $10.02, because the NBBO mid-point of $10.035 would exceed its limit price. The Mid-Point Match Order to sell would be entered on the EDGX Book at the mid-point of the NBBO.

Proposed Amendments to Rule 11.8(a)

The Exchange proposes to amend Rule 11.8(a)(2)(D) to reflect the priority that Mid-Point Discretionary Orders would have when they are executed within their discretionary range. Rule 11.8(a)(2) states, in sum, that the System

[33] This example assumes that the Exchange BBO equals the NBBO and did not create a locked or crossed market.

[34] *Id.*

shall execute equally priced trading interest in time priority in the following order: (i) Displayed size of limit orders; (ii) Mid-Point Match Orders; (ii) non-displayed limit orders and the reserve quantity of Reserve Orders; (iii) discretionary range of discretionary orders as set forth in current Rule 11.5(c)(13); and (iv) Route Peg Orders as set forth in current Rule 11.5(c)(17).

When Mid-Point Discretionary Orders execute at their displayed price, they would have the same priority as that of the displayed size of limit orders, in accordance with Rule 11.8(a)(2)(A). However, when they execute within their discretionary range, the Exchange proposes that they would have the same priority as the discretionary range of Discretionary Orders, as set forth in Rule 11.8(a)(2)(D). Therefore, the Exchange is proposing to amend Rule 11.8(a)(2)(D) to account for the priority of Mid-Point Discretionary Orders when they act within their discretionary range.

Example. Assume the NBBO is \$10.00 × \$10.04, resulting in a NBBO mid-point of \$10.02. A Mid-Point Discretionary Order is entered to buy 100 shares with a limit price of \$10.02. A Non-Displayed order to buy 100 shares at \$10.02 is subsequently entered. The Mid-Point Discretionary Order would be displayed at \$10.00, the NBB, with discretion to buy up to \$10.02, the NBBO mid-point.

- A contra-side limit order to sell 100 shares at \$10.02 would execute against the Non-Displayed order, and not the Mid-Point Discretionary Order, since Non-Displayed orders would have priority over the discretionary range of Mid-Point Discretionary Orders in accordance with Rule 11.8(a)(2).

In addition, the Exchange proposes new Rule 11.8(a)(9) to address the priority of orders when a Mid-Point Discretionary Order is posted the EDGX Book. Where orders to buy (or sell) are made at the same price, Exchange Rule 11.8(a)(2) generally requires, that the order clearly established as the first entered into the System at that price shall have precedence up to the number of shares of stock specified in the order. As described above, the proposed EDGX Mid-Point Discretionary Order would not be eligible to execute immediately upon entry in the System at its displayed price.[35] Instead, the proposed EDGX Mid-Point Discretionary Order would be eligible to execute at its displayed price only after it has been posted to the EDGX Book. Therefore, the Exchange proposes to add subparagraph (9) to Rule 11.8(a) to clarify that, in accordance with proposed Rule 11.5(c)(14), where a Mid-Point Discretionary Order does not execute against certain marketable contra-side interest resting on the EDGX Book, it will, notwithstanding Exchange Rule 11.8(a)(2) described above, be posted directly to the EDGX Book and will be eligible to execute against later arriving marketable contra-side orders.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with Section 6(b) of the Act[36] and further the objectives of Section 6(b)(5) of the Act,[37] because they are 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, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and, in general, to protect investors and the public interest.

Proposed Mid-Point Discretionary Order, Rule 11.5(c)(14)

The Exchange believes that the proposed Mid-Point Discretionary Order 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 because it would provide Users[38] with an order type that may result in the efficient execution of such orders and provide additional flexibility and increased functionality to the Exchange's System and its Users. Specifically, the Exchange believes that Users may receive more efficient order executions by providing them greater flexibility to be displayed at the NBBO with discretion to execute up to and including the mid-point of the NBBO, resulting in the potential benefit of price improvement. The proposed Mid-Point Discretionary Order is designed to increase displayed liquidity on the Exchange while also enhancing execution opportunities at the mid-point of the NBBO. Promotion of displayed liquidity at the NBBO enhances market quality for all Users and promotes competition amongst market centers. Therefore, the Exchange believes that the proposed Mid-Point Discretionary Order will promote just and equitable principles of trade and perfect the mechanism of a free and open market and a national market system because it is designed to: (i) Contribute to the displayed liquidity on the Exchange at the NBBO while providing additional opportunities for price improvement, which would, in turn, benefit competition due to improvements to overall market quality; and (ii) increase competition between exchanges offering similar functionality.

The proposed Mid-Point Discretionary Order is similar to and based on the Mid-Point Discretionary Order on EDGA.[39] While the proposed EDGX Mid-Point Discretionary Order would function similarly to the existing Mid-Point Discretionary Order on EDGA, the order types would differ in four areas. The Exchange does not believe that these differences are significant or presents unique issues with respect to the consistency of the Mid-Point Discretionary Order with the requirements of the Act. The Exchange believes these differences are reasonable due to the different fee structures on EDGA and EDGX and are designed to encourage explicitly priced liquidity at the mid-point of the NBBO, while enabling the Exchange to offer a low cost pricing structure for the order type. EDGA maintains a taker-maker model where Members receive rebates for removing liquidity and pay a fee for adding liquidity.[40] EDGX maintains a maker-taker model where Members pay a fee for removing liquidity and receive a rebate for adding liquidity.[41]

First, unlike the EDGA Mid-Point Discretionary Order, the proposed EDGX Mid-Point Discretionary Order would not be eligible to execute immediately upon entry in the System at its displayed price. Instead, the proposed EDGX Mid-Point Discretionary Order would be eligible to execute at its displayed price only after it has been posted to the EDGX Book. If the Exchange would allow for the execution of a Mid-Point Discretionary Order at its displayed price immediately upon entry into the System, the order would not receive a rebate and instead would be subject to the applicable rates for removing liquidity from the EDGX

[35] *See supra* notes 16 thru 19 and accompanying text. Mid-Point Discretionary Orders would also not be eligible to execute against resting Discretionary Orders, including contra-side Mid-Point Discretionary Orders. *See supra* notes 29 and accompanying text; *see also infra* notes 47 thru 48 and accompanying text.

[36] 15 U.S.C. 78f(b).

[37] 15 U.S.C. 78f(b)(5).

[38] Exchange Rule 1.5(ee) defines ''User'' as ''any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to [Exchange] Rule 11.3.''

[39] *See* EDGA Rule 11.5(c)(17). Securities Exchange Act Release No. 67226 (June 20, 2012), 77 FR 38113 (June 26, 2013) (SR–EDGA–2012–22) (Notice of Filing and Immediate Effectiveness Of Proposed Rule Change to Adopt the Mid-Point Discretionary Order).

[40] *See* EDGA Fee Schedule *available at http://www.directedge.com/Trading/EDGAFeeSchedule.aspx.*

[41] *See* EDGX Fee Schedule *available at http://www.directedge.com/Trading/EDGXFeeSchedule.aspx.*

Book. Therefore, to avoid being charged a fee, the proposed EDGX Mid-Point Discretionary Order would not be eligible to execute at its displayed price immediately upon entry in the System.[42] It would be eligible to execute at its displayed price against incoming liquidity removing orders because such orders are willing to accept the immediate execution and not post to the EDGX Book. Orders resting on the EDGX Book are willing to forgo an execution against the incoming Mid-Point Discretionary Order at its displayed price here because the User is expecting to receive a rebate once posted to the EDGX Book. The Exchange believes that this approach is designed to accomplish the twin goals in implementing this order type—increasing both displayed liquidity and liquidity at the mid-point of the NBBO on the EDGX Book. In addition, the Exchange believes this would optimize available displayed liquidity for incoming orders and provide price improvement at the mid-point of the NBBO. The Exchange does not believe that its proposal is unique in its application of the Exchange's pricing model to the design of the functionality.[43]

The Exchange does not believe that there is anything novel or controversial about permitting otherwise marketable orders to post to the EDGX Book and execute against later arriving orders in a fully transparent manner that is consistent with pre-existing rules of other exchanges described above.[44] Permitting otherwise marketable orders to post directly to that exchange is designed to provide Users with better control over their execution costs. It allows Users to post aggressively priced liquidity, as such Users have certainty as to the fee or rebate they will receive from the Exchange if their order is executed. Without such ability, the Exchange believes that certain Users would simply post less aggressively priced liquidity, and prices available for market participants, including retail investors, would deteriorate. Members remain focused on their trading costs, and in a pricing environment characterized by fees on one side of a trade being used to fund rebates on the other side, it is entirely understandable that some Members may wish to structure their trading activity in a manner that is more likely to avoid a fee and earn a rebate.[45] Therefore, the Exchange believes Mid-Point Discretionary Order not executing at their displayed price upon arrival furthers the objectives of Section 6(b)(5) of the Act,[46] because 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. The Exchange believes this to be the case even if, as described above, a Mid-Point Discretionary Order will execute in certain circumstances against a later arriving contra-side order when there is non-displayed contra-side interest resting on the Exchange's order book at that price. As discussed above, this order, once resting, is expecting to receive a rebate for any execution.

Second, Mid-Point Discretionary Orders would also not be eligible to execute against resting Discretionary Orders, including contra-side Mid-Point Discretionary Orders. The Exchange believes precluding the above executions promotes just and equitable principles of trade by permitting the Exchange to offer a low cost pricing structure while also offering an order type that provides Members the opportunity to achieve price-improvement at prices up to and including the mid-point of the NBBO. On EDGA, a Mid-Point Discretionary Order may execute against resting Discretionary Orders, including contra-side Mid-Point Discretionary Orders, because both orders would pay a fee. However, on EDGX, if the Exchange were to allow Mid-Point Discretionary Orders to execute against each other, the provider of liquidity would receive a rebate while the taker of liquidity would be charged no fee. Members willing to pay a fee for broader execution opportunities at the mid-point of the NBBO could instead choose to utilize Mid-Point Match Orders. Precluding Mid-Point Discretionary Orders from executing as discussed above follows the precedent established by other order types, such as Post Only Orders, in which Members choose to forgo some execution opportunities to avoid paying a fee.[47] Since the Exchange does not offer a Post Only Mid-Point Match Order,[48] Mid-Point Discretionary Orders provide a means to interact with liquidity at the mid-point of the NBBO, while having the added benefit of not incurring a fee. In exchange, the User of a Mid-Point Discretionary Order foregoes certain execution opportunities and therefore incurs risk of not receiving an execution. The above restriction would provide a Mid-Point Discretionary Order the opportunity to become a liquidity provider and receive a rebate. Furthermore, the Exchange believes that this approach is consistent with the Exchange's belief that Mid-Point Discretionary Orders would be utilized primarily by Members seeking access to liquidity at the mid-point of the NBBO while seeking to not be charged a fee. The proposed Mid-Point Discretionary Order is designed to provide Members with better control over their execution costs and with a means to offer price improvement opportunities. As stated above, Members remain focused on their trading costs and may wish to structure their trading activity in a manner that is more likely to control those costs. Other Members may prefer execution certainty and are less cost-sensitive, and would thus be less likely to use the Mid-Point Discretionary Order. Based on the foregoing, the Exchange believes precluding Mid-Point Discretionary Orders from executing against each other is designed to promote just and equitable principles of trade because it would enable Members to achieve potential price improvement and a low cost fee structure by using the proposed Mid-Point Discretionary Order.

Third, the Exchange believes that limiting the circumstance within which a Mid-Point Discretionary Order may execute against orders at the mid-point of the NBBO is designed to promote just and equitable principles of trade by incentivizing Members to submit orders that explicitly contribute to liquidity at the mid-point of the NBBO while also enabling the Exchange to provide a low cost pricing structure for the order type.

[42] In contrast, on EDGA, incoming Mid-Point Discretionary Orders may immediately execute upon entry and will receive a rebate for doing so.

[43] *See supra* notes 20 thru 28 and accompanying text.

[44] *See supra* notes 20 thru 28 and accompanying text.

[45] *See e.g.,* Securities Exchange Act Release No. 69194 (March 20, 2013), 78 FR 18386 at 18391 n. 29 (March 26, 2013) (SR–Phlx–2013–24) (Notice of Filing of Proposed Rule Change); *see also* Securities Exchange Act Release No. 69452 (April 25, 2013), 78 FR 25512 at 25514 (May 1, 2013) (Order Approving SR–PHLX–2013–24) (stating that the Midpoint Peg Post-Only Order ''is intended to provide market participants with better control over their execution costs and to provide a means to offer price improvement opportunities'').

[46] 15 U.S.C. 78f(b)(5).

[47] *See supra* notes 20 thru 28 and accompanying text. A ''Post Only Order'' is precluded from executing against orders resting on the EDGX Book upon entry in the System and receives a rebate for adding liquidity. *See* Exchange Rule 11.5(c)(5); *see also,* EDGX Fee Schedule *available at http://www.directedge.com/Trading/EDGXFeeSchedule.aspx.* NYSE Arca permits members to designate a limit order as ''No Mid-Point Execution'', so that the limit order will ignore mid-point priced orders. NYSE Arca Rule 7.31(h)(5).

[48] For securities priced at or above $1.00, Mid-Point Match Orders incur a fee regardless of whether they add or remove liquidity at the mid-point of the NBBO. *See* Flags MM and MT on the EDGX Fee Schedule *available at http://www.directedge.com/Trading/EDGXFeeSchedule.aspx.*

The proposed Mid-Point Discretionary Order would only be eligible to execute at the mid-point of the NBBO against contra-side Mid-Point Match Orders and incoming liquidity-removing orders when their limit price equals the mid-point of the NBBO. Members utilizing these order types are explicitly adding liquidity at the mid-point of the NBBO and, thereby, provide the benefit of price improving liquidity to Users and their incoming orders. Restricting the orders against which a Mid-Point Discretionary Order may execute to those orders that are designed to explicitly add liquidity at the mid-point of the NBBO is a reasonable means by which to encourage Members to add committed mid-point liquidity. The Exchange believes that encouraging orders that explicitly add liquidity at the mid-point of the NBBO, rather than by happenstance, would enhance price improvement opportunities on the Exchange by seeking to increase the overall liquidity on the Exchange at the mid-point of the NBBO. The Exchange believes restricting the orders against which the proposed Mid-Point Discretionary Order may execute at the mid-point of the NBBO to Mid-Point Match Orders promotes just and equitable principles of trade because it is designed to encourage the use of Mid-Point Match Orders, motivating Members seeking price improvement to direct their orders to EDGX because they would have a heightened expectation of liquidity at the midpoint of the NBBO. In addition, these restrictions also enable the Exchange to offer a low cost pricing structure for the EDGX Mid-Point Discretionary Order because both Mid-Point Match Orders and incoming liquidity-removing orders would be charged a fee, enabling the Exchange to provide a rebate or no fee to the proposed Mid-Point Discretionary Order.

Fourth, on EDGA, in the event a trading halt is declared by the listing market, a resting Mid-Point Discretionary Orders would be eligible for execution once the trading halt is lifted by the listing market. Conversely, on EDGX, in the event a trading halt is declared by the listing market, any Mid-Point Discretionary Orders resting on the EDGX Book would be immediately cancelled. As described above, the approach taken by EDGX is a result of its maker-taker fee structure and serves to avoid a situation where Mid-Point Discretionary Orders would be assessed a take fee when the market re-opens. As discussed above in regard to execution of Mid-Point Discretionary Orders upon entry into the System, this approach is also consistent with the treatment of a Mid-Point Discretionary Order as containing a post only instruction at its displayed price.

The Mid-Point Discretionary Order would also be similar to the Exchange's existing Pegged Order [49] and Mid-Point Match Order because, like these order types, a Mid-Point Discretionary Order would receive a new time stamp each time it was automatically adjusted, and it would not be eligible for routing pursuant to Rule 11.9(b)(2). Like a Pegged Order, a Mid-Point Discretionary Order's displayed price would be pegged to and automatically adjusted in response to changes to the NBB or NBO. Also, like a Pegged Order, if the proposed Mid-Point Discretionary Order displayed on the Exchange would lock the market, the price of the order will be automatically adjusted by the System to one minimum price variation below the current NBO (for bids) or to one minimum price variation above the current NBB (for offers). In addition, the Mid-Point Discretionary Order will also be similar to the Exchange's Mid-Point Match Order, because both would be eligible to receive sub-penny executions at the mid-point of the NBBO. However, unlike the Mid-Point Match Order, the Mid-Point Discretionary Order includes a displayed component, which would provide the added benefit of transparency. The proposed Mid-Point Discretionary Order would also be similar to the Exchange's existing Discretionary Order in that it would include a displayed order at a specified price (an objectively determined price based on the prevailing NBB or NBO) and a non-displayed order at a specified price (an objectively determined price based on the mid-point of the NBBO), subject to any limits the User attaches the Mid-Point Discretionary Order. The Exchange believes that this proposed order type would benefit its Users by offering greater flexibility to display liquidity at the NBBO with discretion generally to execute to the NBBO mid-point, resulting in additional opportunities for price improvement for contra-side orders.

The Exchange further believes that the proposed Mid-Point Discretionary Order is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system because it is based on and would enable the Exchange to offer an order type that would compete with similar order types on other exchanges. For example, the Mid-Point Discretionary Order is similar to NYSE Arca's Pegged Order [50] and Discretionary Order.[51] NYSE Arca's Pegged Order is defined as a ''limit order to buy or sell a stated amount of a security at a displayed price set to track the current bid or ask of the NBBO in an amount specified by the User. . . . A Pegged Order may be designated as a . . . Discretionary Order.'' NYSE Arca defines a Discretionary Order to be ''[a]n order to buy or sell a stated amount of a security at a specified, undisplayed price (the 'discretionary price'), in addition to at a specified, displayed price ('displayed price').'' The Mid-Point Discretionary Order is similar to Arca's Pegged Order when it is designated as a Discretionary Order insofar as the displayed components of both are designed to track the prevailing NBB and NBO. While the undisplayed component of the Mid-Point Discretionary Order presents a variation on the undisplayed component of Arca's order type, insofar as the former sets a more specific parameter on the discretionary aspect of the order (*i.e.,* to execute to the mid-point of the NBBO), the Exchange does not believe that such variation presents unique issues with respect to the consistency of the Mid-Point Discretionary Order with the requirements of the Act.

The proposed Mid-Point Discretionary Order is also not designed to permit unfair discrimination between customers, issuers, brokers, or dealers because the proposed Mid-Point Discretionary Order would be available to all Members on a uniform basis.

Proposed Amendment to Rule 11.8(a)

The Exchange also believes its proposal to amend Rule 11.8(a)(2) to reflect the priority that Mid-Point Discretionary Orders is designed to promote just and equitable principles of trade. Rule 11.8(a)(2) states, in sum, that the System shall execute equally priced trading interest in time priority in the following order: (i) Displayed size of limit orders; (ii) Mid-Point Match Orders; (ii) non-displayed limit orders and the reserve quantity of Reserve Orders; (iii) discretionary range of Discretionary Orders as set forth in current Rule 11.5(c)(13); and (iv) Route Peg Orders as set forth in current Rule 11.5(c)(17). Under the proposal, when Mid-Point Discretionary Orders execute at their displayed price, they would have the same priority as that of the displayed size of limit orders, in accordance with Rule 11.8(a)(2)(A). However, when they execute within their discretionary range, the Exchange

[49] Exchange Rule 11.5(c)(6).

[50] NYSE Arca Rule 7.31(cc).

[51] NYSE Arca Rule 7.31(h)(2)

proposes that they maintain priority behind Mid-Point Match Orders but maintain the same priority as the discretionary range of Discretionary Orders. The Exchange believes the proposed priority for the discretionary range of Mid-Point Discretionary Orders is consistent with the Act because it continues to provide priority to displayed orders on the Exchange and to orders that are designed to provide liquidity at a set price level, such as the mid-point of the NBBO or the limit price of a Reserve Order. Lastly, the Exchange notes that the proposed priority for the discretionary range or Mid-Point Discretionary Orders on EDGX is identical to the priority for the discretionary range of Mid-Point Discretionary Orders on EDGA.[52]

The Exchange also believes it is reasonable and appropriate that the displayed price and discretionary range of a Mid-Point Discretionary Order maintain the same time stamp, even when the displayed price is unchanged but the discretionary range changed due to a new mid-point of the NBBO being established. It is well founded that the price priority of a discretionary order is based on its displayed price and not its discretionary range.[53] Should the discretionary range widen or decrease as a result of a new mid-point of the NBBO being established, the time stamp and priority of the displayed price would remain unchanged so long as the NBBO that the order is pegged to did not change.

In addition, the Exchange believes proposed subparagraph (9) to Rule 11.8(a) furthers the objectives of Section 6(b)(5) of the Act,[54] because 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. The Exchange believes that permitting otherwise marketable orders to post directly to the EDGX Book is reasonable because it is designed to provide Users with better control over their execution costs. Once posted to the EDGX Book, the proposed EDGX Mid-Point Discretionary Order would receive a rebate if executed at its displayed price. This allows Users to post aggressively priced liquidity by providing certainty as to the fee or rebate they will receive from the Exchange if their order is executed. In addition, as stated above, the Exchange does not believe that there is anything novel or controversial about permitting otherwise marketable orders to post to the EDGX Book and execute against later arriving orders in a fully transparent manner that is consistent with pre-existing rules of other exchanges.[55]

Lastly, the Exchange believes it is reasonable for a Mid-Point Discretionary Order to retain its time stamp and priority in relation to other Discretionary Orders when the discretionary range widens or decreases in response to a new mid-point of the NBBO being established. A Mid-Point Discretionary Order's discretionary range is capped by the mid-point of the NBBO, which is an objectively determined price that the User cannot independently establish. As stated above, no price priority is afforded to orders based on their discretionary range. Therefore, a Mid-Point Discretionary Order's discretionary range would not receive a new time stamp when the discretionary range widens or decreases in response to a new mid-point of the NBBO being established; nor would the order's priority be changed in relation to other Discretionary Orders on the EDGX Book.

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

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change would increase intermarket competition among the exchanges because the Mid-Point Discretionary Order will directly compete with a similar order types offered by other exchanges.[56] The Exchange believes that Users may receive more efficient order executions by providing them greater flexibility to be displayed at the NBBO with discretion to execute to the mid-point of the NBBO, resulting in the potential benefit of price improvement. Promotion of displayed liquidity at the NBBO enhances market quality for all market participants and promotes competition amongst market enters. The Exchange believes that the proposed Mid-Point Discretionary Order will contribute to the displayed liquidity on the Exchange, which would, in turn, benefit competition due to improvements to the overall market quality of the Exchange. The proposed rule change would not burden intramarket competition because the Mid-Point Discretionary Order would be available to all Members on a uniform basis.

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from its Members or other interested parties.

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 self-regulatory organization consents, the Commission will:

(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. In particular, the Commission seeks comment on the following:

• Would the Mid-Point Discretionary Order create opportunities for queue-jumping strategies by executing against later-arriving orders rather than against identically-priced orders already resting on the order book?

• Is it consistent with fair and orderly markets to prevent Mid-Point Discretionary Orders from executing against contra-side orders with prices that are within the net economic range (limit price with fee/rebate) specified in such orders?

[52] *See* EDGA Rule 11.8(a)(2). *See also* BATS Rule 11.12(a)(2) (placing the discretionary range of discretionary order last in priority behind the displayed size of limit order, non-displayed limit orders, pegged orders, mid-point peg orders and the reserve size of orders); Securities Exchange Act Release No. 67226 (June 20, 2012), 77 FR 38113 (June 26, 2012) (SR–EDGA–2012–22) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt the Mid-Point Discretionary Order).

[53] NYSE Arca permits Pegged Orders to also be designated as Discretionary Orders. *See* NYSE Arca Rule 7.31(cc) and 7.31(h)(2). In such case, Discretionary Orders are ranked based on their displayed price, not discretionary range, and continue to be ranked at their displayed price when the discretionary portion of the order is decremented. *See* NYSE Arca Rule 7.36(1)(C).

[54] 15 U.S.C. 78f(b)(5).

[55] *See supra* notes 42 thru 48 and accompanying text.

[56] *See* NYSE Arca Rules 7.31(cc), 7.31(h)(2), 7.31(h)(5), and 7.31(nn), Nasdaq Rules 4751(f)(4) and 4751(11) [sic], BATS Rule 11.9(c)(8), NYSE Rule 13, and CBOE Rule 51.8(g)(12).

• Would leaving Mid-Point Discretionary Orders resting on the order book even in the presence of contra-side orders with prices that are within the net economic range (limit price with fee/rebate) specified in the Mid-Point Discretionary Order add unnecessary complexity to the Exchange's priority rules and the equity markets generally?

Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–EDGX–2014–05 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–EDGX–2014–05. 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 20549–1090, 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–EDGX–2014–05, and should be submitted on or before April 15, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[57]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–06461 Filed 3–24–14; 8:45 am]

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[57] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71744; File No. SR–CBOE–2014–024]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Appointment Cost for CBOE Volatility Index (VIX) Options

March 19, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 14, 2014, the Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') 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 proposes to amend CBOE Rule 8.3 (Appointment of Market-Makers) relating to the appointment cost for options on the CBOE Volatility index (''VIX''). The text of the proposed rule change is available on the Exchange's Web site *http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx),* at the Exchange's Office of the Secretary, and at the Commission.

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 purpose of this rule change is to amend CBOE Rule 8.3 relating to the appointment cost for VIX options. Presently, VIX options have an appointment cost of .50. CBOE proposes to reduce the appointment cost to .499, effective April 1, 2014. Market-Makers then could utilize the excess appointment capacity of .001 to hold an appointment and quote electronically in an additional Hybrid option class, which promotes competition and efficiency.

2. Statutory Basis

The Exchange believes the proposed rule changes are consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[3] Specifically, the Exchange believes the proposed rule changes are consistent with the Section 6(b)(5)[4] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that reducing the appointment cost for VIX options will foster competition by enabling Market-Makers to use the excess capacity resulting from the reduced appointment cost in VIX options to quote an additional Hybrid option class. The Exchange believes that the appointment cost reduction for VIX options will promote competition and efficiency. The Exchange believes that the marketplace will benefit because the Exchange is incentivizing Market-Makers to quote electronically an additional Hybrid option class.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).