

connection with assets attributable to Contracts affected by the substitution, at a higher rate than Applicants have received from the corresponding Replaced Portfolio, its advisors or underwriters (or their affiliates), including, without limitation, Rule 12b-1 fees, revenue sharing, or other service fees or arrangements in connection with such assets. Applicants represent that the substitution is not motivated by any financial consideration paid or to be paid to the Company or its affiliates by the Replacement Portfolio, its advisors, underwriters, or their respective affiliates.

11. Applicants represent that the Company is also seeking approval of the proposed substitution from any state insurance regulators whose approval may be necessary or appropriate.

12. The Applicants submit that the proposed substitution meets the standards set forth in Section 26(c) and assert that the replacement of the Existing Fund with the Replacement Fund is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

#### *Conclusion:*

For the reasons and upon the facts set forth above and in the application, the Applicants assert that the requested order meets the standards set forth in Section 26(c) of the 1940 Act and should therefore, be granted.

For the Commission, by the Division of Investment Management, under delegated authority.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013-15242 Filed 6-25-13; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-69809; File No. SR-MIAX-2013-30]

### **Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to \$0.50 and \$1 Strike Price Intervals for Classes in the Short Term Option Series Program**

June 20, 2013.

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 June 13, 2013, Miami International Securities Exchange LLC ("MIAX" or "Exchange")

filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I 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 is filing a proposal to amend Exchange Rule 404, Series of Option Contracts Open for Trading, by adopting Interpretations and Policies .09 to the rule to describe the manner of expiration and the strike price intervals of options series included in the Exchange's \$1 Strike Price Interval Program, and by modifying Interpretations and Policies .02(e) to the rule to describe strike price intervals for options series that are included in the Exchange's Short Term Option Series Program.<sup>3</sup>

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 Statutory Basis for, the Proposed Rule Change*

##### **1. Purpose**

The Exchange proposes to adopt Interpretations and Policies .09 to Exchange Rule 404 to state that, notwithstanding any other provision regarding strike prices in the rule,

<sup>3</sup> The Exchange may open for trading on any Thursday or Friday that is a business day "Short Term Option Opening Date") series of options on that class that expire at the close of business on each of the next consecutive Fridays that are business days ("Short Term Option Series" or "STOS").

Related non-STOS<sup>4</sup> shall be opened on the Thursday or Friday prior to the expiration week that such Related non-STOS (such as, for example, series with standard monthly or quarterly expirations) expire in the same manner as permitted in Rule 404, Interpretations and Policies .02, and in the same strike price intervals for the STOS permitted in Rule 404, Interpretations and Policies .02(e).

The Exchange further proposes to amend Interpretations and Policies .02(e) to Exchange Rule 404 to provide that the strike price interval for STOS may be \$0.50 or greater for option classes that trade in \$1 strike price intervals and are in the STOS Program. If the class does not trade in \$1 strike price intervals, the strike price interval for STOS may be \$0.50 or greater where the strike price is less than \$75 and \$1.00 or greater where the strike price is between \$75 and \$150, and the same as strike prices for series in that same option class that expire in accordance with the normal monthly expiration cycle for strike prices greater than \$150. Notwithstanding any other provision regarding strike prices in the rule, Related non-Short Term Option series shall be opened on the Thursday or Friday prior to the expiration week that such Related non-Short Term Option series expire in the same manner as permitted in Rule 404, Commentary .02, and in the same strike price intervals for the STOS permitted in this [sic] Rule 404, Commentary .02 (e).

This is a competitive filing that is based on recent filings by the International Securities Exchange, LLC ("ISE"), NASDAQ OMX PHLX, LLC ("PHLX") and NYSE MKT LLC ("NYSE MKT").<sup>5</sup> The ISE, PHLX and NYSE MKT filings made changes to the strike price interval setting parameter rules for their respective STOS Programs. STOS options are not listed to expire during the same week as non-Short Term Option series. As a result, ISE, PHLX and NYSE MKT amended their rules to permit non-Short Term Option series to have the same strike price interval setting parameters for STOS during the

<sup>4</sup> Proposed Rule 404, Interpretations and Policies .02(e) defines a "Related non-Short Term Option" as a non-Short Term Option series that is included in a class that has been selected to participate in the Short Term Option Series Program.

<sup>5</sup> See Securities Exchange Act Release Nos. 67754 (August 29, 2012), 77 FR 54629 (September 5, 2012) (Order approving SR-ISE-2012-33) ("ISE filing"); 69633 (May 23, 2012), 77 FR 32498 (May 30, 2012) (SR-Phlx-2013-55) ("PHLX filing"); 68074 (October 19, 2012), 77 FR 65241 (October 25, 2012) (SR-CBOE-2012-92); and 68193 (November 8, 2012), 77 FR 68177 (November 15, 2012) (Notice of Filing and Immediate Effectiveness of SR-NYSEMKT-2012-53).

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

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

week that non-Short Term Option series expire.

ISE and PHLX also both amended the strike price interval setting parameters for their STOS Programs, but the revisions to their respective rules differ. Specifically, ISE permits \$0.50 strike price intervals for Weekly<sup>6</sup> options for option classes that trade in one dollar increments and are in the STOS Program.<sup>7</sup> PHLX permits \$0.50 strike price intervals when the strike price is below \$75, and \$1 strike price intervals when the strike price is between \$75 and \$150, or \$0.50 for classes that trade in one dollar increments in Related non-Short Term Options and that participate in the STOS Program. PHLX also provides that related non-Weekly option series may be opened during the week prior to expiration week pursuant to the same strike price interval parameters that exist for Weekly options. Thus a related non-Weekly option may be opened in Weekly option strike price intervals on a Thursday or a Friday that is a business day before the non-Weekly option expiration week.<sup>8</sup> If PHLX is not open for business on the respective Thursday or Friday, however, the non-Weekly option may be opened in Weekly option intervals on the first business day immediately prior to that respective Thursday or Friday.<sup>9</sup>

The Exchange proposes herein to adopt rules that are in effect on NYSE MKT in order to remain competitive regarding strike price interval setting

parameters. The Exchange notes that while it believes that there is substantial overlap between the two strike price interval setting parameters, the Exchange believes there are gaps that would enable PHLX to initiate a series that ISE would not be able to initiate and vice versa [sic].<sup>10</sup> Since uniformity is not required for the STOS Programs that have been adopted by the various options exchanges, the Exchange proposes to revise its strike price intervals setting parameters so that it has the ability to initiate strike prices in the same manner (*i.e.*, intervals) as both ISE and PHLX, and thus in the same manner currently in place on NYSE MKT. Accordingly, just as with NYSE MKT, the Exchange proposes to adopt aspects of both the ISE rule text language and the PHLX rule text language approved by the Commission.

The STOS Program is codified in Interpretations and Policies .02 to Exchange Rule 404. The rule states that after an option class has been approved for listing and trading on the Exchange, the Exchange may open for trading, on any Thursday or Friday that is a business day, series of options on no more than twenty-five option classes that expire on the Friday of the following business week that is a business day. In addition to the twenty-five option class limitation, there is also a limitation that no more than twenty series for each expiration date in those classes may be initially opened for trading.<sup>11</sup> Furthermore, the strike price

of each STOS has to be fixed with approximately the same number of strike prices being opened above and below the value of the underlying security at about the time that the short term options are initially opened for trading on the Exchange, and with strike prices being within thirty percent (30%) above or below the closing price of the underlying security from the preceding day. The Exchange does not propose any changes to the current program limitations. The Exchange proposes only to specify that STOS can have interval prices of \$0.50 and \$1, as proposed under Interpretations and Policies .02(e) to Rule 404.

The principal reason for the proposed interval pricing structure is market demand for weekly options. There is continuing strong customer demand for having the ability to execute hedging and trading strategies effectively via STOS, particularly in the current fast, multi-faceted trading and investing environment that extends across numerous markets and platforms.<sup>12</sup> The Exchange has observed increased demand for STOS classes and/or series, particularly when market moving events such as significant market volatility, corporate events, or when large market, sector, or individual issue price swings have occurred. The STOS Program is one of the most popular and quickly expanding options expiration programs.

The Exchange believes that the benefits of the ability to trade STOS at \$0.50 and \$1 intervals at lower price levels cannot be underestimated. The proposed intervals would clearly allow traders and investors, and in particular public (retail) investors to more effectively and with greater precision consummate trading and hedging strategies on the Exchange. The Exchange believes that this precision is increasingly necessary, and in fact crucial, as traders and investors engage in trading and hedging strategies across various investment platforms (*e.g.*, equity and ETF, index, derivatives, futures, foreign currency, and even commodities products); particularly when many of these platforms enjoy substantially smaller strike price differentiations (*e.g.*, as low as \$0.05).<sup>13</sup>

<sup>6</sup> Short Term Options Series ("STOS") are also known as "Weekly options" or "weeklies" and trade as such under the various exchanges' respective STOS Programs. For all practical purposes, the terms STOS, Weekly options, and weeklies are interchangeable.

<sup>7</sup> The permissible \$0.50 strike price intervals may only be opened on the Weekly option Opening Date that expire on the Weekly option Expiration date and no additional series, including additional series of the related non-Weekly option, may be opened during expiration week in classes that are listed pursuant to ISE rules.

<sup>8</sup> This opening timing is consistent with the principle that the Exchange may add new series of options until two business days prior to expiration. See Exchange Rule 404(e).

<sup>9</sup> On the Exchange, the STOS opening process is set forth in MIA Rule 404, Interpretations and Policies .02: After an option class has been approved for listing and trading on the Exchange, the Exchange may open for trading on any Thursday or Friday that is a business day ("Short Term Option Opening Date") series of options on that class that expire at the close of business on each of the next consecutive Fridays that are business days ("Short Term Option Expiration Dates"). If the Exchange is not open for business on the respective Thursday or Friday, the Short Term Option Opening Date will be the first business day immediately prior to that respective Thursday or Friday. Similarly, if the Exchange is not open for business on the Friday of the following business week, the Short Term Option Expiration Date will be the first business day immediately prior to that Friday.

<sup>10</sup> The Exchange and the majority, if not all, of the other options exchanges that have adopted a STOS Program have a similar rule that permits the listing of series that are opened by other exchanges, consistent with the Options Listing Procedures Plan ("OLPP"). See Exchange Rule 404A(b)(6). This filing is concerned with the ability to initiate series. For example, if a class is selected to participate in the STOS Program and non-STOS options on that class do not trade in dollar increments, the Exchange believes that PHLX would be permitted to initiate \$0.50 strikes on that class and ISE would not. Similarly, the strike price interval for exchange-traded fund ("ETF") options is generally \$1 or greater where the strike price is \$200 or less.

<sup>11</sup> However, if the Exchange opens twenty (20) short term options for a Short Term Option Expiration Date, up to 10 additional series may be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying security moves substantially from the exercise price or prices of the series already opened. Any additional strike prices listed by the Exchange shall be within thirty percent (30%) above or below the current price of the underlying security. The Exchange may also open additional strike prices of STOS that are more than 30% above or below the current price of the underlying security provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate or individual customers or their brokers (market-makers trading for their own account shall not be considered when determining customer interest under this provision).

<sup>12</sup> These include, without limitation, options, equities, futures, derivatives, indexes, exchange traded funds, exchange traded notes, currencies, and over-the-counter instruments.

<sup>13</sup> As an example, per the CME Web site, strike prices for options on futures may be at an interval of \$.05, \$.10, and \$.25 per specified parameters. See [http://www.cmegroup.com/trading/equityindex/files/EQUITY\\_FLEX\\_Options.pdf](http://www.cmegroup.com/trading/equityindex/files/EQUITY_FLEX_Options.pdf) (options on S&P 500 and NASDAQ-100 contracts) and [http://www.cmegroup.com/rulebook/files/S\\_5734\\_x11-](http://www.cmegroup.com/rulebook/files/S_5734_x11-)

Weekly options have characteristics that are attractive for certain trading and hedging strategies. Thus, weeklies may be attractive for retail trading strategies that could benefit from the inherent accelerated time decay of weekly options, such as selling (buying) vertical or calendar spreads. And weeklies may be particularly attractive instruments for short-term institutional hedging needs (e.g., sudden price movements against large option positions during expiration week; maintenance or adjustment of complex option positions) as well as for retail hedging needs (e.g., preceding large earnings plays). In every case, trading and hedging is more effective when it can be closely tailored. The current wider STOS price intervals have negatively impacted investors and traders, particularly retail public customers, who have on several occasions requested the Exchange to list series with finer, narrower STOS intervals. The proposal would fix this.

The following is an example of how inadequately narrow STOS intervals negatively impact trading and hedging opportunities. If an investor needs to purchase an STOS call option in CSCO (03/26/12 closing price \$20.84), the current \$1 strike interval would offer less opportunity and choice for an investor seeking to keep cash expenditures low. For example, an investor wishing to buy an in-the-money call option for less than a \$2.50 investment per call purchase has only two strike prices that meet his criteria from which to choose: The 19 strike and the 20 strike. Such call options with five days until expiration might offer “ask prices” (option premiums) of \$1.75 and \$.75. However, if CSCO had \$0.50 strike prices as proposed, the same investor would have a selection of March 18.50, 19.00, 19.50, 20.00, and the 20.50 strike call options that may have options premiums from approximately \$2.25 down to approximately \$.25. This expanded range of strikes, and commensurate option premiums, offers far more choice and a considerably lower cost of entry to the investor, thereby garnering the investor more than a 66% options premium savings. Lower intervals increase effective liquidity by offering investors and traders more price points at which they may execute trading and hedging strategies.<sup>14</sup> This allows investors and

traders the ability to more effectively execute their strategies at lower cost. Clearly, more efficient pricing is advantageous to all market participants, from retail to institutional investors. The changes proposed by the Exchange should allow execution of more trading and hedging strategies on the Exchange. The Exchange notes that in conformance with Exchange Rules, the Exchange shall not list \$0.50 or \$1 strike price intervals on Related non-STOS options within two (2) days of expiration. For example, if a Related non-STOS in an options class is set to expire on Friday, September 21, the Exchange could begin to trade \$0.50 strike price intervals surrounding that Related non-STOS on Thursday, September 13, but no later than Friday September 14.

The Exchange proposes to list the expiring Related non-STOS on the Thursday or Friday prior to expiration week, so that investors can close a position in an expiring STOS and open a position at the same strike price in a Related non-STOS. The listing of the \$0.50 or \$1 strike price intervals for expiring Related non-STOS on the Thursday or Friday prior to expiration week is intended to be consistent with the “overlap” of STOS today, which facilitates investors desiring to “roll” a position from one STOS expiration to another. If the \$0.50 or \$1 interval strikes are not available until the opening on Monday of expiration week, an investor who had a position in the prior week’s \$0.50 or \$1 interval STOS could not close a position in the expiring STOS and open a position at the same strike in the Related non-STOS.

Furthermore, the inadequate price intervals for STOS, particularly at the lower price levels proposed by the Exchange, may discourage retail and other customers from executing STOS orders when they could be the most advantageous for effective execution of trading and hedging strategies on regulated and transparent exchanges. The Exchange feels that it is essential that such negative, potentially costly and time-consuming impacts on retail investors are eliminated by offering tighter intervals within the STOS Program. The changes proposed by the Exchange should allow execution of more trading and hedging strategies on the Exchange.<sup>15</sup>

<sup>15</sup> In addition, there is a competitive impact. First, the proposal would enable the Exchange to provide market participants with an opportunity to execute their strategies (e.g., complex option spreads) wholly on their preferred market, namely the Exchange. Second, the proposal would diminish the potential for foregone market opportunities on the Exchange caused by the need to use a more

The Exchange also proposes that Related non-STOS shall be opened on the Thursday or Friday prior to the expiration week that such Related non-STOS expire in the same manner as permitted in Rule 404, Interpretations and Policies .02, and in the same strike price intervals for the STOS permitted in Rule 404, Interpretations and Policies .02(e). The Exchange proposes to make this change to ensure conformity between STOS options and Related non-STOS options that are in the same options class (e.g., weekly and monthly SPY options). The Exchange believes that not having such a conforming change would be counter-productive and not beneficial for trading and hedging purposes.<sup>16</sup>

The Exchange believes that the STOS Program has provided investors with greater trading opportunities and flexibility and the ability to more closely tailor their investment and risk management strategies and decisions. Furthermore, the Exchange has had to reject trading requests because of the limitations imposed by the Program. For these reasons, the Exchange requests a modification of the strike price intervals in the Program and the opportunity to provide investors with better weekly option choices for investment, trading, and risk management purposes.

With regard to the impact of this proposal on system capacity, the Exchange has analyzed its capacity and represents that it and the Options Price Reporting Authority (“OPRA”) have the necessary systems capacity to handle any potential additional traffic associated with this current amendment to the STOS Program. The Exchange believes that its members will not have a capacity issue as a result of this proposal. The Exchange represents that it will monitor the trading volume associated with the additional options series listed as a result of this proposal and the effect (if any) of these additional series on market fragmentation and on the capacity of the Exchange’s automated systems.

## 2. Statutory Basis

MIAX believes that its proposed rule change is consistent with Section 6(b) of the Act<sup>17</sup> in general, and furthers the

advantageous (that is, interval-precise) platform than STOs currently allow.

<sup>16</sup> Moreover, the Exchange notes that STOS options are not listed and traded during the expiration week of the Related non-STOS options. During this week, the non-STOS options are materially and financially equivalent to the STOS options. The proposed change would allow traders and hedgers to have the noted benefits of the STOS Program during each week in a month.

<sup>17</sup> 15 U.S.C. 78f(b).

0518x Change in Listing Rules for Goldx Silverx Copper Options.pdf (options on metals contracts).

<sup>14</sup> Moreover, lower strike intervals provide additional price points for liquidity providers. This allows the liquidity providers to improve theoretical pricing as well as hedging capabilities, thereby enabling them to increase the size and quality of their markets.

objectives of Section 6(b)(5) of the Act<sup>18</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that providing strike prices of \$.50 and \$1 intervals in STOS eligible classes will result in a continuing benefit to investors by giving them more flexibility to closely tailor their investment decisions and hedging decisions in a greater number of securities. The Exchange also believes that providing the same strike price intervals for options classes that are in the STOS Program and for the Related non-STOS options just prior to and during expiration week will provide the investing public and other market participants with additional opportunities to hedge their investment, thus allowing these investors to better manage their risk exposure. In addition, the Exchange believes that the proposal will ensure conformity between STOS options and Related non-STOS options that are in the same options class. The Exchange believes that allowing the listing of expiring Related non-STOS on the Thursday or Friday prior to expiration week will help facilitate the ability of investors and other market participants to close a position in an expiring STOS and open a position at the same strike price in a Related non-STOS in a manner that is designed to promote just and equitable principles of trade. While the expansion of the STOS Program will generate additional quote traffic, the Exchange does not believe that this increased traffic will become unmanageable since the proposal remains limited to a fixed number of classes.

#### *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. In this regard and as indicated above, the Exchange notes that the rule change is being proposed as a competitive response to existing rules on other exchanges. The Exchange believes this proposed rule change is necessary to permit fair competition among the options

exchanges with respect to their short term options programs.

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

Written comments were neither solicited nor received.

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

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>19</sup> and Rule 19b-4(f)(6) thereunder.<sup>20</sup>

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the 30-day operative delay will allow MIAX to initiate strikes prices in more granular intervals for STOs in the same manner as other options exchanges, and permit, during the expiration week of a Related non-Short Term option, a Related non-Short Term Option on a class that is selected to participate in the Short Term Options Series Program to have the strike price interval setting parameters as STOs. In sum, the proposed rule change presents no novel issues, and waiver will allow the Exchange to remain competitive with other exchanges. Therefore, the Commission designates the proposal operative upon filing.<sup>21</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings

to determine whether the proposed rule should be approved or disapproved.

#### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MIAX-2013-30 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-MIAX-2013-30. 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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MIAX-2013-30 and should be submitted on or before July 17, 2013.

<sup>19</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>20</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>21</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>18</sup> 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

Kevin M. O'Neill,  
Deputy Secretary.

[FR Doc. 2013-15225 Filed 6-25-13; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69810; File No. SR-NYSE-2013-41]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Rule 1000 To Increase the Price Threshold for Those Securities Ineligible for Automatic Executions From \$1,000.00 or More to \$10,000.00 or More

June 20, 2013.

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 June 7, 2013, New York Stock Exchange LLC (the “Exchange” or “NYSE”) filed with the Securities and Exchange Commission (“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 NYSE Rule 1000 to increase the price threshold for those securities ineligible for automatic executions from \$1,000.00 or more to \$10,000.00 or more. The text of the proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at

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

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

##### 1. Purpose

The Exchange is proposing to amend Rule 1000(a)(vi) (“Automatic Executions”) to increase the price level at which a security would be considered “high-priced” and thus ineligible for automatic execution. Rule 1000(a)(vi) prohibits automatic executions if the closing price for a security, or if the security did not trade, the closing bid price of the security on the Exchange on the immediate previous trading day, is \$1,000 or more. The Exchange is proposing to increase this price level from \$1,000 or more to \$10,000 or more.<sup>3</sup>

The Exchange is proposing to make a conforming amendment to Rule 60(d)(iii)(B)(I), which provides that the Exchange keeps Autoquote <sup>4</sup> active, even if automatic executions are suspended under Rule 1000, if an order or a cancellation of an order arrives that would not result in a locked or crossed market in a security priced at \$1,000 or more. The Exchange proposes to increase this price level to \$10,000 or more to conform the provision to the proposed amendment to Rule 1000(a)(vi).

Securities priced at \$1,000 or more are traded manually by the assigned Designated Market Maker (“DMM”). Rule 610 of Regulation NMS under the Act prohibits national securities exchanges and national securities associations from locking or crossing protected quotations,<sup>5</sup> and Rule 611 of Regulation NMS prohibits trade-throughs only of protected quotations.<sup>6</sup> Rule 600 of Regulation NMS, however, requires a protected quotation to be automated.<sup>7</sup> The Exchange's quotations in high-priced securities, therefore, are not protected quotations for purposes of Regulation NMS. The proposed rule

change would allow the affected securities to be eligible for automatic execution and auto-quoting, which would allow the Exchange to protect its quotations and remain competitive with other market centers. For the affected securities, the proposal would align the availability of automatic executions on the Exchange with the availability of such executions on other exchanges.<sup>8</sup>

The Exchange is also proposing to make a conforming amendment to Rule 1000(a)(iv)(C), which sets out value ranges used to determine liquidity replenishment points (“LRPs”). LRPs are pre-determined price points that function to moderate volatility in a particular security, improve price continuity, and foster market quality by temporarily converting the electronic market to an auction market and permitting new trading interest to add liquidity.<sup>9</sup> Pursuant to Rule 60(d)(i), Autoquote is suspended when an LRP is reached.

LRPs are calculated by adding and subtracting an LRP value to a security's last sale price. The Exchange sets and disseminates a specific LRP value from a range of potential values. That range, in turn, is based upon a security price category (e.g., \$5 to \$9.99) and the average daily volume of the security to which the value is being added. The LRP value chosen within an LRP value range is based on an examination of trading data. Because the Exchange is increasing the highest price per share at which automatic execution is available, the Exchange is making a conforming amendment to the highest security price category used to determine LRP values from \$250 to \$1000 to \$250 to \$10,000.

##### 2. Statutory Basis

The proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Exchange believes that the proposal is consistent with (i) Section 6(b) of the Act,<sup>10</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>11</sup> in particular, in that it is designed to foster cooperation and coordination with persons engaged in facilitating transactions in securities and to remove impediments to and perfect the

<sup>3</sup> As a result of the proposed amendment, six additional securities would be eligible for automatic execution as of the date of this filing.

<sup>4</sup> Pursuant to Rule 60(d), the Exchange autoquotes the NYSE's highest bid or lowest offer to reflect interest in the Book, and when the highest bid or lowest offer has been traded with in its entirety, the Exchange will autoquote a new bid or offer reflecting the total size of orders at the next highest (in the case of a bid) or lowest (in the case of an offer) price.

<sup>5</sup> 17 CFR 240.610(d)(1)(i).

<sup>6</sup> 17 CFR 240.611(a)(1).

<sup>7</sup> 17 CFR 240.600(b)(57)(iii).

<sup>8</sup> The Exchange is not aware of any other exchange that, by rule, does not issue protected quotations for a stock on a regular basis.

<sup>9</sup> The Exchange recently amended its rules to phase out the functionality associated with LRPs to coincide with the implementation of the Limit Up—Limit Down Plan. See Securities Exchange Act Release No. 69295 (April 4, 2013), 78 FR 21457 (April 10, 2013).

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>22</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.