

potential for investor confusion as to when an opening cross occurs, how the price for the opening cross is determined, and how orders involved in the opening cross are handled. The Commission also believes that the proposed opening cross process is reasonably designed to open trading in a fair and orderly manner, which is consistent with the protection of investors and the public interest. Additionally, to extent the proposal results in additional liquidity during NOM's opening at the beginning of the trading day or following a trading halt, and a more orderly transition to regular trading, it should further promote the goals of Section 6(b)(5) of the Act.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>41</sup> that the proposed rule change (SR-NASDAQ-2014-116) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>42</sup>

**Brent J. Fields,**  
Secretary.

[FR Doc. 2015-01249 Filed 1-23-15; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-74095; File No. SR-MIAX-2015-02]

### Self-Regulatory Organizations: Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Implement an Equity Rights Program

January 20, 2015.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 6, 2015, 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 implement an equity rights program.

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 implement an equity rights program ("Program") pursuant to which units representing the right to acquire equity in the Exchange's parent holding company, Miami International Holdings, Inc. ("MIH") would be issued to a participating Member in exchange for payment of an initial purchase price or the prepayment of certain transaction fees and the achievement of certain liquidity volume thresholds on the Exchange over a 29-month period. The purpose of the Program is to promote the long-term interests of MIAX by providing incentives designed to encourage future MIH owners and MIAX market participants to contribute to the growth and success of MIAX, by being active liquidity providers and takers to provide enhanced levels of trading volume to MIAX's market, through an opportunity to increase their proprietary interests in MIAX's enterprise value.

Members that participate in the Program will have two options to choose from: (i) an offering of C-Units; and/or (ii) an offering of D-Units.<sup>3</sup>

<sup>3</sup> The Program which provides equity-like consideration in exchange for market making or the provision of liquidity, order flow or volume is open to market participants generally. All MIAX Members may participate subject to their

#### C-Units Option

Members that participate in the C-Unit option of the Program will be issued for each unit (i) 52,021 shares of MIH common stock and (ii) warrants to purchase 1,752,670 shares of common stock of MIH in exchange for such participant Member's initial cash capital contribution of \$312,125, and with such warrants being exercisable upon the achievement by the participating Member of certain volume thresholds on the Exchange during a 29-month measurement period commencing February 1, 2015. A total of 20 C-Units will be offered. The total equity ownership of MIH common stock held by any one participant Member will be subject to a cap of 19.9%.<sup>4</sup>

The warrants will vest in six (6) tranches: (i) One (1) tranche, upon initial investment; and (ii) five (5) tranches during a measurement period of months 1—29 of the Program. In addition, the participant Members may earn or lose the right to exercise warrants on a pro-rata basis based upon meeting volume commitments during the measurement periods, as detailed below.

Upon the initial investment, the participant Member would receive common shares equal to 52,021 shares of the common stock and 10% of the warrants will vest. A participant Member will be eligible to earn [sic] the remaining warrants during measurement periods provided that the participant has achieved a specified percentage of the total national average daily volume of options contracts reported to The Options Clearing Corporation ("OCC") ("OCC ADV") on

satisfaction of eligibility requirements. To be designated as a participant Member, an applicant must: (i) Be a Member in good standing of MIAX; (ii) qualify as an "accredited investor" as such term is defined in Regulation D of the Securities Act of 1933; and (iii) have executed all required documentation for Program participation. Members may elect to participate in either or both of the options. If either the C-Unit or the D-Unit option is oversubscribed, the units in the oversubscribed option will be allocated on a pro-rata basis that may result in a fractional allocation.

<sup>4</sup> See Ninth Article (b)(i)(B), Amended and Restated Certificate of Incorporation of Miami International Holdings, Inc., dated August 31, 2012 (providing that no Exchange Member, either alone or together with its Related Persons, may own, directly or indirectly, of record or beneficially, shares constituting more than twenty percent (20%) of any class of capital stock of the Corporation). Any purported transfer of shares or ownership of shares in violation of the ownership cap by a Member would be subject to the limitations of the Certificate of Incorporation, including the non-recognition of voting rights of shares in excess of the cap and a redemption right by MIH for excess shares. See Ninth Article (d) and (e), Amended and Restated Certificate of Incorporation of Miami International Holdings, Inc., dated August 31, 2012.

<sup>41</sup> 15 U.S.C. 78s(b)(2).

<sup>42</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.

MIAX of all option classes listed on MIAX.<sup>5</sup>

The remaining five (5) tranches, of 90% of the warrants, will vest during the following measurement periods: (i) 3.76% of the warrants resulting from months 1–5, with a volume commitment of 0.084% of OCC ADV on MIAX per C-Unit; (ii) 16.82% of the warrants resulting from months 6–11, with a volume commitment of 0.313% of OCC ADV on MIAX per C-Unit; (iii) 20.15% of the warrants resulting from months 12–17, with a volume commitment of 0.375% of OCC ADV on MIAX per C-Unit; (iv) 22.41% of the warrants resulting from months 18–23, with a volume commitment of 0.417% of OCC ADV on MIAX per C-Unit; and (v) 26.86% of the warrants resulting from months 24–29, with a volume commitment of 0.5% of OCC ADV on MIAX per C-Unit. If a participant Member exceeds 100% of the volume commitment during a tranche's measurement period, the Member is able to earn, on a pro-rata basis, warrants not earned by other participant Members. If a participant Member reaches 70–99% of the volume commitment during a tranche's measurement period, the Member will earn [sic] a reduced amount of warrants on a pro-rata basis applicable to such measurement period. If a participant Member fails to reach a minimum of 70% of the volume commitment during a tranche's measurement period, the Member will lose all right to that tranche of warrants. Notwithstanding, in the event a participant Member has not satisfied the volume commitment for

<sup>5</sup> If an options class is not listed on MIAX, then the trading volume in that options class will be omitted from the calculation of % OCC ADV. Priority Customer-to-Priority Customer Crossing transactions where no fees are paid to the Exchange, special strategies, and contracts as to which a Member acts solely as clearing agent will not be counted in the number of option contracts executed on the Exchange by any Member. (Incidental Priority Customer-to-Priority Customer transactions, that are not crossing transactions, will be counted in the number of options contracts executed on the Exchange by a Member.) Special strategies for the purpose of calculating trading volume include: (i) Dividend strategy; (ii) merger strategy; (iii) short stock interest strategy; (iv) reversal and conversion strategies; (v) jelly roll strategy; and (vi) similar strategies offered by an options exchange that are subject to a fee cap. Trading in special strategies currently is not available on MIAX. Special strategies will be omitted from the calculation of % OCC ADV to the extent it is possible to identify such transactions. Calculation of % OCC ADV will be discounted by 5% of ADV for complex order functionality not yet established on the Exchange until such time that functionality is available on MIAX.

<sup>6</sup> The first measurement period will begin on February 1, 2015 and end June 30, 2015. Therefore, February 1, 2015 through June 30, 2015 will count as months 1–5 for purposes of the measurement period.

any one measurement period (other than measurement period 5), the participant Member will have an opportunity to vest those warrants if such participant Member applies a portion of the Members performance from up to two measurement periods immediately following to the prior measurement period to ensure a minimum of 70% of the volume commitment in prior period and in addition has satisfied the volume commitment for the measurement periods immediately following.<sup>7</sup>

#### D-Units Option

Members that participate in the D-Unit option of the Program will be issued for each unit warrants to purchase 1,353,518 shares of common stock of MIH in exchange for the prepayment of Exchange fees in the amount of \$250,000 for the 29-month period commencing February 1, 2015, and with such warrants being exercisable upon the achievement by the participating Member of certain volume thresholds on the Exchange during a 29-month measurement period commencing February 1, 2015. A total of 20 D-Units will be offered. The total equity ownership of MIH common stock held by any one participant Member will be subject to a cap of 19.9%.

The warrants will vest in five (5) tranches during the following measurement periods: (i) 4.18% of the warrants resulting from months 1–5, with a volume commitment of 0.084% of OCC ADV on MIAX per D-Unit; (ii) 18.69% of the warrants resulting from months 6–11, with a volume commitment of 0.313% of OCC ADV on MIAX per D-Unit; (iii) 22.39% of the warrants resulting from months 12–17, with a volume commitment of 0.375% of OCC ADV on MIAX per D-Unit; (iv) 24.90% of the warrants resulting from months 18–23, with a volume commitment of 0.417% of OCC ADV on MIAX per D-Unit; and (v) 29.84% of the warrants resulting from months 24–29, with a volume commitment of 0.5% of OCC ADV on MIAX per D-Unit. If a participant Member exceeds 100% of the volume commitment during any one tranche's measurement period, the Member is able to earn, on a pro-rata

<sup>7</sup> The Exchange notes that if a participant Member has not satisfied the volume commitment for measurement period 4, the participant Member would only have one remaining measurement period immediately following to vest warrants from measurement period 4 versus up to two measurement periods for measurement periods 1–3.

<sup>8</sup> The first measurement period will begin on February 1, 2015 and end June 30, 2015. Therefore, February 1, 2015 through June 30, 2015 will count as months 1–5 for purposes of the measurement period.

basis, warrants not earned by other participant Members. If a participant Member reaches 70–99% of the volume commitment during any one tranche's measurement period, the Member will earn [sic] a reduced amount of warrants on a pro-rata basis applicable to such measurement period. If a participant Member fails to reach a minimum of 70% of the volume commitment during the measurement period, the Member will lose all right to that tranche of warrants. Notwithstanding, in the event a participant Member has not satisfied the volume commitment for any one measurement period (other than measurement period 5), the participant Member will have an opportunity to vest those warrants if such participant Member applies a portion of the Member's performance from up to two measurement periods immediately following to the prior measurement period to ensure a minimum of 70% of the volume commitment in prior period and in addition has satisfied the volume commitment for the measurement periods immediately following.<sup>9</sup>

Once a participant Member has prepaid Exchange fees for the initial 29-month period, each month the participant Member may execute contracts and accumulate transaction fees based on the prevailing MIAX Options Fee Schedule in effect at the time. Once a D-Unit participant Member has executed contract volume whereby the total accumulated transaction fees equal the prepaid amount, all subsequently executed contracts will be billed and collected at the appropriate rate as defined in the MIAX Options Fee Schedule.

#### Provisions Applicable to Both C-Units and D-Units

Each participant Member will have a standard piggyback registration right to include the common shares and the common shares issuable upon exercise of the warrants should MIH file a Registration Statement under the Securities Act of 1933. Each participant Member will also have the right to participate pro rata in all future offerings of MIH securities for so long as the participant Member holds at least 51% of the common shares purchased by the participating Member directly or issuable upon the exercise of warrants included in at least one D-Unit. MIH

<sup>9</sup> The Exchange notes that if a participant Member has not satisfied the volume commitment for measurement period 4, the participant Member would only have one remaining measurement period immediately following to vest warrants from measurement period 4 versus up to two measurement periods for measurement periods 1–3.

will have the right of first refusal to purchase any common shares or warrant shares that a participant Member decides to transfer or sell. Other participant Members will have the secondary right of first refusal to purchase any common shares or warrant shares that a participant Member decides to transfer or sell.

In addition, beginning one (1) year after the last month of the final measurement period, for a period of 90 days, the participant Member will have a right to sell the shares back to MIH at a price per share equal to a fixed percentage of fair market value<sup>10</sup> of the common stock. The right to sell the shares back will reoccur on an annual basis and last for a 90-day period. Years 1 and 2 after the final measurement period, the participant Member may sell back 10% of the common shares vested at a price equal to 50% of the fair market value. Year 3 after the final measurement period, the participant Member may sell back 30% of the common shares vested at a price equal to 60% of the fair market value. Year 4 after the final measurement period, the participant Member may sell back 60% of the common shares vested at a price equal to 70% of the fair market value. Year 5 after the final measurement period, the participant Member may sell back 90% of the common shares vested at a price equal to 80% of the fair market value. Year 6 after the final measurement period, the participant Member may sell back 100% of the common shares vested at a price equal to 90% of the fair market value.

When a participating Member acquires a certain number of units, the Member can appoint one director to the MIH Board and/or the MIAIX Board. The Exchange notes that the number of non-industry directors on the MIAIX Board, including at least one independent director, must equal or exceed the number of industry directors and Member representatives, and that additional new non-industry directors and Member representative directors will need to be added in order to maintain this status. The Exchange also notes that any directors that may be selected by a participating Member would not be counted towards the 20% Member representative requirement on the MIAIX Board. In addition, the Exchange notes that a Member is only entitled to a new seat if they are not

currently represented on the MIAIX board.

All applicants will be subject to the same eligibility and designation criteria, and all participant Members will participate in the Program on the same terms, conditions and restrictions. To be designated as a participant Member, an applicant must: (i) Be a Member in good standing of MIAIX; (ii) qualify as an "accredited investor" as such term is defined in Regulation D of the Securities Act of 1933;<sup>11</sup> and (iii) have executed all required documentation for Program participation. Participant Members must have executed the definitive documentation, satisfied the eligibility criteria required of Program participants enumerated above, and tendered the minimum cash investment or prepayment of fees by January 27, 2015, with a closing to occur on January 30, 2015.

As discussed above, the purpose of the Program is to encourage Members to direct greater trade volume to MIAIX to enhance trading volume in MIAIX's market. Increased volume will provide for greater liquidity and enhanced price discovery, which benefits all market participants. Other exchanges currently engage in the practice of incentivizing increased order flow in order to attract liquidity providers through equity sharing arrangements.<sup>12</sup> In addition, the Exchange previously adopted a substantially similar program to incentivize increased order flow in order to attract liquidity providers through an equity sharing arrangement.<sup>13</sup> The Program similarly intends to attract order flow, which will increase liquidity, thereby providing greater trading opportunities and tighter spreads for other market participants and causing a corresponding increase in order flow from these other market participants. The Program will similarly reward the liquidity providers that

<sup>11</sup> The purpose of this criterion relates to the ability of MIH to sell shares of common stock pursuant to an exemption from registration under the Securities Act of 1933. The definition of "accredited investor" under Rule 501(a)(1) of the Securities Act of 1933 includes any broker or dealer registered pursuant to Section 15 of the Act. MIAIX Rule 200(b) requires a Member to be registered as a broker or dealer pursuant to Section 15 of the Act, therefore all MIAIX Members will satisfy this criterion.

<sup>12</sup> See, e.g., Securities Exchange Act Release Nos. 62358 (June 22, 2010), 75 FR 37861 (June 30, 2010) (SR-NSX-2010-06); 64742 (June 24, 2011), 76 FR 38436 (June 30, 2011) (SR-NYSEAmex-2011-018); 69200 (March 21, 2013), 78 FR 18657 (March 27, 2013) (SR-CBOE-2013-31).

<sup>13</sup> See Securities Exchange Act Release No. 70498 (September 25, 2013), 78 FR 60348 (October 1, 2013) (SR-MIAIX-2013-43).

provide this additional volume with a potential proprietary interest in MIAIX.

The specific volume thresholds of the Program's measurement periods were set based upon business determinations and analysis of current volume levels. The volume thresholds are intended to incentivize firms to increase the number of orders that are sent to MIAIX to achieve the next threshold. Increasing the number of orders that are sent to MIAIX will in turn provide tighter and more liquid markets, and therefore attract more business as well.

MIAIX will initiate the measurement period on February 1, 2015. The Exchange will notify Members of the implementation of the Program and the dates of the enrollment period by Regulatory Circular, and will post a copy of this rule filing on its Web site. Any MIAIX Member that is interested in participating in the Program may contact MIAIX for more information and legal documentation and will be required to enter into a nondisclosure agreement regarding this additional Program information.

## 2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act<sup>14</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>15</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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) of the Act<sup>16</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>17</sup> which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

In particular, the proposed rule change is equitable and not unfairly discriminatory, because all Members may elect to participate (or elect to not

<sup>14</sup> 15 U.S.C. 78f(b).

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

<sup>16</sup> 15 U.S.C. 78f(b)(5).

<sup>17</sup> 15 U.S.C. 78f(b)(4).

<sup>10</sup> 'Fair market value' means the value of the MIH common stock as determined by a nationally-recognized firm of independent certified public accountants to be jointly selected by the MIH and the participant Member, if such common stock is not publicly traded.

participate) in the Program and earn units on the same terms and conditions, assuming they satisfy the same eligibility criteria as described above. The eligibility criteria are objective; thus, all Members have the ability to satisfy them. The Board also has authorized MIAX to offer common shares in MIH to any Member that requests designation to participate in the Program and otherwise satisfies the eligibility criteria to ensure that all Members will have the opportunity to own common shares and thus participate in the Program if they so choose. In addition, participant Members will earn [sic] warrants on a pro-rata basis upon meeting fixed volume threshold amounts during the measurement periods that will apply to all participant Members.

The Exchange believes that the methodology used to calculate the volume thresholds is fair, reasonable and not unfairly discriminatory because it is based on objective criteria that are designed to omit from the calculation functionality that is not available on the Exchange and types of transactions that are subject to little or no transaction fees. Specifically, the Exchange believes excluding Priority Customer-to-Priority Customer Crossing transactions where no fees are paid to the Exchange, special strategies, and contracts as to which a Member acts solely as clearing agent from the number of option contracts executed on the Exchange by any Member is reasonable and not unfairly discriminatory because participating Members could otherwise game the volume thresholds by executing excess volumes in these types of transactions in which either no transaction fees are charged on the Exchange, or the transaction is subject to a fee cap. The Program is designed to reward participating Members for bringing their orders and quotes to the Exchange to be executed on the Exchange. The Exchange believes it is appropriate to exclude special strategies from the OCC volume calculation since those transactions are not executed on the Exchange. The Exchange believes that omitting clearing only transactions from the calculation to be fair and reasonable because the fact that a Member is clearing a trade is coincidental to the choice of where to execute that trade. And, because clearing only transactions are not executed on the MIAX, they don't fall within the intended transactions that qualify for the Program. In addition, if the Exchange were to reward the party clearing a trade, the Exchange would possibly be double counting that trade—once for the

executing party and once for the clearing party. Furthermore, the Exchange believes that counting incidental Priority Customer-to-Priority Customer transactions, which are not crossing transactions, in the number of options contracts executed on the Exchange by a Member is fair and reasonable because in these situations the Priority Customer is not necessarily choosing to execute against another Priority Customer in order to avoid a transaction fee.

The Exchange believes the Program is equitable and reasonable because an increase in volume and liquidity would benefit all market participants by providing more trading opportunities and tighter spreads, even to those market participants that do not participate in the Program. Additionally, the Exchange believes the proposed rule change is consistent with the Act because, as described above, the Program is designed to bring greater volume and liquidity to the Exchange, which will benefit all market participants by providing tighter quoting and better prices, all of which perfects the mechanism for a free and open market and national market system.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change will improve competition by providing market participants with another option when determining where to execute orders and post liquidity.

The Exchange believes that the proposed change would increase both intermarket and intramarket competition by incenting participant Members to direct their orders to the Exchange, which will enhance the quality of quoting and increase the volume of contracts traded here. To the extent that there is an additional competitive burden on non-participant Members, the Exchange believes that this is appropriate because the Program should incent Members to direct additional order flow to the Exchange and thus provide additional liquidity that enhances the quality of its markets and increases the volume of contracts traded here. To the extent that this purpose is achieved, all of the Exchange's market participants should benefit from the improved market liquidity. Enhanced market quality and increased transaction volume that results from the anticipated increase in

order flow directed to the Exchange will benefit all market participants and improve competition on the Exchange.

Given the robust competition for volume among options markets, many of which offer the same products, implementing a program to attract order flow like the one being proposed in this filing is consistent with the above-mentioned goals of the Act. This is especially true for the smaller options markets, such as MIAX, which is competing for volume with much larger exchanges that dominate the options trading industry. As a newer exchange, MIAX has a nominal percentage of the average daily trading volume in options, so it is unlikely that the Program could cause any competitive harm to the options market or to market participants. Rather, the Program is a modest attempt by a small options market to attract order volume away from larger competitors by adopting an innovative pricing strategy, as evidenced by the volume thresholds of the Program that represent fractions of 1% of OCC ADV. The Exchange notes that if the Program resulted in a modest percentage increase in the average daily trading volume in options executing on MIAX, while such percentage would represent a large volume increase for MIAX, it would represent a minimal reduction in volume of its larger competitors in the industry. The Exchange believes that the Program will help further competition, because market participants will have yet another additional option in determining where to execute orders and post liquidity if they factor the benefits of MIAX equity participation into the determination.

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

Written comments were neither solicited nor received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>18</sup> and paragraph (f) of Rule 19b-4 thereunder.<sup>19</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

<sup>18</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>19</sup> 17 CFR 240.19b-4(f).

investors, or otherwise in furtherance of the purposes of the Act.

#### 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-2015-02 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-MIAX-2015-02. 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-2015-02 and should be submitted on or before February 17, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2015-01248 Filed 1-23-15; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-74093; File No. SR-NYSEArca-2014-126]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Listing and Trading of Shares of the AdvisorShares Pacific Asset Enhanced Floating Rate ETF Under NYSE Arca Equities Rule 8.600

January 20, 2015.

#### I. Introduction

On November 19, 2014, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade shares ("Shares") of the AdvisorShares Pacific Asset Enhanced Floating Rate ETF ("Fund") under NYSE Arca Equities Rule 8.600. On November 26, 2014, the Exchange filed Amendment No. 1 to the proposal.<sup>3</sup> The proposed rule change, as modified by Amendment No. 1 thereto, was published for comment in the **Federal Register** on December 8, 2014.<sup>4</sup> The Commission received no comments on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1.

#### II. Description of the Proposal

The Exchange proposes to list and trade Shares of the Fund under NYSE Arca Equities Rule 8.600 ("Managed Fund Shares"), which governs the

listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by AdvisorShares Trust ("Trust"), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.<sup>5</sup> AdvisorShares Investments, LLC ("Adviser") will be the investment adviser to the Fund, and Pacific Asset Management ("Sub-Adviser"), will be the sub-adviser to the Fund.<sup>6</sup> The Bank of New York Mellon ("Administrator") will serve as the administrator, custodian, transfer agent and fund accounting agent for the Fund. Foreside Fund Services, LLC will be the principal underwriter and distributor of the Fund's Shares.

The Exchange has made the following representations and statements in describing the Fund and its investment strategy, including other portfolio holdings and investment restrictions.<sup>7</sup>

<sup>5</sup> The Trust is registered under the Investment Company Act of 1940 ("1940 Act"). The Exchange states that on June 25, 2014, the Trust filed with the Commission an amendment to its registration statement on Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a) and under the 1940 Act relating to the Fund (File Nos. 333-157876 and 811-22110) ("Registration Statement"). In addition, according to the Exchange, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 29291 (May 28, 2010) (File No. 812-13677).

<sup>6</sup> The Exchange represents that the Adviser is not registered as a broker-dealer or affiliated with a broker-dealer. The Sub-Adviser is not registered as a broker-dealer but is affiliated with Pacific Select Distributors, Inc., a registered broker-dealer. The Exchange states that the Sub-Adviser represents that Pacific Select Distributors, Inc. is a limited purpose broker-dealer with a primary business purpose of serving as distributor for mutual funds and variable annuity products, and that Pacific Select Distributors, Inc. does not engage in any brokerage or trading activity. The Exchange states that in the event (a) the Adviser or the Sub-Adviser becomes a registered broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, such adviser or sub-adviser will implement a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition of or changes to the portfolio, and the adviser or sub-adviser will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio.

<sup>7</sup> The Commission notes that additional information regarding the Fund, the Trust, and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions, and taxes, among other things, can be found in the Notice and the Registration Statement, as applicable. See Notice, *supra* note 4, and Registration Statement, *supra* note 5, respectively.

<sup>20</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.

<sup>3</sup> Amendment No. 1 amended the proposed rule change in the following ways: (1) Specified that the floating rate high yield corporate bonds in which the Fund invests generally must have a \$100 million par amount outstanding at the time of investment; (2) clarified that senior loans in which the Fund may invest includes leveraged loans; and (3) specified that the U.S. exchange-traded futures contracts, U.S. exchange-traded options on futures contracts, and U.S. exchange-traded put and call options in which the Fund invests will trade on exchanges that are members of the Intermarket Surveillance Group ("ISG").

<sup>4</sup> See Securities Exchange Act Release No. 73717 (December 2, 2014), 79 FR 72730 ("Notice").