

Majority if: (i) The proposed participation of each Regulated Fund and each Affiliated Fund in such investment is proportionate to its outstanding investments in the issuer immediately preceding the Follow-On Investment; and (ii) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in Follow-On Investments on a pro rata basis (as described in greater detail in the application). In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors, and the Regulated Fund will participate in such Follow-On Investment solely to the extent that a Required Majority determines that it is in the Regulated Fund's best interests.

(c) If, with respect to any Follow-On Investment:

(i) the amount of the opportunity is not based on the Regulated Funds' and the Affiliated Funds' outstanding investments immediately preceding the Follow-On Investment; and

(ii) the aggregate amount recommended by the applicable Adviser to be invested by the applicable Regulated Fund in the Follow-On Investment, together with the amount proposed to be invested by the other participating Regulated Funds and Affiliated Funds, collectively, in the same transaction, exceeds the amount of the investment opportunity; then the investment opportunity will be allocated among them pro rata based on each participant's Available Capital, up to the maximum amount proposed to be invested by each.

(d) The acquisition of Follow-On Investments as permitted by this condition will be considered a Co-Investment Transaction for all purposes and subject to the other conditions set forth in this application.

9. The Non-Interested Directors of each Regulated Fund will be provided quarterly for review all information concerning Potential Co-Investment Transactions and Co-Investment Transactions, including investments made by other Regulated Funds or Affiliated Funds that the Regulated Fund considered but declined to participate in, so that the Non-Interested Directors may determine whether all investments made during the preceding quarter, including those investments that the Regulated Fund considered but declined to participate in, comply with the conditions of the Order. In addition, the Non-Interested Directors will consider at least annually the continued appropriateness for the Regulated Fund

of participating in new and existing Co-Investment Transactions.

10. Each Regulated Fund will maintain the records required by Section 57(f)(3) of the Act as if each of the Regulated Funds were a BDC and each of the investments permitted under these conditions were approved by the Required Majority under Section 57(f) of the Act.

11. No Non-Interested Director of a Regulated Fund will also be a director, general partner, managing member or principal, or otherwise an "affiliated person" (as defined in the Act) of an Affiliated Fund.

12. The expenses, if any, associated with acquiring, holding or disposing of any securities acquired in a Co-Investment Transaction (including, without limitation, the expenses of the distribution of any such securities registered for sale under the Securities Act) will, to the extent not payable by the Advisers under their respective investment advisory agreements with Affiliated Funds and the Regulated Funds, be shared by the Regulated Funds and the Affiliated Funds in proportion to the relative amounts of the securities held or to be acquired or disposed of, as the case may be.

13. Any transaction fee¹⁵ (including break-up or commitment fees but excluding broker's fees contemplated by Section 17(e) or 57(k) of the Act, as applicable), received in connection with a Co-Investment Transaction will be distributed to the participating Regulated Funds and Affiliated Funds on a pro rata basis based on the amounts they invested or committed, as the case may be, in such Co-Investment Transaction. If any transaction fee is to be held by an Adviser pending consummation of the transaction, the fee will be deposited into an account maintained by such Adviser at a bank or banks having the qualifications prescribed in Section 26(a)(1) of the Act, and the account will earn a competitive rate of interest that will also be divided pro rata among the participating Regulated Funds and Affiliated Funds based on the amounts they invest in such Co-Investment Transaction. None of the Affiliated Funds, the Advisers, the other Regulated Funds or any affiliated person of the Regulated Funds or Affiliated Funds will receive additional compensation or remuneration of any kind as a result of or in connection with a Co-Investment Transaction (other than (a) in the case

¹⁵ Applicants are not requesting, and the staff is not providing, any relief for transaction fees received in connection with any Co-Investment Transaction.

of the Regulated Funds and the Affiliated Funds, the pro rata transaction fees described above and fees or other compensation described in condition 2(c)(iii)(C); and (b) in the case of an Adviser, investment advisory fees paid in accordance with the agreement between the Adviser and the Regulated Fund or Affiliated Fund.

14. If the Holders own in the aggregate more than 25 percent of the Shares of a Regulated Fund (other than Fidus SBIC), then the Holders will vote such Shares as directed by an independent third party when voting on (1) the election of directors;

(2) the removal of one or more directors; or (3) any other matter under either the Act or applicable State law affecting the Board's composition, size or manner of election.

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

Robert W. Errett,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79500; File No. SR-MIAX-2016-46]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing of a Proposed Rule Change To Amend Rule 515A, MIAX Price Improvement Mechanism ("PRIME") and PRIME Solicitation Mechanism

December 7, 2016.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 25, 2016, Miami International Securities Exchange LLC ("MIAX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Exchange Rule 515A, MIAX Price

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Improvement Mechanism (“PRIME”) and PRIME Solicitation Mechanism.

The text of the proposed rule change is available on the Exchange’s Web site at 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 new Rule 515A(a)(1)(iii) to state that, with respect to Agency Orders (as defined below) that have a size of less than 50 contracts, if at the time of receipt of the Agency Order, the National Best Bid and Offer (“NBBO”) has a bid/ask differential of \$0.01, the System³ will reject the Agency Order. The Exchange also proposes to make permanent a pilot program that allows orders of less than 50 contracts or 500 mini-option contracts to initiate a PRIME Auction (the “Pilot”), as described below.

Background

PRIME is a process by which a Member may electronically submit for execution an order it represents as agent (“Agency Order”) against principal interest and/or an Agency Order against solicited interest. The Member that submits the Agency Order (the “Initiating Member”) agrees to guarantee the execution of the Agency Order by submitting a contra-side order representing principal interest or solicited interest (“Contra-side Order”). When the Exchange receives a properly designated Agency Order for Auction processing, a Request for Responses (“RFR”) detailing the option, side, size, and initiating price will be sent to all subscribers of the Exchange’s data feeds.

³ The term “System” means the automated trading system used by the Exchange for the trading of securities. See Exchange Rule 100.

Members may submit responses to the RFR (specifying prices and sizes). RFR responses can be either an Auction or Cancel (“AOC”) order or an AOC eQuote.⁴

Originally, for Agency Orders for less than 50 standard option contracts or 500 mini-option contracts, the Initiating Member was required to stop the entire Agency Order as principal or with a solicited order at the better of the NBBO price improved by a \$0.01 increment or the Agency Order’s limit price (if the order is a limit order). In addition, to initiate the PRIME Auction for auto-match submissions, the Initiating Member was required to stop the Agency Order for less than 50 standard option contracts or 500 mini-option contracts at the better of the NBBO price improved by a \$0.01 increment or the Agency Order’s limit price.

In November 2014, MIAX filed to establish a pilot program to allow orders of less than 50 contracts or 500 mini-option contracts to initiate a PRIME Auction (the “Pilot”).⁵ The Pilot allows Agency Orders of any size to initiate a PRIME Auction on MIAX at a price that is at or better than the NBBO. The Exchange has extended the Pilot several times, and the Pilot is currently set to expire January 18, 2017.⁶ The Exchange is proposing to make the Pilot permanent, with one modification, as described below.

Proposal

The Exchange is proposing to adopt new Rule 515A(a)(1)(iii) upon the expiration of the current Pilot to establish on a permanent basis that, with respect to Agency Orders that have a size of less than 50 contracts, if at the time of receipt of the Agency Order, the NBBO has a bid/ask differential of \$0.01,⁷ the System will reject the Agency Order. Agency Orders with a size of under 50 contracts will be accepted and processed by the System when the NBBO bid/ask differential is greater than \$0.01, and all Agency Orders with a size of 50 contracts or greater will be accepted and processed

⁴ See Exchange Rule 515A(a)(2)(i)(D).

⁵ See Securities Exchange Act Release No. 73590 (November 13, 2014), 79 FR 68919 (November 19, 2014) (SR-MIAX-2014-56).

⁶ See Securities Exchange Act Release No. 78265 (July 8, 2016), 81 FR 45578 (July 14, 2016) (SR-MIAX-2016-19).

⁷ Currently, if the market is locked or crossed as defined in Exchange Rule 1402 for the option, the Agency Order will be rejected by the System prior to initiating an Auction or a Solicitation Auction. See Exchange Rule 515A, Interpretations and Policies .09. The Exchange will continue to reject Agency Orders, regardless of their size, in this situation.

by the System, regardless of the NBBO bid/ask differential.

Additionally, the Exchange is proposing to delete Interpretations and Policies .08 to Rule 515A. Interpretations and Policies .08 relates to the Pilot, and it states that the minimum size requirement for PRIME Auctions to start at the NBBO is subject to a Pilot Program ending January 18, 2017. Accordingly, the Exchange will continue after that date to accept and process Agency Orders of any size at the NBBO, except when the Agency Order is for a size of less than 50 contracts and the NBBO has a bid/ask differential of \$0.01, in which case the System will reject the Agency Order. It also states that the Exchange will submit certain data to the Commission during the Pilot. Because the Pilot is being made permanent (and there is no “Pilot”), the Exchange will no longer submit the referenced data.

The purpose of providing the referenced data was to provide supporting evidence that, among other things, there is meaningful competition for all size orders within the PRIME, that there is significant price improvement for all orders executed through the PRIME, and that there is an active and liquid market functioning on the Exchange outside of the PRIME.

The Exchange has analyzed this data and believes that there has been meaningful competition for all size orders within the PRIME Auction process, regardless of the size of the order or the bid/ask differential of the NBBO. Specifically from July, 2015 through January, 2016, there were a total of 961,152 PRIME Auctions on MIAX, which included more than 2,691,000 participants, for an average of 2.8 participants per PRIME Auction.⁸ Market Makers and other participants have submitted competitive bids and offers during the Response Time Interval and have shown interest in participating in trades stemming from PRIME Auctions, and the Exchange believes that the current allocation algorithm⁹ at multiple execution prices or at a single price supports competitive bidding and offering.

The Exchange also believes that the data show that there is an active and liquid market functioning on the Exchange outside of the PRIME.¹⁰

⁸ See Exhibit 3 attached hereto.

⁹ After Priority Customer interest at a given price point has been satisfied, remaining contracts are allocated in accordance with the priority rules set forth in Rule 515A(a)(2)(iii).

¹⁰ From July, 2015 through January, 2016, the Exchange executed 7,449,818 transactions for a total of 92,706,999 contracts outside of the PRIME. The

Competitive bidding and offering occurs outside of the PRIME and participants can submit bids/offers at improved prices or join a bid or offer (thus improving liquidity at that price) regardless of the bid/ask differential of the NBBO.

While the Exchange continues to believe that opportunities remain for price improvement of Agency Orders with a size of less than 50 contracts when the NBBO has a bid/ask differential of \$0.01 (e.g., because market conditions may change during

the PRIME Auction),¹¹ the data have not demonstrated significant price improvement in this narrow circumstance, as indicated in the following table:

PRIME TRADES FOR ORDERS OF LESS THAN 50 CONTRACTS WITH NBBO SPREAD OF \$0.01

[5/1-10/25/2016]

Total Number of Trades	2,383,204	Total Number of Contracts	11,950,538
Trades Receiving Price Improvement	17,179	Contracts Receiving Price Improvement	154,338
Percent of Trades Receiving Improvement	0.72%	Percent of Contracts Receiving Improvement	1.29%

The Exchange does believe, however, that based on the data there is significant price improvement, and significant opportunity for price improvement, for all Agency Orders submitted when the NBBO bid/ask differential is greater than \$0.01. The data attached reflect an average price improvement of \$0.045 per contract for all contracts executed in PRIME Auctions, regardless of the size of the Agency Order (i.e., less than 50 contracts or greater than 50 contracts).¹² The maximum price improvement for any order can only be \$0.01 per contract when the NBBO bid/ask differential is \$0.01; the overall average price improvement, which is elevated to \$0.045 per contract when considering all NBBO bid/ask differentials (i.e., including where the NBBO bid/ask differential is \$0.02 or higher) reflects significant price improvement and opportunity for price improvement when the NBBO bid/ask differential is greater than \$0.01 for orders of all sizes.

Moreover, the Exchange believes that, with respect to Agency Orders with a size of 50 contracts or greater, a PRIME Auction provides not only the opportunity for price improvement, but also a legitimate value proposition in certainty of execution. Continuing to allow PRIME Auctions to be initiated by Agency Orders with a size of 50 contracts or greater increases the opportunity for executions of larger size orders.¹³ For example, although the NBBO may have an associated size of 50 contracts, those 50 contracts at the best price may be fragmented across several exchanges (e.g., five exchanges disseminating the NBBO price for 10 contracts each). There is no guarantee that a participant wishing to buy or sell

50 contracts can access all of the posted liquidity in a fragmented marketplace in which (in this example) often only 10 contracts are executed on a particular exchange at the NBBO price, and thereafter the other 40 contracts are adjusted to inferior prices on the other exchanges before executing. The Exchange believes that maintaining the PRIME Auction for Agency Orders with a size of 50 contracts or greater when the bid/ask differential at the NBBO is \$0.01 enables consolidated size discovery and provides certainty of larger sized executions. The Exchange believes that this represents an efficient way for market participants to access liquidity for larger sized orders. Therefore, the Exchange believes that it is appropriate to continue to support the acceptance of Agency Orders with a size of 50 contracts or greater, regardless of the bid/ask differential of the NBBO, even at \$0.01, both now and in the future.

Based on its review of the data, the Exchange believes that there is meaningful competition for all size orders within the PRIME, that there is significant price improvement for all orders executed through the PRIME (except for Agency Orders with a size of less than 50 contracts that are entered into the PRIME Auction when the NBBO has a bid/ask differential of \$0.01), and that there is an active and liquid market functioning on the Exchange outside of the PRIME. Accordingly, the Exchange proposes to adopt Rule 515A(a)(1)(iii) upon the expiration of the Pilot to establish on a permanent basis that, with respect to Agency Orders that have a size of less than 50 contracts, if at the time of receipt of the Agency Order, the NBBO

has a bid/ask differential of \$0.01, the System will reject the Agency Order.

2. Statutory Basis

MIAX believes that its proposed rule change is consistent with Section 6(b) of the Act¹⁴ in general, and furthers the objectives of Section 6(b)(5) of the Act¹⁵ 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 the proposed rule change fosters cooperation and coordination with persons engaged in facilitating transactions in securities because, based on its communication with the Commission, the Exchange believes that all U.S. options exchanges will file similar proposals to address the handling of Agency Orders received with a size of under 50 contracts when the NBBO has a bid/ask differential of \$0.01.

The proposed rule change removes 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 by way of meaningful competition for all size orders within the PRIME Auction process, regardless of the size of the order or the bid/ask differential of the NBBO. Further, with respect to Agency Orders with a size of 50 contracts or greater, the PRIME Auction process perfects the

Exchange believes that this represents an active and liquid market functioning on the Exchange outside of the PRIME.

¹¹ For example, assume the NBBO is \$1.00 bid, \$1.01 offer and an Agency Order is submitted into MIAX PRIME to buy 20 contracts at \$1.01. The Exchange believes that there is still a chance,

however slight, that during the Response Time Interval the offer price could change to \$1.00, and the Agency Order, while guaranteed an execution at \$1.01, could buy 20 contracts at \$1.00.

¹² See Exhibit 3 attached hereto.

¹³ According to the Options Clearing Corporation ("OCC"), for the year-to-date through September

2016 there were 130, 573,030 transactions for a total of 1,473,152,154 contracts traded, for an average execution size of 11.3 contracts.

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(5).

mechanisms of a free and open market and a national market system by providing meaningful price improvement for orders executed through PRIME, regardless of the NBBO bid/ask differential. Additionally, the proposal protects investors and the public interest by showing that there is an active and liquid market functioning on the Exchange outside of the PRIME.

Furthermore, the proposed rule change removes impediments to and perfects the mechanisms of a free and open market and a national market system by establishing the new manner in which the Exchange will handle Agency Orders received with a size of under 50 contracts when the NBBO has a bid/ask differential of \$0.01.

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 PRIME Auction enables the Exchange to compete for order flow with other exchanges that have similar price improvement mechanisms in place. As stated above, the Exchange believes that there is meaningful competition in PRIME Auctions for all size orders, there are opportunities for significant price improvement for orders executed through PRIME, and that there is an active and liquid market functioning on the Exchange outside of PRIME.

The Exchange believes that approving the Pilot on a permanent basis will not significantly impact competition, as it will continue to accept and process Agency Orders for potential price improvement except in the very limited circumstance where the Agency Order is for a size of less than 50 contracts and the NBBO bid/ask differential is \$0.01.

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

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

approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-MIAX-2016-46 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-MIAX-2016-46. 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-2016-46 and should be submitted on or before January 3, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2016-29805 Filed 12-12-16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79495; File No. SR-NYSEARCA-2016-157]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Period for the Exchange's Retail Liquidity Program

December 7, 2016.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on November 28, 2016, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to 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, on behalf of its wholly-owned corporation, NYSE Arca Equities, Inc., proposes to extend the pilot period for the Exchange's Retail Liquidity Program (the "Retail Liquidity Program" or the "Program"), which is currently scheduled to expire on December 31, 2016, until June 30, 2017. The proposed rule change is available on the Exchange's Web site at 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

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

¹⁶ 17 CFR 200.30-3(a)(12).