

general, to protect customers, issuers, brokers and dealers.

As part of its proposal, the Exchange provided summary data on Exhibit 3 of its filing for the period January through June 2016, which the Exchange and Commission both publicly posted on their respective Web sites. Among other things, this data is useful in assessing the level of price improvement in the Auction, in particular for orders for fewer than 50 contracts; the degree of competition for order flow in such Auctions; and a comparison of liquidity in the Auctions with liquidity on the Exchange generally.<sup>34</sup> Based on the data provided by the Exchange, the Commission believes that the Exchange's price improvement auction generally delivers a meaningful opportunity for price improvement to orders, including orders for fewer than 50 contracts, when the spread in the option is \$0.02 or more. At the same time, as the Exchange has recognized, the data do not demonstrate that such orders have realized significant price improvement when the NBBO has a bid/ask differential of \$0.01.<sup>35</sup> Recognizing this, the Exchange has proposed to amend the Auction eligibility requirements to require the Initiating Participant to guarantee at least \$0.01 of price improvement for Agency Orders of fewer than 50 contracts where the NBBO has a bid/ask differential of \$0.01, whether or not the Exchange BBO is the same as the NBBO.

The Exchange's proposal to modify the Auction eligibility requirements for orders of fewer than 50 contracts and seek permanent approval of the Pilot, as amended with the new provision, will, in the Commission's view, promote opportunities for price improvement for such orders when the NBBO is \$0.01 wide, while continuing to provide opportunities for price improvement when spreads are wider than \$0.01.

In addition, the Commission has carefully evaluated the Pilot data and has determined that it would be beneficial to customers and to the options market as a whole to approve on a permanent basis the provisions concerning early conclusion of the PIM. The Commission notes that there have been few instances of early termination of the PIM.

The Commission believes that, particularly for Auctions for fewer than 50 contracts when the bid/ask differential is wider than \$0.01, the data provided by the Exchange support its proposal to make the Pilot permanent. The data demonstrate that the Auction

generally provides price improvement opportunities to orders, including orders of retail customers and particularly when the bid/ask differential is wider than \$0.01; that there is meaningful competition for orders on the Exchange; and that there exists an active and liquid market functioning on the Exchange outside of the Auction.<sup>36</sup> The Commission further believes that the proposed revisions to the eligibility requirements for orders of fewer than 50 contracts with respect to circumstances when the NBBO is no more than \$0.01 wide should help to enhance the operation of the Auction by providing meaningful opportunities for price improvement in such circumstances, and should benefit investors and others in a manner that is consistent with the Act.

The Commission further notes that, as discussed more fully above, ISE is initially proposing to implement is price improvement requirement for Agency Orders of fewer than 50 option contracts where the difference in the NBBO is \$0.01 with a member conduct standard.<sup>37</sup> As described in greater detail above, ISE proposes to enforce this requirement under proposed ISE Rule 1614(d)(4). The Commission believes that ISE's proposed member conduct standard and its Rule 1614(d)(4) are reasonable means to implement the price improvement requirement until implementation of its proposed systems-based mechanism for this requirement, which will become effective following the migration of a symbol to INET, the platform operated by Nasdaq, Inc. that will also operate the PIM. The Commission further notes that the Exchange has represented that its proposed member conduct standard will be effective until the migration of all symbols to the INET platform, which shall be no later than July 15, 2017.<sup>38</sup>

Thus, the Commission has determined to approve the Exchange's proposed revisions to ISE Rule 723(b), Supplementary Material .03 and .05 to ISE Rule 723, and ISE Rule 1614(d), and to approve the Pilot, as proposed to be modified, on a permanent basis.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>39</sup> that the

<sup>36</sup> See Exhibit 3 to SR-ISE-2016-29.

<sup>37</sup> The Exchange stated that it will conduct electronic surveillance of the PIM to ensure that members comply with the proposed price improvement requirements for option orders of fewer than 50 contracts. See Notice, *supra* note 3, at 91223.

<sup>38</sup> See Notice, *supra* note 3, at 91223 & n.7.

<sup>39</sup> 15 U.S.C. 78s(b)(2).

proposed rule change (SR-ISE-2016-29), be and hereby is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>40</sup>

**Eduardo A. Aleman,**  
*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79837; File No. SR-MIAX-2016-46]

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

January 18, 2017.

#### I. Introduction

On November 25, 2016, Miami International Securities Exchange LLC ("MIAX" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to amend the eligibility requirements for the MIAX Price Improvement Mechanism ("PRIME" or "Auction") and make permanent a pilot program for PRIME. The proposed rule change was published for comment in the **Federal Register** on December 13, 2016.<sup>3</sup> The Commission received no comments regarding the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

PRIME is a process by which a MIAX 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.<sup>4</sup> The Member that submits the Agency Order (the "Initiating Member") must guarantee the execution of the Agency Order by submitting a contra-side order representing principal interest or solicited interest ("Contra-side Order").

<sup>40</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> See Securities Exchange Act Release No. 79500 (December 7, 2016), 81 FR 90030 ("Notice").

<sup>4</sup> See MIAX Rule 515A(a). PRIME was introduced in 2014. See Securities Exchange Act Release No. 72009 (April 23, 2014), 79 FR 24032 (April 29, 2014) ("PRIME Approval Order").

<sup>34</sup> See Exhibit 3 to SR-ISE-2016-29.

<sup>35</sup> See Notice, *supra* note 3 at 91976.

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. 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.<sup>5</sup>

In November 2014, MIAX established a pilot program (the “Pilot”) to permit orders of any size to initiate a PRIME Auction at a price that is at or better than the national best bid or offer (“NBBO”).<sup>6</sup> Pursuant to Interpretations and Policies .08 to MIAX Rule 515A, the Exchange committed to provide data to the Commission to demonstrate that, among other things, there is meaningful competition for all size orders within PRIME, that there is significant price improvement for all orders executed through PRIME, and that there is an active and liquid market functioning on the Exchange outside of PRIME. The

Pilot is currently set to expire on January 18, 2017.<sup>7</sup>

The Exchange proposes to make the Pilot permanent. The Exchange further proposes to adopt new Rule 515A(a)(1)(iii) to state that if, at the time of receipt of an Agency Order of fewer than 50 contracts, the NBBO has a bid/ask differential of \$0.01, the System<sup>8</sup> will reject the Agency Order.

In support of its proposal, the Exchange has provided the Commission with data for PRIME executions from January 2015 through January 2016.<sup>9</sup> The Exchange 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.<sup>10</sup> 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.<sup>11</sup>

The Exchange also believes that the data show that there is an active and

liquid market functioning on the Exchange outside of the PRIME.<sup>12</sup> 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.<sup>13</sup> According to the Exchange, 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.<sup>14</sup>

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), the data have not demonstrated significant price improvement in this narrow circumstance, as indicated in the following table:<sup>15</sup>

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%

In addition to seeking permanent approval of the Pilot, the Exchange proposes to adopt new Rule 515A(a)(1)(iii) to require that if, at the time of receipt of an Agency Order of fewer than 50 contracts, the NBBO has a bid/ask differential of \$0.01,<sup>16</sup> 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 by the System, regardless of the NBBO bid/ask differential.

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.<sup>17</sup> In particular, the Exchange believes that 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.<sup>18</sup> 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.<sup>19</sup> The Exchange believes that this represents an efficient way for market participants to access liquidity for larger sized orders.<sup>20</sup>

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with Section 6(b) of the Act.<sup>21</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>22</sup> which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and

Agency Orders, regardless of their size, in this situation.

<sup>17</sup> See Notice, *supra* note 3, at 90032.

<sup>18</sup> See *id.*

<sup>19</sup> See *id.*

<sup>20</sup> See *id.*

<sup>21</sup> 15 U.S.C. 78f(b). In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>22</sup> 15 U.S.C. 78f(b)(5).

<sup>5</sup> See MIAX Rule 515A(a)(2)(i)(D).

<sup>6</sup> See Securities Exchange Act Release No. 73590 (November 13, 2014), 79 FR 68919 (November 19, 2014) (SR-MIAX-2014-56).

<sup>7</sup> See Securities Exchange Act Release No. 78265 (July 8, 2016), 81 FR 45578 (July 14, 2016) (SR-MIAX-2016-19).

<sup>8</sup> The term “System” means the automated trading system used by the Exchange for the trading of securities. See MIAX Rule 100.

<sup>9</sup> See Exhibit 3 to SR-MIAX-2016-46.

<sup>10</sup> See Notice, *supra* note 3, at 90031.

<sup>11</sup> See *id.*

<sup>12</sup> See *id.* at 90031–32.

<sup>13</sup> See *id.*

<sup>14</sup> See *id.* at 90032.

<sup>15</sup> See *id.*

<sup>16</sup> 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

facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect customers, issuers, brokers and dealers.

As part of its proposal, the Exchange provided summary data on Exhibit 3 of its filing for the period January through June 2015, which the Exchange and Commission both publicly posted on their respective Web sites. Among other things, this data is useful in assessing the level of price improvement in the Auction, in particular for orders for fewer than 50 contracts; the degree of competition for order flow in such Auctions; and a comparison of liquidity in the Auctions with liquidity on the Exchange generally.<sup>23</sup> Based on the data provided by the Exchange, the Commission believes that the Exchange's price improvement auction generally delivers a meaningful opportunity for price improvement to orders, including orders for fewer than 50 contracts, when the spread in the option is \$0.02 or more. At the same time, as the Exchange has recognized, the data do not demonstrate that such orders have realized significant price improvement when the NBBO has a bid/ask differential of \$0.01.<sup>24</sup> Recognizing this, the Exchange has proposed to amend the Auction eligibility requirements to reject an Agency Order of less than 50 contracts where the NBBO has a bid/ask differential of \$0.01. The Exchange's proposal to modify the Auction eligibility requirements for orders of fewer than 50 contracts and seek permanent approval of the Pilot, as amended with the new provision, will, in the Commission's view, promote opportunities for price improvement.

The Commission believes that, particularly for Auctions for fewer than 50 contracts when the bid/ask differential is wider than \$0.01, the data provided by the Exchange support its proposal to make the Pilot permanent. The data demonstrate that the Auction generally provides price improvement opportunities to orders, including orders of retail customers and particularly when the bid/ask differential is wider than \$0.01, that there is meaningful competition for orders on the Exchange; and that there exists an active and liquid market functioning on the Exchange outside of the Auction.<sup>25</sup> The Commission further believes that the proposed revisions to the eligibility requirements for Agency

Orders of fewer than 50 contracts with respect to circumstances when the NBBO is \$0.01 wide should help to enhance the operation of the Auction by limiting its use for smaller orders to circumstances when there are more meaningful opportunities for price improvement, and should benefit investors and others in a manner that is consistent with the Act. Thus, the Commission has determined to approve the Exchange's proposed revisions to Rule 515A and to approve the Pilot, as proposed to be modified, on a permanent basis.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>26</sup> that the proposed rule change (SR-MIAX-2016-46), be and hereby is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>27</sup>

**Eduardo A. Aleman,**  
Assistant Secretary.

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79840; File No. SR-ISEGemini-2016-23]

#### Self-Regulatory Organizations; ISE Gemini, LLC; Order Granting Approval of Proposed Rule Change To Amend ISE Gemini Rule 723 and To Make Pilot Program Permanent

January 18, 2017.

#### I. Introduction

On December 12, 2016, ISE Gemini, LLC (the "Exchange" or "ISE Gemini") 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 amend the eligibility requirements for its Price Improvement Mechanism ("PIM" or "Auction") and make permanent those aspects of the PIM that are currently operating on a pilot basis. The proposed rule change was published for comment in the **Federal Register** on December 19, 2016.<sup>3</sup> The Commission received no comments regarding the proposal. This

<sup>26</sup> 15 U.S.C. 78s(b)(2).

<sup>27</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> See Securities Exchange Act Release No. 79541 (December 13, 2016), 81 FR 91974 ("Notice").

order approves the proposed rule change.

#### II. Description of the Proposal

The Exchange adopted PIM as part of its application to be registered as a national securities exchange under its previous name of Topaz Exchange, LLC ("Topaz").<sup>4</sup> Pursuant to ISE Gemini Rule 723, an Electronic Access Member ("EAM") may electronically submit for execution an order it represents as agent ("Agency Order") against principal interest or against a solicited order for the full size of the Agency Order, provided it submits the Agency Order for electronic execution into the PIM (a "Crossing Transaction"). Parts of the PIM are currently operating on a pilot basis ("Pilot"),<sup>5</sup> which is set to expire on January 18, 2017.<sup>6</sup> The Exchange proposes to make the Pilot permanent, and also proposes to amend the Auction eligibility requirements for certain Agency Orders of less than 50 option contracts.

##### A. PIM Eligibility Requirements for Agency Orders of Fewer than 50 Contracts

Currently, the PIM may be initiated if certain conditions are met. The Crossing Transaction must be entered only at a price that is equal to or better than the National Best Bid/Offer ("NBBO") on the opposite side of the market from the Agency Order, and better than the limit order or quote on the ISE Gemini order book on the same side of the Agency Order.<sup>7</sup>

ISE Gemini proposes to amend ISE Gemini Rule 723(b) to require EAMs to provide at least \$0.01 price improvement for an Agency Order if that order is for less than 50 option contracts and if the difference between the NBBO is \$0.01. For the period beginning January 19, 2017 until a date specified by the Exchange in a Regulatory Information Circular, which date shall be no later than April 15, 2017, ISE Gemini will adopt a member conduct standard to implement this

<sup>4</sup> See Securities Exchange Act Release No. 70050 (July 26, 2013), 78 FR 46622 (August 1, 2013) (File No. 10-209) ("Exchange Approval Order"). The Exchange's PIM was largely based on a similar functionality offered by the International Securities Exchange, LLC ("ISE"). See *id.* The Exchange subsequently changed its name to ISE Gemini. See Securities Exchange Act Release No. 71586 (February 20, 2014), 79 FR 10861 (February 26, 2014) (SR-Topaz-2014-06).

<sup>5</sup> Two components of PIM were approved by the Commission on a pilot basis: (1) the early conclusion of the PIM; and (2) no minimum size requirement of orders.

<sup>6</sup> See Securities Exchange Act Release No. 78343 (July 15, 2016), 81 FR 47483 (July 21, 2016) (SR-ISEGemini-2016-07) ("PIM July 2016 Extension").

<sup>7</sup> See ISE Gemini Rule 723(b)(1).

<sup>23</sup> See Exhibit 3 to SR-MIAX-2016-46.

<sup>24</sup> See Notice, *supra* note 3, at 90032.

<sup>25</sup> See Exhibit 3 to SR-MIAX-2016-46.