

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-93210; File No. SR-MIAX-2021-40]

### Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by Miami International Securities Exchange, LLC To Amend Exchange Rule 402, Criteria for Underlying Securities, Rule 403, Withdrawal of Approval of Underlying Securities, Rule 404, Series of Option Contracts Open for Trading, Rule 404A, Select Provisions of Options Listing Procedures Plan, Rule 503, Openings on the Exchange, Rule 515A, MIAx Price Improvement Mechanism (“PRIME”) and PRIME Solicitation Mechanism, and Rule 518, Complex Orders

September 30, 2021.

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 September 24, 2021, Miami International Securities Exchange, LLC (“MIAX” or the “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 make a number of minor, non-substantive edits to Exchange Rules 402, Criteria for Underlying Securities, 403, Withdrawal of Approval of Underlying Securities, 404, Series of Option Contracts Open for Trading, 404A, Select Provisions of Options Listing Procedures Plan, 503, Openings on the Exchange, 515A, MIAx Price Improvement Mechanism (“PRIME”) and PRIME Solicitation Mechanism, and 518, Complex Orders.

The text of the proposed rule change is available on the Exchange’s website at <http://www.miaxoptions.com/rule-filings/>, at MIAX’s principal office, and at the Commission’s Public Reference Room.

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

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

#### 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 amend Exchange Rules 402, 403, 404, 404A, 503, 515A, and 518 to make minor non-substantive edits and clarifying changes to provide consistency and clarity within the rule text.

First, the Exchange proposes to delete the period at the end of subparagraph (a)(1) of Exchange Rule 402 and add “; and” for purposes of clarity in the rule text that both conditions listed in Exchange Rule 402(a)(1)–(2) must be met.

Next, the Exchange proposes to amend subparagraph (b) of Exchange Rule 402 to correctly spell the word “foregoing” in the last sentence.

Next, the Exchange proposes to delete the period at the end of subparagraph (b)(6)(i) of Exchange Rule 402 and add “; and” for the sentence to be grammatically correct and for purposes of clarity in the rule text that both conditions listed in Exchange Rule 402(b)(6)(i)–(ii) must be met.

Next, the Exchange proposes to delete the period at the end of subparagraph (c)(2)(i)(A) of Exchange Rule 402 and add “; and” for the sentence to be grammatically correct and for purposes of clarity in the rule text.

Next, the Exchange proposes to delete the comma at the end of subparagraph (g)(1) of Exchange Rule 402 and add a semicolon for purposes of clarity in the rule text.

Next, the Exchange proposes to amend subparagraph (i) of Exchange Rule 402 to remove the word “or” after subparagraphs (i)(1), (2) and (3). The purpose of these proposed changes is to provide consistency and clarity throughout the rule text.

Next, the Exchange proposes to delete the semicolon at the end of subparagraph (k)(1)(vi) of Exchange

Rule 402 and add a period for the sentence to be grammatically correct and for purposes of clarity in the rule text.

Next, the Exchange proposes to amend Exchange Rule 403, Interpretation and Policy .02, to add a colon before the list in the second sentence, which uses semicolons for the sentence to be grammatically correct.

Next, the Exchange proposes to amend Exchange Rule 404, Interpretation and Policy .02(a), to remove the word “Pilot” when referring to the Short Term Option Series Program. The purpose of this proposed change is to provide consistency and clarity throughout the rule text as the Short Term Options Series Program is not a pilot program.<sup>3</sup>

Next, the Exchange proposes to amend Exchange Rule 404, Interpretation and Policy .02(c), to add the word “thirty” before the number in parentheses in the first sentence for purposes of consistency and clarity in the rule text.

Next, the Exchange proposes to amend Exchange Rule 404, Interpretation and Policy .02(e), to capitalize the word “rule” in the last sentence of this subparagraph for purposes of consistency and clarity in the rule text.

Next, the Exchange proposes to amend Exchange Rule 404, Interpretation and Policy .02(f), to add the number “(21)” after the word “twenty-one” for purposes of consistency and clarity in the rule text.

Next, the Exchange proposes to amend Exchange Rule 404, Interpretation and Policy .10, to update the name of one of the Exchange-Traded Funds (“ETF”) from “PowerShares Trust (“QQQ”)” to its updated name “Invesco QQQ Trust (“QQQ”).”<sup>4</sup> According to the most recent Prospectus for the QQQ ETF, the ETF Sponsor changed that ETF’s name. Accordingly, the Exchange proposes to update the name of the QQQ ETF for consistency with the QQQ ETF’s Prospectus.

Next, the Exchange proposes to amend Exchange Rule 404, Interpretations and Policies .11, to add the number “(21)” after the word “twenty-one” for purposes of consistency and clarity in the rule text.

Next, the Exchange proposes to amend subparagraph (b) of Exchange Rule 404A to add quotation marks around the phrase “Exchange Traded

<sup>3</sup> See Exchange Rule 404, Interpretation and Policy .02.

<sup>4</sup> See Invesco QQQ Trust, Series 1 Prospectus, dated January 31, 2021, <https://connect.rightprospectus.com/Invesco/TADF/46090E103/P?site=ETF>.

Fund Shares” for the sentence to be grammatically correct.

Next, the Exchange proposes to amend subparagraph (d) of Exchange Rule 503 to: (1) Change the word “an” to “a” immediately preceding the phrase “class-by- class basis”; (2) remove the space in the middle of the hyphenated word “class-by- class”; and (3) remove the word “the” before the phrase “. . . Members through a Regulatory Circular.” These proposed rule changes are to make the sentence grammatically correct and to provide clarity in the rule text.

Next, the Exchange proposes to amend subparagraph (e)(1) of Exchange Rule 503 to make two clarifying changes: (1) Deleting the space between the words “market” and “place” in the second sentence; and (2) capitalizing the word “members” in the third sentence. The purpose of these proposed changes is to provide consistency and clarity throughout the rule text as “marketplace” is supposed to be one word and the term “Members”<sup>5</sup> is a defined term in the Exchange’s rulebook that should be capitalized.

Next, the Exchange proposes to amend subparagraph (f)(2)(vii)(B)5.a. of Exchange Rule 503 to make two clarifying changes. Subparagraph (f)(2)(vii)(B)5.a. currently has two references to Interpretations and Policies of Exchange Rule 503, stated as “Policy .02” and “Policy .03.” The Exchange now proposes to insert the words “Interpretation and” in front of both of those references to Interpretations and Policies in order to provide consistency and clarity throughout the rule text.

Next, the Exchange proposes to amend Exchange Rule 503, Interpretation and Policy .03(f)(1). Currently, Interpretation and Policy .03(f)(1) provides as follows: “The System will broadcast a system imbalance broadcast message to all subscribers of the Exchange’s relevant data feed and begin an SSIP Imbalance Timer, the duration of which shall be determined by the Exchange and announced via Regulatory Circular, however it shall not to exceed ten seconds.” The Exchange now proposes to delete the word “to” at the end of that sentence in order for the sentence to be grammatically correct and to provide clarity throughout the rule text.

Next, the Exchange proposes to amend subparagraph (a)(1) of Exchange Rule 515A to provide consistency and

clarity to the rule text. Subparagraphs (a)(1)(i)–(iii) provide the three conditions that must be met in order for a Member (an “Initiating Member”) to initiate a PRIME Auction.<sup>6</sup> The Exchange proposes to move the “and” from the end of subparagraph (a)(1)(i) to the end of subparagraph (a)(1)(ii), delete the period after subparagraph (a)(1)(ii), and lowercase the word “with” that begins subparagraph (a)(1)(iii). The purpose of these changes is to provide consistency and clarity to the rule text such that market participants know that in order to initiate a PRIME Auction, all three conditions of subparagraphs (a)(1)(i)–(iii) of Exchange Rule 515A must be met.

Finally, the Exchange proposes to amend subparagraph (b)(3) of Exchange Rule 518 to add a closing parenthesis around the phrase “as defined in Rule 518(d)(4).” The purpose of the proposed rule change is for the sentence to be grammatically correct and for clarity in the rule text.

## 2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>8</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 regulating, clearing, settling, processing information with respect to, and 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 the proposed changes promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed rule changes will provide greater clarity to Members and the public regarding the Exchange’s Rules. It is in the public interest for rules to be accurate and concise so as to eliminate the potential for confusion.

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

The Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance

of the purposes of the Act. Specifically, the Exchange believes the proposed changes will not impose any burden on intra-market competition as there is no functional change to the Exchange’s System and because the rules of the Exchange apply to all MIAIX participants equally. The proposed rule change will have no impact on competition as it is not designed to address any competitive issue but rather is designed to remedy minor non-substantive issues and provide added clarity to the rule text of Exchange Rules 402, 403, 404, 404A, 503, 515A, and 518. In addition, the Exchange does not believe the proposal will impose any burden on inter-market competition as the proposal does not address any competitive issues and is intended to protect investors by providing further transparency regarding the Exchange’s functionality.

### 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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii)<sup>9</sup> of the Act and Rule 19b–4(f)(6) thereunder.<sup>10</sup> Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) 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)(iii) of the Act and subparagraph (f)(6) of Rule 19b–4 thereunder.<sup>11</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

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>10</sup> 17 CFR 240.19b–4(f)(6).

<sup>11</sup> In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of its intent to file 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>5</sup> The term “Member” means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed “members” under the Exchange Act. See Exchange Rule 100.

<sup>6</sup> See Exchange Rule 515A(a)(1).

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

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-2021-40 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-2021-40. 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 website (<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 website 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MIAX-2021-40, and should be submitted on or before October 26, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021-21749 Filed 10-4-21; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-93191; File No. SR-NYSEArca-2021-57]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To List and Trade Shares of the NYDIG Bitcoin ETF Under NYSE Arca Rule 8.201-E

September 29, 2021.

On June 30, 2021, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") 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 NYDIG Bitcoin ETF ("Trust") under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares). The proposed rule change was published for comment in the **Federal Register** on July 19, 2021.<sup>3</sup>

On August 23, 2021, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.<sup>5</sup> This order institutes proceedings under Section 19(b)(2)(B) of the Act<sup>6</sup> to determine whether to approve or disapprove the proposed rule change.

#### I. Summary of the Proposal

As described in more detail in the Notice,<sup>7</sup> the Exchange proposes to list

<sup>12</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. 92395 (July 13, 2021), 86 FR 38129 (July 19, 2021) ("Notice"). Comments on the proposed rule change can be found at: <https://www.sec.gov/comments/sr-nysearca-2021-57/srnysearca202157.htm>.

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> See Securities Exchange Act Release No. 92722 (Aug. 23, 2021), 86 FR 48268 (Aug. 27, 2021). The Commission designated October 17, 2021, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

<sup>6</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>7</sup> See Notice, *supra* note 3.

and trade the Shares of the Trust under NYSE Arca Rule 8.201-E, which governs the listing and trading of Commodity-Based Trust Shares on the Exchange.

The investment objective of the Trust is to reflect the performance of the price of bitcoin less the expenses of the Trust's operations.<sup>8</sup> The Trust will not seek to reflect the performance of any benchmark or index. In seeking to achieve its investment objective, the Trust will only hold bitcoin.<sup>9</sup> The Trust generally does not intend to hold cash or cash equivalents. However, the Trust may hold cash and cash equivalents on a temporary basis to pay extraordinary expenses.<sup>10</sup>

The net asset value ("NAV") of the Trust will be determined in accordance with Generally Accepted Accounting Principles ("GAAP") as the total value of bitcoin held by the Trust, plus any cash or other assets, less any liabilities including accrued but unpaid expenses. The NAV of the Trust will typically be determined as of 4:00 p.m. E.T. on each day that the Exchange is open for regular trading ("Business Day"). The Administrator will calculate the NAV of the Trust once each Exchange trading day. The Exchange's Core Trading Session closes at 4:00 p.m. E.T. The Trust's daily activities will generally not be reflected in the NAV determined for the Business Day on which the transactions are effected (the trade date), but rather on the following Business Day. The NAV for the Trust's Shares will be disseminated daily to all market participants at the same time.<sup>11</sup>

The Trust will disseminate an intraday indicative value ("IIV") per Share updated every 15 seconds. The IIV will be calculated by using the same methodology that the Trust uses to determine NAV, which is to follow GAAP. Generally, GAAP requires the fair value of an asset that is traded on a market to be measured by reference to orderly transactions on an active

<sup>8</sup> See *id.* at 38129. NYDIG Asset Management LLC ("Sponsor") is the sponsor of the Trust, and Delaware Trust Company is the trustee. U.S. Bancorp Fund Services, LLC ("Administrator") is the transfer agent and the administrator of the Trust. The bitcoin custodian for the Trust is NYDIG Trust Company LLC ("Bitcoin Custodian"). The Bitcoin Custodian is chartered as a limited purpose trust company by the New York State Department of Financial Services ("NYDFS") and is authorized by NYDFS to provide digital asset custody services. Both the Sponsor and the Bitcoin Custodian are indirect wholly-owned subsidiaries of New York Digital Investment Group LLC. See *id.*

<sup>9</sup> See *id.*

<sup>10</sup> See *id.* at 38130. The Trust will enter into a cash custody agreement with U.S. Bank N.A. under which U.S. Bank N.A. will act as custodian of the Trust's cash and cash equivalents. See *id.*

<sup>11</sup> See *id.* at 38130-32.