

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-77035; File No. SR-MIAX-2016-02)

February 2, 2016

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Exchange Rule 301

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 20, 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 and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange is filing a proposal to amend Exchange Rule 301, Just and Equitable Principles of Trade, to add Interpretations and Policies .03 to Rule 301 to state in the Exchange’s rules that the practice of unbundling an order is considered conduct inconsistent with just and equitable principles of trade.

The text of the proposed rule change is available on the Exchange’s website 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

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

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

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 Rule 301, Just and Equitable Principles of Trade, to add Interpretations and Policies .03 to Rule 301 that states that the practice of unbundling an order is considered conduct inconsistent with just and equitable principles of trade. The proposal codifies existing Exchange procedures when dealing with the unlawful bundling of orders.

The purpose of the proposed rule change is to amend Exchange Rule 301 by adding a new Interpretations and Policies .03 to Rule 301 which will expressly prohibit the splitting-up of an order into smaller orders; a practice also known as unbundling, or trade shredding. More specifically, the Exchange is proposing to add language to its existing rules to prohibit Members<sup>3</sup> from splitting orders into multiple smaller orders for any purpose other than best execution.

Unbundling, or trade shredding, is the practice of breaking up an order into multiple smaller orders for some purpose other than best execution of the order. The practice of unbundling has in the past been used for such purposes as improperly maximizing commissions and fees charged to customers, distorting trade data, or circumventing rules pertaining to maximum order size. In addition, the unbundling of a large order into several smaller orders could be done so as to affect the allocation of a trade among market participants pursuant to the

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<sup>3</sup> The term “Member” means an individual or organization approved to exercise trading rights associated with a Trading Permit. Members are deemed “members” under the Exchange Act. See Exchange Rule 100.

allocation methodology used by the Exchange.<sup>4</sup> Finally, the Exchange believes that the unbundling of orders generally serves no purpose to the customer that entered the order and may cause unnecessary delays in the execution of said orders.

Pursuant to Exchange Rule 301, Members must observe high standards of commercial honor and just and equitable principles of trade. The Exchange would consider a Member to have engaged in conduct inconsistent with just and equitable principles of trade were they to unbundle an order which (1) distorts fees and/or commissions to the detriment of a customer or the Exchange, (2) causes an unnecessary delay in the execution of an order, or (3) circumvents an Exchange rule or federal securities law, including those rules pertaining to order size and trade allocation. Members engaging in conduct inconsistent with just and equitable principles of trade are subject to formal disciplinary action by the Exchange.

The Exchange now proposes to adopt Interpretations and Policies .03 to Rule 301, which will expressly state that the Exchange considers it to be conduct inconsistent with just and equitable principles of trade for a Member to split an order into multiple smaller orders for any purpose other than seeking the best execution of the entire order.

The Exchange believes that, by adopting this proposed language which serves to codify existing Exchange procedures when dealing with the unlawful unbundling of orders, it will deter and help to prevent this distortive practice, and therefore promote just and equitable principles of trade.

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<sup>4</sup> For example, pursuant to Exchange Rule 514(g)(2), small size orders, or orders of five contracts or less, are allocated to the Primary Lead Market Maker (“PLMM”) if the PLMM has a priority quote at the NBBO. If a Member was to break up a large order into several smaller orders of five contracts or less, the PLMM could unfairly garner a greater trade allocation than it was otherwise entitled to.

The Exchange notes that it considers unbundling, among other things, to be conduct inconsistent with just and equitable principles of trade in the rules governing its price improvement mechanism, MIAX PRIME.<sup>5</sup> The Exchange notes further that other US options exchanges have rules prohibiting the unbundling of orders for a variety of reasons, including the early termination of any price improvement mechanism auction conducted by an exchange, and violations of these rules may be considered conduct inconsistent with just and equitable principles of trade.<sup>6</sup>

## 2. Statutory Basis

MIAX 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

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<sup>5</sup> Specifically, it shall be considered conduct inconsistent with just and equitable principles of trade, in accordance with Rule 301, for any Member to enter orders, quotes, Agency Orders, or other responses for the purpose of disrupting or manipulating the Auction. Such conduct includes, but is not limited to, engaging in a pattern or practice of submitting unrelated orders that cause an Auction to conclude before the end of the RFR period and engaging in a pattern of conduct where the Member submitting the Agency Order into the PRIME breaks up the Agency Order into separate orders for two (2) or fewer contracts for the purpose of gaining a higher allocation percentage than the Member would have otherwise received in accordance with the allocation procedures contained in paragraph (a)(2)(iii) or (b)(2)(iii) above. See Exchange Rule 515A, Interpretations and Policies .01.

<sup>6</sup> See Securities Exchange Act Release Nos. 62667 (August 9, 2010), 75 FR 50013 (August 16, 2010) (SR-NYSEAmex-2010-77) (adopting NYSE Amex Rule 995NY(d)); and 52872 (December 1, 2005), 70 FR 73043 (December 8, 2005), (SR-CBOE-2005-92) (adopting CBOE Rule 4.23). See also International Securities Exchange LLC Rule 723 Supplementary Material .01 (prohibiting the entering of orders, quotes, Agency Orders, Counter-Side Orders or Improvement Orders for the purpose of disrupting or manipulating the Price Improvement Mechanism Auction), CBOE Rule 6.74A Interpretations and Policies .02 (prohibiting the submission of unrelated orders that cause an Automated Improvement Mechanism Auction to conclude before the end of the RFR period) and NASDAQ OMX PHLX LLC Rule 1080(b)(iii).

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

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

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 proposed rule change is designed to protect investors and the public interest and to promote just and equitable principles of trade by preventing the distortive practice of unbundling, or trade shredding, which conduct is considered inconsistent with the just and equitable principles of trade.

**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 that is 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 because it applies to all MIAX participants equally. In addition, the Exchange does not believe the proposal will impose any burden on inter-market competition as the proposal is intended to protect investors by preventing the distortive practice of unbundling, or trade shredding.

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

Written comments were neither solicited nor received.

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

Because the foregoing proposed rule change does not: (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 after the date of the filing, or such shorter time as the

Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6)<sup>10</sup> thereunder.

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>11</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>12</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay. The Exchange states that waiver of the operative delay would enable market participants to benefit from the proposed language codifying existing Exchange procedures when dealing with the unlawful unbundling of orders and would help to prevent this distortive practice. For this reason, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.<sup>13</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

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

<sup>10</sup> 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>13</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Comments may be submitted by any of the following methods:

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>);
- or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MIAX-2016-02 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-2016-02. This file number should be included on the subject line if e-mail 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; 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-2016-02 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

Robert W. Errett  
Deputy Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).