

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-79837; File No. SR-MIAX-2016-46)

January 18, 2017

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

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

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<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”).

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. 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.

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<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.

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>

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<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.

**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

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

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

<sup>18</sup> See id.

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 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 websites. 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

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<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).

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

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<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.

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

<sup>27</sup> 17 CFR 200.30-3(a)(12).