

foundational principle underlying section 22(d) and rule 22c-1 under the Act that shareholders be treated equitably.

44. Further, any breakdown in the pricing or the ability to price the proposed ETF may result in damage to market confidence in secondary trading of ETFs—not just in the proposed product, but in ETFs generally. Investors may exit the ETF market because of a loss of trust, particularly in actively managed ETFs, should the proposed ETFs fail to function in a manner similar to current ETFs.<sup>62</sup> For this additional reason, the Commission preliminarily believes that it is not necessary or appropriate, nor in the public interest or consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act, to grant the requested relief.

\* \* \* \* \*

45. In light of the foregoing, the Commission remains unconvinced that Applicants' proposed ETFs meet the standard for relief under section 6(c) of the Act. Accordingly, absent a request for a hearing that is granted by the Commission, the Commission intends to deny Applicants' request for an exemption under section 6(c) of the Act as not necessary or appropriate in the public interest and as not consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

By the Commission.

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-73395; File No. SR-MIAX-2014-53]

### Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX Top of Market ("ToM") and AIS Data Feeds

October 21, 2014.

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 October 6, 2014, 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 is filing a proposal to amend the MIAX Top of Market ("ToM") and AIS data feeds.

#### 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 the MIAX Top of Market ("ToM") market data feed, the MIAX Express Interface ("MEI") connectivity service,<sup>3</sup> and Administrative Information Subscriber ("AIS") market data feed. Specifically, the Exchange proposes removing messages related to administrative information and Liquidity Seeking Events ("LSE") from ToM and the MEI Port connection, while also adding the information to the AIS data feed to the extent that it is not already included with AIS.

ToM provides market participants with a direct data feed that includes the Exchange's best bid and offer, with aggregate size, and last sale information, based on displayable order and quoting interest on the Exchange. The ToM data feed includes data that is identical to the data sent to the processor for the

Options Price Regulatory Authority ("OPRA"). The ToM and OPRA data leave the MIAX system at the same time, as required under Section 5.2(c)(iii)(B) of the Limited Liability Company Agreement of the Options Price Reporting Authority LLC (the "OPRA Plan"), which prohibits the dissemination of proprietary information on any more timely basis than the same information is furnished to the OPRA System for inclusion in OPRA's consolidated dissemination of options information. In addition to MIAX's best bid and offer, with aggregate size and last sale information, subscribers that currently subscribe to ToM also receive: opening imbalance condition information; opening routing information; Expanded

Quote Range<sup>4</sup> information, as provided in MIAX Rule 503(f)(5); Post-Halt Notification,<sup>5</sup> as provided in MIAX Rule 504(d), and Liquidity Refresh,<sup>6</sup> condition information, as provided in MIAX Rule 515(c)(2). This additional information (the "administrative information") is included in the ToM feed as secondary information. The administrative information is also currently available to non-Market Makers through the AIS data feed and MIAX Market Makers via connectivity with the MIAX Express Interface ("MEI"),<sup>7</sup> for which they are assessed connectivity fees.

The Exchange proposes to remove all the secondary administrative information including LSE related information from the ToM data feed and from the MEI Port connectivity service, with the exception of the Post-Halt Notification. The secondary administrative information and

<sup>4</sup> Where there is an imbalance at the price at which the maximum number of contracts can trade that is also at or within the highest valid width quote bid and lowest valid width quote offer, the System will calculate an Expanded Quote Range ("EQR"). The EQR will be recalculated any time a Route Timer or Imbalance Timer expires if material conditions of the market (imbalance size, ABBO price or size, liquidity price or size, etc.) have changed during the timer. Once calculated, the EQR will represent the limits of the range in which transactions may occur during the opening process. See Exchange Rule 503(f)(5).

<sup>5</sup> After the Exchange has determined to end a trading system halt, the System will broadcast to subscribers of the Exchange's data feeds, a Post-Halt Notification. See Exchange Rule 504(d).

<sup>6</sup> If a Market Maker quote was all or part of the MIAX Best Bid or Offer ("MBBO") and the Market Maker's quote was exhausted by the partial execution of the initiating order, the System will pause the market for a time period not to exceed one second to allow additional orders or quotes refreshing the liquidity at the MBBO to be received ("liquidity refresh pause"). See Exchange Rule 515(c)(2).

<sup>7</sup> MIAX Express Interface is a connection to MIAX systems that enables Market Makers to submit electronic quotes to MIAX.

<sup>62</sup> See Tamar Frankel, *Regulation and Investors' Trust in the Securities Markets*, 68 Brook. L. Rev. 439 (2002), at 448 (arguing that once investors' trust is lost, they will flee the stock markets and turn to other types of investments that "they can see, evaluate and guard for themselves").

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

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

<sup>3</sup> MIAX Express Interface is a connection to MIAX systems that enables Market Makers to submit electronic quotes to MIAX.

Liquidity Seeking Event data being removed from ToM and the MEI Port includes: (i) Opening imbalance condition information; (ii) opening routing information; (iii) Expanded Quote Range information, as provided in MIAX Rule 503(f)(5); (iv) Liquidity Refresh messages, as provided in MIAX Rule 514(c)(2); (v) Route Timer information, as provided in MIAX Rule 529; (vi) PRIME related auction messages, as provided in MIAX Rule 515A; and (vii) any other similar timer or auction related messages. ToM subscribers will continue to receive the direct data that includes the Exchange's best bid and offer, with aggregate size, and last sale information based on displayable order and quoting interest on the Exchange, and the Post-Halt Notification. The ToM data feed includes data that is identical to the data sent to the processor for the Options Price Regulatory Authority ("OPRA"). Both Full Service and Limited Service MEI Ports will continue to provide Market Makers with the ability to send quotes and purge messages in the same manner as they do currently. The Exchange also proposes to amend the AIS data feed to specifically include all the secondary administrative information and LSE related information that is being removed from ToM and the MEI Port connection. The Exchange notes that most of this administrative information is already included in the AIS data feed, as described above. In order to receive the secondary administrative information and LSE related messages, the ToM subscribers and users of the MEI Port connectivity service will have to connect to the Exchange with an AIS data feed. The Exchange notes that ToM subscribers may receive the AIS data feed at no additional cost.<sup>8</sup>

Because of the technology changes associated with this rule proposal, the Exchange will announce the implementation date of the proposal in a Regulatory Circular to be published no later than 90 days after the publication of the approval order in the **Federal Register**. The implementation date will be no later than 90 days following publication of the Regulatory Circular announcing publication of the approval order in the **Federal Register**.

## 2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b)<sup>9</sup> of the Act in general, and furthers the objectives of Section

6(b)(5)<sup>10</sup> of the Act 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 proposed changes to the market data products are designed to increase the efficient use of connectivity bandwidth between market participants and the Exchange in a manner that promotes just and equitable principles of trade, fosters cooperation and coordination with persons engaged in facilitating transactions in securities, removes impediments to and perfect the mechanisms of a free and open market and a national market system. The Exchange believes that the changes will enhance the quality and usefulness of ToM, the MEI Ports, and AIS market data product to the benefit of all market participants that subscribe to such products.

The ToM market data product is designed to promote just and equitable principles of trade by providing all subscribers with top of market data that should enable them to make informed decisions on trading in MIAX options by using the ToM data to assess current market conditions that directly affect such decisions. The market data provided by ToM and AIS, and the connectivity of MEI, removes impediments to, and is designed to further perfect, the mechanisms of a free and open market and a national market system by making the MIAX market more transparent and accessible to market participants making routing decisions concerning their options orders. The ToM market data product is also designed to protect investors and the public interest by providing data to subscribers that is already currently available on other exchanges and will enable MIAX to compete with such other exchanges, thereby offering market participants with additional data in order to seek the market center with the best price and the most liquidity on which to execute their transactions, all to the benefit of investors and the public interest, and to the marketplace as a whole.

## 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. On the contrary, the Exchange believes that the changes to the market data products will enhance competition in the U.S. options markets by enhancing the quality and usefulness of a market data product that is similar to that which is currently provided on other options exchanges.<sup>11</sup>

## 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 19(b)(3)(A) of the Act<sup>12</sup> and Rule 19b-4(f)(6)<sup>13</sup> thereunder.

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 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,

<sup>11</sup> The Exchange notes that the ToM market data product competes with similar products offered by other markets such as NASDAQ OMX PHLX, LLC ("PHLX") and the International Stock Exchange LLC ("ISE"). For example, PHLX and ISE offer market data products that are similar to ToM: data feeds that show the top of the market entitled Top of PHLX Options ("TOPO") and the ISE TOP Quote Feed. See e.g., Securities Exchange Act Release No. 60459 (August 7, 2009), 74 FR 41466 (August 17, 2009) (SR-PHLX-2009-54) (Order Approving a Proposed Rule Change to Establish Fees for the Top of PHLX Options Direct Data Feed Product).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization 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>8</sup> See SR-MIAX-2014-51.

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

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-2014-53 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-2014-53. 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-2014-53 and should be submitted on or before November 17, 2014.

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

**Kevin M. O'Neill,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-73399; File No. SR-NASDAQ-2014-081]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving a Proposed Rule Change Related to Proposed Changes to NASDAQ Rule 4120(c) To Modify the Parameters for Releasing Securities for Trading Upon the Termination of a Trading Halt in a Security That Is the Subject of an Initial Public Offering

October 21, 2014.

#### I. Introduction

On August 20, 2014, The NASDAQ Stock Market LLC ("NASDAQ" or the "Exchange") filed with the Securities and Exchange Commission (the "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 relating to its initial public offering ("IPO") process. The proposed rule change was published for comment in the **Federal Register** on September 9, 2014.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

The Exchange proposes to amend NASDAQ Rule 4120(c) to modify the parameters for releasing securities for trading upon the termination of a trading halt in a security that is the subject of an IPO (the "IPO Halt Cross" or the "Cross").<sup>4</sup> Currently, NASDAQ Rule 4120(c)(7)(B) governs the launch of trading of IPO securities approved for listing on the Exchange.<sup>5</sup> NASDAQ Rule 4120(c)(7)(B) provides a two-phase process in which there is a 15 minute Display Only Period in which market participants may enter quotes and orders in that IPO security in the NASDAQ systems, which is then followed by a "Pre-Launch Period" that is not of a fixed duration.<sup>6</sup> According to the Exchange, the Pre-Launch Period continues until: (1) NASDAQ receives notice from the underwriter of the IPO that the security is ready to trade and there is no "order imbalance"<sup>7</sup> in the security, in which case the security is released for trading; or (2) the

underwriter, with concurrence of NASDAQ, determines to postpone and reschedule the IPO. The Exchange states that it disseminates the "Current Reference Price," which is an indication of the price at which the IPO Halt Cross would execute if it occurred at that time, every five seconds during the Display Only Period and the Pre-Launch Period.<sup>8</sup>

The Exchange proposes to replace its current process with a procedure under which the "Expected Price"<sup>9</sup> of the IPO Halt Cross will be displayed to the underwriter, who will then select price bands to ensure that the actual calculated price at which the IPO Halt Cross would occur does not deviate from the Expected Price by more than the selected amounts.<sup>10</sup> According to the Exchange, price deviations between the Expected Price and the actual calculated price of the Cross can occur because market participants may continue to enter and cancel orders during the period between the display of the Expected Price to the underwriter and the commencement of the Cross calculation, a period of up to five seconds in duration.<sup>11</sup>

Under the proposal, the process for determining the end of the Pre-Launch Period and when the IPO security will be released for trading will be as follows: (1) NASDAQ receives notice from the underwriter of the IPO that the security is ready to trade; (2) the NASDAQ system will then calculate the Current Reference Price and display it to the underwriter (*i.e.*, the Expected Price); (3) the underwriter agrees to go forward; (4) the NASDAQ system determines that all market orders will be executed in the cross; and (5) the

<sup>8</sup> See *id.* According to the Exchange, under the current rule, an "order imbalance" in an IPO security exists if: (1) The Current Reference Price disseminated immediately prior to commencing the release of the IPO for trading during the Pre-Launch Period and any of the three preceding Current Reference Prices differ by more than the greater of 5 percent or 50 cents; (2) upon completion of the Cross calculation, the calculated price at which the security would be released for trading and any of the three preceding Current Reference Prices disseminated immediately prior to the initiation of the Cross calculation differ by more than the greater of 5 percent or 50 cents; or (3) all market orders will not be executed in the Cross. See *id.*; and NASDAQ Rule 4120(c)(7)(C).

<sup>9</sup> The "Expected Price," according to the Exchange, is the Current Reference Price displayed to the underwriter after the Exchange receives notice from the underwriter that the security is ready to trade. See Notice, *supra* note 3, at 53501, and Proposed NASDAQ Rule 4120(c)(8)(A)(i).

<sup>10</sup> See Notice, *supra* note 3, at 53501. The Exchange is also proposing to reorganize certain provisions of NASDAQ Rule 4120 relating to the process for ending a trading halt of securities other than IPO securities, but is not making substantive modifications to these rules. See *id.*

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

<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. 72961 (September 3, 2014), 79 FR 53500 ("Notice").

<sup>4</sup> See *id.*

<sup>5</sup> See Securities Exchange Act Release No. 69897 (July 1, 2013), 78 FR 40782, 40783 (July 8, 2013).

<sup>6</sup> See Notice, *supra* note 3, at 53501.

<sup>7</sup> See *id.*

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