

the BZX, BYX, EDGA, or EDGX book.¹³ For the foregoing reasons, the Exchange believes that the proposed rule change is consistent with the Act.

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. As discussed above, the proposed functionality is partly based on existing functionality available on competitor exchanges.¹⁴ Furthermore, the Exchange provides routing services in a highly competitive market in which participants may avail themselves of a wide variety of routing options offered by other exchanges, alternative trading systems, other broker-dealers, market participants' own proprietary routing systems, and service bureaus. In such an environment, system enhancements such as the changes proposed in this rule filing do not burden competition, because they can succeed in attracting order flow to the Exchange only if they offer investors higher quality and better value than services offered by others. Encouraging competitors to provide higher quality and better value is the essence of a well-functioning competitive marketplace. Lastly, SCAR would not provide any advantage to members when routing to the Nasdaq Affiliated Exchanges as compared to other methods of routing or connectivity available to members by the Exchange. For the foregoing reasons, the Exchange does not believe the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

No written comments were either solicited or 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 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) of the Act¹⁵ and Rule 19b-4(f)(6) thereunder.¹⁶

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, 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. Please include File Number SR-Phlx-2019-04 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-Phlx-2019-04. 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-Phlx-2019-04 and should be submitted on or before April 16, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Eduardo A. Aleman,
Deputy Secretary.

[FR Doc. 2019-05697 Filed 3-25-19; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85365; File No. SR-MIAX-2019-12]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 503

March 20, 2019.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 7, 2019, Miami International Securities Exchange, LLC ("MIAX Options" or the "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 Exchange Rule 503, Openings on

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and 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. The Exchange has satisfied this requirement.

¹³ See BZX Rule 11.13(b)(3)(O), BYX Rule 11.13(b)(3)(M), EDGA Rule 11.11(g)(7), and EDGX Rule 11.11(g)(7). ALLB is also substantially similar to the Exchange's PCRT strategy, as described above.

¹⁴ *Id.*

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

the Exchange, Interpretations and Policies .03.

The text of the proposed rule change is available on the Exchange's website at <http://www.miaxoptions.com/rule-filings/> at MIAX Options' 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 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

On October 12, 2018, the Exchange received approval from the Securities and Exchange Commission ("SEC" or "Commission") to list and trade on the Exchange, options on the SPIKES™ Index, a new index that measures expected 30-day volatility of the SPDR S&P 500 ETF Trust (commonly known and referred to by its ticker symbol, "SPY").³ To facilitate trading options on the Index the Exchange proposes to amend Exchange Rule 503, Openings on the Exchange, Interpretations and Policies .03.

Specifically, the Exchange proposes to amend Exchange Rule 503, Openings on the Exchange, Interpretations and Policies .03, to provide that bona fide Market Maker activity does not constitute either a SPIKES strategy order or a modification to or cancellation of a previously submitted SPIKES strategy order during the "SPIKES Special Settlement Auction."

The SPIKES Index is calculated using only standard options on SPY that expire on the third Friday of each calendar month. Although weekly options on SPY are available, these are not used in the calculation of the Index. To determine the final settlement value

of the Index, the Exchange performs an Index settlement price calculation which includes all SPY options that expire 30 days after the SPIKES settlement that are included in the settlement (these options are referred to in this rule filing as the "constituent options"). In order to perform the Index settlement price calculation, each constituent option is assigned a Settlement Reference Price or "SRP," defined and discussed in more detail below. Each SRP is determined using the SPIKES Special Settlement Auction, which is conducted once per month, in the constituent options traded on the Exchange, on final settlement day. The SPIKES Special Settlement Auction utilizes the Exchange's standard, existing Opening Process, as defined and fully-described in Exchange Rule 503(f), with a modification to account for situations where there remains an order imbalance⁴ that must be filled at the opening price after the requisite number of iterations of the imbalance process takes place under the Exchange's existing Opening Process (the Exchange's existing Opening Process provides that the Exchange can open with an imbalance after the requisite number of iterations of the imbalance process takes place).⁵ This modification to the Exchange's existing Opening Process to facilitate the execution of this remaining must-fill interest is referred to as the special settlement imbalance process ("SSIP"), which is governed by Interpretations and Policies .03 to Exchange Rule 503, as described more fully below. This modified Opening Process functionality, which is accessible to all Members of the Exchange for participation, occurs in highly liquid SPY options (which are simultaneously opening and available for trading on up to 14 other exchanges, thus providing real-time cross-reference prices for the SPY options included in the settlement) is used to conduct the SPIKES Special Settlement Auction to settle expiring SPIKES options.

As discussed more fully below, the Exchange's existing Opening Process runs to completion and precedes the engagement of the new SSIP. The existing Opening Process cannot occur prior to 9:30 a.m. Eastern Time and only begins following the dissemination of a quote or trade in the market for the underlying security.⁶ Following the dissemination of a quote or trade in the

market for the underlying security, the System⁷ pauses for a period of time no longer than one half second to allow the marketplace to absorb this information.⁸ When there is an imbalance,⁹ the System broadcasts a System Imbalance Message (which includes the symbol, side of the market, quantity of matched contracts, the imbalance quantity, must fill quantity (*i.e.*, the number of contracts that must be filled in order for that option to open on the Exchange at the indicated price), quantity of routable contracts, and price of the affected series) to subscribers of the Exchange's data feeds and begins an Imbalance Timer¹⁰ not to exceed three seconds.¹¹ Under the existing Opening Process the Exchange may repeat this process up to three times.¹² While the Exchange is conducting its Opening Process, all 14 other option exchanges will also be conducting their opening process for SPY options. As the Exchange works through its process to resolve imbalances under the existing Opening Process, other Exchanges will be open and serve as real-time cross-reference prices for those SPY options, enabling market participants to send orders to the Exchange if there are pricing anomalies for these SPY options across venues. The longer it takes the Exchange to work through the imbalance, the greater the likelihood that other exchanges will have opened their SPY options market and the natural pressures of a competitive market helps to eliminate any pricing anomalies and aid in eliminating the imbalance on the Exchange.

As previously discussed, on the day the settlement value for the Index is calculated, the Exchange conducts the SPIKES Special Settlement Auction, using its standard, existing Opening Process for all options on the Exchange, including the constituent options.¹³ Pursuant to the standard, existing Opening Process, if there are no quotes or orders that lock or cross each other, the System will open by disseminating the Exchange's best bid and offer among quotes and orders that exist in the System at that time. If there are quotes or orders that lock each other, the System will calculate an Expanded

⁷ The term "System" means the automated trading system used by the Exchange for the trading of securities. See Exchange Rule 100.

⁸ The Exchange notes that the current setting is one half second.

⁹ See *supra* note 4.

¹⁰ The Exchange notes that the current Imbalance Timer setting is one second.

¹¹ See Exchange Rule 503(f)(2)(vii).

¹² See Exchange Rule 503(f)(2)(vii)(B)(4).

¹³ For a complete description of the Exchange's standard, existing Opening Process, refer to Exchange Rule 503, Openings on the Exchange.

³ See Securities Exchange Act Release No. 84417 (October 12, 2018), 83 FR 52865 (October 18, 2018) (SR-MIAX-2018-14) (Order Granting Approval of a Proposed Rule Change by Miami International Securities Exchange, LLC to List and Trade on the Exchange Options on the SPIKES™ Index).

⁴ An "imbalance" occurs when there is insufficient liquidity to satisfy all trading interest due an execution at a certain price. See Exchange Rule 503(f)(2)(v).

⁵ See Exchange Rule 503(f)(2)(vii)(B)(5).

⁶ See Exchange Rule 503(e)(1).

Quote Range (“EQR”), as described in Rule 503(f)(2). The EQR represents the limits of the range in which transactions may occur during the Opening Process.¹⁴ The EQR is recalculated any time a route timer or Imbalance Timer expires if material conditions of the market (imbalance size, ABBO¹⁵ price and size, liquidity price or size, etc.) have changed during the timer. Once calculated, the EQR represents the limits of the range in which transactions may occur during the Opening Process.¹⁶ The System uses the EQR to determine the highest and lowest price of the opening price range.

To calculate the opening price, the System takes into consideration all valid Exchange quotes and all valid orders, together with other exchanges’ markets for the series, and identifies the price at which the maximum number of contracts can trade. If that price is within the EQR and leaves no imbalance, the Exchange will open at that price, executing marketable trading interest as long as the opening price includes only Exchange interest.¹⁷ If the calculated opening price included interest other than solely Exchange interest, the System will broadcast a system imbalance message (which includes the symbol, side of the market, quantity of matched contracts, the imbalance quantity, must fill quantity, quantity of routable contracts, and price of the affected series) to Exchange Members¹⁸ and initiate a “route timer,” not to exceed one second.¹⁹

If all opening and marketable interest cannot be completely executed at or within the EQR without trading at a price inferior to the ABBO, or cannot trade at or within the quality opening market range in the absence of a valid width NBBO,²⁰ the System will automatically institute an imbalance

process.²¹ The System will broadcast a system imbalance message (which includes the symbol, side of the market, quantity of matched contracts, the imbalance quantity, must fill quantity, quantity of routable contracts, and price of the affected series) to subscribers of the Exchange’s data feeds, and begin an Imbalance Timer, not to exceed three seconds.²² Market Makers²³ may enter Opening Only (“OPG”) eQuotes,²⁴ Auction or Cancel (“AOC”) eQuotes,²⁵ Standard quotes,²⁶ Opening Orders (“OPG Orders”),²⁷ AOC Orders²⁸ and limit orders during the Imbalance Timer. Other Exchange Members may enter OPG Orders, AOC Orders and other order types (except those order types not valid during the Opening Process, as described in Rule 516) during the Imbalance Timer.²⁹ If, at the conclusion of the timer, quotes and orders submitted during the Imbalance Timer, or other changes to the ABBO, would not allow the entire imbalance amount to trade at the Exchange at or within the EQR without trading at a price inferior to the ABBO, the System will send a new system imbalance message to Exchange Members and initiate a route timer for routable Public Customer orders not to exceed one second. If, during the route timer, interest is received by the System which would allow all interest to trade on the System (*i.e.*, there is no longer an imbalance) at the opening price without trading at a price inferior to other markets, the System will trade and the route timer will end.³⁰ The System may repeat the imbalance process up to three times (as established by the

Exchange).³¹ Following completion of the third imbalance process, if there is an opening transaction, any unexecuted contracts from the imbalance not traded or routed will be cancelled back to the entering Member if the price for those contracts crosses the opening price, in effect cancelling that must fill interest.³² That is the completion of the Exchange’s standard, existing Opening Process.

Now, where an imbalance exists in constituent options and the final imbalance process has been conducted as part of the Exchange’s standard, existing Opening Process, instead of cancelling that must fill interest back to the entering Member, the Exchange conducts the SSIP,³³ where the Exchange will satisfy that must fill interest. The Exchange does not want to cancel any must fill interest, as this liquidity could represent previously hedged interest that must be unwound.

The SSIP is employed to satisfy all liquidity identified as must fill which is creating the imbalance, referred to as the must fill imbalance. The SSIP is an iterative process that is designed to determine a price at which all must fill imbalance interest can be satisfied.³⁴ In the SPIKES Special Settlement Auction, in addition to any order types that may be regularly accepted by the Exchange, the Exchange will also accept settlement auction only orders (“SAO Orders”) and settlement auction only eQuotes (“SAO eQuotes”) (SAO Orders and SAO eQuotes are collectively referred to as “SAOs”) at any time after the opening of the Live Order Window (“LOW”)³⁵ and the Live Quote Window (“LQW”),³⁶ respectively. SAOs are specific order types that allow a Member to voluntarily tag such order as a SPIKES strategy order, defined below. All orders for participation in the SPIKES Special Settlement Auction that are related to positions in, or a trading strategy involving, SPIKES Index options (“SPIKES strategy orders”), and any change to or cancellation of any such order: (i) Must be received prior to the applicable SPIKES strategy order cut-off time for the constituent option series, as determined by the Exchange, which may be no earlier than the opening of the LOQ or the LQW, and no later than the opening of trading in the series. The

¹⁴ See Exchange Rule 503(f)(2)(i). See also Exchange Regulatory Circular 2012–02, which sets forth the tables that describe the calculation of the EQR for option classes traded on the Exchange, at http://www.miaxoptions.com/sites/default/files/circular-files/MLAX_Opening_Process_and_Pause_Timer.pdf.

¹⁵ The term “ABBO” or “Away Best Bid or Offer” means the best bid(s) or offer(s) disseminated by other Eligible Exchanges (defined in Rule 1400(f)) and calculated by the Exchange based on market information received by the Exchange from OPRA. See Exchange Rule 100.

¹⁶ See Exchange Rule 503(f)(2)(i).

¹⁷ See Exchange Rule 503(f)(2)(iv).

¹⁸ 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.

¹⁹ See Exchange Rule 503(f)(2)(iv)(A).

²⁰ The term “NBBO” means the national best bid or offer as calculated by the Exchange based on market information received by the Exchange from OPRA. See Exchange Rule 100.

²¹ See Exchange Rule 503(f)(2)(vii).

²² See Exchange Rule 503(f)(2)(vii)(A).

²³ The term “Market Makers” refers to “Lead Market Makers”, “Primary Lead Market Makers” and “Registered Market Makers” collectively. See Exchange Rule 100.

²⁴ An opening only or “OPG” eQuote is a quote that can be submitted by a Market Maker only during the Opening as set forth in Rule 503. OPG eQuotes will automatically expire at the end of the Opening Process. See Exchange Rule 517(a)(2)(iii).

²⁵ An Auction or Cancel or “AOC” eQuote is a quote submitted by a Market Maker to provide liquidity in a specific Exchange process with a time in force that corresponds with the duration of that event and will automatically expire at the end of that event. See Exchange Rule 517(a)(2)(ii).

²⁶ A Standard quote is a quote submitted by a Market Maker that cancels and replaces the Market Maker’s previous Standard quote, if any. See Exchange Rule 517(a)(1).

²⁷ An Opening or “OPG” Order is an order that is valid only for the opening process. See Exchange Rule 516(h).

²⁸ An Auction-or-Cancel or “AOC” order is a limit order used to provide liquidity during a specific Exchange process with a time in force that corresponds with that event. See Exchange Rule 516(b)(4).

²⁹ See *supra* note 10.

³⁰ See Exchange Rule 503(f)(2)(vii)(B)(2).

³¹ See Exchange Rule 503(f)(2)(vii)(B)(4).

³² See Exchange Rule 503(f)(2)(vii)(B)(5).

³³ See Exchange Rule 503(f)(2)(vii)(B)(5)(a).

³⁴ See Exchange Rule 503, Interpretations and Policies .03.

³⁵ The Exchange notes that the current Live Order Window opens at 7:30 a.m.

³⁶ The Exchange notes that the current Live Quote Window setting opens at 9:25 a.m., however the Exchange plans to open the Live Quote Window for the SPIKES Special Settlement Auction at 8:30 a.m.

Exchange will announce all determinations regarding changes to the applicable SPIKES strategy order cut-off time via Regulatory Circular at least one day prior to implementation (however the Exchange anticipates initially establishing the cut-off time at 9:20 a.m. Eastern); and (ii) may not be cancelled or modified after the applicable SPIKES strategy order cut-off time, unless the SPIKES strategy order is not executed in the SPIKES Special Settlement Auction and the cancellation or modification is submitted after the SPIKES Special Settlement Auction is concluded (provided that any such SPIKES strategy order may be modified or cancelled after the applicable SPIKES strategy order cut-off time and prior to the applicable non-SPIKES strategy order cut-off time in order to correct a legitimate error, in which case the Member submitting the change or cancellation will prepare and maintain a memorandum setting forth the circumstances that resulted in the change or cancellation and will file a copy of the memorandum with the Exchange no later than the next business day in a form and manner prescribed by the Exchange).

In general, the Exchange considers orders to be SPIKES strategy orders for purposes of Rule 503 Interpretation and Policy .03, if the orders possess the following three characteristics: (A) Are for options with the expiration that will be used to calculate the exercise or final settlement value of the applicable volatility index option contract; (B) are for options spanning the full range of strike prices for the appropriate expiration for options that will be used to calculate the exercise or final settlement value of the applicable volatility index option contract, but not necessarily every available strike price; and (C) are for put options with strike prices less than the “at-the-money” strike price and for call options with strike prices greater than the “at-the-money” strike price. They may also be for put and call options with “at-the-money” strike prices.

Whether certain orders are SPIKES strategy orders for purposes of Interpretation and Policy .03 depends upon specific facts and circumstances. The Exchange may also deem order types other than those provided above as SPIKES strategy orders if the Exchange determines that to be the case based upon the applicable facts and circumstances.

These requirements are substantially similar to Cboe’s requirements for

“strategy orders” participating in the VIX settlement auction.³⁷

Market participants that actively trade SPIKES options may hedge their positions with SPY option series that will also be used to calculate the SPIKES exercise settlement/final settlement value. Market participants holding hedged SPIKES options positions may trade out of their SPY option series on the relevant SPIKES expiration/final settlement date. Specifically, market participants holding short, hedged SPIKES options could liquidate that hedge by selling their SPY options series, while traders holding long, hedged SPIKES options could liquidate their hedge by buying SPY option series. In order to seek convergence with the SPIKES exercise/final settlement value, these market participants may liquidate their hedges by submitting SPIKES strategy orders in the appropriate SPY option series during the SPIKES Special Settlement Auction on the SPIKES expiration/final settlement date.

The SPIKES strategy order cut-off time exists because trades to liquidate hedges can contribute to an order imbalance during the SPIKES Special Settlement Auction in SPY option series on expiration/final settlement dates. For example, traders liquidating hedges could predominantly be on one side of the market and those market participants’ orders may create buy or sell order imbalances during the SPIKES Special Settlement Auction in SPY option series on expiration/final settlement dates. As a result of having a SPIKES strategy order cut-off time in place, the Exchange has created a defined window to encourage participation in the SPIKES Special Settlement Auction among market participants who may wish to place off-setting orders against imbalances to which SPIKES strategy orders may have contributed. Additionally, by precluding the modification or cancellation of SPIKES strategy orders from occurring after the cut-off time, the Exchange is ensuring that the order book reflects bona-fide interest for execution, and is a feature designed to prevent manipulation of the final settlement price.

Next, to begin the SSIP, which occurs during the SPIKES Special Settlement Auction and is done to resolve imbalances, the System broadcasts a system imbalance message to all subscribers of the Exchange’s relevant

data feed and begins an SSIP Imbalance Timer, the duration of which shall be determined by the Exchange, not to exceed ten seconds, and shall be communicated via Regulatory Circular. During the SSIP Imbalance Timer, the System accepts all quote and order types supported during the standard Opening Process. Next, the System evaluates the must fill imbalance and adjusts the EQR by a defined amount by appending to the EQR (adding to offers or subtracting from bids) the EQR value (as determined by the Exchange and communicated via Regulatory Circular).³⁸ During the SSIP, the allowable EQR is increased .5 times the EQR value upon each iteration of the SSIP. The SSIP is repeated until a price is reached at which there is no remaining must fill imbalance.

Once there is no remaining must fill imbalance, SAOs, AOC Orders, AOC eQuotes, OPG Orders, and OPG eQuotes submitted into the SPIKES Special Settlement Auction are cancelled. Any unfilled day limit orders and GTC orders that are priced at the Opening Price are placed on the Book and managed by the System.

As previously discussed, the System assigns an SRP to each constituent option to facilitate the calculation of the final settlement price of the Index. If the System opens the constituent option with a trade, the System assigns the constituent option an SRP equal to the trade price in that option. If there is no locking or crossing interest and the System opens the constituent option without a trade, and the bid-ask spread is at or within a range as defined by the Exchange in an SRP opening width table and communicated via Regulatory Circular, the System assigns the constituent option an SRP equal to the midpoint of the bid and ask prices. If the bid-ask spread is not within a range as defined in the SRP opening width table, the System conducts an additional process to determine the SRP of the constituent option, as follows.

First, the System starts a settlement reference price timer (“SRPT”) (the duration of which shall be defined by the Exchange not to exceed sixty seconds and shall be communicated via Regulatory Circular). If, during the SRPT, there is a trade on the Exchange, the System will set the SRP equal to the trade price. If, during the SRPT, the bid-ask spread changes so that it is within a range defined in the settlement price opening width table, the System will set the SRP equal to the midpoint of the bid and ask price.

³⁷ See Cboe Rule 6.2, Hybrid Opening (and Sometimes Closing) System (“HOSS”), Interpretations and Policies .01, Modified Opening Procedure for Series Used to Calculate the Exercise/Final Settlement Values of Volatility Indexes.

³⁸ See *supra* note 14.

If the SRPT expires, the System will set the SRP equal to the Reference Price (the current price of that option utilizing the cash index calculation formula, described above) of the constituent option if it is equal to or inside the MBBO.³⁹ If the Reference Price is non-zero and less than the Exchange's bid, then the System will set the SRP equal to the Exchange's bid. If the Reference Price is non-zero and greater than the Exchange's ask, then the System will set the SRP equal to the Exchange's ask. If the Reference Price is zero and if one or both adjacent constituent options have a non-zero SRP, the constituent option will be excluded from the calculation. If the Reference Price is zero and there are multiple adjacent constituent options with a current Reference Price of zero, the System will use the midpoint of the NBBO for the SRP if the NBBO bid-ask spread is at or within a range defined in the settlement price opening width table. If the NBBO bid-ask spread is not within a range defined in the settlement price opening width table, the System will wait for either a trade, or a bid-ask spread that is within a range defined in the settlement price opening width table. Once all constituent options have been assigned an SRP, the System performs the final settlement price calculation of the Index.

In the options market, it is important for Market Makers to provide liquidity to execute against orders submitted by other market participants. Pursuant to Rule 603, a Market Maker has general obligations to, among other things, engage (to a reasonable degree under existing circumstances) in dealings for the Market Maker's own account when there exists, or it is reasonably anticipated that there will exist, a lack of price continuity, a temporary disparity between the supply of and demand for an option (*i.e.*, an imbalance), to compete with other Market Makers to improve markets in its appointed classes, and to update market quotations in response to changed market conditions in its appointed classes. Certain types of Market Makers have obligations to facilitate resolution of imbalances and make competitive markets, and the proposed rule change is consistent with those obligations.⁴⁰ As described above, the entry of SPIKES strategy orders may lead to order imbalances in the option series used to determine the final settlement value for expiring SPIKES Index options. In order

for the Exchange's system to open these series for trading (*i.e.*, to resolve order imbalances) and achieve the most competitive pricing in these series, Market Maker participation in the SPIKES Special Settlement Auction is important for adding liquidity and promoting a fair and orderly opening and settlement process.

The Exchange understands that some Market Makers may hesitate to provide liquidity that could resolve order imbalances, out of a concern that adding such liquidity after the SPIKES strategy order cut-off time could be deemed either a new SPIKES strategy order or a modification to or cancellation of an existing SPIKES strategy order. As a result, this perceived risk may lead to reduced liquidity and may exacerbate the time it takes to open a series at a competitive price.⁴¹ The proposed rule change encourages Market Makers to provide liquidity on SPIKES Index options settlement days by explicitly stating in Rule 503, Interpretations and Policies .03, that bona fide Market Maker activity does not constitute either a SPIKES strategy order or a modification to or cancellation of a previously submitted SPIKES strategy order during the SPIKES Special Settlement Auction. The Exchange believes Market Maker liquidity is important to the resolution of order imbalances on SPIKES Index settlement days and to the orderly opening of series on such day, due to the fact that a series cannot open if there is a market order imbalance. Also, Market Maker liquidity is desirable to advance the opening of series at competitive prices on SPIKES Index settlement days. The Exchange's system also relies on Market Maker liquidity to open series for trading. Pursuant to Rule 503, the Exchange's system will not open a series for trading if there are no Market Maker quotes present. Additionally, the width of the best Market Maker quotes on the Exchange must be within a certain price range for the System to open a series for trading. The Exchange believes the proposed rule change will incentivize Market Maker liquidity on SPIKES Index settlement days by explicitly stating in the Rules that providing such liquidity will not be deemed to constitute either submission of a SPIKES strategy order or modification or cancellation of a previously submitted SPIKES strategy order.

Specifically, proposed Rule 503, Interpretations and Policies .03(e) states a Market Maker with an appointment in a class with constituent option series may submit bids and offers in those

series for bona fide market making purposes in accordance with Rule 603 and the Securities Exchange Act of 1934 (the "Act"), for its market maker account prior to the open of trading for participation in the SPIKES Special Settlement Auction. The Exchange will deem these bids and offers to be non-SPIKES strategy orders, and will not deem them to be changes to or cancellations of previously submitted SPIKES strategy orders, if:

(i) The Member with which the Market Maker is affiliated has established, maintains, and enforces reasonably designed written policies and procedures (including information barriers, as applicable), taking into consideration the nature of the Member's business and other facts and circumstances, to prevent the misuse of material nonpublic information (including the submission of SPIKES strategy orders); and

(ii) when submitting these bids and offers, the Market Maker has no actual knowledge of any previously submitted SPIKES strategy orders.

In other words, if a Market Maker submits bids or offers in constituent options on a SPIKES Index option settlement day, and if such bids and offers are for its market maker account and submitted for purposes of its market making activities on the Exchange (including in accordance with Market Maker obligations, such as to offset imbalances or provide competitive pricing), the Market Maker may submit those bids and offers any time prior to the open of trading, including both before and after the strategy order cut-off time. As long as the Member has appropriate procedures in place both to prevent the Market Maker from knowing about the submission of SPIKES strategy orders by other persons within the Member organization with which it is affiliated, and to prevent other persons from knowing about the Market Maker's submission of bids and offers, the Exchange will not review such bids and offers for either potential impermissible entry of SPIKES strategy orders, or cancellations of or modifications to previously submitted SPIKES strategy orders.

Bona fide Market Maker activity is generally activity consistent with Market Maker requirements under the Act and MIAX Options Rules:

- Pursuant to the Act, a market maker is a specialist permitted to act as a dealer, any dealer acting in the capacity of block positioner, and any dealer who, with respect to a security, holds himself out (by entering quotations in an inter-dealer communications system or otherwise) as being willing to buy and

³⁹ The term "MBBO" means the best bid or offer on the Exchange. See Exchange Rule 100.

⁴⁰ See, e.g., Rules 603 and 604 (describing the obligations of Primary Lead Market Makers and Lead Market Makers).

⁴¹ See Rules 503(f).

sell such security for his own account on a regular or continuous basis.⁴²

- Pursuant to Rule 603, a Market Maker appointed to a class must, among other things, engage to a reasonable degree under existing circumstances in dealings for the Market Maker's own account when there exists, or it is reasonably anticipated that there will exist, a lack of price continuity, a temporary disparity between the supply of and demand for an option (*i.e.*, an imbalance), to compete with other Market Makers to improve markets in its appointed classes, and to update market quotations in response to changed market conditions in its appointed classes. Additionally, pursuant to Rule 603, all quotes a Market Maker submits, including prior to the opening, must comply with all requirements including applicable bid-ask differential and minimum size requirements.⁴³ Rule 604 imposes an ongoing continuous quoting requirement on Market Makers that applies through the opening of trading, as well as during regular trading hours.

- In addition to these obligations, Market Makers also effect transactions for the purpose of hedging, reducing risk of, rebalancing, or liquidating their open positions.

As noted above, the Exchange implemented the SPIKES strategy order cut-off time for the operational purpose of providing market participants with time to enter additional orders and quotes to offset any such imbalances prior to the opening of these series.⁴⁴ The Exchange's surveillance procedures to determine market participants' compliance with the SPIKES strategy order cut-off time are separate and distinct from the Exchange's surveillance procedures to identify potentially manipulative behavior. Therefore, from the Exchange's perspective, whether a Market Maker's bids and offers constitute SPIKES strategy orders is distinct from whether the submitting Market Maker is attempting to engage in manipulative behavior. The classification of bona fide Market Maker activity as non-SPIKES strategy orders will have no impact on the Exchange's surveillance procedures to detect activity intended to manipulate the settlement value or violate other Rules. Additionally, all

Market Maker bids and offers, even though not considered SPIKES strategy orders pursuant to the proposed rule change, will continue to be subject to Exchange surveillance procedures that monitor trading in the option series used to calculate SPIKES Index settlement values on expiration dates, as well as surveillance procedures that monitor Market Maker activity for compliance with Market Maker obligations in the Rules. This activity will merely be excepted from Exchange surveillance procedures determining compliance with the operational SPIKES strategy order cut-off time.

The Exchange believes Market Makers are more likely to interact with and resolve order imbalances on SPIKES settlement days if they can be confident that their bids and offers submitted for that purpose will not be deemed SPIKES strategy orders or cancellations of or modifications to previously submitted SPIKES strategy orders. As discussed above, the purpose of the SPIKES strategy order cut-off time is to provide market participants, including Market Makers, with sufficient time to address imbalances created by SPIKES strategy orders. Additionally, as discussed above, pursuant to Rule 503(f), whether a series opens depends on the presence of Market Maker quotes at prices no wider than an acceptable price range. Market Makers are an important source of liquidity on the Exchange, and also have various obligations with which they must comply. The proposed rule change will provide a Market Maker with an opportunity to provide liquidity on SPIKES Index settlement dates and to satisfy their Market Maker obligations, without concern that the Exchange may consider such activity to constitute the placing of, or cancellations to or modifications of, SPIKES strategy orders, even if the Member with which the Market Maker is affiliated submitted a SPIKES strategy order.

The purpose of this proposed change is to accommodate the fact that the Member with which the Market Maker is affiliated may submit a SPIKES strategy order while the Market Maker may also be submitting bids and offers to accommodate a fair and orderly opening process, by among other things, resolving market order imbalances and submitting competitively priced bids and offers.

For example, a Member may have a SPY Market Maker and a separate volatility trading desk. During the SPIKES Special Settlement Auction on a SPIKES Index settlement day, the trading strategy of the SPY Market Maker is to provide markets in SPY

options (both before and after the SPIKES strategy order cut-off time), and the trading strategy of the volatility trading desk may be to replicate Vega exposure by replacing its expiring SPIKES options positions with positions in the SPY constituent series. To replicate its Vega exposure, the volatility trading desk may enter SPIKES strategy orders prior to the SPIKES strategy order cut-off time. These are separate and distinct trading strategies. If the Member has reasonable policies and procedures in place such that the SPY Market Maker has no knowledge of the volatility trading desk's submission of SPIKES strategy orders, and that the volatility trader has no knowledge of the SPY Market Maker's submission of bids and offers, the Exchange believes it is appropriate for the SPY Market Maker's bids and offers to not be deemed SPIKES strategy orders, or the modification to or cancellation of the SPIKES strategy order submitted by its affiliated volatility trading desk.

The Exchange does not believe it is necessary to restrict the bona fide market making activities of a Market Maker within its appointed classes due to other unrelated trading activities that may involve submissions of orders deemed to be SPIKES strategy orders of which the Market Maker has no actual knowledge. The proposed rule change expressly provides that activity related to a Market Maker's market making activity in an appointed class will not constitute the submission of a SPIKES strategy order or the cancellation of or modification to a previously submitted SPIKES strategy order.

The proposed rule change makes clear that a Market Maker's submission of bids and offers for bona fide market making purposes in constituent series is permitted on SPIKES Index settlement days through the open of trading in the same manner as it is permitted in all series in its appointed classes at all other times. This will encourage Market Makers to continue to submit bids and offers through the open, despite other trading activity within the Member organization. This will also ensure Market Makers can respond to imbalances and update their quotes⁴⁵ in accordance with their market making dealings and obligations. The Exchange believes this will contribute to price transparency and liquidity in the option series at the open, and thus will promote a fair and orderly opening on SPIKES Index settlement days. The

⁴² 15 U.S.C. 78c(a)(38); *see also* 12 U.S.C. 1851(d)(1)(B) (market making is intended to service "the reasonably expected near-term demand" of other parties).

⁴³ Rule 603(b)(4) permits the Exchange to set different minimum quote size and bid-ask differential requirements for opening quotes as those for intraday quotes.

⁴⁴ *See* Exchange Rule 503, Interpretations and Policies .03.

⁴⁵ As noted above, the Exchange's system will not open a series if there is no quote of if the opening quote or price is outside an acceptable price range.

Exchange continuously evaluates the SPIKES Special Settlement Auction to identify potential enhancements, and intends to modify the procedure as it deems appropriate to contribute to a fair and orderly opening process. A fair and orderly opening in these series benefits all market participants who trade in the SPIKES Index options and the constituent options.

The proposed rule change would not eliminate a Market Maker's requirements to abide by Exchange Rules 301 (Just and Equitable Principles of Trade), 318 (Manipulation), and 303 (Prevention of the Misuse of Material Nonpublic Information). The requirement in the proposed rule change that the Member with which a Market Maker is affiliated must establish, maintain, and enforce policies and procedures reasonably designed to ensure the Market Maker will not have knowledge of the submission of SPIKES strategy orders is consistent with requirements of Rule 303. The Exchange will continue to conduct surveillance to monitor trading in the option series used to calculate the SPIKES Index settlement values on expiration dates, including but not limited to, monitoring entry of SPIKES strategy orders, or modifications to SPIKES strategy orders, following the cut-off time, as well as compliance with other Rules.

The proposed rule change also makes a non-substantive change to change paragraph numbering resulting from the addition of this proposed rule.

Additionally, the proposed rule changes modifies Interpretations and Policies .03(c) to Rule 503, to state that "SPIKES strategy orders" means all orders for participation in the SPIKES Special Settlement Auction that are related to positions in, or a trading strategy involving, expiring SPIKES Index options. The addition of the word "expiring" is a codification of the Exchange's interpretation of the term SPIKES strategy order. As discussed above, to replicate expiring SPIKES Index options on their expiration dates with options portfolios, market participants generally submit SPIKES strategy orders to participate in the SPIKES Special Settlement Auction on SPIKES Index settlement days. The addition of the word "expiring" is consistent with the introductory paragraph in Interpretations and Policies .03 to Rule 503, which states that the SPIKES Special Settlement Auction applies to series used to calculate the exercise/final settlement value of the SPIKES Index for expiring options contracts, and demonstrates the rule is meant to refer to orders that relate to strategies involving expiring

SPIKES Index options. Therefore, the proposed codification is consistent with this general practice, as well as the current rule.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act⁴⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act⁴⁷ 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposed change will increase liquidity on SPIKES Index settlement dates, as it will remove an impediment that may discourage Market Makers from submitting bids and offers to offset imbalances and update the prices of their quotes in response to changing market conditions prior to the open. The Exchange believes this additional liquidity may contribute to a fair and orderly opening by increasing execution opportunities, reducing imbalances in constituent options, and increasing the presence of quotes within the acceptable price range, which would benefit all market participants who trade in the SPIKES Index options and the constituent options. The Exchange does not believe it is necessary to restrict the bona fide market maker activities of a Market Maker due to other unrelated trading activity by the Member with which it is affiliated. The Exchange notes that the proposed rule change would not impact a Market Maker's requirements to abide by Exchange Rules 301 (Just and Equitable Principles of Trade), 318 (Manipulation), and 303 (Prevention of the Misuse of Material Nonpublic Information). The requirement in the proposed rule change that the Member with which a Market Maker is affiliated must establish, maintain, and enforce policies and procedures reasonably designed to

ensure the Market Maker will not have knowledge of the submission of SPIKES strategy orders is consistent with requirements of Rule 303. As a result, the Exchange does not believe that the proposed rule change will be burdensome on Market Makers.

The Exchange believes the proposed rule change will contribute to price transparency and liquidity in the option series at the open, and thus a fair and orderly opening on SPIKES Index settlement days. A fair and orderly opening in these series benefits all market participants who trade in the SPIKES Index options and the constituent options.

The proposed rule change to add the term "expiring" to the definition of SPIKES strategy order is merely a codification of a current Exchange interpretation and is consistent with the definition of constituent options in the current rule.

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. Because of the importance of Market Maker liquidity in the options market and the Exchange's need for competitive quotes to open a series, the Exchange believes it is appropriate for Market Makers' bids and offers prior to the opening of trading, including after the SPIKES strategy order cut-off time, not to be considered SPIKES strategy orders, or cancellations to or modifications of previously submitted SPIKES strategy orders. As discussed above, Market Makers are subject to various obligations under the Rules, and the proposed rule change provides them with the ability to satisfy these obligations without the risk of their market making activity being deemed to constitute SPIKES strategy orders or modifications to or cancellations of SPIKES strategy orders. The requirement in the proposed rule change that the Member with which a Market Maker is affiliated must establish, maintain, and enforce policies and procedures is reasonably designed to ensure the Market Maker will not have knowledge of the submission of SPIKES strategy orders and is consistent with the requirements of Rule 303. As a result, the Exchange does not believe the proposed rule change will be burdensome on Market Makers. The Exchange does not believe it is necessary to restrict the bona fide market maker activities of a Member due to its other unrelated trading activities. The proposed rule change has

⁴⁶ 15 U.S.C. 78f(b).

⁴⁷ 15 U.S.C. 78f(b)(5).

no impact on intermarket competition, as it applies to orders and quotes submitted to the SPIKES Special Settlement Auction the Exchange conducts prior to the open of trading in certain classes.

The Exchange believes that the proposed rule change will relieve any burden on, or otherwise promote, competition. The Exchange believes the proposed rule change will contribute to price transparency and liquidity in constituent options at the open on SPIKES Index settlement days, and thus to a fair and orderly opening on those days. A fair and orderly opening, and increased liquidity in these series benefits all market participants who trade in the SPIKES Index options and the constituent options.

The proposed rule change to add the term “expiring” to the definition of SPIKES strategy orders has no impact on competition, as it is merely a codification of a current Exchange interpretation and is consistent with the definition of constituent options in the current rule.

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 Act⁴⁸ and Rule 19b-4(f)(6)⁴⁹ 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.

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. Please include File Number SR-MIAX-2019-12 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-2019-12. 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-2019-12 and should be submitted on or before April 16, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁰

Eduardo A. Aleman,
Deputy Secretary.

[FR Doc. 2019-05696 Filed 3-25-19; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85374; File No. SR-NYSE-2018-54]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Approval of a Proposed Rule Change Amending Sections 312.03 and 312.04 of the Listed Company Manual To Amend the Price Requirements for Certain Exceptions From the Shareholder Approval Rules

March 20, 2019.

I. Introduction

On December 3, 2018, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Sections 312.03 and 312.04 of the NYSE Listed Company Manual (“Manual”) to modify the price requirements that companies must meet to avail themselves of certain exceptions from the shareholder approval requirements set forth in Section 312.03. The proposed rule change was published for comment in the **Federal Register** on December 20, 2018.³ On January 30, 2019, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated March 20, 2019, as the date by which it should either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ The Commission has received no comment letters on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange has proposed to amend Sections 312.03 and 312.04 of the Manual to modify the price requirements that companies must meet

⁴⁸ 15 U.S.C. 78s(b)(3)(A).

⁴⁹ 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.

⁵⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 84821 (Dec. 14, 2018), 83 FR 65378 (“Notice”).

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 85005 (Jan. 30, 2019), 84 FR 1812 (Feb. 5, 2019).