

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79048; File No. SR-MIAX-2016-35]

### Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 503 Openings on the Exchange and Rule 603 Obligations of Market Makers

October 5, 2016.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) <sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 23, 2016, Miami International Securities Exchange LLC (“MIAX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I, 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 the Exchange; and Rule 603, Obligations of Market Makers, to adopt new Interpretations and Policies .01 to each existing rule.

The text of the proposed rule change is available on the Exchange’s Web site at [http://www.miaxoptions.com/filter/wotitle/rule\\_filing](http://www.miaxoptions.com/filter/wotitle/rule_filing), at MIAX’s principal office, and at the Commission’s Public Reference Room.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

#### A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange proposes to amend Exchange Rule 503, Openings on the Exchange, to adopt new Interpretations and Policies .01 to state that if the Primary Lead Market Maker (“PLMM”) <sup>3</sup> assigned in a particular equity option class has not submitted valid width quotes in any series of such class within one minute following the dissemination of a quote or trade by the market for the underlying security and the affected series of such class has opened for trading within such one minute period, such failure to submit valid width quotes will not be considered a violation of Rule 503(e)(5) by the Primary Lead Market Maker, unless the PLMM demonstrates a pattern or practice of not submitting valid width quotes within one minute following the dissemination of a quote or trade by the market for the underlying security, irrespective of whether the series have opened for trading. Additionally, the Exchange proposes to amend Exchange Rule 603, Obligations of Market Makers, to adopt new Interpretations and Policies .01 to state that if the Primary Lead Market Maker assigned in a particular equity option class has not submitted valid width quotes in any series of such class within one minute following the dissemination of a quote or trade by the market for the underlying security if the affected series of such class have opened for trading within such one minute period, such failure to submit valid width quotes will

<sup>3</sup> The term “Market Makers” refers to “Lead Market Makers”, “Primary Lead Market Makers” and “Registered Market Makers” collectively. The term “Lead Market Maker” means a Member registered with the Exchange for the purpose of making markets in securities traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VI of the Exchange’s Rules with respect to Lead Market Makers. When a Lead Market Maker is appointed to act in the capacity of a Primary Lead Market Maker, the additional rights and responsibilities of a Primary Lead Market Maker specified in Chapter VI of the Exchange’s Rules will apply. The term “Primary Lead Market Maker” means a Lead Market Maker appointed by the Exchange to act as the Primary Lead Market Maker for the purpose of making markets in securities traded on the Exchange. The Primary Lead Market Maker is vested with the rights and responsibilities specified in Chapter VI of the Exchange’s Rules with respect to Primary Lead Market Makers. The term “Registered Market Maker” means a Member registered with the Exchange for the purpose of making markets in securities traded on the Exchange, who is not a Lead Market Maker and is vested with the rights and responsibilities specified in Chapter VI of the Exchange’s Rules with respect to Registered Market Makers. See Exchange Rule 100.

not be considered a violation of Rule 603(c) by the Primary Lead Market Maker, unless the PLMM demonstrates a pattern or practice of not submitting valid width quotes within one minute following the dissemination of a quote or trade by the market for the underlying security, irrespective of whether the series have opened for trading.

To open a series for trading the Exchange employs an automated Opening Process <sup>4</sup> which begins after a pause for a period of time no longer than one half second following the dissemination of a quote or trade in the market for the underlying security when any one of three separate sets of criteria is met: The first requires that a PLMM’s valid width quote <sup>5</sup> has been submitted; <sup>6</sup> the second requires that valid width quotes of at least two Market Makers, where at least one is a Lead Market Maker, have been submitted; <sup>7</sup> the third, <sup>8</sup> applicable to multiply listed option classes, requires that at least one Eligible Exchange (as defined in Rule 1400(f)) <sup>9</sup> has disseminated a quote in the individual option in accordance with Rule 1402(a), <sup>10</sup> there is a valid width NBBO available and the valid width quote of at least one Lead Market Maker has been submitted. If any one of these criteria can be satisfied, the opening process will begin. <sup>11</sup>

The requirement that a PLMM enter valid width quotes not later than one minute following the dissemination of a quote or trade by the market for the underlying security is intended to ensure that the option class is opened

<sup>4</sup> See Exchange Rule 503(e), Starting the Opening Process.

<sup>5</sup> A valid width quote is one where the bid and offer, comprised of a Market Maker’s Standard quotes and Day eQuotes, differ by no more than the differences outlined in Exchange Rule 603(b)(4)(i). See Exchange Rule 503(e)(3).

<sup>6</sup> See Exchange Rule 503(e)(1)(i).

<sup>7</sup> See Exchange Rule 503(e)(1)(ii).

<sup>8</sup> See Exchange Rule 503(e)(1)(iii).

<sup>9</sup> The term “Eligible Exchange” means a national securities exchange registered with the SEC in accordance with Section 6(a) of the Exchange Act that: (1) is a Participant Exchange in OCC (as that term is defined in Section VII of the OCC by-laws); (2) is a party to the OPRA Plan (as that term is described in Section I of the OPRA Plan); and (3) if the national securities exchange is not a party to the Options Order Protection and Locked/Crossed Markets Plan as defined below, is a participant in another plan approved by the Commission providing for comparable Trade-Through and Locked and Crossed Market protection. See Exchange Rule 1400(f).

<sup>10</sup> Except for quotations that fall within the provisions of paragraph (b) or this Rule, Members shall reasonably avoid displaying, and shall not engage in a pattern or practice of displaying any quotations that lock or cross a Protected Quotation. See Exchange Rule 1402(a), Prohibition.

<sup>11</sup> See Exchange Rule 503.

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

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

for trading in a timely fashion. However, there are two additional methods which the Opening Process may use to open the option class for trading which do not require the presence of a PLMM's valid width quote. If series of the option class are opened for trading within one minute following the dissemination of a quote or trade by the market for the underlying security, the requirement that a PLMM enter valid width quotes within one minute following the dissemination of a quote or trade by the market for the underlying security is unnecessary.

The MIAX Options Exchange became a registered national securities exchange on December 7, 2012.<sup>12</sup> Two months later, in February 2013, the Exchange revised its opening quoting obligations for market makers to better align its rules to those of the other then existing option exchanges.<sup>13</sup> In its rule filing the Exchange stated that, “[w]hile MIAX agrees that eliminating its opening quoting obligations for Market Makers would be pro-competitive in that it will attract more market makers and additional liquidity to the Exchange, MIAX believes that the PLMM should still have the responsibility to assure a timely start to the opening process in each of its appointed classes and is therefore continuing to require the PLMM to submit valid width quotes not later than one minute after a trade or quote in the underlying security has been disseminated. As it builds its options marketplace, MIAX believes a consistently timely opening of its options classes is essential for attracting order flow.”<sup>14</sup>

The Exchange remains committed to ensuring that its options classes open in a consistently timely manner and nothing in the current rule proposal diminishes the affirmative obligation the PLMM bears to open series in a timely fashion. The Exchange has reviewed data for the first two quarters of 2016 for series opening on the Exchange within one minute following the dissemination of a quote or trade by the market for the underlying security and found that 99.92%<sup>15</sup> of all series listed on the Exchange were opened for

trading within such one minute period. During this review period, the Exchange found that a valid width PLMM quote was present for 95.57% of all series which opened within one minute following the dissemination of a quote or trade by the market for the underlying security. For the remaining 4.35% of series, 98.13% were opened within one minute by an alternative method which did not require the presence of a PLMM quote.

Under the proposed rule filing, the PLMM maintains an affirmative obligation to provide a valid width quote within one minute following the dissemination of a quote or trade by the market for the underlying security to ensure that the series are opened in a timely manner. The Exchange seeks only to eliminate unnecessary disciplinary action against a PLMM for not providing a valid width quote within such one minute period when the series is opened within that period by an alternative method. The Exchange notes that the proposed rule change will not prohibit the Exchange from taking disciplinary action against a PLMM for failing to provide valid width quotes within one minute following the dissemination of a quote or trade by the market for the underlying security if the affected series do not open within such one minute period. Additionally, the proposed rule provides that a PLMM that demonstrates a pattern or practice of not submitting valid width quotes within one minute following the dissemination of a quote or trade by the market for the underlying security, irrespective of whether the series have opened for trading or not, will be subject to disciplinary action by the Exchange. This ensures that the incentive for PLMMs to provide valid width quotes within one minute following the dissemination of a quote or trade by the market for the underlying security remains intact, and ensures that the participation rates established by the PLMM community remain high.

Further, the Exchange notes that the proposed rule change will not relieve Market Makers of their continuous quoting obligations under Exchange Rule 604<sup>16</sup> and under Reg NMS Rule 602.<sup>17</sup> Nor will the proposed rule change prohibit the Exchange from taking disciplinary action against a Market Maker for failing to meet their

continuous quoting obligation each trading day.

The Exchange now proposes to adopt Interpretations and Policies .01 to Rule 503, which will establish that a PLMM assigned in a particular equity option class will not be in violation of subsection (e)(5) if the PLMM has not submitted valid width quotes in any series of such class within one minute following the dissemination of a quote or trade by the market for the underlying security if the affected series of such class have opened for trading within such one minute period, unless the PLMM demonstrates a pattern and practice of not submitting valid width quotes within one minute following the dissemination of a quote or trade by the market for the underlying security, irrespective of whether the series have opened for trading. Additionally, the Exchange now proposes to adopt Interpretations and Policies .01 to Rule 603, which will establish that a PLMM assigned in a particular equity option class will not be in violation of subsection (c) if the PLMM has not submitted valid width quotes in any series of such class within one minute following the dissemination of a quote or trade by the market for the underlying security if the affected series of such class have opened for trading within such one minute period, unless the PLMM demonstrates a pattern and practice of not submitting valid width quotes within one minute following the dissemination of a quote or trade by the market for the underlying security, irrespective of whether the series have opened for trading. The Exchange believes that by adopting the proposed Rule it will harmonize the intent of the rule with its enforcement.

## 2. Statutory Basis

MIAX believes that its proposed rule change is consistent with Section 6(b) of the Act<sup>18</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>19</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange notes that the proposed rule change is not a material change to either Rule 503, Openings on the

<sup>12</sup> See Securities Exchange Act Release No. 68341 (December 3, 2012), 77 FR 73065 (December 7, 2012) (File No. 10-207).

<sup>13</sup> See Securities Exchange Act Release No. 68954 (February 20, 2013), 78 FR 13107 (February 26, 2013) (SR-MIAX-2013-04).

<sup>14</sup> See Securities Exchange Act Release No. 68954 (February 20, 2013), 78 FR 13107 (February 26, 2013) (SR-MIAX-2013-04).

<sup>15</sup> The Exchange determined that for Q1 2016, 99.83%, and for Q2 2016, 99.95%, of all series listed on the Exchange were opened within one minute following the dissemination of a quote or trade by the market for the underlying security.

<sup>16</sup> See Exchange Rule 604(e)(1)(i) which states, “[a] Primary Lead Market Maker must provide continuous two-sided Standard quotes and/or Day eQuotes, which for the purpose of this paragraph shall mean 90% of the time, for the options classes to which it is appointed.

<sup>17</sup> 17 CFR 242.602.

<sup>18</sup> 15 U.S.C. 78f(b).

<sup>19</sup> 15 U.S.C. 78f(b)(5).

Exchange, or Rule 603, Obligations of Market Makers. The proposed rule change is designed to promote just and equitable principles of trade by better aligning the enforcement of a Market Maker's obligations on the Exchange with the objective of the Rule which is to ensure that option classes on the Exchange are opened in a consistently timely fashion. Further, the proposed rule change will foster cooperation and coordination with persons engaged in regulating and facilitating transactions in securities as the proposed rule change articulates the specific conditions under which a Market Maker has met, or has failed to meet, a quoting obligation on the Exchange.

#### *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. The proposed rule change is not designed to address any competitive issues.

#### *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>20</sup> and Rule 19b-4(f)(6)<sup>21</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, 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-2016-35 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-2016-35. 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-2016-35 and should be submitted on or before November 2, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

**Brent J. Fields,**

*Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-79052; File No. SR-NYSEArca-2016-82]**

### **Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment Nos. 1, 2, and 3 Thereto, To List and Trade Shares of the JPMorgan Diversified Event Driven ETF Under NYSE Arca Equities Rule 8.600**

October 5, 2016.

#### **I. Introduction**

On June 20, 2016, NYSE Arca, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade shares of the JPMorgan Diversified Event Driven ETF under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the **Federal Register** on July 7, 2016.<sup>3</sup> On August 18, 2016, the Exchange filed Amendment No. 1 to the proposed rule change,<sup>4</sup> and,

<sup>22</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 78218 (Jul. 1, 2016), 81 FR 44339 ("Notice").

<sup>4</sup> In Amendment No. 1, which amended and replaced the proposed rule change in its entirety, the Exchange clarified: (a) certain aspects relating to the Fund's investment strategy, including descriptions of (i) certain return factors that the Fund seeks to utilize to achieve its investment objective, (ii) the Fund's total net long market exposure, (iii) the Fund's use of derivative instruments and its market exposure to such instruments, and (iv) the Fund's investments in mutual funds; (b) that the common stock into which convertible securities held by the Fund can be converted will be exchange-traded; (c) that the Fund may invest no more than 5% of its assets, in the aggregate, in over-the-counter ("OTC") common stocks, preferred stocks, warrants, rights, and contingent value rights ("CVRs") of U.S. and foreign corporations (including emerging market securities); (d) the redemption order submission cut-off time; (e) that no more than 10% of the net assets of the Fund will be invested in Depository Receipts (as defined herein) that are not exchange-listed; and (f) the use of certain defined terms. Amendment No. 1 to the proposed rule change is

Continued

<sup>20</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>21</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.