

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

The foregoing change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁷ and paragraph (f) of Rule 19b-4¹⁸ 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-BX-2015-033 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-BX-2015-033. 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 such filing also will be available for inspection and copying at the principal offices 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-BX-2015-033, and should be submitted on or before July 8, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Robert W. Errett,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-75152; File No. SR-MIAX-2015-19]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Order Approving a Proposed Rule Change To Amend Exchange Rule 515

June 11, 2015.

I. Introduction

On April 13, 2015, Miami International Securities Exchange LLC ("MIAX" or "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 Exchange Rule 515 regarding the functionality of Customer Cross Order and Qualified Contingent Cross Order types. The proposed rule change was published for comment in the **Federal Register** on April 30, 2015.³ The Commission did not receive any comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes amendments to MIAX Rule 515(h) to provide that trading interest that is subject to an

ongoing timer or auction will maintain priority over a new incoming Customer Cross Order or Qualified Contingent Cross Order. MIAX Rule 515(h)(1) provides that Customer Cross Orders⁴ are automatically executed upon entry provided that the execution (i) is at or between the best bid and offer on the Exchange; (ii) is not at the same price as a Priority Customer Order on the Exchange's Book; and (iii) will not trade at a price inferior to the national best bid or offer ("NBBO"). Customer Cross Orders are automatically canceled if they cannot be executed.⁵ Customer Cross Orders may only be entered in the minimum trading increments applicable to the options class under Rule 510.⁶

MIAX Rule 515(h)(2) provides that Qualified Contingent Cross Orders⁷ are automatically executed upon entry provided that the execution (i) is not at the same price as a Priority Customer Order on the Exchange's Book; and (ii) is at or between the NBBO. Qualified Contingent Cross Orders are automatically canceled if they cannot be executed.⁸ Qualified Contingent Cross Orders may only be entered in the minimum trading increments applicable to the options class under MIAX Rule 510.⁹

Although neither the Customer Cross Order nor the Qualified Contingent Cross Order may be executed at a price inferior to the NBBO, the Exchange notes that there are situations at the Exchange during which trading interest may exist in the Exchange's System that could be executable at prices up to the NBBO but is not automatically executed because the Exchange is either attempting to obtain additional price improvement for the order or additional liquidity to trade against the order on the Exchange. The Exchange states that it employs a variety of timers and auctions to provide market participants with an opportunity to obtain additional price improvement for their order or to access additional liquidity to trade against the order on the Exchange. Specifically, during the liquidity refresh pause or managed interest process

⁴ See MIAX Rules 515(h)(1) and 516(i). The Commission notes that the Customer Cross Order type is currently not available for use on the Exchange. See MIAX Options Regulatory Circular, RC-2015-05.

⁵ See Notice, *supra* note 3, at 24297.

⁶ See MIAX Rule 515(h)(1).

⁷ See MIAX Rules 515(h)(2) and 516(j). See also MIAX Rule 516, Interpretations and Policies .01. The Qualified Contingent Cross Order is currently not deployed; however, the Exchange represents that it intends to make the order type available pending Commission approval of the proposed rule change. See Notice, *supra* note 3, at 24297.

⁸ See Notice, *supra* note 3, at 24297.

⁹ See MIAX Rule 515(h)(2).

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f).

¹⁹ 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. 74809 (April 24, 2015), 80 FR 24297 (SR-MIAX-2015-19) ("Notice").

pursuant to MIAX Rule 515(c),¹⁰ or a route timer pursuant to MIAX Rule 529,¹¹ the Exchange has trading interest that exists that may be executable up to the NBBO but is displayed at a price one minimum price increment away. In addition, during the price improvement mechanisms such as the PRIME Auction or PRIME Solicitation Auction pursuant to MIAX Rule 515A,¹² the Exchange has trading interest that exists that may be executable up to the NBBO but is not displayed.¹³

According to the Exchange, the execution of a Customer Cross Order or Qualified Contingent Cross Order that arrives during a timer or auction at a potentially better price than the interest subject to the timer or auction has the potential to cause confusion and perceived disruption to market participants that are subject to the pre-existing timers or auctions that may see executions occurring at better prices than their trading interest. In addition,

¹⁰ The “liquidity refresh pause” is a process during which 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 MIAX best bid or offer (“MBBO”) to be received when at the time of receipt or reevaluation of the initiating order by the System: (A) either the initiating order is a limit order whose limit price crosses the NBBO or the initiating order is a market order, and the limit order or market order could only be partially executed; (B) a Market Maker quote was all or part of the MBBO when the MBBO is alone at the NBBO; and (C) and the Market Maker quote was exhausted. See MIAX Rule 515(c)(2). The “managed interest process” is a process for non-routable orders during which, if the limit price locks or crosses the current opposite side NBBO, the System will display the order one MPV away from the current opposite side NBBO, and book the order at a price that will lock the current opposite side NBBO. Should the NBBO price change to an inferior price level, the order’s Book price will continuously re-price to lock the new NBBO and the managed order’s displayed price will continuously re-price one MPV away from the new NBBO until (i) the order has traded to and including its limit price, (ii) the order has traded to and including its price protection limit at which any remaining contracts are cancelled, (iii) the order is fully executed or (iv) the order is cancelled. See MIAX Rule 515(c)(1)(ii).

¹¹ See MIAX Rule 529. The “route timer” is a process for those initiating Public Customer orders that are routable, but do not meet the additional criteria for Immediate Routing, during which the System will implement a route timer not to exceed one second, in order to allow Market Makers and other participants an opportunity to interact with the initiating order.

¹² The “PRIME Auction” is a process by which a Member may electronically submit for execution (“auction”) an order it represents as agent (“agency order”) against principal interest, and/or an agency order against solicited interest. See MIAX Rule 515A(a). The “PRIME Solicitation Mechanism” is a process by which a Member that represents agency orders of a size of 500 contracts or more may electronically execute against solicited orders provided it submits both the agency order and solicited orders for electronic execution into the PRIME Solicitation Mechanism pursuant to Rule 515A. See MIAX Rule 515A(b).

¹³ See Notice, *supra* note 3, at 24298.

the Exchange believes that the timers and auctions provide a valuable service to market participants and that the use of these mechanisms, which provide market participants with opportunities to obtain additional price improvement for their orders or to access additional liquidity to trade against the orders, should be promoted on the Exchange. The Exchange proposes to modify its Rules in order to maintain the priority of trading interest subject to timers and auctions that are initiated prior to the arrival of these specified order types. The proposed changes also would codify existing functionality for Customer Cross Orders that is not currently detailed in the Exchange’s Rules.¹⁴

Thus, the Exchange proposes to amend Rule 515 to provide that Customer Cross Orders and Qualified Contingent Cross Orders will be rejected if there is a timer or price improvement auction in progress when either of these orders is received. Specifically, the Exchange proposes to amend Rule 515(h)(1) to provide that if trading interest exists on the MIAX Book that is subject to the liquidity refresh pause or managed interest process pursuant to Rule 515(c), or a route timer pursuant to Rule 529, when the Exchange receives a Customer Cross Order, the System will reject the Customer Cross Order. The Exchange also proposes to amend Rule 515(h)(1) to provide that if trading interest exists that is subject to a PRIME Auction or PRIME Solicitation Auction pursuant to Rule 515A when the Exchange receives a Customer Cross Order, the System will reject the Customer Cross Order.

In addition, the Exchange proposes to amend Rule 515(h)(2) to provide that if trading interest exists on the MIAX Book that is subject to the liquidity refresh pause or managed interest process pursuant to Rule 515(c), or a route timer pursuant to Rule 529, when the Exchange receives a Qualified Contingent Cross Order, the System will reject the Qualified Contingent Cross Order. The Exchange also proposes to amend Rule 515(h)(2) to provide that if trading interest exists that is subject to a PRIME Auction or PRIME Solicitation Auction pursuant to Rule 515A when the Exchange receives a Qualified Contingent Cross Order, the System will reject the Qualified Contingent Cross Order. The Exchange proposes no changes to the Customer Cross Order and the Qualified Contingent Cross Order order types, and represents that both order types will continue to be

subject to the same requirements as before.¹⁵

III. Discussion and Commission’s Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act¹⁶ and the rules and regulations thereunder applicable to a national securities exchange.¹⁷ Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁸ which requires, among other things, that the Exchange’s rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that it is reasonable for the Exchange’s rules to provide that trading interest subject to ongoing timers and auctions will maintain priority over a new incoming Customer Cross Order or Qualified Contingent Cross Order. The proposed rule change provides that a Customer Cross Order or Qualified Contingent Cross Order will be rejected by the System if there is a timer or price improvement auction in progress. In that instance, market participants may choose to route their orders to other exchanges or resubmit their Customer Cross Order or Qualified Contingent Cross Order to the Exchange. The proposed rule change may eliminate potential confusion by market participants as to the functionality of the Customer Cross Order and Qualified Contingent Cross Order types. The proposed rule change also provides clarity regarding the functionality of Customer Cross Orders; the Commission notes that the proposed changes would codify existing functionality for Customer Cross Orders that is not currently detailed in the Exchange’s Rules.¹⁹ Finally, the Commission emphasizes that the proposed rule change does not change any of the requirements for submitting a Customer Cross Order or Qualified Contingent Cross Order set forth in Rule 515.²⁰

¹⁵ See *id.* at 24298.

¹⁶ 15 U.S.C. 78f.

¹⁷ Additionally, in approving the proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁸ 15 U.S.C. 78f(b)(5).

¹⁹ See Notice, *supra* note 3, at 24297.

²⁰ See *id.* at 24298.

¹⁴ See *id.* at 24297.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²¹ that the proposed rule change (File No. SR-MIAX-2015-19) be, and hereby is, approved.

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

Robert W. Errett,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-75157; File No. 10-214]

Automated Matching Systems Exchange, LLC; Order Denying an Application for a Limited Volume Exemption From Registration as a National Securities Exchange Under Section 5 of the Securities Exchange Act of 1934

June 11, 2015.

I. Introduction

Automated Matching Systems Exchange, LLC (“AMSE”) believes that its proposed business model would qualify it as an exchange. As defined in Section 3(a)(1) of the Securities Exchange Act of 1934 (“Exchange Act” or “Act”), an “exchange” is “any organization, association, or group of persons, whether incorporated or unincorporated, which constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange as that term is generally understood, and includes the market place and the market facilities maintained by such exchange.”¹ Under Section 5 of the Act, it is unlawful for an exchange to effect

any transaction in a security, or to report such transaction, “unless such exchange (1) is registered as a national securities exchange . . . or (2) is exempted from such registration upon application by the exchange because, in the opinion of the Commission, by reason of the limited volume of transactions effected on such exchange, it is not practicable and not necessary or appropriate in the public interest or for the protection of investors to require such registration.”²

AMSE has chosen the latter option, seeking from the Commission an exemption from registration as a national securities exchange.³ After a careful review of the exemption application, however, we have determined to deny it.

Although our review leads us to identify a number of potential issues that might warrant this result (including whether AMSE would even qualify as an exchange),⁴ we find that the application is fatally flawed because AMSE is proposing to possess the broad regulatory powers and responsibilities that are reserved for self-regulatory organizations (“SROs”), while simultaneously seeking exemption from registration as an exchange.⁵ Under the Act, for an exchange to possess the powers and responsibilities of an SRO, it must register as a national securities exchange. An exchange that is exempt from such registration does *not* meet the definition of an SRO under the Act. Moreover, the Commission has never allowed an exempt exchange to possess the broad range of regulatory powers and responsibilities of an SRO. We believe that doing so here would be

contrary to the Act and inconsistent with the public interest and the protection of investors.

II. Background

A. Procedural History

On July 7, 2014, AMSE filed with the Commission an application seeking a limited volume exemption, under Section 5 of the Act, from the requirement to register as a national securities exchange under Section 6 of the Act.⁶ Notice of AMSE’s exemption application was published for comment in the **Federal Register** on July 29, 2014.⁷

On October 23, 2014, the Commission issued an order instituting proceedings to determine whether to grant or deny AMSE’s exemption application.⁸ In that order, the Commission explained that it “is concerned that AMSE’s exemption application does not meet a key threshold requirement for being granted an exemption from exchange registration—namely, that the applicant actually be an ‘exchange’ as defined under Section 3(a)(1) of the Exchange Act and Rule 3b-16 thereunder.”⁹ The Commission specifically identified the fact that “it does not appear that any AMSE system would operate as an exchange by bringing together purchasers and sellers of securities.”¹⁰

⁶ In the interest of completeness, we note the events that preceded AMSE’s filing of its July 7th application. From December 2013 through March 2014, staff had numerous communications with AMSE about its (then-draft) application, including multiple email exchanges and at least one phone call; during these exchanges, the staff explained that it was concerned that AMSE’s proposed business model was not an “exchange.” In March 2014, AMSE formally submitted a Form 1 application. On April 24, 2014, the staff returned AMSE’s application because, based on its review, the staff believed that AMSE had erred in submitting an application for an exchange and instead should have submitted an application for a national securities association, a classification that the staff believed better fit with AMSE’s proposed business model. On May 6, 2014, the staff had a phone call with AMSE in which the staff again explained its view that AMSE’s proposed business model was not an exchange. On June 16, 2014, AMSE brought suit against the Commission in the U.S. District Court for the District of South Dakota seeking certain injunctive and declaratory relief in connection with its application. *See AMSE v. SEC*, Civ. 14-4095 (D.S.D.). On June 24, 2014, the Commission staff and AMSE reached an agreement pursuant to which AMSE would submit a new Form 1 application that would include certain additional information needed to complete the application and the staff would thereafter proceed to process the revised application for Commission consideration.

⁷ *See* Securities Exchange Act Release No. 72661 (July 23, 2014), 79 FR 44070.

⁸ *See* Securities Exchange Act Release No. 73419, 79 FR 64421 (October 29, 2014) (“Order Instituting Proceedings”).

⁹ *Id.* at 64422.

¹⁰ *Id.*

²¹ 15 U.S.C. 78e.

³ We note that, in a December 2014 public notice, the Commission expressly stated that it understood AMSE to be seeking an exemption under Section 5—not registration—and that AMSE did not respond otherwise. *See* Securities Exchange Act Release No. 73911 (December 22, 2014), 79 FR 78507, note 1 (December 30, 2014) (“Amendment Notice”) (“The Commission notes that AMSE’s application only seeks a limited volume exemption under Section 5 of the Exchange Act from registration as a national securities exchange under Section 6 of the Exchange Act. AMSE’s application does not seek to register as a national securities exchange.”). We therefore deem any claim to the contrary waived.

⁴ *See infra* Section III.A.

⁵ SROs are privately-funded entities, entrusted with quasi-governmental authority, which generally adopt rules to govern their members and enforce these rules as well as the federal securities laws. *See generally Free Enterprise Fund v. Public Co. Accounting Oversight Bd.*, 561 U.S. 477, 484 (2010) (explaining that “private self-regulatory organizations in the securities industry—such as the New York Stock Exchange— . . . investigate and discipline their own members subject to Commission oversight”). The quasi-governmental authority afforded to SROs includes prosecutorial, adjudicatory, and rulemaking authority.

²¹ 15 U.S.C. 78s(b)(2).

²² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78c(a)(1). Rule 3b-16 under the Act further provides that an organization, association, or group of persons shall be considered to constitute, maintain, or provide ‘a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange,’ as those terms are used in Section 3(a)(1) of the Act, (15 U.S.C. 78c(a)(1)), if such organization, association, or group of persons: (1) Brings together the orders for securities of multiple buyers and sellers; and (2) Uses established, non-discretionary methods (whether by providing a trading facility or by setting rules) under which such orders interact with each other, and the buyers and sellers entering such orders agree to the terms of a trade. 17 CFR 240.3b-16(a).