

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84594; File No. SR–MIAX–2018–34]

Self-Regulatory Organizations: Notice of Filing of a Proposed Rule Change by Miami International Securities Exchange, LLC To Amend Exchange Rule 519, MIAX Order Monitor; Exchange Rule 519A, Risk Protection Monitor; and Rule 517, Quote Types Defined

November 14, 2018.

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 November 9, 2018, Miami International Securities Exchange, LLC (“MIAX Options” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I and II 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 519, MIAX Order Monitor; Exchange Rule 519A, Risk Protection Monitor; and Rule 517, Quote Types Defined.

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 June 28, 2018, the Exchange filed with the Securities and Exchange Commission (“SEC”) a proposal 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.³ To establish the settlement value for the Index, a settlement auction named the SPIKES Special Settlement Auction will be conducted once per month, on the day the settlement value for the Index is to be calculated. During the SPIKES Special Settlement Auction, in addition to any order types that may regularly be 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”).⁴ SAOs are specific order types that allow a Member⁵ to voluntarily tag such an order as a SPIKES strategy order.

The Exchange anticipates that 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 SPIKE 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. Given that SAOs are designed for the special purpose of closing a hedged position and are available for use only during the SPIKES Special Settlement Auction, the Exchange proposes to amend its rules to remove SAO Orders from certain risk protection features offered by the Exchange.

Specifically, the Exchange proposes to amend Exchange Rule 519, MIAX Order Monitor. The MIAX Order Monitor is a risk management feature of the Exchange’s System.⁶ Pursuant to paragraph (a) of the Rule, the MIAX Order Monitor provides an order price protection for Market Orders to Sell,⁷ Market Orders to Buy or Sell,⁸ and Limit Orders to Buy or Sell,⁹ in order to avoid the occurrence of potential obvious or catastrophic errors on the Exchange. The MIAX Order Monitor will prevent certain orders from executing or being placed on the Book¹⁰ at prices outside pre-set standard limits.¹¹ The MIAX Order Monitor will also cause the System to prevent certain orders from executing or being placed on the Book if the size of the order exceeds the order size protection designated by the Member.¹² The MIAX Order Monitor will also cause the System to reject any orders that exceed the maximum number of open orders held in the System on behalf of a particular Member, as designated by the Member.¹³ The MIAX Order Monitor will also cause the System to reject any orders that exceed the maximum number of open contracts represented by orders held in the System on behalf of a particular Member, as designated by the Member.¹⁴

The Exchange now proposes to amend Exchange Rule 519, Interpretations and Policies, to adopt new subsection .03, to provide that the order protections of the MIAX Order Monitor pursuant to sections (b) (c) and (d) will not apply to Settlement Auction Only Orders (SAO Orders), as defined in Interpretations and Policies .03 of Exchange Rule 503. The Exchange does not believe that an

⁶ The term “System” means the automated trading system used by the Exchange for the trading of securities. See Exchange Rule 100.

⁷ See Exchange Rule 519(a)(1).

⁸ See Exchange Rule 519(a)(2).

⁹ See Exchange Rule 519(a)(3).

¹⁰ The term “Book” means the electronic book of buy and sell orders and quotes maintained by the System. See Exchange Rule 100.

¹¹ See Exchange Rule 519(a).

¹² See Exchange Rule 519(b).

¹³ See Exchange Rule 519(c).

¹⁴ See Exchange Rule 519(d).

¹⁵ 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. 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 Options on the SPIKES™ Index).

⁴ *Id.*

⁵ The term “Member” means an individual or organization approved to exercise the trading rights associate with a Trading Permit. Members are deemed “members” under the Exchange Act. See Exchange Rule 100.

SAO Order should be subject to the order size protection described in Rule 519(b) as preventing the order from being placed on the Book may prevent the Member from effectively hedging or closing a hedged position in SPIKES options. Similarly, the Exchange does not believe that an SAO Order should be subject to the open order protection described in Rule 519(c) as this protection aggregates open orders held in the System and may inadvertently prevent the Member from hedging or closing a hedged position in SPIKES options by preventing the submission of an SAO Order. Lastly, the Exchange does not believe that an SAO Order should be subject to the open contract protection described in Rule 519(d) as this protection aggregates the number of open contracts represented by orders held in the System. Including SAO Orders in this protection may inadvertently prevent the Member from hedging or closing a hedged position in SPIKES options by preventing the submission of an SAO Order.

The Exchange also proposes to amend Exchange Rule 519A, Risk Protection Monitor. The Risk Protection Monitor (“RPM”) is a feature of the MIAX System which maintains a counting program (“counting program”) for each participating Member that will count the number of orders entered and the number of contracts traded via an order entered by a Member on the Exchange within a specified time period that has been established by the Member (the “specified time period”). The maximum duration of the specified time period will be established by the Exchange and announced via a Regulatory Circular. The Risk Protection Monitor maintains one or more Member-configurable Allowable Order Rate settings and Allowable Contract Execution Rate settings. When a Member’s order is entered or when an execution of a Member’s order occurs, the System will look back over the specified time period to determine if the Member has: (i) Entered during the specified time period a number of orders exceeding their Allowable Order Rate setting(s), or (ii) executed during the specified time period a number of contracts exceeding their Allowable Contract Execution Rate setting(s). Once engaged, the Risk Protection Monitor will then, as determined by the Member:

Automatically either (A) prevent the System from receiving any new orders in all series in all classes from the Member; (B) prevent the System from receiving any new orders in all series in all classes from the Member and cancel all existing orders with a time-in-force

of Day in all series in all classes from the Member; or (C) send a notification to the Member without any further preventative or cancellation action by the System. When engaged, the Risk Protection Monitor will still allow the Member to interact with existing orders entered prior to exceeding the Allowable Order Rate setting or the Allowable Contract Execution Rate setting, including sending cancel order messages and receiving trade executions from those orders. The Risk Protection Monitor shall remain engaged until the Member communicates with the Help Desk¹⁵ to enable the acceptance of new orders.¹⁶

The Exchange now proposes to amend Interpretations and Policies, to adopt new subsection .02, to state that SAO Orders, as defined in Interpretations and Policies .03 of Rule 503, are not eligible to participate in the Risk Protection Monitor. Prohibiting SAO Orders from participating in the Risk Protection Monitor ensures that these orders may be freely submitted to the Exchange and will remain active in the System once accepted. As discussed above, SAO Orders are strategy orders used for hedging or closing a hedged position in SPIKES options during the SPIKES Special Settlement Auction which is conducted only once per month. When engaged the Risk Protection Monitor may prevent the Member from submitting SAO Orders to the Exchange until the Member communicates with the Help Desk to enable the acceptance of new orders. The Exchange does not believe it is in the best interest of the Member to introduce this type of delay for SAO Orders, as they are time sensitive and are designed to participate in the SPIKES Special Settlement Auction.

Additionally, the Exchange proposes to amend Rule 517, Quote Types Defined. Specifically, subsection (d) of Rule 517 provides that bids and offers in certain limited time in force eQuote types (Auction or Cancel, Opening Only, Immediate or Cancel, Fill or Kill, and Immediate or Cancel Intermarket Sweep) will not be disseminated by the Exchange in accordance with Rule 602 of Regulation NMS. In addition, executions resulting from these eQuote types will not be used by the Exchange’s Aggregate Risk Manager to determine whether the Market Maker has exceeded

¹⁵ The term “Help Desk” means the Exchange’s control room consisting of Exchange staff authorized to make certain trading determinations on behalf of the Exchange. The Help Desk shall report to and be supervised by a senior executive officer of the Exchange. See Exchange Rule 100.

¹⁶ See Exchange Rule 519A(a).

the Allowable Exchange Percentage as more fully described in Rule 612.

Exchange Rule 612, Aggregate Risk Manager (“ARM”) describes a risk protection feature similar to the Risk Protection Manager for orders, however ARM is only available for Market Makers and provides a counting program (“counting program”) for each Market Maker who is required to submit continuous two-sided quotations pursuant to Rule 604 in each of their appointed option classes. The counting program will count the number of contracts traded by the Market Maker (the “specified time period”). The Market Maker may also establish for each option class an Allowable Engagement Percentage. The Exchange will establish a default specified time period and a default Allowable Engagement Percentage (“default settings”) on behalf of a Market Maker that has not established a specified time period and/or an Allowable Engagement Percentage.¹⁷

The System will engage the Aggregate Risk Manager in a particular option class when the counting program has determined that a Market Maker has traded during the specified time period a number of contracts equal to or above their Allowable Engagement Percentage. The Aggregate Risk Manager will then automatically remove the Market Maker’s Standard Quotations and Day eQuotes from the Exchange’s disseminated quotation in all series of that particular option class until the Market Maker sends a notification to the System of the intent to reengage quoting and submits a new revised quotation.¹⁸

The Exchange now proposes to add the Settlement Auction Only eQuote (SAO eQuote), as defined in Interpretations and Policies .03 of Exchange Rule 503, to the list of eQuotes that are not subject to the Aggregate Risk Manager. An SAO eQuote is a special purpose eQuote available only during the SPIKES Special Settlement Auction and as such should be treated similarly to other limited time in force eQuote types.

The Exchange also proposes to amend Interpretations and Policies of Rule 517 to adopt new subsection .02 which will state that an SAO eQuote will be considered a priority quote for trade allocation in accordance with Exchange Rule 514(e). To be considered a priority quote a Market Maker’s quote must meet certain conditions as stipulated in the Exchange rules, one of which is that the

¹⁷ See Exchange Rule 612(a).

¹⁸ See Exchange Rule 612(b)(1).

quote is valid width and two-sided.¹⁹ SAO eQuotes are a special purpose eQuote used to hedge or close a hedged position. A Market Maker using an SAO eQuote will not be in a position to place a quote on the opposite side of the market, as an execution of the opposite side eQuote would impair the ability of the Market Maker to hedge or close a hedged position. The Exchange does not wish to disadvantage a Market Maker for properly using an eQuote when it is not feasible for a Market Maker to otherwise meet the priority quote requirements (submission of a two-sided quote) with this type of eQuote.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act²⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act²¹ 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.

The Exchange believes that the proposed changes promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system because they seek to ensure that SAOs may be freely submitted to the Exchange and that SAOs are not encumbered by risk protections designed for order types used during the course of regular trading. Additionally, the Exchange believes that removing SAO Orders from RPM and from certain MIAAX Order Monitor features ensures that SAO Orders are available for their intended use to hedge or close a hedged position in SPIKES options. Similarly, the Exchange believes that removing SAO eQuotes from ARM ensures that SAO eQuotes are available for their intended use. Treating an SAO eQuote as a priority quote for allocation purposes ensures that a Market Maker with an SAO eQuote at the Opening Price could receive an execution without having to submit a two-sided quote. A Market Maker using an SAO eQuote to hedge or close a hedged position can not provide

an SAO eQuote on the opposite side of the market without negatively impacting their original eQuote. Therefore, the Exchange believes it is just and equitable to permit SAO eQuotes to be treated as priority quotes for allocation purposes as it is not feasible for a Market Maker to meet the requirements necessary to establish a priority quote using SAO eQuotes.

The Exchange believes that the proposed change promotes just and equitable principles of trade, and removes impediments to and perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest, as the changes allow for SAO Orders and SAO eQuotes to be freely used for their intended purpose and will contribute to increased liquidity 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 Exchange does not believe the proposed rule change will impose any burden on inter-market competition as the proposed rule changes are designed to ensure that SAOs may be submitted to the Exchange to participate in the SPIKES Special Settlement Auction, and that once accepted these orders remain active in the System. The Exchange does not believe that the proposed rule change will cause an unnecessary burden on inter-market competition as SAOs are only used for the SPIKES Special Settlement Auction which is a special process unique to the Exchange.

Additionally, the Exchange does not believe the proposed rule change will impose any burden on intra-market competition as the Rules apply equally to all Exchange Members, and all Members have the ability to submit SAOs.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its

reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be 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-MIAAX-2018-34 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to File Number SR-MIAAX-2018-34. 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

¹⁹ See Exchange Rule 517(b)(1)(i)(A).

²⁰ 15 U.S.C. 78f(b).

²¹ 15 U.S.C. 78f(b)(5).

Number SR–MIAX–2018–34, and should be submitted on or before December 11, 2018.

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

Eduardo A. Aleman,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available

From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Extension:

Rules 15Fb1–1 through 15Fb6–2 and Forms SBSE, SBSE–A, SBSE–BD, SBSE–C and SBSE–W, SEC File No. 270–642, OMB Control No. 3235–0696.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (“PRA”) (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (“Commission”) is soliciting comments on the existing collection of information provided for in Rules 15Fb1–1 through 15Fb6–2 and Forms SBSE, SBSE–A, SBSE–BD, SBSE–C and SBSE–W (17 CFR 240.15Fb1–1 through 240.15Fb6–2, and 17 CFR 249.1600, 249.1600a, 249.1600b, 249.1600c and 249.1601), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (“OMB”) for extension and approval.

The Commission adopted Rules 15Fb1–1 through 15Fb6–2 and Forms SBSE, SBSE–A, SBSE–BD, SBSE–C and SBSE–W on August 5, 2015 to create a process to register SBS Entities. Forms SBSE, SBSE–A, and SBSE–BD and SBSE–C were designed to elicit certain information from applicants. The Commission uses the information disclosed by applicants through the SBS Entity registration rules and forms to: (1) Determine whether an applicant meets the standards for registration set forth in the provisions of the Exchange Act; and (2) develop an information resource regarding SBS Entities where members of the public may obtain relevant, up-to-date information about SBS Entities, and where the Commission may obtain information for examination and

enforcement purposes. Without the information provided through these SBS Entity registration rules and forms, the Commission could not effectively determine whether the applicant meets the standards for registration or implement policy objectives of the Exchange Act.

The information collected pursuant to Rule 15Fb3–2 and Form SBSE–W allows the Commission to determine whether it is appropriate to allow an SBS Entity to withdraw from registration and to facilitate that withdrawal. Without this information, the Commission would be unable to effectively determine whether it was appropriate to allow an SBS Entity to withdraw. In addition, it would be more difficult for the Commission to properly regulate SBS Entities if it were unable to quickly identify those that have withdrawn from the security-based swap business.

In 2017 there were approximately 55 entities that may need to register as SBS Entities. The Commission estimates that these Entities likely would incur a total burden of 9,825 hours per year to comply with Rules 15Fb1–1 through 15Fb6–2 and Forms SBSE, SBSE–A, SBSE–BD, SBSE–C and SBSE–W.

In addition, Rules 15Fb1–1 through 15Fb6–2 and Forms SBSE, SBSE–A, SBSE–BD, SBSE–C and SBSE–W may impose certain costs on non-resident persons that apply to be registered with the Commission as SBS Entities, including an initial and ongoing costs associated with obtaining an opinion of counsel indicating that it can, as a matter of law, provide the Commission with access to its books and records and submit to Commission examinations, and an ongoing cost associated with establishing and maintaining a relationship with a U.S. agent for service of process.

The staff estimates, based on internet research,¹ that it would cost each nonresident SBS Entity approximately \$176 annually to appoint and maintain a relationship with a U.S. agent for

service of process. Consequently, the total cost for all nonresident SBS Entities to appoint and maintain relationships with U.S. agents for service of process is approximately \$3,872 per year.

Non-resident SBS Entities also would incur outside legal costs associated with obtaining an opinion of counsel. The staff estimates that each of the estimated 22 non-resident persons that likely will apply to register as SBS Entities with the Commission would incur, on average, approximately \$25,000 in outside legal costs to obtain the opinion of counsel necessary to register, and that the total annualized cost for all nonresident SBS Entities to obtain this opinion of counsel would be approximately \$183,333. Nonresident SBS Entities would also need to obtain a revised opinion of counsel after any changes in the legal or regulatory framework that would impact the SBS Entity’s ability to provide, or manner in which it provides, the Commission with prompt access to its books and records or that impacts the Commission’s ability to inspect and examine the SBS Entity. We do not believe this would occur frequently, and therefore estimate that one non-resident entity may need to recertify annually. Thus, the total ongoing cost associated with obtaining a revised opinion of counsel regarding the new regulatory regime would be approximately \$25,000 annually. Consequently, the total annualized cost burden associated with Rules 15Fb1–1 through 15Fb6–2 and Forms SBSE, SBSE–A, SBSE–BD, SBSE–C and SBSE–W would be approximately \$212,205 per year.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission’s estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

¹ See, e.g., <http://www.incorp.com/registered-agent-resident-agent-services.aspx> (as of September 21, 2018, \$99 per state per year), https://ct.wolterskluwer.com/registered-agent-services?mm_campaign=Enter_Campaign_Code_Here&keyword=registered%20agent&utm_source=Google&utm_medium=CPC&utm_campaign=RegisteredAgent&jadid=69563123457&jap=113&jk=registered%20agent&jklid=gc:a8a8ae4cd4a6542cf014a97541e8d183e:t1_p:k_registered%20agent:pl&jp=&js=1&jsid=35672&jt=1 (as of September 21, 2018, \$279 per year), and <https://www.aicorp.com/services/registered-agent> (as of September 21, 2018, \$149 per year). The staff sought websites that provided pricing information and a comprehensive description of their registered agent services. We calculated our estimate by averaging the costs provided on these three websites—(\$99 + \$279 + \$149) ÷ 3 = \$176.

²² 17 CFR 200.30–3(a)(12).