

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-93463; File No. SR-MIAX-2021-52)

October 29, 2021

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Make a Minor Adjustment to the Calculation Methodology for the BRIXX™ Commercial Real Estate Indexes

Pursuant to 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 October 18, 2021, 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, 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 make a minor adjustment to the calculation methodology for the BRIXX™ Commercial Real Estate Indexes (the “BRIXX Indexes”), on which the Exchange may list and trade options.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 make a minor adjustment to the calculation methodology for each of the sector BRIXX Indexes – the BRIXX Office Index, BRIXX Retail Index, BRIXX Residential Index, and BRIXX Hospitality Index (collectively, the “BRIXX Sector Indexes”), on which the Exchange may list and trade options.³ The Exchange does not propose to amend the methodology for the BRIXX Composite Index at this time.

Background

On April 17, 2020, the Exchange filed its proposal to list and trade options on five AF CRE Indexes (the AF CRE Residential Index, AF CRE Retail Index, AF CRE Office Index, AF CRE Hospitality Index and AF CRE Composite Index)⁴, all of which have since been rebranded

³ On April 16, 2020, the Exchange filed a Form 19b-4(e) with the Commission pursuant to Rule 19b-4(e) of the Act to list and trade options on the Advanced Fundamentals Commercial Real Estate Indexes (the “AF CRE Indexes”), which have since been rebranded as the BRIXX Indexes. See Securities Exchange Act Release No. 91542 (April 13, 2021), 86 FR 20426 (April 19, 2021) (SR-MIAX-2021-09). The Exchange has not yet listed options for trading on the BRIXX Indexes for business reasons. The Exchange notes that it will file a new Form 19b-4(e) with the Commission pursuant to Rule 19b-4(e) of the Act to list and trade options on the BRIXX Indexes at the time the Exchange anticipates it will begin listing options for trading.

⁴ See Securities Exchange Act Release No. 88767 (April 29, 2020), 85 FR 26743 (May 5, 2020) (SR-MIAX-2020-08) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to List and Trade Options That Overlie Five Advanced Fundamentals LLC Commercial Real Estate Indexes) (the “AF CRE Index Notice”).

as the BRIXX Indexes.⁵ In the AF CRE Index Notice, the Exchange described, among other things, the component selection criteria in order for an equity real estate investment trust (“REIT”) to be included in the calculation of each index.

In particular, the composition of each index is determined in a reconstitution on a quarterly basis from audited REIT company public filings and supplemental filings with the Commission, updated each quarter and intra-quarter based on 8-K, 10-Q, and 10-K filings. The components in each of the indexes are determined from the REITs that have the largest enterprise value (“Enterprise Value”)⁶ within each individual sector and that meet the following minimum eligibility requirements. To be eligible for inclusion in each of the BRIXX Sector Indexes, a REIT must: (i) be classified as an equity REIT; (ii) be listed on a U.S. securities exchange; (iii) have a minimum Enterprise Value of \$1 billion; (iv) have at least 85% of its revenue derived from the associated asset class; and (v) have issued a quarterly filing or annual report after its initial listing.

Proposal

The Exchange now proposes to modify the condition in romanette (iv), above, for an equity REIT to be eligible for inclusion in each of the BRIXX Sector Indexes. With the proposed change, to be eligible for inclusion in each of the BRIXX Sector Indexes, an equity company/REIT must have at least 70% of its revenue derived from the associated asset class. The Exchange does not propose to amend any other criteria for inclusion in the BRIXX Sector Indexes. The purpose of this change is to ensure a broad scope of REITs that may be included in

⁵ See supra note 3.

⁶ The term “Enterprise Value” refers to the measure of a company’s total value, calculated by adding the company’s market capitalization, total liabilities and preferred equity, then subtracting all cash and cash equivalents. See <https://www.investopedia.com/terms/e/enterprisevalue.asp>.

the calculation of each BRIXX Sector Index while continuing to maintain that each component REIT derive substantial revenue from the associated asset class. The Exchange believes that with the proposed change, there will be a greater pool of equity REITs that may qualify for inclusion in each of the BRIXX Sector Index calculations, while continuing to ensure that the integrity of each BRIXX Sector Index will not be compromised.

Further, with the proposed change, each BRIXX Sector Index will continue to be comprised of equity REITs representative of each particular sector of commercial real estate. The Exchange also believes that this proposal will continue to provide transparency regarding the calculation methodology for the BRIXX Sector Indexes. The Exchange represents that the proposed change will have no impact on the accuracy and dissemination of the BRIXX Sector Index values, which will continue to be disseminated and available to market participants in the same manner and in the same intervals. The proposed change will be made before the Exchange launches options on the BRIXX Sector Indexes.

The Exchange intends that this filing is to provide market participants with an update regarding the proposed change to one condition of the component selection criteria, which criteria was included in the initial filing to list and trade options on the AF CRE Indexes (since rebranded as the BRIXX Indexes), as described in the AF CRE Index Notice.⁷ The Exchange notes that this filing does not propose to amend any of the Exchange's generic initial and maintenance listing criteria, as set forth in Exchange Rules 1802(b)-(e). Further, the Exchange notes that with the proposed change to modify one of the conditions to the component selection

⁷ See supra note 4, pages 10-11.

criteria, the BRIXX Sector Indexes will continue to satisfy the Exchange's initial and maintenance listing criteria for narrow-based indexes pursuant to the Exchange's current rules.⁸

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁹ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁰ requirements that the rules of an exchange be 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 mechanism 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)¹¹ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed rule changes remove impediments to and perfects the mechanism of a free and open market a national market system, and protects investors and the public interest by updating the methodology to determine which component securities are eligible for inclusion in each of the BRIXX Sector Indexes. The proposed change will have no impact on the dissemination of BRIXX Sector Index values; rather, the proposed

⁸ See Exchange Rule 1802(b)-(c).

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ Id.

change is intended to provide an update to market participants regarding the wider eligibility of certain components in the calculation of each index. The Exchange believes that by broadening the scope of potential equity REITs that may be included in each of the BRIXX Sector Indexes, this will ensure that no single equity REIT dominates each index. The Exchange believes this proposal perfects the mechanism of a free and open market a national market system, and protects investors and the public interest because, with the proposed change, there will be no change to the initial or maintenance listing criteria, expiration months, settlement or exercise style of options on the BRIXX Sector Indexes. Further, the Exchange believes that the proposed change will have no impact on the accuracy and dissemination of the BRIXX Sector Index values, which will continue to be disseminated and available to market participants in the same manner and in the same intervals. The Exchange notes that it has not listed options on the BRIXX Indexes at this time.

The Exchange believes that the proposal satisfies the requirements of Section 6(b)(5)¹² of the Act because, with the proposed change, each of the BRIXX Sector Indexes will continue to satisfy the initial listing criteria for narrow-based indexes pursuant to the Exchange's current rules.¹³ The Exchange notes that the initial listing criteria in Exchange Rule 1802(b) covers the following categories of requirements, in general, for each of the BRIXX Sector Indexes: that options are A.M.-settled; each index is modified-market capitalization weighted; specified minimum market capitalizations for each component security; specified minimum trading volumes over certain time periods for each component security; specified maximum weighting for the combined weight of the five highest weighted component securities in each index;

¹² 15 U.S.C. 78f(b)(5).

¹³ See Exchange Rule 1802(b).

specified maximum weights for each individual component security; that each component security is an “NMS stock” as defined in Rule 600 of Regulation NMS under the Act; and, that each index is widely disseminated at least once every 15 seconds by OPRA, CTA/CQ, NIDS or one or more major market data vendors.¹⁴ The Exchange also believes that, with the proposed modified eligibility criteria, that each of the BRIXX Sector Indexes will continue to satisfy the maintenance listing standards set forth in Exchange Rule 1802(c). The Exchange notes that the maintenance listing criteria in Exchange Rule 1802(c) covers the following categories of requirements, in general, for each of the BRIXX Sector Indexes: that the initial listing criteria set forth in Exchange Rule 1802(b)(1), (3), (6)-(12) continue to be satisfied; specified percentages that the total number of component securities may increase or decrease by from the time of initial listing; and specified trading volumes over six months.¹⁵ Notwithstanding the proposed change in component selection criteria, there will be no change to the current generic initial and maintenance listing criteria. This proposed change will have no impact on, or effect application and interpretation of, the initial and maintenance listing criteria in Exchange Rules 1802(b)-(c). The purpose of this proposed change is to update potential market participants regarding the component selection criteria used for each of the BRIXX Sector Indexes.

The Exchange represents that it will continue to have the necessary systems capacity to support the new option series for each of the BRIXX Sector Indexes given the proposed modification once the Exchange determines to list options on the BRIXX Sector Indexes.

¹⁴ See id.

¹⁵ See Exchange Rule 1802(c).

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.

Intra-Market Competition

The Exchange does not believe that the proposed change will impose any burden on intra-market that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed change is not intended to address a competitive issue. Rather, the proposed change is to update one piece of the calculation methodology for the BRIXX Sector Indexes, on which the Exchange is authorized to list options. The proposed rule change has no impact on the dissemination of index values for the BRIXX Indexes. Further, the Exchange has not yet listed options for trading on the BRIXX Indexes at this time.

Inter-Market Competition

The Exchange does not believe the propose change will impose any burden on inter-market competition because the proposed rule change will continue to facilitate the listing and trading of novel options products that will enhance competition for commercial real estate securities among market participants, to the benefit of investors and the marketplace. This proposal furthers the Exchange's goal of listing options on the BRIXX Indexes, which will enhance competition by providing investors with an additional investment vehicle, in a fully-electronic trading environment, through which investors can gain and hedge exposure to various sectors of the commercial real estate market. Further, these products could offer a competitive alternative to other existing investment products that seek to allow investors to gain broad market exposure via equity REITs in the same individual sectors as the BRIXX Indexes.

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 Act¹⁶ and Rule 19b-4(f)(6)¹⁷ 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:

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 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.

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-MIAX-2021-52 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-2021-52. This file number should be included on the subject line if e-mail 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-2021-52 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

J. Matthew DeLesDernier
Assistant Secretary

¹⁸ 17 CFR 200.30-3(a)(12).