

determination would be informed by any comments received on a fee filing. Therefore, the Commission does not believe that FINRA's use of the immediately effective fee filing process would allow FINRA to avoid regulatory scrutiny for its proposed fees for the service.

Finally, while the Commission outlined various concerns relating to effective-upon-filing fee changes for NMS plans under Rule 608(b) in the Proposed Regulation NMS Fee Amendment, we do not believe those concerns call into question our approach here. Fee filings in this context are governed by Section 19 of the Act rather than Rule 608. More importantly, as stated above, the Commission assesses whether or not any fee proposal filed under Section 19 of the Act is consistent with the Act. If the Commission determines that a fee filing pursuant to Section 19(b)(3)(A) merits further review, which may be informed by the required notice and comment process, the Commission may temporarily suspend it and issue an order instituting proceedings to determine whether to approve or disapprove the proposal.

#### b. Assessment of Proposal's Consistency With the Act

The Commission further disagrees that it cannot adequately assess the proposal's consistency with the Act and its economic effects without knowing the fees that FINRA will charge for the proposed reference data service or the costs to build the service. The Commission has evaluated the economic effects, including the qualitative costs and benefits, of the proposal based on the record before it and has concluded that there is a lack of broadly available and accessible new issue reference data on the first day of secondary market trading that impedes the efficiency and competition in the current marketplace, and that FINRA's proposal would address this information asymmetry to the benefit of the market and market participants.<sup>274</sup> The Commission's consideration of the proposal's economic effects, including the burden on underwriters, the proposal's impact on competition among market participants, including other data vendors, and its impact on efficiency and capital formation, as discussed above, is based upon the understanding that the fees assessed will be consistent with the Act and will

and hearing procedure for an order instituting proceedings.

<sup>274</sup> See generally Sections III.A and III.B; *supra* notes 31–42, 89–102 and 139–145 and accompanying text.

be assessed using a cost-based formula. It is reasonable for the Commission to assume that any future fees assessed will be consistent with the Act because, as discussed above, if it believes such fees are not consistent with the Act, the Commission must suspend and disapprove them.<sup>275</sup> The Commission will evaluate FINRA's eventual fee application based on the requirements of the Act and assess FINRA's proposed cost-based formula. It is that fee filing that will merit a consideration of FINRA's cost to build the New Issue Reference Data Service because the costs of the system, which will be better known once the system is built, will be necessary to assess whether FINRA has proposed a fee for that service that is consistent with the Act, including Section 15A(b)(5).<sup>276</sup> FINRA has expressly and clearly committed that its fees will be cost-based, and it will be required to set forth why such cost-based fees meet the requirements of the Act. While commenters have raised concerns regarding FINRA's costs to build and operate the new reference data service,<sup>277</sup> should FINRA hypothetically build a New Issue Reference Data Service at a high cost that would be unreasonable to pass on to end-users, FINRA would not be able to make a showing that any such fees proposed to be assessed on the basis of its cost to build the service are reasonable, as required by Section 15A(b)(5) of the Act. In such a case, as discussed above, the Commission would suspend and disapprove the proposal.

#### c. Application of Section 15A(b)(5) to FINRA's Proposal

The Commission disagrees with one commenter's argument that the Commission is required to make a finding under Section 15A(b)(5) of the Act that the current proposal "provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls." The plain language of the Act necessitates that the proposal involve a due, fee or other charge in order to make such a finding concerning Section 15A(b)(5) of the Act.

#### IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations

<sup>275</sup> See *supra* note 273 and accompanying text.

<sup>276</sup> See *supra* note 266 and accompanying text.

<sup>277</sup> See *supra* notes 259–261 and accompanying text.

thereunder applicable to a national securities association.

*It is therefore ordered*, pursuant to Rule 431 of the Commission's Rules of Practice, that the earlier action taken by delegated authority, Exchange Act Release No. 87656 (December 4, 2019), 84 FR 67491 (December 10, 2019), is set aside and, pursuant to Section 19(b)(2) of the Act, the proposed rule change (SR-FINRA-2019-008), as modified by Amendment No. 2, hereby is approved.

By the Commission.

**Vanessa A. Countryman,**  
*Secretary.*

[FR Doc. 2021-01438 Filed 1-22-21; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90937; File No. SR-MIAX-2021-01]

### Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 1308, Supervision of Accounts, To Adopt Temporary Rules To Extend the Time by Which Members Must Complete Their Branch Office Inspections for the Calendar Year 2020 and To Provide Temporary Remote Inspection Relief for Their Office Inspections for Calendar Years 2020 and 2021

January 15, 2021.

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 January 08, 2021, Miami International Securities Exchange, LLC ("MIAX Options" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Exchange Rule 1308, Supervision of Accounts, to: (1) Remove obsolete rule text; and (2) adopt temporary rules to extend the time by

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

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

which Members<sup>3</sup> must complete their branch office<sup>4</sup> inspections for the calendar year 2020 and to provide temporary remote inspection relief for their office inspections for calendar years 2020 and 2021.

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

The Exchange proposes to amend Exchange Rule 1308, Supervision of Accounts, to: (1) Remove obsolete rule text; and (2) adopt temporary rules to extend the time by which Members must complete their branch office inspections for the calendar year 2020 and to provide temporary remote inspection relief for their office inspections for calendar years 2020 and 2021.

The Exchange proposes to amend Exchange Rule 1308 by removing obsolete rule text that is the first sentence prior to subparagraph (a). The first sentence of Exchange Rule 1308 currently provides as follows: "The deadline to submit the annual supervision-related reports pursuant paragraphs (g) and (h) will be extended from June 30, 2020 to July 31, 2020."<sup>5</sup>

<sup>3</sup> The term "Member" means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed "members" under the Exchange Act. See Exchange Rule 100.

<sup>4</sup> A "branch office" is any location where one or more associated persons of a Member regularly conduct the business of effecting any transactions in, or inducing or attempting to induce the purchase or sale of any security, or is held out as such, with such exclusions pursuant to Exchange Rule 1306(c)(1)–(7). See Exchange Rule 1306(c).

<sup>5</sup> See Securities Exchange Act Release No. 89261 (July 8, 2020), 85 FR 42447 (July 14, 2020) (SR–

After the July 31, 2020 extension passed, the Exchange determined not to file to amend its rules to extend it any further. Accordingly, this rule text is obsolete and no longer necessary. The purpose of this proposed change is to provide clarity to Members and market participants regarding the Exchange's rules.

In light of the operational challenges that Members are facing due to the outbreak of the coronavirus disease ("COVID-19"), the Exchange proposes to extend the time by which Members must complete their calendar year 2020 inspection obligations under Exchange Rule 1308(d) (Annual Branch Office Inspections) to March 31, 2021,<sup>6</sup> and to provide Members with the option to complete their calendar year 2020 and calendar year 2021 inspection obligations under Exchange Rule 1308(d) remotely, without an on-site visit to the office or location.<sup>7</sup>

The Exchange has observed the impact of the COVID-19 pandemic on its Members', investors, and the industry generally and recognizes that Members are experiencing operational challenges with much of their personnel working from home due to stay-at-home orders, restrictions on businesses and social activity imposed in various states, and adherence to other social distancing guidelines consistent with the recommendations of public health officials.<sup>8</sup> In response, like many

MIAX-2020-24) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Temporarily Extend Filing Deadlines for Certain Supervision-Related Reports). The Exchange filed this rule change amidst continued and unprecedented market uncertainty, and sought to address potential challenges that Members could face in timely meeting their obligations to submit to the Exchange annual supervision-related reports under Rule 1308(g) and (h).

<sup>6</sup> The proposed rule change will automatically sunset on March 31, 2021. If the Exchange seeks to provide additional temporary relief from the rule requirement identified in this proposal beyond March 31, 2021, it will submit a separate rule filing to further extend the temporary extension of time.

<sup>7</sup> The proposed rule change will automatically sunset on December 31, 2021. If the Exchange seeks to extend the duration of the temporary proposed rule beyond December 31, 2021, it will submit a separate rule filing to further renew the temporary relief. The Exchange notes that SEC staff has stated in guidance that inspections must include a physical, on-site review component. See SEC National Examination Risk Alert, Volume I, Issue 2 (November 30, 2011); SEC Division of Market Regulation, Staff Legal Bulletin No. 17: Remote Office Supervision (March 19, 2004) (stating, in part, that broker-dealers that conduct business through geographically dispersed offices have not adequately discharged their supervisory obligations where there are no on-site routine or "for cause" inspections of those offices).

<sup>8</sup> See Centers for Disease Control and Prevention ("CDC"), International Classification of Diseases, Tenth Revision, Clinical Modification, <https://www.cdc.gov/nchs/data/icd/Announcement-New-ICD-codeforcoronavirus-3-18-2020.pdf>; WHO

employers across the United States, Members closed their offices to the public, transitioned their employees to telework arrangements to comply with stay-at-home orders, and implemented other restrictive measures in an effort to slow the spread of COVID-19, such as curtailing or eliminating non-essential business travel and significantly limiting or canceling in-person activities.<sup>9</sup>

Exchange Rules require Members to conduct branch<sup>10</sup> and non-branch office and location inspections pursuant to certain annual cycles. Specifically, pursuant to Exchange Rule 1308(d), each branch office that supervises one or more non-branch locations must be inspected no less often than once each calendar year, unless it qualifies for certain exemptions.<sup>11</sup> Every branch office, without exception, must be inspected at least once every three calendar-years. Members must maintain written reports of such inspections.<sup>12</sup>

As a result of the compelling health and welfare concerns stemming from the COVID-19 pandemic, Members are facing potentially significant disruptions to their normal business operations that include staff absenteeism, the increased use of remote offices or telework arrangements, travel or transportation limitations, and technology interruptions or slowdowns. Pandemic-related operational changes have made it impracticable for Members to conduct the on-site inspections pursuant to Exchange Rule 1308(d) at many or most locations for calendar year 2020 because this compliance

Director-General, Opening Remarks at the Media Briefing on COVID-19 (March 11, 2020), <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>; and Centers for Disease Control and Prevention, How to Protect Yourself & Others (last visited November 12, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/preventgettingsick/prevention.html>.

<sup>9</sup> See e.g., FINRA Regulatory Notice 20-16 (May 2020) ("Notice 20-16") (describing practices implemented by small, mid-sized and large firms to transition to, and supervise in, remote work environment during the COVID-19 pandemic).

<sup>10</sup> The Exchange notes that notwithstanding the exclusions in subparagraphs (c)(1)–(7) of Exchange Rule 1306, any location that is responsible for supervising the activities of persons associated with a Member at one or more non-branch locations of such Member is considered to be a branch office. See Exchange Rule 1306(d).

<sup>11</sup> A Member may demonstrate to the satisfaction of the Exchange that because of proximity, special reporting or supervisory practice, other arrangements may satisfy Exchange Rule 1308(d)'s requirements for a particular branch office, or that, based upon the written policies and procedures of such Member providing for a systematic risk-based surveillance system, the Member submits a proposal to the Exchange and receives, in writing, an exemption from the requirement in Exchange Rule 1308(d), pursuant to Exchange Rule 1308(e).

<sup>12</sup> See Exchange Rule 1308(d)(2).

function requires firm employees to travel to geographically dispersed branch and non-branch office locations. Such travel not only has been restricted by government orders,<sup>13</sup> but also puts the health and safety of employees at great risk of contracting and spreading COVID-19.<sup>14</sup> By mid-year, with many restrictive measures still in place, and in some instances additional quarantine requirements imposed on interstate travel, on-site inspections of Member offices or locations scheduled for calendar year 2020 remain pending. The acute health and safety concerns related to COVID-19 persist, with the number of confirmed cases of COVID-19 in the U.S. continuing to rise through the fall of 2020.<sup>15</sup> While Members have continued to supervise all offices and locations by, among other things, implementing remote supervisory practices through novel uses of technology as well as existing methods of supervision (e.g., supervisory checklists, surveillance tools, incident trackers, email review, and trade exception reports),<sup>16</sup> they are still experiencing logistical challenges related to conducting the onsite portion of their inspections due to continuing business and governmental restrictions and public health concerns.<sup>17</sup> As a result, the Exchange understands that Members have not yet been able to conduct on-site inspections scheduled for calendar year 2020, and, with no certainty as to when pandemic-related health concerns will subside and restrictions recently re-implemented in light of the resurgence of cases during the fall of 2020,<sup>18</sup> Members may have a considerable backlog of 2020 inspections that may have been difficult, if not impossible, to overcome

on or before calendar year 2020 ended. Additionally, the Exchange recognizes that planning on-site inspections for calendar year 2021 for Member branch and non-branch offices and locations in the current environment may be impacted as well. In light of pandemic-related developments and the approaching end of calendar year 2020, the Exchange believes it is appropriate to provide tailored temporary relief for Members to meet their inspection obligations under Exchange Rule 1308(d) for calendar years 2020 and 2021.

Specifically, the Exchange proposes to adopt temporary Rule 1308(d)(4), to provide that each Member obligated to complete an annual branch office inspection pursuant to Exchange Rule 1308(d) in calendar year 2020 will be deemed to have satisfied such obligation if the applicable inspection is completed on or before March 31, 2021. The Exchange believes that this proposed temporary extension of time is tailored to address the needs and constraints on a Member's operations during the COVID-19 pandemic, without significantly compromising critical investor protection, as potential risks that may arise from providing firms additional time to comply with their inspection obligations due in calendar year 2020 are mitigated by their ongoing supervisory obligations, off-site monitoring, and the temporary nature of the extension. The proposed extension will provide Members with an opportunity to better manage the operational challenges resulting from the COVID-19 pandemic and the resources needed to fulfill these supervisory obligations during the pandemic.

In addition to this, the Exchange proposes to extend temporary remote inspection relief for calendar year 2020 and 2021. In particular, the Exchange proposes to adopt temporary Exchange Rule 1308(d)(5), which provides that each Member obligated to conduct an inspection of a branch office or non-branch location in calendar year 2020 and calendar year 2021 pursuant to Exchange Rule 1308(d), as applicable, may, subject to the requirements of Rule 1308(d)(5), satisfy such obligation by conducting the applicable inspection remotely, without an on-site visit to the office or location. In accordance with Exchange Rule 1308(d)(4), inspections for calendar year 2020 must be completed on or before March 31, 2021. Inspections for calendar year 2021 must be completed on or before December 31, 2021. Notwithstanding proposed Exchange Rule 1308(d)(5), a Member

remains subject to the other requirements of Exchange Rule 1308(d).

The proposed rule change also adopts written supervisory procedures for remote inspections in proposed Exchange Rule 1308(d)(5)(i), which provides that, consistent with a Member's obligations under Rule 1308(d), a Member that elects to conduct each of its calendar year 2020 or calendar year 2021 branch office inspections remotely must amend or supplement its written supervisory procedures to provide for remote inspections that are reasonably designed to assist in detecting and preventing violations of and achieving compliance with applicable securities laws and regulations, and with applicable Exchange Rules. Reasonably designed procedures for conducting remote inspections of offices or locations should include, among other things: (i) A description of the methodology, including technologies permitted by the branch office, that may be used to conduct remote inspections; and (ii) the use of other risk-based systems employed generally by the branch office to identify and prioritize for review those areas that pose the greatest risk of potential violations of applicable securities laws and regulations, and of applicable Exchange Rules. The Exchange believes the proposed rule change is consistent with a Member's existing supervisory obligations to establish and maintain written supervisory procedures for branch office reviews and review of non-branch offices and locations.<sup>19</sup>

Proposed temporary Rule 1308(d)(5)(ii) provides that the requirement to conduct inspections of offices and locations is one part of a Member's overall obligation to have an effective supervisory system and, therefore, a Member must continue with its ongoing review of the activities and functions occurring at all offices and locations, whether or not the Member conducts inspections remotely. A Member's use of a remote inspection of an office or location will be held to the same standards for review as set forth under Exchange Rule 1308(d). Where a Member's remote inspection of an office or location identifies any indicators of irregularities or misconduct (i.e., "red flags"),<sup>20</sup> the Member may need to

<sup>19</sup> See Exchange Rule 1306(g)-(h).

<sup>20</sup> Red flags that suggest the increased risk or occurrence of violations may include, among other events: Customer complaints; an unexplained increase or change in the types of investments or trading concentration that a representative is recommending or trading; an unexpected improvement in a representative's production, lifestyle, or wealth; questionable or frequent

<sup>13</sup> See e.g., City of Chicago, Emergency Travel Order (November 10, 2020) <https://www.chicago.gov/city/en/sites/covid-19/home/emergency-travelorder.html> (announcing certain travel restrictions applicable to different states based on the status of the outbreak in the states and how the data compares to the situation in Chicago); New York Department of Health, Interim Guidance for Quarantine Restrictions on Travelers Arriving in New York State Following Out of State Travel (November 3, 2020).

<sup>14</sup> See CDC, Travel During the COVID-19 Pandemic (updated October 21, 2020) <https://www.cdc.gov/coronavirus/2019-ncov/travelers/travel-during-covid19.html> (stating, in part, "[t]ravel increases your chance of getting and spreading COVID-19. Staying home is the best way to protect yourself and others from COVID-19").

<sup>15</sup> See CDC, COVIDView, Key Updates for Week 44, ending October 31, 2020 (November 5, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/coviddata/pdf/covidview-11-06-2020.pdf> (stating that surveillance indicators tracking levels of SARS-CoV-2 virus circulation and associated illnesses have been increasing since September).

<sup>16</sup> See *supra* note 9.

<sup>17</sup> See *supra* note 13.

<sup>18</sup> See *supra* note 15.

impose additional supervisory procedures for that office or location or may need to provide for more frequent monitoring or oversight of that office or location, including potentially a subsequent physical, on-site visit on an announced or unannounced basis when the branch office's operational difficulties associated with COVID-19 abate, nationally or locally as relevant, and the challenges a branch office is facing in light of the public health and safety concerns make such on-site visits feasible using reasonable best efforts. The temporary relief provided by proposed Exchange Rule 1308(d)(5) does not extend to a Member's inspection requirements beyond calendar year 2021 and such inspections must be conducted in compliance with Exchange Rule 1308(d)(1) through (3). The Exchange believes that the proposed rule is consistent with a Member's existing supervisory obligations to maintain policies and procedures, and a system for applying such procedures, reasonably designed to achieve compliance with, as well as assist in preventing and detecting violations of, applicable securities laws and regulations and Exchange Rules.<sup>21</sup>

Finally, proposed temporary Exchange Rule 1308(d)(5)(iii) provides for a documentation requirement and specifically provides that a Member must maintain and preserve a centralized record for each of calendar year 2020 and calendar year 2021 that separately identifies: (1) All offices or locations that had inspections that were conducted remotely; and (2) any offices or locations for which the Member determined to impose additional supervisory procedures or more frequent monitoring, as provided in Exchange Rule 1308(d)(5). A Member's documentation of the results of a remote inspection for an office or location must identify any additional supervisory procedures or more frequent monitoring for that office or location that were imposed as a result of the remote inspection. The Exchange believes that

transfers of cash or securities between customer or third party accounts, or to or from the representative; a representative that serves as a power of attorney, trustee or in a similar capacity for a customer or has discretionary control over a customer's account(s); representative with disciplinary records; customer investments in one or a few securities or class of securities that is inconsistent with firm policies related to such investments; churning; trading that is inconsistent with customer objectives; numerous trade corrections, extensions, liquidations; or significant switching activity of mutual funds or variable products held for short time periods. See generally SEC Division of Market Regulation, Staff Legal Bulletin 17: Remote Office Supervision (March 19, 2020).

<sup>21</sup> See generally Exchange Rule 1308(g)(5)(i).

this documentation requirement would help readily distinguish the offices and locations that underwent remote inspections and their attendant supervisory procedures, and their more frequent monitoring, as applicable.

As noted above, even in the current environment, Members have an ongoing obligation to establish and maintain a system to supervise the activities of their associated persons that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable Exchange Rules. The proposed temporary additions of Exchange Rule 1308(d)(4) and (d)(5) are not intended to lessen the supervisory obligations prescribed under the Exchange Rules. The Exchange believes that the proposed temporary rule changes, which address the needs and constraints on a Member's operations during the COVID-19 pandemic by extending the time to conduct inspections for calendar year 2020 and permitting firms to remotely inspect, subject to specified requirements described above, their offices and locations for calendar years 2020 and 2021, would provide Members a way to comply with Exchange Rule 1308(d) that would not materially diminish, and is reasonably designed to achieve, the investor protection objectives of the inspection requirements under these unique circumstances. The Exchange notes that potential risks that may arise from providing Members extended time to conduct their 2020 inspections and the option to conduct their inspections remotely are mitigated by their use of technology to meet their supervisory obligations on an ongoing basis, the unique circumstances under which they are operating, and the temporary nature of the proposed rules, which would expire on March 31, 2021 and December 31, 2021, respectively.<sup>22</sup>

The Exchange notes that the proposed temporary rules are substantively identical to the temporary inspection extension and remote relief rules recently filed by the Financial Industry Regulatory Authority ("FINRA") and the Cboe Exchange, Inc. ("Cboe").<sup>23</sup> The

<sup>22</sup> See *supra* notes 6 and 7.

<sup>23</sup> See FINRA Rule 3110.16; see also Securities and Exchange Act Release Nos. 89188 (June 30, 2020), 85 FR 40713 (July 7, 2020) (SR-FINRA-2020-019); 90454 (November 18, 2020), 85 FR 75097 (November 24, 2020) (SR-FINRA-2020-040) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Temporary Supplementary Material .17 (Temporary Relief To Allow Remote Inspections for Calendar Year 2020 and Calendar Year 2021) Under FINRA Rule 3110 (Supervision)); 90583 (December 7, 2020), 85 FR 80207 (December 11, 2020) (SR-CBOE-2020-112) (Notice of Filing and Immediate Effectiveness of a

Exchange notes too that it will continue to monitor the situation and engage with Members, other financial regulators, and governmental authorities to determine whether further regulatory relief or guidance related to Exchange Rule 1308 may be appropriate.

The Exchange notes that MIAX Chapter XIII is incorporated by reference into the rulebooks of the Exchange's affiliates, MIAX PEARL, LLC ("PEARL") and MIAX Emerald, LLC ("Emerald"). As such, the amendments to MIAX Chapter XIII proposed herein will also apply to MIAX PEARL and MIAX Emerald Chapters XIII.

## 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.<sup>24</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>25</sup> 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)<sup>26</sup> 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 change to remove obsolete text in Exchange Rule 1308 is designed to prevent fraudulent and manipulative acts and practices, promotes just and equitable principles of trade, fosters cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitates transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market

Proposed Rule Change Relating To Adopt Temporary Rules To Extend the Time by Which Trading Permit Holders must Complete Their Office Inspections for the Calendar Year 2020 and To Provide Temporary Remote Inspection Relief for Their Office Inspections for Calendar Years 2020 and 2021).

<sup>24</sup> 15 U.S.C. 78f(b).

<sup>25</sup> 15 U.S.C. 78f(b)(5).

<sup>26</sup> *Id.*

system, and, in general, protects investors and the public interest. The Exchange believes that the proposed change is a non-substantive and clarifying change and will reduce potential investor or market participant confusion regarding the Exchange's rules. Further, the Exchange believes the proposed change is not material as the waiver period under this rule text expired at the end of July 2020.

In particular, the Exchange believes that, in light of the impact of COVID-19 on the performance of on-site office and location inspections pursuant to Exchange Rule 1308(d), the proposed temporary rule changes are intended to provide Members additional time to comply with their Exchange Rule 1308(d) inspection obligations due in calendar year 2020 and a temporary regulatory option to conduct inspections of offices and locations remotely for calendar years 2020 and 2021. The proposed temporary rule changes do not relieve firms from meeting their existing regulatory obligations to establish and maintain a supervisory system that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable Exchange Rules, which directly serve investor protection. In a time when faced with unique challenges resulting from the COVID-19 pandemic, the Exchange believes that the proposed temporary rule changes provide appropriately tailored relief that will afford Members the ability to observe the recommendations of public health officials to provide for the health and safety of their personnel, while continuing to serve and promote the protection of investors and the public interest.

#### *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 to delete obsolete text will impose any burden on intra-market and inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed change is not intended to address competitive issues but rather are corrective, non-substantive changes that are concerned solely with the removal of rule text that is no longer effective.

The Exchange does not believe the proposed temporary rule changes to Exchange Rule 1308(d) will impose any burden on intra-market competition that

is not necessary or appropriate in furtherance of the Act, because the extension for inspections and the remote inspection relief will apply equally to all Members required to conduct office and location inspections in calendar year 2020 and 2021. The Exchange further does not believe that the proposed temporary rule changes will impose any burden on inter-market competition because it relates only to the extension of time for 2020 inspections and the manner in which inspections for 2020 and 2021 may be conducted. Additionally, and as stated above, FINRA and Cboe have recently submitted filings to adopt substantively identical temporary inspection relief rules for their members and trading permit holders.

#### *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>27</sup> and Rule 19b-4(f)(6)<sup>28</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-2021-01 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-2021-01. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MIAX-2021-01 and should be submitted on or before February 16, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>29</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

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<sup>27</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>28</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.

<sup>29</sup> 17 CFR 200.30-3(a)(12).