

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-92081; File No. SR-MIAX-2021-21)

June 1, 2021

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rule 531, Reports and Market Data Products, to Adopt the Liquidity Taker Event Report

Pursuant to 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 May 19, 2021, Miami International Securities Exchange, LLC (“MIAX Options” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the 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 531(a) to provide for the new “Liquidity Taker Event Report”.

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

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

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

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 531(a) to provide for the new “Liquidity Taker Event Report” (the “Report”). The proposed Report is identical to that previously adopted by the Exchange’s affiliate, MIAX Emerald, LLC (“MIAX Emerald”), and approved by the Securities and Exchange Commission (“Commission”).<sup>3</sup>

The Report is an optional product<sup>4</sup> available to Members.<sup>5</sup> Currently, the Exchange provides real-time prices and analytics in the marketplace. The Exchange believes the additional data points from the matching engine outlined below may help Members gain a better understanding about their interactions with the Exchange. The Exchange believes the Report will provide Members with an opportunity to learn more about better opportunities to access liquidity and receive better execution rates. The proposed Report will increase transparency and democratize information so that all firms that subscribe to the Report have access to the same information on an equal basis, even for firms that do not have the appropriate resources to

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<sup>3</sup> See Securities Exchange Act Release No. 91787 (May 6, 2021), 85 FR 26111 (May 12, 2021) (SR-EMERALD-2021-09) (Order Approving Proposed Rule Change to Adopt Exchange Rule 531(a), Reports, to Provide for a New “Liquidity Taker Event Report”).

<sup>4</sup> The Exchange intends to submit a separate filing with the Commission pursuant to Section 19(b)(1) to propose fees for the Liquidity Taker Event Report.

<sup>5</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.

generate a similar report regarding interactions with the Exchange. None of the components of the proposed Report include real-time market data.

Members generally would use a liquidity accessing order if there is a high probability that it will execute against an order resting on the Exchange's Book.<sup>6</sup> The proposed Report would identify by how much time an order that may have been marketable missed an execution. The proposed Report will provide greater visibility into the missed trading execution, which will allow Members to optimize their models and trading patterns to yield better execution results.

The proposed Report will be a Member-specific report and will help Members to better understand by how much time a particular order missed executing against a specific resting order, thus allowing that Member to determine whether it wants to invest in the necessary resources and technology to mitigate missed executions against certain resting orders on the Exchange's Book. For example, Member A submits an order that is posted to the Book and then Member B enters a marketable order to execute against Member A's resting order. Immediately thereafter, Member C sends a marketable order to execute against Member A's resting Order. Because Member B's order is received by the Exchange before Member C's order, Member B's order executes against Member A's resting order. The proposed Report would provide Member C the data points necessary for that firm to calculate by how much time they missed executing against Member A's resting order. The Exchange proposes to provide the Report on a T+1 basis. As further described below, the Report will be specific and tailored to the Member that is subscribed to the Report and any data included in the Report that relates to a Member other than the Member receiving the Report will be anonymized.

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<sup>6</sup> The term "Book" means the electronic book of buy and sell orders and quotes maintained by the System. See Exchange Rule 100. The term "System" means the automated trading system used by the Exchange for the trading of securities. See id.

The Exchange proposes to provide the Report in response to Member demand for data concerning the timeliness of their incoming orders and executions against resting orders. Members have periodically requested from the Exchange's trading operations personnel information concerning the timeliness of their incoming orders and efficacy of their attempts to execute against resting liquidity on the Exchange's Book. The purpose of the Report is to provide Members the necessary data in a standardized format on a T+1 basis to those that subscribe to the Report on an equal basis.

Proposed Exchange Rule 531(a) would provide that the Report is a daily report that provides a Member ("Recipient Member") with its liquidity response time details for executions of an order resting on the Book, where that Recipient Member attempted to execute against such resting order within a certain timeframe.

#### Report Content

Paragraph (a)(1) of Rule 531 would describe the content of the Report and delineate which information would be provided regarding the resting order,<sup>7</sup> the response that successfully executed against the resting order, and the response submitted by the Recipient Member that missed executing against the resting order. It is important to note that the content of the Report will be specific to the Recipient Member and the Report will not include any information related to any Member other than the Recipient Member. The Exchange will restrict all other market participants, including the Recipient Member, from receiving another market participant's data.

*Resting Order Information.* Rule 531(a)(1)(i) would provide that the following information would be included in the Report regarding the resting order: (A) the time the resting

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<sup>7</sup> Only displayed orders will be included in the Report. The Exchange notes that it does not currently offer any non-displayed orders types on its options trading platform.

order was received by the Exchange;<sup>8</sup> (B) symbol; (C) order reference number, which is a unique reference number assigned to a new order at the time of receipt; (D) whether the Recipient Member is an Affiliate<sup>9</sup> of the Member that entered the resting order<sup>10</sup>; (E) origin type (e.g., Priority Customer,<sup>11</sup> Market Maker<sup>12</sup>); (F) side (buy or sell); and (G) displayed price and size of the resting order.<sup>13</sup>

*Execution Information.* Rule 531(a)(1)(ii) would provide that the following information would be included in the Report regarding the execution of the resting order: (A) the MBBO<sup>14</sup> at

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<sup>8</sup> The time the Exchange received the resting order would be in nanoseconds and is the time the resting order was received by the Exchange's System.

<sup>9</sup> The term "affiliate" of or person "affiliated with" another person means a person who, directly, or indirectly, controls, is controlled by, or is under common control with, such other person. See Exchange Rule 100.

<sup>10</sup> The Report will simply indicate whether the Recipient Member is an Affiliate of the Member that entered the resting order and not include any other information that may indicate the identity of the Member that entered the resting order.

<sup>11</sup> The term "Priority Customer" means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). The number of orders shall be counted in accordance with Interpretation and Policy .01 to Exchange Rule 100. See Exchange Rule 100.

<sup>12</sup> The term "Market Maker" refers to "Lead Market Makers", "Primary Lead Market Makers" and "Registered Market Makers" collectively. See Exchange Rule 100.

<sup>13</sup> The Exchange notes that the displayed price and size are also disseminated via the Exchange's proprietary data feeds and the Options Price Reporting Authority ("OPRA"). The Exchange also notes that the displayed price of the resting order may be different than the ultimate execution price. This may occur when a resting order is displayed and ranked at different prices upon entry to avoid a locked or crossed market.

<sup>14</sup> The term "MBBO" means the best bid or offer on the Exchange. See Exchange Rule 100.

the time of execution;<sup>15</sup> (B) the ABBO<sup>16</sup> at the time of execution;<sup>17</sup> (C) the time first response that executes against the resting order was received by the Exchange and the size of the execution and type of the response;<sup>18</sup> (D) the time difference between the time the resting order was received by the Exchange and the time the first response that executes against the resting order was received by the Exchange;<sup>19</sup> and (E) whether the response was entered by the Recipient Member. If the resting order executes against multiple contra-side responses, only the MBBO and ABBO at the time of the execution against the first response will be included.

*Recipient Member's Response Information.* Rule 531(a)(1)(iii) would provide that the following information would be included in the Report regarding response(s) sent by the Recipient Member: (A) Recipient Member identifier; (B) the time difference between the time the first response that executes against the resting order was received by the Exchange and the time of each response sent by the Recipient Member, regardless of whether it executed or not;<sup>20</sup>

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<sup>15</sup> Exchange Rule 531(a)(1)(ii)(A) would further provide that if the resting order executes against multiple contra-side responses, only the EBBO [sic] at the time of the execution against the first response will be included.

<sup>16</sup> The term "ABBO" or "Away Best Bid or Offer" means the best bid(s) or offer(s) disseminated by other Eligible Exchanges (defined in Exchange Rule 1400(g)) and calculated by the Exchange based on market information received by the Exchange from OPRA. See Exchange Rule 100.

<sup>17</sup> Exchange Rule 531(a)(1)(ii)(B) would further provide that if the resting order executes against multiple contra-side responses, only the ABBO at the time of the execution against the first response will be included.

<sup>18</sup> The time the Exchange received the response order would be in nanoseconds and would be the time the response was received by the Exchange's network, which is before the time the response would be received by the System.

<sup>19</sup> The time difference would be provided in nanoseconds.

<sup>20</sup> For purposes of calculating this duration of time, the Exchange will use the time the resting order and the Recipient Member's response(s) is received by the Exchange's network, both of which would be before the order and response(s) would be received by the System. This time difference would be provided in nanoseconds.

(C) size and type of each response submitted by Recipient Member; and (D) response reference number, which is a unique reference number attached to the response by the Recipient Member.

#### Timeframe for Data Included in Report

Paragraph (a)(2) of Rule 531 would provide that the Report would include the data set forth under Rule 531(a)(1) described above for executions and contra-side responses that occurred within 200 microseconds of the time the resting order was received by the Exchange.

#### Scope of Data Included in the Report

Paragraph (a)(3) of Rule 531 would provide that the Report will only include trading data related to the Recipient Member and, subject to the proposed paragraph (4) of Rule 531(a) described below, will not include any other Member's trading data other than that listed in paragraphs (1)(i) and (ii) of Exchange Rule 531(a) described above.

#### Historical Data

Paragraph (a)(4) of Rule 531 would specify that the Report will contain historical data from the prior trading day and will be available after the end of the trading day, generally on a T+1 basis.

## 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>21</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>22</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles

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<sup>21</sup> 15 U.S.C. 78f(b).

<sup>22</sup> 15 U.S.C. 78f(b)(5).

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. This proposal is in keeping with those principles in that it promotes increased transparency through the dissemination of the optional Report to those interested in subscribing to receive the data. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>23</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposed Report is also identical to a report previously adopted by the Exchange's affiliate, MIAX Emerald, and approved by the Commission.<sup>24</sup> Therefore, the proposed rule change does not present any new or novel issues not previously considered by the Commission.

The Exchange believes the proposed Report will serve to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general protect investors and the public interest because it will benefit investors by facilitating their prompt access to the value added information that is included in the proposed Report. The Report will allow Members to access information regarding their trading activity that they may utilize to evaluate their own trading behavior and order interactions.

The proposed Report is designed for Members that are interested in gaining insight into latency in connection with orders that failed to execute against an order resting on the

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<sup>23</sup> Id.

<sup>24</sup> See supra note 3.

Exchange's Book by providing those Members data to analyze by how much time their order may have missed an execution against a contra-side order resting on the Book. The Exchange believes that providing this optional latency data to interested Members is consistent with facilitating transactions in securities, removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest because it provides greater visibility into the latency of Members' incoming orders. Members may use this data to optimize their models and trading patterns in an effort to yield better execution results by calculating by how much time their order may have missed an execution.

As discussed above, the Exchange currently fields ad hoc requests from Members for information regarding the timeliness of their attempts to execute against resting orders liquidity on the Exchange's Book. The proposal is designed to offer this type of latency information in a systematized way and standardized format to any Member that chooses to subscribe to the Report. As a result, the proposal will make latency information for liquidity-seeking orders available in a more equalized manner and will increase transparency, particularly for Recipient Members that may not have the expertise to generate the same information on their own. The proposed Report may better enable Recipient Members to increase the fill rates for their liquidity-seeking orders. At the same time, as is also discussed above, the Report is designed to prevent a Recipient Member from learning other Members' sensitive trading information. The Report would not be a real-time market data product, as it would provide only historical trading data for the previous trading day, generally on a T+1 basis. In addition, the data in the Report regarding incoming orders that failed to execute would be specific to the Recipient Member's

orders, and other information in the proposed Report regarding resting orders and executions would be anonymized if it relates to a Member other than the Recipient Member.

The Report generally contains three buckets of information. The first two buckets include information about the resting order and the execution of the resting order. This information is generally available from other public sources, such as OPRA and the Exchange's proprietary data feeds, or is similar to information included in a report offered by another exchange. For example, OPRA provides bids, offers, and consolidated last sale and quotation information for options trading on all national securities exchanges, including the Exchange. In addition, the Exchange offers the Top of Market ("ToM") feed which provides real-time quote and last sale information for all displayed orders on the Book.<sup>25</sup>

Specifically, the first bucket of information contained in the Report for the resting order includes the time the resting order was received by the Exchange, the symbol, unique reference number assigned at the time of receipt, side (buy or sell), and the displayed price and size of the resting order. Further, the symbol, origin type, side (buy or sell), and displayed price and size are also available either via OPRA or the Exchange's proprietary data feeds. The first bucket of information also indicates whether the Recipient Member is an Affiliate of the Member that entered the resting order. This data field will not indicate the identity of the Member that entered the resting order and would simply allow the Recipient Member to better understand the scenarios in which it may execute against the orders of its Affiliates.<sup>26</sup>

The second bucket of information contained in the Report regards the execution of the resting order and includes the MBBO and ABBO at the time of execution. These data points are

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<sup>25</sup> See Section 6)a) of the Exchange's fee schedule.

<sup>26</sup> The Exchange's surveils to monitor for abhorrent behavior related to internalized trades and identify potential wash sales.

also available either via OPRA or the Exchange's proprietary data feeds. The second bucket of information will also indicate whether the response was entered by the Recipient Member. This data point is simply provided as a convenience. If not entered by the Recipient Member, this data point will be left blank so as not to include any identifying information about other Member activity. The second bucket of information also includes the size, time and type of first response that executes against the resting order; as well as the time difference between the time the resting order and first response that executes against the resting order are received by the Exchange. These data points would assist the Recipient Member in analyzing by how much time their order may have missed an execution against a contra-side order resting on the Book.

The third bucket of information is about the Recipient Member's response(s) and the time their response(s) is received by the Exchange. This includes the time difference between the time the first response that executes against the resting order was received by the Exchange and the time of each response sent by the Recipient Member, regardless of whether it executed or not. As above, this data point would assist the Recipient Member in analyzing by how much time their order may have missed an execution against a contra-side order resting on the Book. This bucket would also include the size and type of each response submitted by the Recipient Member, the Recipient Member identifier, and a response reference number which is selected by the Recipient Member. Each of these data points are unique to the Recipient Member and should already be known by Recipient Member even if not included in the Report.

The Exchange proposes to provide the Report on a voluntary basis and no Member will be required to subscribe to the Report. The Exchange notes that there is no rule or regulation that requires the Exchange to produce, or that a Member elect to receive, the Report. It is entirely a business decision of each Member to subscribe to the Report. The Exchange proposes

to offer the Report as a convenience to Members to provide them with additional information regarding trading activity on the Exchange on a delayed basis after the close of regular trading hours. A Member that chooses to subscribe to the Report may discontinue receiving the Report at any time if that Member determines that the information contained in the Report is no longer useful.

In summary, the proposed Report will help to protect a free and open market by providing additional data (offered on an optional basis) to the marketplace and by providing investors with greater choices.<sup>27</sup> Additionally, the proposal would not permit unfair discrimination because the proposed Report will be available to all Exchange Members.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The Exchange believes that the proposed Report will enhance competition<sup>28</sup> by providing a new option for receiving market data to Members. The proposed Report will also further enhance competition between exchanges by allowing the Exchange to expand its product offerings to include a report similar to that currently offered by the NASDAQ Stock Market LLC (“NASDAQ”).<sup>29</sup>

In this instance, the proposed rule change to offer the optional Report is in response to Member interest and requests for such information. The Exchange does not believe the proposed

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<sup>27</sup> See Sec. Indus. Fin. Mkts. Ass’n (SIFMA), Initial Decision Release No. 1015, 2016 SEC LEXIS 2278 (ALJ June 1, 2016) (finding the existence of vigorous competition with respect to non-core market data).

<sup>28</sup> Id.

<sup>29</sup> See NASDAQ Equity Section 7, Rule 146(a)(2).

Report will have an inappropriate burden on intra-market competition between Recipient Members and other Members who do not receive the Report. As discussed above, the first two buckets of information included in the Report contain information about the resting order and the execution of the resting order, both of which are generally available to Members that choose not to receive the Report from other public sources, such as OPRA and the Exchange's proprietary data feeds. The third bucket of information is about the Recipient Member's response and the time their response is received by the Exchange, information which the Recipient Member would be able to obtain without receiving the Report. Additionally, some Members may already be able to derive a substantial amount of the same data that is provided by some of the components based on their own executions and algorithms.

In sum, if the proposed Report is unattractive to Members, Members will opt not to receive it. Accordingly, the Exchange does not believe that the proposed change will impair the ability of Members or competing order execution venues to maintain their competitive standing in the financial markets.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>30</sup> and Rule 19b-4(f)(6) thereunder.<sup>31</sup> Because the 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 from the date on which it was

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<sup>30</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>31</sup> 17 CFR 240.19b-4(f)(6).

filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>32</sup> and Rule 19b-4(f)(6) thereunder.<sup>33</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>34</sup> normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>35</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately. The Exchange states that it is prepared to begin offering the Report upon the effectiveness of this proposed rule change. The Exchange also argues that waiver of the operative delay would allow the Exchange to provide a product offering identical to that of its affiliate, MIAX Emerald, as soon as practicable, which in turn would reduce potential confusion in the near term about whether the Exchange is offering the same report as its affiliate offers currently. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.<sup>36</sup>

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<sup>32</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>33</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of 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>34</sup> 17 CFR 240.19b-4(f)(6).

<sup>35</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>36</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 change 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MIAX-2021-21 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-2021-21. 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-2021-21, 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.<sup>37</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>37</sup> 17 CFR 200.30-3(a)(12), (59).