C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing change has become effective pursuant to Section 19(b)(3)(A) of the Act18 and paragraph (f) of Rule 19b–419 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission’s Internet comment form (http://www.sec.gov/rules/sro.shtml); or
• Send an email to rule-comments@sec.gov. Please include File Number SR–BX–2015–033 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2015–033. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s Internet Web site (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission’s Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2015–033, and should be submitted on or before July 8, 2015.

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

Robert W. Errett,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION


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

June 11, 2015.

I. Introduction

On April 13, 2015, Miami International Securities Exchange LLC (“MIAX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)1 and Rule 19b–4 thereunder,2 a proposed rule change to amend Exchange Rule 515 regarding the functionality of Customer Cross Order and Qualified Contingent Cross Order types. The proposed rule change was published for comment in the Federal Register on April 30, 2015.3 The Commission did not receive any comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes amendments to MIAX Rule 515(h) to provide that trading interest that is subject to an ongoing timer or auction will maintain priority over a new incoming Customer Cross Order or Qualified Contingent Cross Order. MIAX Rule 515(h)(1) provides that Customer Cross Orders4 are automatically executed upon entry provided that the execution (i) is at or between the best bid and offer on the Exchange; (ii) is not at the same price as a Priority Customer Order on the Exchange’s Book; and (iii) will not trade at a price inferior to the national best bid or offer (“NBBO”). Customer Cross Orders are automatically canceled if they cannot be executed.5 Customer Cross Orders may only be entered in the minimum trading increments applicable to the options class under Rule 510.6 MIAX Rule 515(h)(2) provides that Qualified Contingent Cross Orders7 are automatically executed upon entry provided that the execution (i) is not at the same price as a Priority Customer Order on the Exchange’s Book; and (ii) is at or between the NBBO. Qualified Contingent Cross Orders are automatically canceled if they cannot be executed.8 Qualified Contingent Cross Orders may only be entered in the minimum trading increments applicable to the options class under MIAX Rule 510.9

Although neither the Customer Cross Order nor the Qualified Contingent Cross Order may be executed at a price inferior to the NBBO, the Exchange notes that there are situations at the Exchange during which trading interest may exist in the Exchange’s System that could be executable at prices up to the NBBO but is not automatically executed because the Exchange is either attempting to obtain additional price improvement for the order or additional liquidity to trade against the order on the Exchange. The Exchange states that it employs a variety of timers and auctions to provide market participants with an opportunity to obtain additional price improvement for their order or to access additional liquidity to trade against the order on the Exchange. Specifically, during the liquidity refresh pause or managed interest process...
the Exchange believes that the timers and auctions provide a valuable service to market participants and that the use of these mechanisms, which provide market participants with opportunities to obtain additional price improvement for their orders or to access additional liquidity to trade against the orders, should be promoted on the Exchange. The Exchange proposes to modify its Rules in order to maintain the priority of trading interest subject to timers and auctions that are initiated prior to the arrival of these specified order types. The proposed changes also would codify existing functionality for Customer Cross Orders that is not currently detailed in the Exchange’s Rules.14

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

In addition, the Exchange proposes to amend Rule 515(h)(2) to provide that if trading interest exists on the MIAX Book that is subject to the liquidity refresh pause or managed interest process pursuant to Rule 515(c), or a route timer pursuant to Rule 529, when the Exchange receives a Qualified Contingent Cross Order, the System will reject the Qualified Contingent Cross Order. The Exchange also proposes to amend Rule 515(h)(2) to provide that if trading interest exists that is subject to a PRIME Auction or PRIME Solicitation Auction pursuant to Rule 515A when the Exchange receives a Qualified Contingent Cross Order, the System will reject the Qualified Contingent Cross Order. The Exchange proposes no changes to the Customer Cross Order and the Qualified Contingent Cross Order order types, and represents that both order types will continue to be subject to the same requirements as before.15

III. Discussion and Commission’s Findings

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

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

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15 See id. at 24298.
17 Additionally, in approving the proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).
19 See Notice, supra note 3, at 24297.
20 See id. at 24298.
SECURITIES AND EXCHANGE COMMISSION

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


June 11, 2015.

I. Introduction

Automated Matching Systems Exchange, LLC (“AMSE”) believes that its proposed business model would qualify it as an exchange. As defined in Section 3(a)(1) of the Securities Exchange Act of 1934 (“Exchange Act” or “Act”), an “exchange” is “any organization, association, or group of persons, whether incorporated or unincorporated, which constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange as that term is generally understood, and includes the market place and the market facilities maintained by such exchange.”1 Under Section 5 of the Act, it is unlawful for an exchange to effect any transaction in a security, or to report such transaction, “unless such exchange (1) is registered as a national securities exchange . . . or (2) is exempted from such registration upon application by the exchange because, in the opinion of the Commission, by reason of the limited volume of transactions effected on such exchange, it is not practicable and not necessary or appropriate in the public interest or for the protection of investors to require such registration.”2

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

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

II. Background

A. Procedural History

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

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

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

B. Application

1. AMSE

AMSE is proposing to operate an automated matching system (the “AMSE System”). Under Section 5 of the Act, a national securities exchange must register with the Commission. While some entities that bring together buyers and sellers of securities—or for otherwise performing with respect to securities the functions commonly performed by a stock exchange—are exempt from registration as an exchange by bringing together multiple buyers and sellers; and (2) uses established, non-discretionary methods (whether by providing a trading facility or by setting rules) under which such orders interact with each other, and the buyers and sellers entering such orders agree to the terms of a trade. 17 CFR 200.3b–16(a).