

• Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2017-57 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-Phlx-2017-57. 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 office 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-Phlx-2017-57, and should be submitted on or before August 23, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>21</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-81229; File No. SR-MIAX-2017-34]

### Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend MIAX Options Rule 515A, MIAX Price Improvement Mechanism ("PRIME") and PRIME Solicitation Mechanism, Rule 518, Complex Orders, and Rule 519A, Risk Protection Monitor

July 27, 2017.

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 July 13, 2017, Miami International Securities Exchange, LLC ("MIAX Options" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Exchange Rule 515A, MIAX Price Improvement Mechanism ("PRIME") and PRIME Solicitation Mechanism, to state that the Exchange's System<sup>3</sup> will reject an Agency Order (as defined below) if, at the time of receipt of the Agency Order, the option is a component of a complex strategy that is the subject of a cPRIME Auction (as defined below). The Exchange also proposes to amend Rule 518, Complex Orders, and Rule 519A, Risk Protection Monitor ("RPM"), so that the price and other trade protections contained in those rules address certain new complex order types on the Exchange. In addition, the Exchange proposes to amend Exchange Rule 518, Interpretations and Policies .05, to state that, unless otherwise specifically set forth in the Rule, the price and other protections contained in Interpretations and Policies .05 (including proposed amendments to the Rule, described below) apply to all complex order types set forth in Rule 518(b), as described

below. The Exchange also proposes to amend Rule 519A to set forth clearly the manner in which the RPM handles the various complex order types listed in that Rule, as described below. amend Exchange Rule 515A to reflect changes to the MIAX Options Price Improvement Mechanism ("PRIME") [sic].

The text of the proposed rule change is available on the Exchange's Web site at <http://www.miaxoptions.com/rule-filings>, at MIAX's 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 515A, MIAX Price Improvement Mechanism ("PRIME") and PRIME Solicitation Mechanism, to state that the Exchange's System will reject an Agency Order if, at the time of receipt of the Agency Order, the option is a component of a complex strategy that is the subject of a cPRIME Auction (as defined below). The Exchange also proposes to amend Rule 518, Complex Orders, and Rule 519A, RPM, so that the price and other trade protections contained in those rules address certain new complex order types on the Exchange, as described below. In addition, the Exchange proposes to amend Exchange Rule 518, Interpretations and Policies .05, to state that, unless otherwise specifically set forth in the Rule, the price and other protections contained in Interpretations and Policies .05 (including proposed amendments to the Rule, described below) apply to all complex order types set forth in Rule 518(b), as described below. The Exchange also proposes to amend Rule 519A to set forth clearly the manner in which the RPM handles the various complex order types listed in that Rule, as described below.

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

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

<sup>3</sup> The term "System" means the automated trading system used by the Exchange for the trading of securities. See Exchange Rule 100.

<sup>21</sup> 17 CFR 200.30-3(a)(12).

## Background

The Exchange began trading complex orders<sup>4</sup> in October, 2016.<sup>5</sup> As part of its effort to continue to build out its complex order market segment, the Exchange recently adopted rules to establish three new types of complex orders—complex PRIME (“cPRIME”) Orders, Complex Customer Cross (“cC2C”) Orders, and Complex Qualified Contingent Cross (“cQCC”) Orders—and to adopt new provisions that relate to the processing of those new complex order types.<sup>6</sup> A cPRIME Order is a complex order that is submitted for participation in a cPRIME Auction. A cC2C Order is comprised of one Priority Customer complex order to buy and one Priority Customer complex order to sell the same complex strategy at the same initiating price (which must be better than (inside) the icMBBO<sup>7</sup> price or the best net price of a complex order for the strategy) and for the same quantity. A cQCC Order is comprised of an originating complex order to buy or sell where each leg is at least 1,000 contracts and that is identified as being part of a qualified contingent trade, as defined in Rule 516, Interpretations and Policies .01,<sup>8</sup> coupled with a contra-side complex order or orders for the same strategy totaling an equal number of contracts. cPRIME orders will be processed and executed in the

Exchange’s PRIME mechanism, the same mechanism that the Exchange uses to process and execute simple PRIME orders, pursuant to Exchange Rule 515A. cC2C and cQCC Orders will be processed and executed in the same mechanism that the Exchange uses to cross simple Customer Cross orders and QCC orders, pursuant to Exchange Rule 515.

The Exchange is proposing to modify Exchange Rule 518, Complex Orders, and Rule 519A, RPM, which govern certain price and other trade protection features in the Exchange’s System so that they address (through inclusion or exclusion) cPRIME Orders, cC2C Orders, and cQCC Orders in those features.

## Proposal

The Exchange is proposing to amend Exchange Rules 515A, MIAx Price Improvement Mechanism (“PRIME”) and PRIME Solicitation Mechanism, to state that the Exchange’s System will reject an Agency Order if, at the time of receipt of the Agency Order, the option is a component of a complex strategy that is the subject of a cPRIME Auction (as defined below). The Exchange also proposes to amend Rule 518, Complex Orders, Interpretations and Policies .05, Price and Other Protections, and Interpretations and Policies .06, MIAx Order Monitor for Complex Orders (“cMOM”), and Exchange Rule 519A, RPM, by stating in those rules how the new cPRIME Order, cC2C Order, and cQCC Order types will be handled by the System with respect to those price and other protections. The Exchange is also proposing to amend Exchange Rule 518, Interpretations and Policies .05, to state that, unless otherwise specifically set forth in the Rule, the price and other protections contained in Interpretations and Policies .05 (including proposed amendments to the Rule, described below) apply to all complex order types set forth in Rule 518(b), as described below. The Exchange is also proposing to amend Rule 519A, Interpretations and Policies .02, to set forth clearly the manner in which the RPM handles the various complex order types listed in that Rule, as described below.

## MIAx PRIME

The Exchange is proposing to amend Rule 515A, MIAx Price Improvement Mechanism (“PRIME”) and PRIME Solicitation Mechanism. PRIME is a process by which a Member may electronically submit for execution (“Auction”) an order it represents as agent (“Agency Order”) against principal interest, and/or an Agency Order against solicited interest.

The Exchange proposes to amend Rule 515A(a)(2) to add cPRIME Orders<sup>9</sup> to the list of price-improvement auctions that are prohibited by the Exchange’s System from occurring simultaneously on the Exchange. Specifically, Rule 515A(a)(2) will continue to state clearly that only one Auction may be ongoing at any given time in an option and Auctions in the same option may not queue or overlap in any manner. Currently, the Rule states that the System will reject an Agency Order if, at the time of receipt of the Agency Order, the option is in an Auction or is a component of a complex strategy<sup>10</sup> that is the subject of a Complex Auction pursuant to Rule 518(d). The proposed amendment would state that the System will reject an Agency Order if, at the time of receipt of the Agency Order, the option is a component of a complex strategy that is the subject of a cPRIME Auction. The Exchange believes that the rejection of Agency Orders that are received in an option in which an Auction, cPRIME Auction, or Complex Auction is ongoing ensures that there will not be any interference with the potential for price improvement for the Agency Order as a result of overlapping, concurrent auctions on the Exchange.

The Exchange further believes that, without such a limitation, investors could be faced with an unusually large number of simultaneous PRIME and/or Complex Auctions in the same option in the simple market, or involving the same strategy or components of the same strategy in the complex market, which in turn could impact the orderly function of the markets. The Exchange believes that this limitation is consistent with the Act because it protects investors and the public interest by ensuring orderliness in the PRIME, cPRIME and Complex Auction process.

## Complex Order Price and Other Protections in Rule 518

The Exchange proposes to amend Rule 518, Interpretations and Policies .05, to state that, unless otherwise

<sup>9</sup> “cPRIME” is the process by which a Member may electronically submit a “cPRIME Order” (as defined in Rule 518(b)(7)) it represents as agent (a “cPRIME Agency Order”) against principal or solicited interest for execution (a “cPRIME Auction”). See Exchange Rule 515A, Interpretations and Policies .12(a).

<sup>10</sup> The term “complex strategy” means a particular combination of components and their ratios to one another. New complex strategies can be created as the result of the receipt of a complex order or by the Exchange for a complex strategy that is not currently in the System. The Exchange may limit the number of new complex strategies that may be in the System at a particular time and will communicate this limitation to Members via Regulatory Circular. See Exchange Rule 518(a)(6).

<sup>4</sup> A “complex order” is any order involving the concurrent purchase and/or sale of two or more different options in the same underlying security (the “legs” or “components” of the complex order), for the same account, in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purposes of executing a particular investment strategy. Mini-options may only be part of a complex order that includes other mini-options. Only those complex orders in the classes designated by the Exchange and communicated to Members via Regulatory Circular with no more than the applicable number of legs, as determined by the Exchange on a class-by-class basis and communicated to Members via Regulatory Circular, are eligible for processing. See Exchange Rule 518(a)(5).

<sup>5</sup> For a complete description of the trading of complex orders on the Exchange, see Exchange Rule 518. See also, Securities Exchange Act Release No. 79072 (October 7, 2016), 81 FR 71131 (October 14, 2016) (SR-MIAx-2016-26).

<sup>6</sup> See Securities Exchange Act Release No. 81131 (July 12, 2017) (SR-MIAx-2017-19), (Order Granting Approval of a Proposed Rule Change to Amend MIAx Options Rules 515, Execution of Orders and Quotes; 515A, MIAx Price Improvement Mechanism (“PRIME”) and PRIME Solicitation Mechanism; and 518, Complex Orders).

<sup>7</sup> The Implied Complex MIAx Best Bid or Offer (“icMBBO”) is a calculation that uses the best price from the Simple Order Book for each component of a complex strategy including displayed and non-displayed trading interest. For stock-option orders, the icMBBO for a complex strategy will be calculated using the best price (whether displayed or non-displayed) on the Simple Order Book in the individual option component(s), and the NBBO in the stock component. See Exchange Rule 518(a)(11).

<sup>8</sup> See *id.*

specifically set forth in the Rule, the price and other protections contained in Interpretations and Policies .05 apply to all complex order types set forth in Rule 518(b).<sup>11</sup> The Exchange believes that the application of existing protections to all complex order types as described in proposed Rule 518, Interpretations and Policies .05 is consistent with the Act because such application is designed to protect investors and the public interest, by assisting investors in maintaining their established risk tolerance levels on the Exchange when making investment decisions concerning these order types.

The Exchange is proposing to modify Rule 518, Interpretations and Policies .05, Price and Other Protections, to describe the manner in which the System will handle cPRIME Orders, cC2C Orders, and cQCC Orders with respect to the protections described in the Rule. The Exchange is proposing to apply these protections to complex orders so that investors submitting complex orders are better able to manage their risk tolerance levels with respect to complex orders they submit to the Exchange, just as they are currently able to manage their risk tolerance levels with respect to orders in the simple market and certain types of complex orders listed in Rule 518(b).<sup>12</sup> The Exchange believes that extending the application of existing protections to all complex order types, including the recently added cPRIME Orders, cC2C Orders, and cQCC Orders, as described in the proposed rules is consistent with the Act because such application is designed to protect investors and the public interest, by ensuring that investors that participate in these order types are afforded the price protections that already apply to all order types currently listed in Rule 518(b).<sup>13</sup> These protections are designed to assist investors in maintaining their established risk tolerance levels on the Exchange when making investment decisions concerning complex orders.

<sup>11</sup> In addition to a general description, Rule 518(b) defines the following complex orders: a "Complex Auction-on-Arrival" or "cAOA" order, which is a complex order designated to be placed into a Complex Auction upon receipt or upon evaluation; a Complex Auction-or-Cancel or "cAOC" order, which is a complex limit order used to provide liquidity during a specific Complex Auction with a time in force that corresponds with that event; and a Complex Immediate-or-Cancel or "cIOC" order, which is a complex order that is to be executed in whole or in part upon receipt. See Exchange Rule 518(b). The Exchange recently amended Rule 518(b) to add cPRIME, cC2C and cQCC Orders to the complex order types defined in the Rule. See *supra* note 6.

<sup>12</sup> *Id.*

<sup>13</sup> See Exchange Rule 518(b). See also *supra* note 6.

The remaining proposed amendments to Rule 518, Interpretations and Policies .05, are intended to exclude certain order types from certain provisions in the Rule.

#### ixABBO Protection

First, the Exchange proposes to modify Rule 518, Interpretations and Policies .05(d) to state that the Implied Away Best Bid or Offer ("ixABBO") Price Protection feature is not available for cPRIME Orders, cC2C Orders, and cQCC Orders. The ixABBO price protection feature is a price protection mechanism under which, when in operation as requested by the submitting Member, a buy order will not be executed at a price that is higher than each other single exchange's best displayed offer for the complex strategy, and under which a sell order will not be executed at a price that is lower than each other single exchange's best displayed bid for the complex strategy. The ixABBO is calculated using the best net bid and offer for a complex strategy using each other exchange's displayed best bid or offer on their simple order book. For stock-option orders, the ixABBO for a complex strategy is calculated using the BBO for each component on each individual away options market and the NBBO for the stock component. The ixABBO price protection feature must be engaged on an order-by-order basis by the submitting Member and is not available for complex Standard quotes, complex eQuotes, or cAOC orders.<sup>14</sup>

The ixABBO protection will not be available because this type of protection isn't necessary for these new complex order types. Specifically, with respect to cPRIME Orders, a cPRIME Agency Order is received by the Exchange accompanied by, and guarantees an execution against, a contra-side order at a single price or at multiple prices with a "stop" price outside of which the cPRIME Agency Order, the contra-side order, and auction responses will not be executed.<sup>15</sup> Additionally, cC2C Orders are automatically executed upon entry provided that: (i) The execution is at least \$0.01 better than (inside) the icMBBO price, or (ii) the best net price of a complex order (as defined in Rule 518(a)(5)) on the Strategy Book (as defined in Rule 518(a)(17)),<sup>16</sup> whichever is more aggressive (*i.e.*, the higher bid and/or lower offer).<sup>17</sup> cQCC Orders, on

<sup>14</sup> See Exchange Rule 518, Interpretations and Policies .05(d).

<sup>15</sup> See *supra* note 6.

<sup>16</sup> The "Strategy Book" is the Exchange's electronic book of complex orders and complex quotes. See Exchange Rule 518(a)(17).

<sup>17</sup> See *supra* note 6.

the other hand, are automatically executed upon entry provided that, with respect to each option leg of the cQCC Order, the execution (i) is not at the same price as a Priority Customer<sup>18</sup> order on the Exchange's Book; and (ii) is at or between the NBBO.<sup>19</sup> Therefore, the System will not consider the ixABBO protection parameters (each other single exchange's best displayed bid or offer for the complex strategy) with respect to cPRIME Orders, cC2C Orders, and cQCC Orders.

#### Wide Market Conditions

Current Exchange Rule 518, Interpretations and Policies .05(e), describes the handling of complex orders when a component of a complex strategy is in a wide market condition,<sup>20</sup> a Simple Market Auction or Timer ("SMAT") Event,<sup>21</sup> or a Halt. Complex orders will be handled in accordance with current Rule 518, Interpretations and Policies .05(e)(2), with respect to SMAT Events, and Interpretations and Policies .05(e)(3), with respect to Halts. The Exchange is not proposing to amend these rules.

The Exchange is proposing to amend Rule 518, Interpretations and Policies .05, with respect to wide market conditions. Currently, during free trading, if a wide market condition exists for a component of a complex strategy, trading in the complex strategy will be suspended.<sup>22</sup> Similarly, if a wide market condition exists for a component of a complex strategy following a Complex Auction, trading in the complex strategy will be suspended.<sup>23</sup> The Exchange is proposing to exclude cPRIME Orders, cC2C Orders, and cQCC Orders from these current trade protection provisions relating to wide market conditions.

The purpose of this "carve-out" is similar to the purpose of the ixABBO carve-out described above: cPRIME Orders, cC2C Orders, and cQCC Orders

<sup>18</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). See Exchange Rule 100.

<sup>19</sup> See *supra* note 6.

<sup>20</sup> A "wide market condition" is defined as any individual component of a complex strategy having, at the time of evaluation, an MBBO quote width that is wider than the permissible valid quote width as defined in Rule 603(b)(4). See Exchange Rule 518.05(e)(1).

<sup>21</sup> A SMAT Event is defined as a PRIME Auction (pursuant to Rule 515A); a Route Timer (pursuant to Rule 529); or a liquidity refresh pause (pursuant to Rule 515(c)(2)). See Exchange Rule 518(a)(16).

<sup>22</sup> See Exchange Rule 518, Interpretations and Policies .05(e)(1)(i).

<sup>23</sup> See Exchange Rule 518, Interpretations and Policies .05(e)(1)(ii).

are all received with either a paired cPRIME Agency Order (in the case of a cPRIME Order) or a contra-side order or orders. cPRIME and cC2C orders are received with an execution price at least \$0.01 better than (inside) the icMBBO price or the best net price of a complex order on the Strategy Book, whichever is more aggressive. cQCC Orders are received with an execution price that (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. Therefore, these three order types, all of which consist of paired orders with execution price requirements, are not affected by wide market conditions because they may only be executed at or inside of their obligatory prices. Accordingly, proposed Rule 518, Interpretations and Policies .05(e)(iii), states that a wide market condition shall have no impact on the trading of cPRIME Orders and processing of cPRIME Auctions (including the processing of cPRIME Auction responses) pursuant to Rule 515A, Interpretations and Policies .12, or on the trading of cC2C and cQCC Orders pursuant to Rule 515(h)(3) and (4). Such trading and processing will not be suspended and will continue during wide market conditions.

#### MIAX Order Monitor for Complex Orders ("cMOM")

The Exchange is also proposing to amend Exchange Rule 518, Interpretations and Policies .06(a), to exclude cPRIME Orders, cC2C Orders, and cQCC Orders from the System's cMOM feature. cMOM defines a price range outside of which a complex limit order will not be accepted by the System. A complex limit order that is priced through the cMOM range will be rejected. cMOM is a number defined by the Exchange and communicated to Members via Regulatory Circular. The default price range for cMOM will be greater than or equal to a price through the cNBBO for the complex strategy to be determined by the Exchange and communicated to Members via Regulatory Circular. Such price will not be greater than \$2.50. A complex limit order to sell will not be accepted at a price that is lower than the cNBBO bid, and a complex limit order to buy will not be accepted at a price that is higher than the cNBBO offer, by more than cMOM. A complex limit order that is priced through this range will be rejected.<sup>24</sup>

The Exchange is proposing to amend Rule 518, Interpretations and Policies

.06(a), by stating that the cMOM price protection feature shall not apply to cPRIME Orders, cC2C Orders, and cQCC Orders. Under the proposal, the new order types will therefore not be rejected for being outside of cMOM price parameters upon receipt. The purpose of excluding these complex order types from the cMOM price protection feature is that cPRIME Orders, cC2C Orders and cQCC Orders are all guaranteed an execution at a price or prices determined by the participants, and cPRIME Orders are subject to further price improvement. Therefore, the cMOM price protection feature isn't necessary for these complex order types, and thus these complex order types will not be rejected based upon cMOM price parameters. In order to remain consistent in the Rule, the Exchange is also proposing to make a conforming change to Rule 518, Interpretations and Policies .06(e). Specifically, the Exchange is proposing to carve out cPRIME, cC2C and cQCC Orders from the Rule by stating, in Rule 518, Interpretations and Policies .06(e), that, except as provided in sub-paragraph .06(a) above (which excludes cPRIME, cC2C and cQCC Orders), the protections set forth in Interpretations and Policies .06 will be available for complex orders as determined by the Exchange and communicated to Members via Regulatory Circular.

#### RPM

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

Automatically either (A) prevent the System from receiving any new orders in all series in all classes from the Member; (B) prevent the System from receiving any new orders in all series in all classes from the Member and cancel all existing orders with a time-in-force of Day in all series in all classes from the Member; or (C) send a notification to the Member without any further preventative or cancellation action by the System. When engaged, the RPM will still allow the Member to interact with existing orders entered prior to exceeding the Allowable Order Rate setting or the Allowable Contract Execution Rate setting, including sending cancel order messages and receiving trade executions from those orders. The RPM remains engaged until the Member communicates with the Help Desk to enable the acceptance of new orders.

The Exchange is proposing to amend Interpretations and Policies .02 to Rule 519A by setting forth the specific circumstances under which the Rule will apply to cPRIME Orders, QCC Orders, cQCC Orders, Customer Cross Orders, and cC2C Orders, in addition to the order types currently set forth in the rule (PRIME Orders, PRIME Solicitation Orders, and GTC Orders). Rather than "carve-out" these new complex order types, the Exchange is proposing to state in the Rule how these order types will participate in the RPM.

Rule 519A, Interpretations and Policies .02, currently states that PRIME Orders, PRIME Solicitation Orders, and GTC Orders do not participate in the RPM. However, the System does include such PRIME Orders, PRIME Solicitation Orders, and GTC Orders in the counting program for purposes of this Rule. Under current Rule 519A, Interpretations and Policies .02(b), PRIME Orders, PRIME Solicitation Orders, and Customer Cross Orders<sup>25</sup> will each be counted as two orders for the purpose of calculating the Allowable Order Rate. Current Rule 519A, Interpretations and Policies .02(c), further provides that, once engaged, the RPM will not cancel any existing PRIME Orders, PRIME Solicitation Orders, AOC orders, OPG orders, or GTC orders. PRIME Orders, PRIME Solicitation Orders, and GTC Orders remain in the System available for trading when the RPM is engaged.

The Exchange is proposing to amend Interpretations and Policies .02 by adding the new order types to the Rule

<sup>24</sup> See Exchange Rule 518, Interpretations and Policies .06.

<sup>25</sup> The Exchange is proposing a technical amendment to refer in the Rule to "Customer Cross" orders and to delete an erroneous reference to "Customer-to-Customer Orders."

where appropriate (as described below) and to re-word and reorganize the Rule to clearly describe the functionality of the RPM as it relates to both existing and the proposed new order types. These proposed amendments are designed to remove impediments to and perfect the mechanisms of a free and open market and to eliminate possible confusion by establishing clearly in the Rule the manner in which the RPM handles each existing and proposed order type. This should assist MIAX Options participants in managing their risk tolerance levels with respect to the order types that are included in the RPM's counting program.

First, the Exchange proposes to amend the introduction of Rule 519A, Interpretations and Policies .02, to add cPRIME Orders, QCC Orders, cQCC Orders, Customer Cross Orders, and cC2C Orders to the currently enumerated order types (PRIME Orders, PRIME Solicitation Orders, and GTC Orders). Thus, as amended, Rule 519A, Interpretations and Policies .02 applies to all of these order types.

Currently, Rule 519A, Interpretations and Policies .02(a), states that the System includes PRIME Orders, PRIME Solicitation Orders, and GTC Orders in the counting program for purposes of this Rule. The Exchange is proposing to amend the Rule by expanding it to list all order types (*i.e.*, cPRIME Orders, QCC Orders, cQCC Orders, Customer Cross Orders, and cC2C Orders) that are subject to the RPM counting program.<sup>26</sup> The Exchange believes that the inclusion of all of these order types in the rules and System functionality is consistent with the Act because it removes impediments to, and perfects the mechanisms of a free and open market, by correctly and accurately describing how existing orders are handled by RPM and, also describing the handling of the proposed new order types. This is consistent with the Act because it is intended to remove impediments to and perfect the mechanisms of a free and open market by applying the counting program to all of the order types mentioned, thus instilling confidence in participants that an unusually high number of orders and/or contracts submitted within a specified time period during, for example, periods of unusually high market volatility, will be counted towards the possible prevention of additional orders and quotes that

subject them to higher risk levels than they are prepared to tolerate. The Exchange believes that this should result in more order flow on the Exchange, all to the benefit of the marketplace.

Proposed new Rule 519A, Interpretations and Policies .02(b), will continue to state, just as Interpretations and Policies .02(b) states today, that PRIME Orders, PRIME Solicitation Orders, and Customer Cross Orders will each be counted as two orders for the purpose of calculating the Allowable Order Rate. These order types included in the current Rule all consist of orders that are paired with contra-side orders upon receipt, with certain execution guarantees. For consistency, the Exchange is proposing to include a list of all paired orders that are counted as two orders for purposes of the RPM in the Rule. Orders received by the Exchange are from various sources, and order consolidators may submit them as components of crossing orders where appropriate. The purpose of counting these order types as two separate orders is to protect investors whose orders are submitted on their behalf as a component of crossing orders from the risk that an automated trading system or algorithm could inadvertently send an exponential number of paired orders during times of high volatility. By counting each paired order as two separate orders for purposes of the RPM, the Exchange believes that the likelihood of a participant engaging in activity that exceeds participants' established risk thresholds is mitigated and accounted for. Counting these order types as two separate orders thus protects investors and the public interest, and is therefore consistent with the Act.

Additionally, these order types are counted as two separate orders for a systemic reason. Specifically, these paired order types are counted in the counting program as two orders when calculating the Allowable Order Rate because a participant sending such a paired order submits just one single message representing two orders. The RPM does not count the number of messages submitted; it counts orders. Therefore, for the foregoing reasons, the Exchange is proposing to add the following order types to be counted as two orders for purposes of the RPM: cPRIME Orders, QCC Orders, cQCC Orders, Customer Cross Orders and cC2C Orders. The proposed amended Rule thus accurately and correctly reflects the manner in which paired order types are submitted (as a single message representing two orders) for

purposes of calculating the Allowable Order Rate.

The Exchange notes that, as of the date of this proposal, the Exchange is not aware of any Member whose best execution obligation has been compromised based upon the Member's level of RPM settings, and is not aware of any Member whose RPM settings were so stringent that the Member's Agency Order did not receive an execution it should have received. Additionally, Exchange members are expected to consider their best execution obligations when setting parameters for the RPM. In connection with this proposal, the Exchange will issue a Regulatory Circular reminding Members of their best execution obligations.

Rule 519A, Interpretations and Policies .02, currently states that, once engaged, the RPM will not cancel any existing PRIME Orders, PRIME Solicitation Orders, AOC orders, OPG orders, or GTC orders, and that PRIME Orders, PRIME Solicitation Orders and GTC Orders will remain in the System available for trading when the RPM is engaged. The Exchange is proposing to add new sub-paragraph (c) to Interpretations and Policies .02, to include cPRIME Orders in the list of order types that will remain in the System instead of being cancelled by the RPM. The Exchange believes that, just as PRIME Orders are not cancelled under the current rule, cPRIME Orders, which are similarly paired and guaranteed an execution on receipt, should not be cancelled and instead be retained by the System so that they can be executed according to their terms, regardless of whether the RPM is engaged.

The Exchange will announce the implementation date of the proposed rule change by Regulatory Circular to be published no later than 60 days following the operative date of the proposed rule. The implementation date will be no later than 60 days following the issuance of the Regulatory Circular.

## 2. Statutory Basis

MIAX believes that its proposed rule change is consistent with Section 6(b) of the Act<sup>27</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>28</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with

<sup>26</sup> The counting program counts the number of orders entered and the number of contracts traded via an order entered by a Member on the Exchange within a specified time period that has been established by the Member (the "specified time period"). See Exchange Rule 519A(a).

<sup>27</sup> 15 U.S.C. 78f(b).

<sup>28</sup> 15 U.S.C. 78f(b)(5).

respect to, and facilitating transactions in, securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the application of existing protections to all complex order types as described in proposed Rule 518, Interpretations and Policies .05 is consistent with the Act because such application is designed to protect investors and the public interest, by assisting investors in maintaining their established risk tolerance levels on the Exchange when making investment decisions concerning these order types.

The Exchange believes that the proposed amendment to Rule 515A(a)(2), specifically adding to the existing limitations against simultaneous Auctions and Complex Auctions by stating that the System will reject an Agency Order if, at the time of receipt of the Agency Order, the option is a component of a complex strategy that is the subject of a cPRIME Auction, is consistent with the Act. Specifically, the proposal perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest because, without such a limitation, investors could be faced with an unusually large number of simultaneous PRIME, cPRIME and/or Complex Auctions in the same option in the simple market, and in the same strategy in the complex market, which in turn could impact the orderly function of the markets. The Exchange believes that this limitation is consistent with the Act because it protects investors and the public interest by establishing the same limitation with respect to any combination of concurrent PRIME, cPRIME and Complex Auctions. The Exchange notes that other exchanges also limit concurrent auctions involving the same option.<sup>29</sup>

The Exchange believes that the proposed amendments to Rule 518, Interpretations and Policies .05(d), to exclude cPRIME Orders, cC2C Orders, and cQCC Orders from the ixABBO protection facilitates transactions in securities and removes impediments to and perfects the mechanisms of a free and open market and a national market system. The Exchange believes that, if not excluded, such protection feature could unnecessarily impede certain transactions in order types submitted with contra-side participation and guaranteed executions.

The Exchange believes that its proposal to adopt Rule 518, Interpretations and Policies .05(e)(1)(iii), to state that a wide market condition shall have no impact on the trading of cPRIME Orders, cC2C Orders, and cQCC Orders perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest, by ensuring participants submitting these order types that such paired orders will be executed at the submitted price regardless of wide market conditions. The Exchange does not believe that such orders should be affected by wide market conditions since the execution of these order types is guaranteed. The Exchange believes that preventing the execution of these orders would unnecessarily preclude executions on the Exchange that should occur regardless of wide market conditions.

Additionally, the Exchange believes that proposed Rule 518, Interpretations and Policies .05(e)(1)(i), stating that trading and processing in these order types will not be suspended and will continue during wide market conditions perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest by systemically avoiding the unnecessary preclusion of executions of paired order types during market conditions that do not affect such executions. The suspension of trading in these order types due to wide market conditions would unnecessarily preclude the execution of transactions that are guaranteed at protected prices upon receipt.

The Exchange is proposing to apply these protections to complex orders so that investors submitting complex orders are better able to manage their risk tolerance levels with respect to complex orders they submit to the Exchange, just as they are currently able to manage their risk tolerance levels with respect to orders in the simple market and certain types of complex orders listed in Rule 518(b).<sup>30</sup> The Exchange believes that extending the application of existing protections to all complex order types, including the recently added cPRIME Orders, cC2C Orders, and cQCC Orders, as described in the proposed rules is consistent with the Act because such application is designed to protect investors and the public interest, by ensuring that investors that participate in these order types are afforded the price protections that already apply to all order types

currently listed in Rule 518(b).<sup>31</sup> These protections are designed to assist investors in maintaining their established risk tolerance levels on the Exchange when making investment decisions concerning complex orders.

The Exchange further believes that its proposal in Rule 518, Interpretations and Policies .06(a), that the cMOM Price Protection feature shall not apply to cPRIME Orders, cC2C Orders, and cQCC Orders removes impediments to and perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest. Under the proposal, these new order types will not be rejected for being outside of the cMOM price upon receipt, and will thus be executed instead of being rejected unnecessarily. These order types are already effectively executed when they are received (and, in the case of cPRIME Orders, subject to price improvement) because they are paired orders with a guaranteed execution. The Exchange believes that accepting these orders, rather than rejecting them, protects investors that have established crossing orders at a specific execution price.

The Exchange believes that its proposal to amend, re-word and reorganize Rule 519A, Interpretations and Policies .02, is designed to facilitate transactions in securities and to remove impediments to and perfect the mechanisms of a free and open market, by amending the existing Rule to indicate that PRIME Orders, PRIME Solicitation Orders, and GTC Orders participate in the RPM, and by expanding the Rule to identify the proposed new order types and to describe how RPM handles each order type.

The Exchange's proposal to add cPRIME Orders, QCC Orders, cQCC Orders, Customer Cross Orders and cC2C Orders to the list of order types in which Rule 519A, Interpretations and Policies .02 applies, and to the list of order types to be counted as two orders for purposes of the RPM's open order protection in Rule 519A, Interpretations and Policies .02(b), perfects the mechanisms of a free and open market and a national market system by assisting investors in managing their acceptable risk levels respecting open orders. The submission of a single message into the System for the execution of a paired order type is a submission representing two orders, and the RPM counts them as such for purposes of calculating the Allowable Order Rate. Participants thus will know that their single message for these order

<sup>29</sup> See, e.g., NASDAQ PHILX LLC ("Phlx") Rule 1080(n)(ii). See also, Chicago Board Options Exchange, Inc. ("CBOE") Rule 6.74A(b).

<sup>30</sup> See *supra* note 11.

<sup>31</sup> See *supra* note 11.

types represents two orders for purposes of the counting system and may determine their appropriate risk tolerance parameters accordingly.

The Exchange's proposal in Rule 519A, Interpretations and Policies .02(c), not to cancel existing cPRIME Orders once the RPM is engaged ensures that paired orders that are guaranteed executions are not unnecessarily cancelled. CPRIME Agency Orders are submitted with a contra side order at a guaranteed improved price; the engagement of RPM has no effect on the cPRIME price guarantee. Therefore, the Exchange believes that this proposal removes impediments to and perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest, by permitting existing cPRIME Orders to be executed despite the engagement of RPM.

The Exchange believes that the proposed amendments to its trade protection rules should instill additional confidence in Members that submit orders to the Exchange that their risk tolerance levels are protected, and thus should encourage such Members to submit additional order flow and liquidity to the Exchange with the understanding that they retain necessary protections and avoid unnecessary protections with respect to all orders they submit to the Exchange, including complex orders, thereby removing impediments to and perfecting the mechanisms of a free and open market and a national market system and, in general, protecting investors and the public interest.

The Exchange also believes that the proposed rule change removes impediments to and perfects the mechanisms of a free and open market and a national market system by attracting more order flow and by increasing the frequency with which Initiating Members initiate Auctions in complex orders through PRIME.

#### *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.

On the contrary, the proposed rule change is intended to promote competition by ensuring that necessary trade protections are available on the Exchange, and by avoiding unnecessary protections that would preclude executions, enabling MIAX Options participants to execute more complex orders on the Exchange. The Exchange believes that this enhances inter-market

competition by enabling MIAX Options to compete for this type of order flow with other exchanges that have similar functionalities in place.

The Exchange further believes that enhancing the trade protections promotes intra-market competition by protecting new order types through which competing MIAX Options participants may submit complex orders into the System. Furthermore, the price protections and limitations on simultaneous auctions described in this proposal are available, and apply equally, to all market participants, resulting in an even playing field on the Exchange with respect to available trade and price protections on the Exchange. This should result in enhanced liquidity and more competition on the Exchange.

Additionally, the Exchange believes that the proposed limitation on simultaneous auctions involving the same options should encourage participants to submit more PRIME and cPRIME Agency Orders to the Exchange, thus increasing the number of such orders, and responses to those orders on the Exchange, which should enhance the Exchange's position with respect to inter-market competition.

For all the reasons stated, the Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, and believes the proposed change will in fact enhance competition.

#### *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 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 filed, or such shorter time as the Commission may designate, it 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>

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

<sup>33</sup> 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the 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.

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>34</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>35</sup> permits the Commission to 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 trade and price protections will be operative at the commencement of trading in the new crossing and cPRIME order types on the Exchange.<sup>36</sup> The Exchange believes that the trade and price protections proposed for the new order types are indispensable tools for participants in managing their risk levels, and that a waiver of the operative delay will ensure the protection of investors and the public interest, consistent with the Act. The Commission believes the waiver of the operative delay is consistent with the protection of investors and the public interest to assure that the Risk Protection Monitor provisions and the price and other protections in MIAX Rule 518, Interpretation and Policy .05, except as otherwise provided therein, will apply to the new cPRIME Orders, cC2C Orders, and cQCC Orders at the time these orders begin trading on MIAX.<sup>37</sup> As noted above, MIAX states that the trade and price protections are indispensable tools for participants to manage their risk tolerance levels. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.<sup>38</sup>

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

<sup>34</sup> 17 CFR 240.19b-4(f)(6).

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

<sup>36</sup> See *supra* note 6.

<sup>37</sup> See *id.* The Commission notes that the proposal also provides that the ixABBO Price Protection and the wide market condition provisions in MIAX Rule 518, Interpretation and Policy .05, and the cMOM Price Protection feature in MIAX Rule 518, Interpretation and Policy .06, will not apply to cPRIME, cC2C, and cQCC Orders because, as described more fully above, cPRIME, cC2C, and cQCC Orders are submitted as paired orders and are guaranteed executions.

<sup>38</sup> For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).



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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MIAX-2017-34 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-MIAX-2017-34. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet 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 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; 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-MIAX-2017-34 and should be submitted on or before August 23, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>39</sup>

**Eduardo A. Aleman,**  
*Assistant Secretary.*

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**BILLING CODE 8011-01-P**

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-81224; File No. SR-NYSEArca-2017-05]

##### **Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of Direxion Daily Crude Oil Bull 3x Shares and Direxion Daily Crude Oil Bear 3x Shares Under NYSE Arca Equities Rule 8.200**

July 27, 2017.

On January 23, 2017, NYSE Arca, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to list and trade shares of Direxion Daily Crude Oil Bull 3x Shares and Direxion Daily Crude Oil Bear 3x Shares under NYSE Arca Equities Rule 8.200. The proposed rule change was published for comment in the **Federal Register** on February 7, 2017.<sup>3</sup>

On March 16, 2017, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.<sup>5</sup> On May 5, 2017, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change.<sup>6</sup>

<sup>39</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 79916 (February 1, 2017), 82 FR 9608.

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> See Securities Exchange Act Release No. 80265, 82 FR 14778 (March 22, 2017).

<sup>6</sup> See Securities Exchange Act Release No. 80606, 82 FR 22042 (May 11, 2017). Specifically, the Commission instituted proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be "designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade," and "to protect investors and the public interest." See *id.* at 22043.

On June 23, 2017, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>7</sup> The Commission has received no comments on the proposed rule change.

Section 19(b)(2) of the Act<sup>8</sup> provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for notice and comment in the **Federal Register** on February 7, 2017. August 6, 2017 is 180 days from that date, and October 5, 2017 is 240 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider this proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> designates October 5, 2017 as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR-NYSEArca-2017-05), as modified by Amendment No. 1.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Eduardo A. Aleman,**  
*Assistant Secretary.*

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**BILLING CODE 8011-01-P**

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-32764]

##### **Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940**

July 28, 2017.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of July 2017.

<sup>7</sup> Amendment No. 1, which amended and replaced the proposed rule change in its entirety, is available on the Commission's Web site at: <https://www.sec.gov/comments/sr-nysearca-2017-05/nysearca201705-1822806-154288.pdf>.

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> *Id.*

<sup>10</sup> 17 CFR 200.30-3(a)(57).