

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68723; File No. SR-MIAX-2013-02)

January 24, 2013

Self-Regulatory Organizations: Miami International Securities Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Adopt MIAX Rule 319 Relating to Proxy Voting

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 16, 2013, Miami International Securities Exchange LLC (“MIAX” 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, and is approving the proposed rule change on an accelerated basis.

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

The Exchange is filing a proposal to adopt Rule 319 (Proxy Voting) in accordance with the provisions of Section 957 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”).

The text of the proposed rule change is provided in Exhibit 5. The text of the proposed rule change is also available on the Exchange’s website at http://www.miaxoptions.com/filter/wotitle/rule_filing, at MIAX’s principal office, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 is proposing to adopt MIAX Rule 319 (Proxy Voting), in accordance with the provisions of Section 957 of the Dodd-Frank Act, to prohibit Members from voting uninstructed shares if the matter voted on relates to (i) the election of a member of the board of directors of an issuer (other than an uncontested election of a director of an investment company registered under the Investment Company Act of 1940 (the "Investment Company Act")), (ii) executive compensation, or (iii) any other significant matter, as determined by the Commission, by rule.

Section 957 of the Dodd-Frank Act amends Section 6(b)³ of the Act to require the rules of each national securities exchange to prohibit any member organization that is not the beneficial owner of a security registered under Section 12⁴ of the Act from granting a proxy to vote the security in connection with certain stockholder votes, unless the beneficial owner of the security has instructed the member organization to vote the proxy in accordance with the voting instructions of the beneficial owner. The stockholder votes covered by Section 957 include any

³ 15 U.S.C. 78(f)(b).

⁴ 15 U.S.C. 781.

vote with respect to (i) the election of a member of the board of directors of an issuer (other than an uncontested election of a director of an investment company registered under the Investment Company Act), (ii) executive compensation, or (iii) any other significant matter, as determined by the Commission, by rule.

Accordingly, in order to carry out the requirements of Section 957 of the Dodd-Frank Act, the Exchange proposes to adopt proposed MIAX Rule 319 to prohibit any Member from giving a proxy to vote stock that is registered in its name, unless: (i) such Member is the beneficial owner of such stock; (ii) pursuant to the written instructions of the beneficial owner; or (iii) pursuant to the rules of any national securities exchange or association of which it is a member provided that the records of the Member clearly indicate the procedure it is following. The Exchange is proposing to adopt these rules because other national securities exchanges and associations do allow proxy voting under certain limited circumstances while the current Exchange Rules are silent on such matters. Therefore, a Member that is also a member of another national securities exchange or association may vote the shares held for a customer when allowed under its membership at another national securities exchange or association, provided that the records of the Member clearly indicate the procedure it is following.

Notwithstanding the forgoing, a Member that is not the beneficial owner of a security registered under Section 12 of the Act is prohibited from granting a proxy to vote the security in connection with a shareholder vote with respect to the election of a member of the board of directors of an issuer (except for a vote with respect to uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act), executive compensation, or any other significant matter, as determined by the Commission, by rule, unless the beneficial owner of the security has instructed the Member to vote the proxy in accordance with the voting instructions of the beneficial owner.

The Exchange notes that proposed MIAX Rule 319 is identical to International Securities Exchange (“ISE”) Rule 421; and proposed MIAX Rule 319(a) is based on NYSE Arca, Inc. (“NYSE Arca”) Rule 9.4, Financial Industry Regulatory Authority (“FINRA”) Rule 2251; and proposed MIAX Rule 319(b) is based on Nasdaq Rule 2251(d).

2. Statutory Basis

MIAX believes that its proposed rule change is consistent with Section 6(b) of the Act⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act⁶ in particular. The Exchange believes that proposed Rule 319(a) will provide clarity to MIAX members going forward on whether broker discretionary voting is permitted by MIAX members under limited circumstances when the MIAX member is also a member of another national securities exchange that permits broker discretionary voting.

The Exchange believes that proposed Rule 319(b) is consistent with Section 6(b)(10)⁷ of the Act, which requires that national securities exchanges adopt rules prohibiting members that are not beneficial holders of a security from voting uninstructed proxies with respect to the election of a member of the board of directors of an issuer (except for uncontested elections of directors for companies registered under the Investment Company Act), executive compensation, or any other significant matter, as determined by the Commission by rule. The Exchange believes that proposed Rule 319(b) is consistent with Section 6(b)(10) of the Act because it adopts provisions that comply with that section.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78f(b)(10)

The Exchange also believes that proposed Rule 319(b) is consistent with Section 6(b)(5)⁸ of the Act, which provides, among other things, that the rules of the Exchange must be designed 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, to protect investors and the public interest, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange is adopting this proposed rule to comply with the requirements of Section 957 of the Dodd-Frank Act, and therefore believes the proposed rule to be consistent with the Exchange Act, particularly with respect to the protection of investors and the public interest.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The propose (sic) rule would allow the Exchange to implement Section 957 of the Dodd-Frank Act and adopt rules consistent with Section 6(b)(10) of the Act, which is applicable to all national securities exchanges and national securities association (sic).⁹ The Exchange notes this proposed rule does not go outside of the scope of the rules of other national securities (sic). Additionally, consistency among the various proxy voting rules governing national securities exchanges reduces the possibility of any regulatory arbitrage on the part of a market participant seeking a forum with a lower regulatory requirement.

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.

⁸ 15 U.S.C. 78f(b)(5).

⁹ The Commission notes that Section 6(b)(10) of the Act, 15 U.S.C. 78f(b)(10), does not apply to national securities associations.

III. 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:to-rule-comments@sec.gov). Please include File Number SR-MIAX-2013-02 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-MIAX-2013-02. 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; 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-2013-02 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

In its filing, the Exchange requested that the Commission approve the proposal on an accelerated basis so that the Exchange could immediately comply with the requirements imposed by the Dodd-Frank Act, and because the proposed rule text is based upon, among others, ISE Rule 421.¹⁰ After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹¹

The Commission believes that proposed Rule 319(a) is consistent with Section 6(b)(5)¹² of the Act, which provides, among other things, that the rules of the Exchange must be designed 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, to protect investors and the public interest, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Under proposed Rule 319(a), a Member shall be prohibited from voting uninstructed shares unless (1) that Member is the beneficial owner of the stock; (2) pursuant to the written instructions of the beneficial owner; or (3) pursuant to the rules of any national securities

¹⁰ See Securities Exchange Act Release No. 63139 (October 20, 2010), 75 FR 65680 (October 26, 2010) (SR-ISE-2010-99).

¹¹ In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹² 15 U.S.C. 78f(b)(5).

exchange or association of which it is also a member, provided that the Member's records clearly indicate the procedure it is following. This provision is based on ISE Rule 421, which was previously approved by the Commission.¹³ The Commission notes that the proposed change will provide clarity to Exchange Members going forward on whether broker discretionary voting is permitted by Exchange Members under limited circumstances when the Member is also a member of another national securities exchange that permits broker discretionary voting. In approving this portion of the proposal, the Commission notes that Rule 319(a) is consistent with the approach taken under the rules of other national securities exchanges or national securities association, and for Exchange Members who are not also members of another national securities exchange prohibits broker discretionary voting on any matter, consistent with investor protection and the public interest under Section 6(b)(5) of the Act¹⁴.

The Commission believes that proposed Rule 319(b) is consistent with Section 6(b)(10)¹⁵ of the Act, which requires that national securities exchanges adopt rules prohibiting members that are not beneficial holders of a security from voting uninstructed proxies with respect to the election of a member of the board of directors of an issuer (except for uncontested elections of directors for companies registered under the Investment Company Act), executive compensation, or any other significant matter, as determined by the Commission by rule.

The Commission believes that proposed Rule 319(b) is consistent with Section 6(b)(10) of the Act because it adopts new language that complies with that section. As noted in the accompanying Senate Report, Section 957, which enacted Section 6(b)(10), reflects the principle that "final vote tallies should reflect the wishes of the beneficial owners of the stock and not be

¹³ See supra note 10.

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ 15 U.S.C. 78f(b)(10).

affected by the wishes of the broker that holds the shares.”¹⁶ The proposed rule change will make the Exchange compliant with the new requirements of Section 6(b)(10) by specifically prohibiting broker-dealers, who are not beneficial owners of a security, from voting uninstructed shares in connection with a shareholder vote on the election of a member of the board of directors of an issuer (except for a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940), executive compensation, or any other significant matter, as determined by the Commission by rule, unless the member receives voting instructions from the beneficial owner of the shares.¹⁷

The Commission also believes that proposed Rule 319(b) is consistent with Section 6(b)(5)¹⁸ of the Act, which provides, among other things, that the rules of the Exchange must be designed 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, to protect investors and the public interest, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission believes that the rule assures that shareholder votes on the election of the board of directors of an issuer (except for a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940) and on executive compensation matters are made by those with an

¹⁶ See S. Rep. No. 111-176, at 136 (2010).

¹⁷ The Commission has not, to date, adopted rules concerning other significant matters where uninstructed broker votes should be prohibited, although it may do so in the future. Should the Commission adopt such rules, we would expect the Exchange to adopt coordinating rules promptly to comply with the statute.

¹⁸ 15 U.S.C. 78f(b)(5).

economic interest in the company, rather than by a broker that has no such economic interest, which should enhance corporate governance and accountability to shareholders.¹⁹

Based on the above, the Commission finds that the Exchange's proposal will further the purposes of Sections 6(b)(5) and 6(b)(10) of the Act because it should enhance corporate accountability to shareholders while also serving to fulfill the Congressional intent in adopting Section 6(b)(10) of the Act.

The Commission also finds good cause, pursuant to Section 19(b)(2) of the Act,²⁰ for approving the proposed rule change prior to the 30th day after the date of publication of notice in the Federal Register. The Commission believes that good cause exists to grant accelerated approval to proposed Rule 319(a), because this proposed rule will conform the Exchange rule to ISE Rule 421, which was published for public comment in the Federal Register and approved by the Commission, and for which no comments were received.²¹ Because proposed Rule 319(a) is identical to the ISE rule, it raises no new regulatory issues.

The Commission also believes that good cause exists to grant accelerated approval to proposed Rule 319(b), which conforms the Exchange's rules to the requirements of Section 6(b)(10) of the Act. Section 6(b)(10) of the Act, enacted under Section 957 of the Dodd-Frank Act, does not provide for a transition phase, and requires rules of national securities exchanges to prohibit broker voting on the election of a member of the board of directors of an issuer (except for a vote with respect to the uncontested election of a member of the board of directors of any

¹⁹ As the Commission stated in approving New York Stock Exchange ("NYSE") rules prohibiting broker voting in the election of directors, having those with an economic interest in the company vote the shares, rather than the broker who has no such economic interest, furthers the goal of enfranchising shareholders. See Securities Exchange Act Release No. 60215 (July 1, 2009), 74 FR 33293 (July 10, 2009) (SR-NYSE-2006-92).

²⁰ 15 U.S.C. 78s(b)(2).

²¹ See supra note 10.

investment company registered under the Investment Company Act of 1940), executive compensation, or any other significant matter, as determined by the Commission by rule. The Commission believes that good cause exists to grant accelerated approval to proposed Rule 3.22(b), because it will conform the Exchange rule to the requirements of Section 6(b)(10) of the Act. Moreover, proposed Rule 319(b) is identical to ISE Rule 421.²²

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²³ that the proposed rule change (SR-MIAX-2013-02) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

Kevin M. O'Neill
Deputy Secretary

²² See supra note 10.

²³ 15 U.S.C. 78s(b)(2).

²⁴ 17 CFR 200.30-3(a)(12).