

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 will also 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-NYSEMKT-2014-78 and should be submitted on or before October 17, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

**Kevin M. O'Neill,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-73177; File No. SR-MIAX-2014-49]

### Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Exchange Rule 404

September 22, 2014.

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 September 18, 2014, 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.

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

The Exchange is filing a proposal to amend Rule 404.

The text of the proposed rule change is available on the Exchange's Web site at [http://www.miaxoptions.com/filter/wotitle/rule\\_filing](http://www.miaxoptions.com/filter/wotitle/rule_filing), 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 is proposing to amend Exchange Rule 404 to allow \$1 or greater strike price intervals for options listed on the SPDR S&P 500 ETF ("SPY") and the SPDR Dow Jones Industrial Average ETF ("DIA"), consistent with recent changes proposed by NASDAQ OMX PHLX ("Phlx") and approved by the Commission.<sup>3</sup> Options on SPY and DIA have historically traded on the MIAX with \$1 intervals up to a strike price of \$200 pursuant to Rule 404(g), which permits options on Exchange-Traded Fund Shares to be traded in intervals that were established on other exchanges prior to listing on the Exchange. Above \$200 these options classes trade with significantly wider \$5 strike price intervals. As the underlying securities have been steadily approaching, and in the case of SPY has recently surpassed, the \$200 mark, and in response to increased investor and member demand to list additional

strikes in these heavily traded options classes, the Exchange now proposes to list options on SPY and DIA in dollar intervals regardless of the strike price.

Specifically, the Exchange proposes to add Interpretations and Policies .10 to Rule 404 to state that notwithstanding any other provision regarding the interval of strike prices of series of options on Exchange-Traded Fund Shares in Rule 404, the interval of strike prices on SPY and DIA options will be \$1 or greater. By having smaller strike intervals in SPY and DIA, investors will have more efficient hedging and trading opportunities. The proposed \$1 intervals above a \$200 strike price will result in having at-the-money series based on the underlying SPY or DIA moving less than 1%, which falls in line with slower price movements of a broad-based index. Furthermore, the proposed \$1 intervals will allow members to continue to employ current option trading and hedging strategies in SPY and DIA. Considering that \$1 intervals already exist below the \$200 price point, and that SPY and DIA are both trading close to or at the \$200 level, continuing to maintain the artificial \$200 ceiling (above which intervals increase 500% to \$5), will have a negative effect on investing, trading and hedging opportunities and volume. The continued demand for highly liquid options such as SPY and DIA, and the investing, trading, and hedging opportunities they represent, far outweighs any potential negative impact of allowing SPY and DIA options to trade in more finely tailored intervals above a \$200 price point.

With the proposal, for example, investors and traders would be able to roll open positions from a lower strike to a higher strike in conjunction with the price movement of the underlying. Under the current rule, where the next higher available series would be \$5 away above a \$200 strike price, the ability to roll such positions is effectively negated. Thus, to move a position from a \$200 strike to a \$205 strike under the current rule, an investor would need for the underlying product to move 2.5%, and would not be able to execute a roll up until such a large movement occurred. With the proposed rule change, however, the investor would be in a significantly safer position of being able to roll his open options position from a \$200 to a \$201 strike price, which is only a 0.5% move for the underlying.

By allowing SPY and DIA options in \$1 intervals over a \$200 strike price, the proposal will moderately augment the total number of options series available on the Exchange. However, the

<sup>20</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 Nos. 72949 (August 29, 2014), 79 FR 53089 (September 5, 2014) (SR-Phlx-2014-46); 72998 (September 4, 2014), 79 FR 53813 (September 10, 2014) (SR-ISE-2014-42); 72990 (September 4, 2014), 79 FR 53799 (September 10, 2014) (SR-CBOE-2014-068).

Exchange notes that it has analyzed its capacity and represents that it and the Options Price Reporting Authority (“OPRA”) have the necessary systems capacity to handle any potential additional traffic associated with this proposed rule change. The Exchange believes that its members will not have a capacity issue as a result of this proposal. The Exchange also represents that it does not believe this expansion will cause fragmentation of liquidity. The Exchange’s beliefs are supported by the limited nature of the proposal, which applies to two symbols rather than to all Exchange-Traded Fund Shares. Moreover, while under current rules there is ample liquidity, such liquidity is constricted above \$200. This proposal enhances liquidity by offering more rational strike price intervals as the stock market appreciates in value.

The Exchange believes that the proposed rule change, like the other strike price programs currently offered by the Exchange, will benefit investors by giving them more flexibility to more closely tailor their investment and hedging decisions.

## 2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b)<sup>4</sup> of the Act in general, and furthers the objectives of Section 6(b)(5)<sup>5</sup> of the Act 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 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.

In particular, the proposed rule change would add consistency to the SPY and DIA options markets and allow investors to use SPY and DIA options more easily and effectively. Moreover, the proposed rule change would allow investors and traders, whether big or small, to better trade and hedge positions in SPY and DIA options where the strike price is greater than \$200, and ensure that SPY and DIA options investors and traders are not at a disadvantage simply because of the strike price.

The rule change proposal allows the Exchange to respond to customer demand to allow SPY and DIA options to trade in \$1 intervals above a \$200 strike price. The Exchange does not

believe that the proposed rule would create additional capacity issues or affect market functionality. As noted above, options on Exchange-Traded Fund Shares generally trade in wider \$5 intervals above a \$200 strike price, whereas options at or below a \$200 strike price trade in \$1 intervals. This creates a situation where contracts on the same option class, namely SPY and DIA options, effectively may not be able to execute certain strategies, such as rolling to a higher strike price, simply because of the arbitrary \$200 strike price above which options intervals increase by 500%. This proposal remedies the situation by establishing an exception to the current strike price interval regime, for SPY and DIA options only, to allow such options to trade in \$1 or greater intervals at all strike prices.

The Exchange believes that the proposed rule change, like other strike price programs currently offered by the Exchange, will benefit investors by giving them increased flexibility to more closely tailor their investment and hedging decisions. Moreover, the proposed rule change is consistent with changes proposed by Phlx and approved by the Commission.<sup>6</sup>

With regard to the impact of this proposal on system capacity, the Exchange notes that it has analyzed its capacity and represents that it and the Options Price Reporting Authority (“OPRA”) have the necessary systems capacity to handle any potential additional traffic associated with the proposed rule change. The Exchange believes that its members will not have a capacity issue as a result of this proposal.

### *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 Exchange believes this proposed rule change will benefit investors by providing additional methods to trade options on the liquid securities, and providing greater ability to mitigate risk in managing large portfolios. Specifically, the Exchange believes that investors would benefit from the introduction and availability of additional series by more series available as an investing tool. The Exchange also believes the proposed changes will provide investors with an additional tool for hedging risk in highly liquid securities. 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 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder.<sup>8</sup>

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange stated that waiver of this requirement will allow the Exchange to respond to current customer demand for strike prices in SPY options and more effectively tailor the investing, trading, and hedging decisions in respect of SPY and DIA options by using finer \$1 increments. The Exchange also stated that given the current level of the S&P 500 Index, the Exchange believes that it is important to be able to list the requested strikes as soon as possible so that investors have the hedging tools they need given the current market conditions. For these reasons, the Commission believes that the proposed rule change presents no novel issues and that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest; and will allow the Exchange to remain competitive with other exchanges. Therefore, the Commission designates the proposed rule change to be operative upon filing.<sup>9</sup>

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</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.

<sup>9</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule’s impact on

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

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

<sup>6</sup> See supra note 3.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

#### IV. Solicitation of Comments

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

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MIAX-2014-49 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-2014-49. 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

efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2014-49 and should be submitted on or before October 17, 2014.

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

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-73181; File No. SR-NYSEArca-2014-103]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to an Increase in the Number of Securities Held by the Peritus High Yield ETF

September 23, 2014.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on September 17, 2014, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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 reflect an increase in the number of securities that may be held by the Peritus High Yield ETF. The text of the proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

<sup>10</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 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 self-regulatory organization 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 those 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 parts of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Commission has approved a proposed rule change relating to listing and trading on the Exchange of shares ("Shares") of the Peritus High Yield ETF ("Fund") under NYSE Arca Equities Rule 8.600<sup>4</sup>, which governs the listing and trading of Managed Fund Shares.<sup>5</sup>

The Shares are offered by AdvisorShares Trust (the "Trust"), a

<sup>4</sup> See Securities Exchange Act Release No. 63329 (November 17, 2010), 75 FR 71760 (November 24, 2010) (SR-NYSEArca-2010-86) (the "Prior Order"). The notice with respect to the Prior Order was published in Securities Exchange Act Release No. 63041 (October 5, 2010), 75 FR 62905 (October 13, 2010) ("Prior Notice" and, together with the Prior Order, the "Prior Release"). The Exchange subsequently filed with the Commission several proposed rule changes relating to changes in the Fund's holdings. See Securities Exchange Act Release Nos. 66818 (April 17, 2012), 77 FR 24233 (April 23, 2012) (SR-NYSEArca-2012-33) (notice of filing and immediate effectiveness of proposed rule change relating to the Fund's investment in equity securities) ("Equities Investment Release"); 70284 (August 29, 2013), 78 FR 54715 (September 5, 2013) (SR-NYSEArca-2013-83) (notice of filing and immediate effectiveness of proposed rule change relating to the Fund's investments in leveraged loans) ("Leveraged Loan Release"); 72433 (June 19, 2014), 79 FR 36114 (June 25, 2014) (SR-NYSEArca-2014-69) (notice of filing and immediate effectiveness of proposed rule change relating to an increase in the Fund's investments in equity securities) ("Equities Increase Release", and together with the Prior Release, the Equity Investment Release, and the Leveraged Loan Release, the "Prior Releases").

<sup>5</sup> A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1) ("1940 Act") organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.