

declaring that it has ceased to be an investment company. Applicant has transferred its assets to Ares Dynamic Credit Allocation Fund, Inc., and on August 31, 2015, made a final distribution to its shareholders based on net asset value. Expenses of \$864,442 incurred in connection with the reorganization were paid by applicant and the acquiring fund.

*Filing Dates:* The application was filed on September 23, 2015.

*Applicant's Address:* 2000 Avenue of the Stars, 12th Floor, Los Angeles, California 90067

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Robert W. Errett,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-75986; File No. SR-MIAX-2015-55]

### Self-Regulatory Organizations: Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX Options Fee Schedule

September 25, 2015.

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 21, 2015, 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 the Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule (the "Fee Schedule") to modify the Exchange's connectivity fees.

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 proposes to amend its Fee Schedule regarding connectivity to the Exchange. Specifically, the Exchange proposes to (a) establish a new connectivity fee for a 10Gigabit ("Gb") ultra-low latency ("ULL") fiber connection; (b) establish a new connectivity testing and certification fee for the 10Gb ULL fiber connection; and (c) change the network connectivity fees so that the fees assessed to a subscriber during a trading month are pro-rated when a subscriber makes a change to the connectivity (by adding or deleting connections) with such pro-rated fees based on the number of trading days that the subscriber has been credentialed to utilize any of the Exchange application program interfaces ("APIs") in the production environment through such connection, divided by the total number of trading days in such month multiplied by the applicable monthly rate.

The Exchange currently offers various bandwidth alternatives for connectivity to the Exchange, including a 10Gb fiber connection and a 1Gb fiber connection.<sup>3</sup> The Exchange now proposes to provide a second 10Gb fiber connection offering, which uses ultra-low latency switches.<sup>4</sup> A switch is a type of network hardware that facilitates communication between a MIAX participant's application servers and the Exchange's application servers that service MIAX participants. Each of the Exchange's current connection offerings uses different switches, but the switches are of uniform type within each offering. As a consequence, all subscribers to a particular connection

receive the same latency in terms of the capabilities of their switches. The 10Gb ULL offering uses a new ultra-low latency switch, which provides faster processing of messages sent to it in comparison to the current switch in use for other types of connectivity. As a consequence, MIAX participants that seek faster processing of their messages to the Exchange will now have the opportunity to subscribe to a faster and more efficient connection to the Exchange.<sup>5</sup>

The Exchange proposes a monthly network connectivity fee of \$7,500 for a 10Gb ULL connection for both members and non-members. The Exchange also proposes a network connectivity testing and certification fee of \$4,000 for members and \$4,200 for non-members, which is identical to the testing and certification fee for the current 10Gb fiber connection. It has been MIAX's experience that Member testing takes less time than non-Member testing because Members have more experience testing these systems with the Exchange; generally fewer questions and issues arise during the testing and certification process. Therefore, the Exchange believes that it is reasonable to charge non-Members more for testing and certification than Members.

The network connectivity fee for the 10Gb ULL connectivity will be pro-rated based on the number of trading days that the member or non-member has been credentialed to utilize any of the Exchange APIs in a production environment through the 10Gb ULL connection, divided by the total number of trading days in such month multiplied by the monthly rate. MIAX participants may also be credentialed to receive market data through the 10Gb ULL connection.

The Exchange believes that the pricing of the 10Gb ULL connectivity is reflective of the value it will provide and the cost to the Exchange for the necessary hardware and other infrastructure and maintenance costs to the Exchange associated with this technology. The growth in the size of consolidated and proprietary data feeds has resulted in demand for faster processing of message traffic, and ultra-low latency switches meet this demand by decreasing the time in which individual messages are processed and market data is transmitted by these new switches. The Exchange's proposal will provide MIAX participants with the opportunity to connect to the Exchange via faster switch processing. The

<sup>3</sup> See MIAX Fee Schedule, Section 5.

<sup>4</sup> The Term "latency" for these purposes is a measure of the time it takes for an order to enter into a switch and then exit for entry into the Exchange's system.

<sup>5</sup> The Exchange is not offering a low latency alternative for other bandwidth connections at this time, but may do so in the future.

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

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

Exchange notes that other exchanges have adopted low-latency connectivity alternatives for their participants. For example, NASDAQ OMX PHLX LLC ("PHLX"), NYSE Arca ("Arca"), NYSE MKT LLC ("Amex") and the International Securities Exchange LLC ("ISE") all offer a 10Gb low latency Ethernet connectivity alternative to each of their participants, which provides a higher speed network to access their trading systems.<sup>6</sup>

The Exchange also proposes to modify its network connectivity fees for all of its connections. Specifically, the Exchange proposes to pro-rate both member and non-member network connectivity fees assessed when a MIAX participant makes a change to its connectivity by adding or deleting connections. The pro-rated fee will be based upon the number of trading days that the MIAX participant has been credentialed to utilize any of the Exchange APIs in a production environment through the applicable connection, divided by the total number of trading days in such month multiplied by the applicable monthly rate. The Exchange believes that providing members and non-members the ability to change connectivity between the Exchange's 1Gb, 10Gb and 10Gb ULL lines and be charged accordingly will provide each MIAX participant with greater flexibility and potential cost savings. MIAX participants may also be credentialed to receive market data through such connections.

The Exchange proposes to implement the proposed changes to the Fee Schedule effective as of October 1, 2015.

## 2. Statutory Basis

MIAX believes that its proposal to amend its fee schedule is consistent with Section 6(b) of the Act<sup>7</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>8</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or

system which the Exchange operates or controls. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act<sup>9</sup> in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customer, issuers, brokers and dealers.

The Exchange believes that its proposal is consistent with Section 6(b)(4) of the Act because the fees assessed for 10Gb ULL connectivity fee allow the Exchange to cover the costs associated with the purchase of new, state-of-the-art switches for this new offering. The switches are priced at a premium, the cost of which the Exchange must bear. The Exchange believes that the proposal to establish fees for the 10Gb ULL connectivity is fair, equitable and not unreasonably discriminatory because the fees are assessed equally among all users of the connection.

The Exchange believes that the proposed Member and non-Member Network Connectivity Testing and Certification Fees are consistent with Section 6(b)(4) of the Act because they are identical to the connectivity and certification fees currently assessed for 10Gb fiber connectivity. The Exchange notes that it will incur the same costs associated with setting up a subscriber with either 10Gb or 10Gb ULL fiber connectivity. The network connectivity testing and certification fee of \$4,000 for members and \$4,200 for non-Members, which is identical to the testing and certification fee for the current 10Gb fiber connection is reasonable and not unfairly discriminatory. As stated above, it has been MIAX's experience that Member testing takes less time than non-Member testing because Members have more experience testing these systems with the Exchange; generally fewer questions and issues arise during the testing and certification process. Therefore, the Exchange believes that it is reasonable to charge non-Members more for testing and certification than Members.

As discussed above, PHLX and ISE each offer different connections with respect to latency, and NYSE Arca, Inc. and NYSE Amex both offer similar connectivity alternatives. Despite this, all of them charge a higher fee than the Exchange proposes to charge for the same 10Gb lower-latency connection. For these reasons, the Exchange believes

the proposed fees for 10Gb ULL fiber connectivity to the Exchange are reasonable and not unfairly discriminatory.

The Exchange also believes the proposed 10Gb ULL fiber connectivity testing and certification fees and connectivity fees are equitably allocated in that all Members and non-Members that voluntarily select this service option will be charged the same amount to cover the hardware, installation, testing and connection costs to maintain and manage the enhanced connection. All Members and non-Members may subscribe to this voluntary connectivity, and the Exchange is not eliminating any existing connectivity. Accordingly, a Member or non-Member may elect not to subscribe to the 10Gb ULL fiber connection and retain the connection to which it is currently subscribed.

The Exchange also believes that the proposed change to pro-rate the fees in the event of a connectivity change during any trading month is fair and reasonable because such change will allow all MIAX participants to subscribe to the most effective connectivity according to their trading and data feed requirements and as a result will only be assessed fees for the connectivity for which they were credentialed to utilize any of the Exchange APIs in a production environment through the applicable connection during any trading month. MIAX participants may also be credentialed to receive market data through such connections. The Exchange's proposal to pro-rate the fees in the event of a connectivity change during any trading month is also equitable since it applies equally to all subscribers to the Exchange's connectivity.

The Exchange also believes the proposals further the objectives of Section 6(b)(5) of the Act<sup>10</sup> in that each proposal is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customer, issuers, brokers and dealers.

The 10Gb ULL fiber connectivity assists MIAX participants in making their network connectivity more efficient by reducing the time messages take to reach the Exchange once sent from their server and to be received by the MIAX participant from the Exchange. Speed and efficiency are important drivers of the U.S. securities markets and the Exchange is offering a

<sup>6</sup> See Securities Exchange Act Release Nos. 70174 (August 13, 2013), 78 FR 50477 (August 19, 2013) (SR-PHLX-2013-82); 70886 (November 15, 2013), 78 FR 69904 (November 21, 2013) (SR-NYSEMKT-2013-92); 70982 (December 4, 2013), 78 FR 74197 (December 10, 2013) (SR-NYSEMKT-2013-97); 70887 (November 15, 2013), 78 FR 69897 (November 21, 2013) (SR-NYSEARCA-2013-123); 70981 (December 4, 2013), 78 FR 74203 (December 10, 2013) (SR-NYSEARCA-2013-131); 66525 (March 7, 2012), 77 FR 14847 (March 13, 2012) (SR-ISE-2012-09). Both NYSE Arca and NYSE Amex filed one filing to provide for the new lower-latency 10Gb connection and one filing to establish the fees associated with the connection.

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(4).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

connectivity solution that promotes speed and efficiency by providing enhanced technology that is available to all MIAX participants. The Exchange believes the enhanced 10Gb ULL connection will remove impediments to and perfect the mechanism of a free and open market and a national market system because the Exchange will provide faster switching technology to market participants, which will improve the speed and efficiency of processing messages arriving at the market from MIAX participants' servers, and will provide a more efficient means for the Exchange's processing of executions and reports.

The Exchange also believes the proposed connectivity testing and certification fees and connectivity fees for the 10Gb ULL fiber connection are consistent with Section 6(b)(5) of the Act because all MIAX participants have the opportunity to subscribe to the 10Gb ULL connection. There is no differentiation among MIAX participants with regard to the fees charged for these services.

The Exchange also believes that the Exchange's pro-rating of network connectivity fees in the event of a connectivity change is consistent with Section 6(b)(5) of the Act since all subscribers will receive the benefit of being charged only for the connectivity through which it was credentialed to utilize the Exchange APIs in a production environment through the applicable connection during any trading month. MIAX participants may also be credentialed to receive market data through such connections.

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

The Exchange does not believe that the proposed rule changes will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. On the contrary, the Exchange believes that the proposed changes should increase both intermarket and intramarket competition. Specifically, the Exchange believes that the changes will promote competition by offering MIAX participants more flexibility in their choice of Exchange connectivity, and that the availability of the lower-latency connectivity in turn will enhance their trading operations and ultimately bring greater speed and efficiency to trading in the marketplace.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the

Exchange must continually adjust its fees to remain competitive with other exchanges. The Exchange believes that the proposed changes reflect this competitive environment because they increase the types of connections available to MIAX participants and should result in potential cost savings to a market participant. Given the robust competition for a higher speed network among options markets, many of which offer the same products, enhancing the type of connectivity available on MIAX is consistent with the goals of the Act.

#### *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 foregoing 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 after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6)<sup>12</sup> thereunder.

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>13</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>14</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 filing can be operative on October 1, 2015. The Exchange states that the proposal would provide MIAX participants an opportunity to enhance the efficiency of their trading through the 10Gb ULL connectivity, and the Commission notes that other exchanges offer similar upgraded, low-latency hardware. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</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>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> 17 CFR 240.19b-4(f)(6)(iii).

Commission hereby waives the operative delay and designates the proposed rule change operative on October 1, 2015.<sup>15</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 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 No. SR-MIAX-2015-55 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 No. SR-MIAX-2015-55. 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.,

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

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 No. SR-MIAX-2015-55, and should be submitted on or before October 22, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Robert W. Errett,**

*Deputy Secretary.*

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-75983; File No. SR-ICEEU-2015-013]

### Self-Regulatory Organizations; ICE Clear Europe Limited; Order Approving Proposed Rule Change Relating to CDS End-of-Day Price Discovery Policy

September 25, 2015.

#### I. Introduction

On July 24, 2015, ICE Clear Europe Limited (“ICE Clear Europe”) 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 amend its end-of-day price discovery policies and procedures for credit default swap (“CDS”) contracts to incorporate certain enhancements (SR-ICEEU-2015-013). The proposed rule change was published for comment in the **Federal Register** on August 12, 2015.<sup>3</sup> The Commission did not receive comments on the proposed rule change. The Commission is approving the proposed rule change.

#### II. Description of the Proposed Rule Change

ICE Clear Europe has proposed to amend its CDS End-of-Day Price Discovery Policy (the “EOD Price

Discovery Policy”) to make certain enhancements to the end-of-day submission and firm trade process for CDS contracts. ICE Clear Europe also proposed to adopt a new Price Submission Disciplinary Framework (the “Disciplinary Framework”) that addresses missed price submissions by Clearing Members for CDS contracts. ICE Clear Europe did not otherwise propose to change its Clearing Rules or Procedures in connection with these amendments.

As described by ICE Clear Europe, under the EOD Price Discovery Policy, ICE Clear Europe currently utilizes a “cross and lock” algorithm as part of its CDS price discovery process. Under this algorithm, standardized bids and offers derived from Clearing Member submissions are matched by sorting them from highest to lowest and lowest to highest levels, respectively. This sorting process pairs the Clearing Member submitting the highest bid price with the Clearing Member submitting the lowest offer price, the Clearing Member submitting the second highest bid price with the Clearing Member submitting the second-lowest offer price, and so on. The algorithm then identifies crossed and/or locked markets. Crossed markets are the Clearing Member pairs generated by the sorting and ranking process for which the bid price of one Clearing Member is above the offer price of the matched Clearing Member. The algorithm identifies locked markets, where the bid and the offer are equal, in a similar fashion.

According to ICE Clear Europe, whenever there are crossed and/or locked matched markets, the algorithm applies a set of rules designed to identify standardized submissions that are “obvious errors.” The algorithm sets a high bid threshold equal to the preliminary end-of-day (“EOD”) level plus one bid-offer width (“BOW”), and a low offer threshold equal to the preliminary EOD level minus one BOW. The algorithm considers a Clearing Member’s standardized submission to be an “obvious error” if the bid is higher than the high bid threshold, or the offer is lower than the low offer threshold.

Clearing Member pairs identified by the algorithm as crossed or locked markets may be required from time to time, under the EOD Price Discovery Policy, to enter into cleared CDS trades with each other (“Firm Trades”). Currently, ICE Clear Europe excludes standardized submissions it identifies as obvious errors from potential Firm Trades and does not use these submissions in its determination of published EOD levels.

ICE Clear Europe has proposed to impose certain consequences under the Firm Trade methodology for Clearing Members providing price discovery submissions deemed to be obvious errors. ICE Clear Europe has represented that, as revised, the process for determining potential Firm Trades will now include all standardized submissions, including those classified as obvious errors (and as a result submissions that are obvious errors may result in Firm Trades). However, obvious errors will not be used in the calculation of the final EOD level, as under the current framework. Thus, ICE Clear Europe has represented that it will effectively execute its current EOD algorithm twice: initially in the same way it does today (eliminating obvious errors) to generate the final EOD levels, and again, without excluding obvious errors, to generate Firm Trades and related reversing transactions.<sup>4</sup>

To limit the potential exposure created through Firm Trades that include a bid or offer from an obvious error submission, ICE Clear Europe has represented that it will adjust Firm Trade prices, where appropriate, to fall within a predefined band on either side of the EOD price such that the potential profit or loss (“P/L”) realized by unwinding the trade at the EOD level is capped.

To prevent Clearing Members from receiving Firm Trades with large P/L impact in certain index instruments that are less actively traded, and for which it is therefore more difficult and/or more expensive to manage the associated risk, ICE Clear Europe has represented that it will automatically generate reversing transactions at the end-of-day price level for specific index CDS instruments (*i.e.*, for specific combinations of index/sub-index and series determined by the ICE Clear Europe risk department in consultation with the trading advisory committee). Currently, reversing transactions are only available for eligible single name CDS instruments.

ICE Clear Europe has also proposed revising the EOD Price Discovery Policy to remove the option for Clearing Members to provide end-of-day price submissions for single name CDS instruments in terms of spread and associated recovery rate. Under the revised approach, Clearing Members will be required to provide price submissions (or equivalent “points upfront” submissions) for all single name CDS instruments. Clearing

<sup>4</sup> A reversing transaction is a second cleared transaction with identical attributes to the initial Firm Trade, but with the buyer and seller counterparties reversed, and at that day’s EOD price rather than the initial Firm Trade price.

<sup>16</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> Securities Exchange Act Release No. 34-75624 (Aug. 6, 2015), 80 FR 48369 (Aug. 12, 2015) (SR-ICEEU-2015-013).