

## VI. Accelerated Approval of Proposed Rule Change, as Modified by Amendment Nos. 1, 2, and 3

The Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act, to approve the proposed rule change, as modified by Amendment Nos. 1, 2, and 3, prior to the 30th day after the date of publication of Amendment No. 3 in the **Federal Register**. FINRA proposed the changes in Amendment No. 3 in response to issues raised by commenters.<sup>190</sup>

More specifically, Amendment No. 3 revised the proposal to increase the gross open position exception from \$2.5 million or less to \$10 million or less. Second, FINRA revised the proposed language in new Supplementary Material .05(a)(1) to delete the clause “except with respect to any account or group of commonly controlled accounts whose assets managed by that investment adviser constitute more than 10 percent of the investment adviser’s regulatory assets under management as reported on the investment adviser’s most recent Form ADV.” The Commission believes that the changes proposed in Amendment No. 3 do not raise any novel regulatory issues because they provide greater clarity with respect to the application of the proposed rule change and will reduce the regulatory burden on FINRA members, particularly smaller firms and counterparties. Therefore, the Commission finds that Amendment No. 3 is consistent with the protection of investors and the public interest.

Amendment No. 3 also clarified which paragraphs related to the required written risk limit determinations become effective six months after Commission approval of the proposed rule change. The Commission believes that these are technical clarifications and do not change the substance of the proposed implementation timeframe as proposed in the Order Instituting Proceedings and the Amendment No. 2 Notice.

Accordingly, the Commission finds good cause pursuant to Section 19(b)(2) of the Exchange Act,<sup>191</sup> for approving the proposed rule change, as modified by Amendment Nos. 1, 2, and 3, on an accelerated basis.

## VII. Conclusion

IT IS THEREFORE ORDERED, pursuant to section 19(b)(2) of the Exchange Act,<sup>192</sup> that the proposed rule change, as modified by Amendment Nos. 1, 2, and 3 (SR-FINRA-2015-036)

be, and hereby is approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>193</sup>

**Robert W. Errett,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78078; File No. SR-NASDAQ-2016-064]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change Relating to the Listing and Trading of the Shares of the First Trust Strategic Mortgage REIT ETF of First Trust Exchange-Traded Fund VIII

June 15, 2016.

On May 3, 2016, The NASDAQ Stock Market LLC (“Nasdaq”) 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 the First Trust Strategic Mortgage REIT ETF of First Trust Exchange-Traded Fund VIII under Nasdaq Rule 5735. The proposed rule change was published for comment in the **Federal Register** on May 12, 2016.<sup>3</sup> The Commission received no comments on the proposed rule change.

Section 19(b)(2) of the Act<sup>4</sup> provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is June 26, 2016. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period

<sup>193</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. 77781 (May 6, 2016), 81 FR 29590 (“Notice”).

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

within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to section 19(b)(2) of the Act,<sup>5</sup> designates August 10, 2016, as the date by which the Commission should either approve or disapprove or institute proceedings to determine whether to disapprove the proposed rule change (File Number SR-NASDAQ-2016-064).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

**Robert W. Errett,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78080; File No. SR-MIAX-2016-16]

### Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 510 To Extend the Penny Pilot Program Until December 31, 2016

June 15, 2016.

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 June 13, 2016, 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 Exchange Rule 510, Interpretations and Policies .01 to extend the pilot program for the quoting and trading of certain options in pennies (the “Penny Pilot Program”).

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

<sup>5</sup> 15 U.S.C. 78s(b)(2).

<sup>6</sup> 17 CFR 200.30-3(a)(31).

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

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

<sup>190</sup> See Amendment No. 3, *supra* note 14.

<sup>191</sup> 15 U.S.C. 78s(b)(2).

<sup>192</sup> 15 U.S.C. 78s(b)(2).

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 a participant in an industry-wide pilot program that provides for the quoting and trading of certain option classes in penny increments (the "Penny Pilot Program" or "Program"). The Penny Pilot Program allows the quoting and trading of certain option classes in minimum increments of \$0.01 for all series in such option classes with a price of less than \$3.00; and in minimum increments of \$0.05 for all series in such option classes with a price of \$3.00 or higher. Options overlying the PowerShares QQQ™ ("QQQ"), SPDR® S&P 500® ETF ("SPY"), and iShares® Russell 2000 ETF ("IWM"), however, are quoted and traded in minimum increments of \$0.01 for all series regardless of the price. The Penny Pilot Program was initiated at the then existing option exchanges in January 2007<sup>3</sup> and currently includes more than 300 of the most active option classes. The Penny Pilot Program is currently scheduled to expire on June 30, 2016.<sup>4</sup> The purpose of the proposed rule change is to extend the Penny Pilot Program in its current format through December 31, 2016.

In addition to the extension of the Penny Pilot Program through December

<sup>3</sup> See Securities Exchange Act Release Nos. 55154 (January 23, 2007), 72 FR 4743 (February 1, 2007) (SR-CBOE-2006-92); 54603 (October 16, 2006), 72 FR 4754 (February 1, 2007) (SR-ISE-2006-62); 54688 (November 2, 2006), 71 FR 239 (December 13, 2006) (SR-Phlx-2006-74); 54590 (October 12, 2006), 71 FR 201 (October 18, 2006) (SR-NYSEArca-2006-73); and 54741 (November 9, 2006), 71 FR 223 (November 20, 2006) (SR-Amex-2006-106).

<sup>4</sup> See Securities Exchange Act Release No. 75284 (June 24, 2015), 78 FR 37349 (June 30, 2015) (SR-MIAX-2015-40) (extending the Penny Pilot Program from June 30, 2015, to June 30, 2016).

31, 2016, the Exchange proposes to extend one other date in the Rule. Currently, Interpretations and Policies .01 states that the Exchange will replace any Penny Pilot issues that have been delisted with the next most actively traded multiply listed option classes that are not yet included in the Penny Pilot Program, and that the replacement issues will be selected based on trading activity in the previous six months. Such option classes will be added to the Penny Pilot Program on the second trading day following July 1, 2015, and January 1, 2016.<sup>5</sup> Because these dates have expired and the Exchange intends to continue this practice for the duration of the Penny Pilot Program, the Exchange is proposing to amend the Rule to reflect that such option classes will be added to the Penny Pilot Program on the second trading day following July 1, 2016.

The purpose of this provision is to reflect the new date on which replacement issues may be added to the Penny Pilot Program.

#### 2. Statutory Basis

MIAX believes that its proposed rule change is consistent with Section 6(b) of the Act<sup>6</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>7</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 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, which extends the Penny Pilot Program for six months, allows the Exchange to continue to participate in a program that has been viewed as beneficial to traders, investors and public customers and viewed as successful by the other options exchanges participating in it.

### 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

<sup>5</sup> The month immediately preceding a replacement class's addition to the Pilot Program (*i.e.*, June) is not used for purposes of the six-month analysis. For example, a replacement added on the second trading day following July 1, 2016, will be identified based on trading activity from December 1, 2015, through May 31, 2016.

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that, by extending the expiration of the Pilot Program, the proposed rule change will allow for further analysis of the Penny Pilot Program and a determination of how the Program should be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace, facilitating investor protection, and fostering a competitive environment. In addition, consistent with previous practices, the Exchange believes the other options exchanges will be filing similar extensions of the Penny Pilot Program.

### 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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup> 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>10</sup> normally does not become operative prior to 30 days after the date of the filing.<sup>11</sup> However, pursuant to Rule 19b-4(f)(6)(iii),<sup>12</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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. The Exchange has satisfied this pre-filing requirement.

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

Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because doing so will allow the Pilot Program to continue without interruption in a manner that is consistent with the Commission's prior approval of the extension and expansion of the Pilot Program and will allow the Exchange and the Commission additional time to analyze the impact of the Pilot Program. Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.<sup>13</sup>

At any time within 60 days of the filing of such 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 under Section 19(b)(2)(B)<sup>14</sup> of the Act 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-2016-16 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-2016-16. 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

<sup>13</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>14</sup> 15 U.S.C. 78s(b)(2)(B).

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-2016-16 and should be submitted on or before July 12, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Robert W. Errett,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78076; File No. SR-NYSEARCA-2016-86]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Options Fee Schedule

June 15, 2016.

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 June 6, 2016, 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, II, and III 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 amend the NYSE Arca Options Fee Schedule. 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.

#### 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 purpose of this filing is to amend the Fee Schedule to introduce a new alternative for qualifying for the Customer and Professional Customer Incentive Program, as described below. The Exchange proposes to implement the fee change effective June 6, 2016.

The Exchange is proposing to introduce a new tier to the Incentive Program, which provides OTP Holders and OTP Firms (collectively, "OTPs") several alternatives to earn additional posting credits ranging from \$0.01 to \$0.05. Specifically, the Exchange proposes to add a new alternative that would enable OTPs to earn a \$0.03 credit if they achieve at least 1.50% of Total Industry Customer equity and ETF option ADV ("TCADV") from Customer and Professional Customer Posted Orders in both Penny Pilot and non-Penny Pilot Issues, Plus Executed ADV of 0.10% of U.S. Equity Market Share Posted and Executed on NYSE Arca Equity Market. The Exchange believes this new credit would provide additional incentive to direct Customer and Professional Customer order flow to the Exchange, which benefits all market

<sup>15</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.