

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–465, OMB Control No. 3235–0528]

Proposed Collection; Comment Request; Extension: Rule 237

Upon Written Request, Copies Available

From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the “Commission”) is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget (“OMB”) for extension and approval.

In Canada, as in the United States, individuals can invest a portion of their earnings in tax-deferred retirement savings accounts (“Canadian retirement accounts”). These accounts, which operate in a manner similar to individual retirement accounts in the United States, encourage retirement savings by permitting savings on a tax-deferred basis. Individuals who establish Canadian retirement accounts while living and working in Canada and who later move to the United States (“Canadian-U.S. Participants” or “participants”) often continue to hold their retirement assets in their Canadian retirement accounts rather than prematurely withdrawing (or “cashing out”) those assets, which would result in immediate taxation in Canada.

Once in the United States, however, these participants historically have been unable to manage their Canadian retirement account investments. Most securities that are “qualified investments” for Canadian retirement accounts are not registered under the U.S. securities laws. Those securities, therefore, generally cannot be publicly offered and sold in the United States without violating the registration requirement of the Securities Act of 1933 (“Securities Act”).¹ As a result of this registration requirement, Canadian-U.S. Participants previously were not able to purchase or exchange securities for their Canadian retirement accounts

as needed to meet their changing investment goals or income needs.

The Commission issued a rulemaking in 2000 that enabled Canadian-U.S. Participants to manage the assets in their Canadian retirement accounts by providing relief from the U.S. registration requirements for offers of securities of foreign issuers to Canadian-U.S. Participants and sales to Canadian retirement accounts.² Rule 237 under the Securities Act³ permits securities of foreign issuers, including securities of foreign funds, to be offered to Canadian-U.S. Participants and sold to their Canadian retirement accounts without being registered under the Securities Act.

Rule 237 requires written offering documents for securities offered and sold in reliance on the rule to disclose prominently that the securities are not registered with the Commission and are exempt from registration under the U.S. securities laws. The burden under the rule associated with adding this disclosure to written offering documents is minimal and is non-recurring. The foreign issuer, underwriter, or broker-dealer can redraft an existing prospectus or other written offering material to add this disclosure statement, or may draft a sticker or supplement containing this disclosure to be added to existing offering materials. In either case, based on discussions with representatives of the Canadian fund industry, the staff estimates that it would take an average of 10 minutes per document to draft the requisite disclosure statement.

The Commission understands that there are approximately 2,553 Canadian issuers other than funds that may rely on rule 237 to make an initial public offering of their securities to Canadian-U.S. Participants.⁴ The staff estimates that in any given year approximately 25 (or 1 percent) of those issuers are likely to rely on rule 237 to make a public offering of their securities to participants, and that each of those 25

² See Offer and Sale of Securities to Canadian Tax-Deferred Retirement Savings Accounts, Release Nos. 33–7860, 34–42905, IC–24491 (June 7, 2000) [65 FR 37672 (June 15, 2000)]. This rulemaking also included new rule 7d–2 under the Investment Company Act, permitting foreign funds to offer securities to Canadian-U.S. Participants and sell securities to Canadian retirement accounts without registering as investment companies under the Investment Company Act. 17 CFR 270.7d–2.

³ 17 CFR 230.237.

⁴ This estimate is based on the following calculation: 3,461 total issuers – (82 closed-end funds + 826 exchange-traded products) = 2,553 total equity and bond issuers. See The MiG Report, Toronto Stock Exchange and TSX Venture Exchange (January 2022) (providing number of issuers on the Toronto Exchange). This calculation excludes Canadian funds to avoid double-counting disclosure burdens under rule 237 and rule 7d–2.

issuers, on average, distributes 3 different written offering documents concerning those securities, for a total of 75 offering documents.

The staff therefore estimates that during each year that rule 237 is in effect, approximately 25 respondents⁵ would be required to make 75 responses by adding the new disclosure statements to approximately 75 written offering documents. Thus, the staff estimates that the total annual burden associated with the rule 237 disclosure requirement would be approximately 13 hours (75 offering documents × 10 minutes per document). The total annual cost of internal burden hours is estimated to be \$5,915 (13 hours × \$455 per hour of attorney time).⁶

In addition, issuers from foreign countries other than Canada could rely on rule 237 to offer securities to Canadian-U.S. Participants and sell securities to their accounts without becoming subject to the registration requirements of the Securities Act. However, the staff believes that the number of issuers from other countries that rely on rule 237, and that therefore are required to comply with the offering document disclosure requirements, is negligible.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission’s estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by September 30, 2022.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information

⁵ This estimate of respondents only includes foreign issuers. The number of respondents would be greater if foreign underwriters or broker-dealers draft stickers or supplements to add the required disclosure to existing offering documents.

⁶ The Commission’s estimate concerning the wage rate for attorney time is based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association (“SIFMA”). The \$455 per hour figure for an attorney is from SIFMA’s *Management & Professional Earnings in the Securities Industry 2013*, modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, overhead, and adjusted to account for the effects of inflation.

¹ 15 U.S.C. 77. In addition, the offering and selling of securities of investment companies (“funds”) that are not registered pursuant to the Investment Company Act of 1940 (“Investment Company Act”) is generally prohibited by U.S. securities laws. 15 U.S.C. 80a.

under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549 or send an email to: PRA_Mailbox@sec.gov.

Dated: July 26, 2022.

J. Matthew DeLesDernier,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-95365; File No. SR-MIAX-2022-26]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 404, Series of Option Contracts Open for Trading

July 26, 2022.

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 July 13, 2022, Miami International Securities Exchange, LLC (“MIAX Options” or the “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 404, Series of Option Contracts Open for Trading. The text of the proposed rule change is available on the Exchange’s website at <http://www.miaxoptions.com/rule-filings/> at MIAX Options’ principal office, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to amend Exchange Rule 404, Series of Option Contracts Open for Trading. Specifically, the Exchange proposes to

amend Interpretations and Polices .11 of Rule 404 to account for conflicts between different provisions within the Short Term Option Series Rules.

Background

In 2021, the Exchange amended Rule 404 to limit the intervals between strikes in equity options listed as part of the Short Term Option Series Program, excluding Exchange-Traded Fund Shares and ETNs, that have an expiration date more than twenty-one days from the listing date (“Strike Interval Proposal”).³ The Strike Interval Proposal adopted new Policy .11 to Interpretations and Policies of Rule 404, which included a table that intended to specify the applicable strike intervals that would supersede Policy .02(e)⁴ of Rule 404 for Short Term Option Series in equity options, excluding Exchange-Traded Fund Shares and ETNs, which have an expiration date more than twenty-one days from the listing date. The Strike Interval Proposal was designed to reduce the density of strike intervals that would be listed in later weeks, within the Short Term Option Series Program, by utilizing limitations for intervals between strikes which have an expiration date more than twenty-one days from the listing date.

The Exchange now proposes to amend the rule text within Policy .11 of Interpretations and Policies of Rule 404 to clarify current rule text and amend the application of the table to account for potential conflicts within the Short Term Option Series Rules. Currently, the table within Policy .11 of Rule 404 is as follows:⁵

Tier	Average daily volume	Share price				
		Less than \$25	\$25 to less than \$75	\$75 to less than \$150	\$150 to less than \$500	\$500 or greater
1	Greater than 5,000	\$0.50	\$1.00	\$1.00	\$5.00	\$5.00
2	Greater than 1,000 to 5,000	1.00	1.00	1.00	5.00	10.00
3	0 to 1,000	2.50	5.00	5.00	5.00	10.00

The first sentence of Policy .11 of Rule 404 provides, “[w]ith respect to listing Short Term Option Series in equity options, excluding Exchange-

Traded Fund Shares and ETNs, which have an expiration date more than twenty-one (21) days from the listing

date, the following table will apply as noted within Policy .02(f).”

First, the Exchange proposes to amend the first sentence of Policy .11 of

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 91776 (May 5, 2021), 86 FR 25923 (May 11, 2021) (SR-MIAX-2021-12).

⁴ The strike price interval for Short Term Option Series may be \$0.50 or greater for option classes that trade in \$1 strike price intervals and are in the Short Term Option Series Program. If the class does not trade in \$1 strike price intervals, the strike price interval for Short Term Option Series may be \$0.50

or greater where the strike price is less than \$100 and \$1.00 or greater where the strike price is between \$100 and \$150, and \$2.50 or greater for strike prices greater than \$150. See Policy .02(e) of Exchange Rule 404.

⁵ The Share Price is the closing price on the primary market on the last day of the calendar quarter. In the event of a corporate action, the Share Price of the surviving company is utilized. The Average Daily Volume is the total number of options contracts traded in a given security for the applicable calendar quarter divided by the number

of trading days in the applicable calendar quarter. Beginning on the second trading day in the first month of each calendar quarter, the Average Daily Volume shall be calculated by utilizing data from the prior calendar quarter based on Customer-cleared volume at The Options Clearing Corporation. For options listed on the first trading day of a given calendar quarter, the Average Daily Volume shall be calculated using the quarter prior to the last trading calendar quarter. See Interpretations and Policies .11 of Exchange Rule 404.