

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69686; File No. SR-MIAX-2013-24)

June 3, 2013

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 605 Regarding Orders in a Market Maker's Appointed Classes

Pursuant to 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 May 22, 2013, Miami International Securities Exchange LLC ("MIAX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the 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 605 to delete the provision that includes executions resulting from orders in a Market Maker's appointed classes as part of the limitation on executions in a Market Maker's non-appointed classes.

The text of the proposed rule change is 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.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to eliminate an unnecessary provision in Rule 605 that places a limitation on orders that can be submitted by a Market Maker in its appointed classes. Rule 605 governs the submission of orders by Market Makers; differentiating between orders submitted in classes to which the Market Maker is appointed and orders submitted in classes to which the Market Maker is not appointed. Paragraph (a) governs option classes to which the Market Maker is appointed and limits the types of orders that can be submitted by a Market Maker in its appointed classes. Paragraph (b) governs option classes other than those to which the Market Maker was appointed. Market Makers can submit all types of orders in non-appointed classes, but subparagraphs (b)(2) and (b)(3) place limitations on the overall percentage of executions that can occur in the non-appointed classes. Specifically, subparagraph (b)(2) limits a Registered Market Maker's total number of contracts executed in non-appointed option classes to 25% of the Registered Market Maker's total number of contracts executed in its appointed option classes and subparagraph (b)(3) limits a Lead Market Maker's total number of contracts executed in non-appointed option classes to 10% of the Lead Market Maker's total number of contracts executed in its appointed option classes. The Exchange places further limitations in subparagraphs (b)(2) and (b)(3) by including in the 25% limitation for Registered Market Makers and in the 10% limitation for Lead Market Makers, contracts resulting from the execution of orders in appointed classes.

Traditionally, the purpose of limiting the number of contracts executed in non-appointed classes to a small percentage of contracts executed in appointed classes was to encourage Market Makers to provide liquidity in their appointed classes. Such a limitation was important at “floor-based” exchanges, since market makers were limited in the number of classes in which they could physically make markets and it was in the floor-based exchange’s interest that market makers focus their market making abilities on their appointed classes. Although, limitations on trading in non-appointed classes is less important on a fully electronic exchange, since electronic quoting and trading systems allow market makers to make markets and provide liquidity in many more option classes than on a floor-based exchange, MIAX still believes focusing its Registered Market Makers and its Lead Market Makers on trading in their appointed classes is important for providing the greatest amount of liquidity in those classes and intends to keep that part of the limitation intact.

The second provision in subparagraphs (b)(2) and (b)(3) includes contracts resulting from the execution of orders in appointed classes as part of the 25% limitation for Registered Market Makers and the 10% limitation for Lead Market Makers. By including orders in appointed classes, MIAX sought to encourage the use of quotes by Market Makers in their appointed classes by limiting the use of orders in their appointed classes.

The Exchange is now proposing to eliminate the provisions in subparagraphs (b)(2) and (b)(3) of Rule 605 that includes contracts resulting from the execution of orders in appointed classes in the 25% limitation for Registered Market Makers and in the 10% limitation for Lead Market Makers. The Exchange believes that the elimination of these provisions is appropriate since they are unnecessary given the restrictions on the use of orders in appointed classes set forth elsewhere in Rule 605. Specifically, Rule 605(a) limits the types of orders a Market Maker

can enter in an appointed class; and Rule 605(c) accords a lower priority to executions resulting from Market Maker orders (i.e., allocated with all other Professional Interest³) than to executions resulting from Market Maker priority quotes, which have precedence over other Professional Interest. These provisions provide a significant incentive for Market Makers to use quotes rather than orders in their appointed classes, which renders the further limitation on Market Maker orders in subparagraphs (b)(2) and (b)(3) unnecessary. In addition, a Market Maker's affirmative obligations to continuously quote in appointed classes for a significant part of the trading day as set forth in Rule 604 provides an additional incentive for Market Makers to use quotes and provides the Exchange with means for enforcing use of quotes by Market Makers in their appointed classes.

It should be noted that while some of the other options exchanges place limitations on market maker trading in non-appointed classes,⁴ none of those exchanges include orders in appointed classes in those limitations. The Exchange does not believe the proposed rule change will adversely impact the quality of the Exchange's markets or lead to a material decrease in

³ Exchange Rule 100 defines "Professional Interest" as (i) an order that is for the account of a person or entity that is not a Priority Customer, or (ii) an order or non-priority quote for the account of a Market Maker.

⁴ CBOE Rule 8.7, Interpretations and Policies .03 provides that 75% of a market maker's total contract volume must be in classes to which the market maker is appointed, thus, only 25% of a market maker's contract volume can be in non-appointed classes. ISE Rule 805(b)(2) provides the total number of contracts executed during a quarter by a Competitive Market Maker ("CMM") in classes to which he is not appointed may not exceed 25% of the total number of contracts traded by such CMM in its appointed classes, and ISE Rule 805(b)(3) provides the total number of contracts executed during a quarter by a Primary Market Maker ("PMM") in classes to which he is not appointed may not exceed 10% of the total number of contracts traded by such PMM in its appointed classes. PHLX Rule 1014, Commentary .03 provides that 50% of Registered Options Trader's trading activity in any quarter (measured in terms of contract volume) shall ordinarily be in assigned classes. None of these exchanges includes executions resulting from orders in appointed classes when calculating the contract volume resulting from executions in non-appointed classes.

liquidity. Rather, the Exchange believes that eliminating an unnecessary obligation on Market Makers, one that is not in place at other options exchanges, may increase the level of market making activity across all of a Market Makers appointed and non-appointed classes.

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, 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 Exchange believes this proposed rule change promotes just and equitable principles of trade because it reduces a burden and unnecessary restrictiveness on Market Makers. The Exchange still imposes many obligations on all Market Makers to maintain a fair and orderly market in their appointed classes, which the Exchange believes eliminates the risk of a material decrease in liquidity. While executions resulting from orders in appointed classes will no longer be used to calculate a Registered Market Maker's or a Lead Market Maker's percentage of contracts executed in non-appointed classes; MIAX still has in place rules that limit the use of orders in appointed classes and rules that both encourage and require the use of quotes by Market Makers. Accordingly, the proposal supports the quality of MIAX's markets by helping to ensure that Market Makers will continue to be obligated to and have incentives to use quotes rather than orders in their appointed classes. The benefit provided to the Market

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

Maker from the proposed elimination of orders in appointed classes from the calculation of a Market Maker's trading activity in non-appointed classes is offset by the continued limitations on the use of orders and the affirmative obligations of Market Makers to provide continuous quotes. Ultimately, the benefit the proposed rule change confers upon Market Makers is offset by the continued responsibilities to provide significant liquidity to the market to the benefit of market participants.

In addition, the Exchange believes this proposed rule change promotes just and equitable principles of trade because it reduces a burden and unnecessary restrictiveness on Market Makers. The Exchange believes the proposal removes a Market Maker limitation that is unnecessary, as evidenced by the fact that it does not exist on other competitive markets.

Finally, in determining to revise requirements for its Market Makers, MIAX is mindful of the balance between the obligations and the benefits bestowed on its Market Makers. The proposal will change obligations currently in place for Market Makers; however, the Exchange does not believe that these changes reduce the overall obligations applicable to Market Makers. In this respect, the Exchange notes that its Market Makers are subject to many limitations and obligations, such as the types of orders that can be submitted in appointed classes, the fact that executions resulting from orders in appointed classes confer a lower level of priority on Market Makers, and the Market Maker's affirmative obligations to continuously quote in appointed classes for a significant part of the trading day provides an additional incentive for Market Makers to use quotes and provides the Exchange with means for enforcing use of quotes by Market Makers in their appointed classes.

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 operates in a highly competitive market comprised of eleven U.S. options exchanges in which sophisticated and knowledgeable market participants can, and do, send order flow to competing exchanges if they deem trading practices at a particular exchange to be onerous or cumbersome. The proposed rule change allows the Exchange to eliminate a limitation on the use of orders in appointed classes that is not in place at other option exchanges, thus allowing MIAX to attract more Market Makers to its developing options marketplace. By providing Market Maker limitations and obligations that are more consistent with market maker limitations and obligations in place at other option exchanges, competition for the liquidity providing services of market makers is enhanced. MIAX is better able to compete for the services of market makers when its requirements for market makers are consistent with the other options exchanges.

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 Act⁷ and Rule 19b-4(f)(6) thereunder.⁸ Because the proposed rule change does not: (i)

⁷ 15 U.S.C. 78s(b)(3)(A)(iii).

⁸ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) 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 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 requirement.

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.

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) of the Act⁹ 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 e-mail to rule-comments@sec.gov. Please include File No. SR-MIAX-2013-24 on the subject line.

Paper comments:

⁹ 15 U.S.C. 78s(b)(2)(B).

- 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 No. SR-MIAX-2013-24. 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 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-2013-24 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Kevin M. O'Neill
Deputy Secretary

¹⁰ 17 CFR 200.30-3(a)(12).