

*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-BX-2013-014 on the subject line.

*Paper Comments*

- 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 Number SR-BX-2013-014. 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 such filing also will be available for inspection and copying at the principal office 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-BX-2013-014, and should be submitted on or before March 19, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

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

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-68954; File No. SR-MIAX-2013-04]

**Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Revise Market Maker Obligations Regarding the Opening Process on the Exchange**

February 20, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 11, 2013, Miami International Securities Exchange LLC ("Exchange" or "MIAX") 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 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 is filing a proposal to amend Rules 503, 603 and 604 to revise Market Maker obligations regarding the opening process on the Exchange.

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 purpose of the proposed rule change is to revise the quoting obligations of Market Makers prior to and during the opening process. Specifically, (i) Lead Market Makers ("LMMs"), including those appointed Primary Lead Market Maker ("PLMM"), will not be required to enter quotes before or during the opening process in their assigned option classes; and (ii) PLMMs will, however, be required to submit valid width quotes not later than one minute following the dissemination of a quote or trade by the market for the underlying security. These changes, which are described in detail below, will make MIAX's Market Maker obligations more consistent with market maker obligations at other options exchanges.

Currently, Rules 503(e)(5), 603(c), 604(e)(1)(i) and 604(e)(2)(i) require PLMMs and LMMs to participate in the opening process by submitting valid width quotes and entering into any transactions resulting from their participation. MIAX proposes to amend each of these rules to revise the PLMM obligations and eliminate the LMM obligations. Rule 503(e) specifies that the opening process can begin following the dissemination of a quote or trade by the market for the underlying security and a pause of no longer than one half second. The pause allows the market place to absorb the dissemination of the underlying security's quote or trade. Thereafter, the option's opening process can be initiated by the occurrence of one of three triggers. These triggers are (i) a valid width quote being submitted by the PLMM in the option class; (ii) the valid width quotes of at least two Market Makers (one of whom must be a LMM) being submitted in the option; or (iii) the valid width quote of one LMM being submitted in the option with at least one other options exchange disseminating a quote in the option and a valid width NBBO being available for that option. Trigger (iii) can only occur in multiply listed option classes; for singly listed option classes either trigger (i) or (ii) must occur to initiate the option's opening process.

While the PLMM can submit a valid width quote to start the option's opening process, there are, as described above, other ways in which the option opening process can begin. Pursuant to the revisions being proposed herein, MIAX will require the PLMM to submit valid width quotes in each of the

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

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

<sup>8</sup> 17 CFR 200.30-3(a)(12).

PLMM's appointed classes within one minute of a trade or quote in the underlying security being disseminated, thus assuring a timely start of the opening process if none of the other triggers for starting the opening process have occurred.<sup>3</sup> As described above, an LMM's valid width quotes can also be used to trigger the start of the opening process, however, MIAX now proposes to eliminate the requirement that PLMMs and LMMs submit such quotes as part of the opening process.

By eliminating the specific obligations for PLMMs and LMMs to submit valid width quotes prior to regular options trading and only require continuous quoting during regular options trading, the opening obligations for MIAX Market Makers would be consistent with opening obligations for market makers at other options exchanges. For example, in addition to the PHLX rule for their non-specialist market makers referred to in footnote three above, NYSE Amex Options does not require either its specialist or its market makers to submit quotes or participate in the opening process.<sup>4</sup> In addition, NASDAQ Options Market, LLC ("NOM")<sup>5</sup>, NASDAQ OMX BX, Inc ("BX Options")<sup>6</sup>, and BOX Options Exchange LLC ("BOX")<sup>7</sup> eliminated market maker pre-opening quoting obligations in 2012. As a result of these filings, NOM, BX Options and BOX do not impose obligations on their respective options market makers to continuously quote prior to the regular options trading.

Market Makers have advised the Exchange that other option exchanges do not have opening quoting obligations for their market makers and have requested that MIAX eliminate its opening quoting obligations so that MIAX rules are similar to the other options exchanges. While MIAX agrees that eliminating its opening quoting obligations for Market Makers would be

pro-competitive in that it will attract more market makers and additional liquidity to the Exchange, MIAX believes that the PLMM should still have the responsibility to assure a timely start to the opening process in each of its appointed classes and is therefore continuing to require the PLMM to submit valid width quotes not later than one minute after a trade or quote in the underlying security has been disseminated. As it builds its options marketplace, MIAX believes a consistently timely opening of its options classes is essential for attracting order flow.

Moreover, the Exchange believes that its proposal to put LMMs in the same position as market makers on other exchanges with respect to opening obligations will not have a negative effect on MIAX's options market. In particular, the Exchange believes the removal of opening quoting obligations for LMMs will have no impact on the functioning of the MIAX opening process and will not negatively impact MIAX market participants. Exchange rules continue to provide that the PLMM will be required to assure a timely opening by submitting valid width quotes in its appointed option classes if none of the other triggers for opening its appointed option classes have occurred. MIAX, therefore, believes its market participants will continue to experience a quality opening on the Exchange.

## 2. Statutory Basis

MIAX believes that its proposed rule change is consistent with Section 6(b) of the Act<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>9</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, and it is not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange believes the proposal to conform Market Maker obligations to the requirements of competing markets will promote the application of consistent trading practices.

Additionally, the Exchange believes the proposal removes a market maker quoting requirement that is

unnecessary, as evidenced by the fact that it does not exist on other competitive markets. 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. With this proposal, LMMs will be relieved of a market maker requirement that does not materially improve the quality of the markets. On the contrary, the opening quoting obligation creates an additional obligation and burden on LMMs that does not exist on numerous other competitive markets. The Exchange believes that in this competitive marketplace, the impact of the opening quoting obligation that exists on the Exchange today compels this proposal. It will allow LMMs on the Exchange to follow rules that are similar to the rules of other options exchanges that do not impose opening obligations on their market makers, and will allow LMMs to focus on aspects of their operations that contribute to the market in a more efficient and meaningful way. However, as the newest entrant into this competitive marketplace, MIAX also believes it is important to provide consistently timely openings for its options, therefore, MIAX has a requirement that the PLMM in each of its appointed option classes be required to submit valid width quotes within one minute of the dissemination of a quote or trade in the underlying security. This requirement for the PLMM is also consistent with requirements at other options exchanges.

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 reduce obligations currently in place for PLMMs and LMMs without a corresponding reduction in the benefits currently bestowed upon them. MIAX nevertheless believes this shifting in the balance of obligations and benefits is appropriate given (i) the obligation is not necessary for LMMs; (ii) the obligation is being revised and not eliminated for the PLMM; and (iii) the changes being proposed herein are in place at other options exchanges. MIAX believes that its proposal is consistent with the Act in that the relieving of an unnecessary requirement for LMMs does not detract from the overall market making obligations of LMMs. The requirement that a market maker hold

<sup>3</sup> See NASDAQ OMX PHLX ("PHLX") Rule 1017(k), which requires "the specialist assigned in a particular equity option must enter opening quotes not later than one minute following the dissemination of a quote or trade by the market for the underlying security." PHLX does not require any of its other market makers to enter opening quotes, see also, PHLX Rule 1014.

<sup>4</sup> See NYSE Amex Options Rules 925NY (Obligations of Market Makers), 925.1NY (Market Maker Quotes), 927NY (Specialists), 927.5NY (e-Specialists Obligations) and 952NY (Opening Process). None of these rules require specialist or market maker participation in the opening process.

<sup>5</sup> See Securities Exchange Act Release No. 67722 (August 23, 2012) 77 FR 52375 (August 29, 2012) (SR-NASDAQ-2012-095).

<sup>6</sup> See Securities Exchange Act Release No. 68116 (October 26, 2012) 77 FR 66204 (November 2, 2012) (SR-BX-2012-069).

<sup>7</sup> See Securities Exchange Act Release No. 68412 (December 12, 2012) 77 FR 74902 (December 18, 2012) (SR-BOX-2012-022).

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

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

itself out as willing to buy and sell options for its own account on a regular or continuous basis is better supported by requirements to quote continuously throughout the trading day rather than by a requirement to quote at the opening. The LMM's continuous quoting obligations are the equivalent of obligations in place for other similarly situated market makers at other options exchanges. Maintaining the PLMM requirement to submit valid width quotes within one minute of a trade or quote in the underlying security being disseminated is consistent with the heightened level of obligations imposed by MIAX rules on PLMMs.

#### *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. MIAX's proposal to eliminate the obligation for Market Makers to submit quotes and participate in the opening process for each of its appointed option classes is consistent with what is already occurring on other markets. By providing Market Maker obligations that are more consistent with market maker 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 Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</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>12</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>13</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 Commission to waive the 30-day operative delay, noting that doing so will allow Market Makers on the Exchange to follow rules concerning Market Maker quoting obligations prior to the commencement of daily trading that are similar to the rules of other options Exchanges. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.<sup>14</sup> Accordingly, the Commission hereby grants the Exchange's request and designates the proposal operative upon filing.<sup>15</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.

### **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-2013-04 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

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

**Kevin M. O'Neill,**

*Deputy Secretary.*

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>11</sup> 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.

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

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

<sup>14</sup> The Commission notes that it recently waived the operative delay for a similar filing submitted by BX Options. See *supra* note 6.

<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).

<sup>16</sup> 17 CFR 200.30-3(a)(12).