

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and paragraph (f) of Rule 19b-4<sup>12</sup> thereunder. 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 will institute proceedings 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-CBOE-2016-075 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.

All submissions should refer to File Number SR-CBOE-2016-075. 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 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-CBOE-2016-075 and should be submitted on or before December 7, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2016-27471 Filed 11-15-16; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-79272; File No. SR-MIAX-2016-39]

**Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 519A, Risk Protection Monitor**

November 9, 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 October 31, 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.

<sup>13</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.

**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 519A, Risk Protection Monitor.

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 Exchange Rule 519A, Risk Protection Monitor, to mandate the use of the Risk Protection Monitor by Members, and to state clearly in the rule that Members may establish multiple RPM Settings, as defined below.

Current Functionality

Currently, using the Risk Protection Monitor, the Exchange's System<sup>3</sup> maintains a counting program ("counting program") for each participating Member that counts the number of orders entered and the number of contracts traded via an order entered by a Member on the Exchange within a specified time period that has been established by the Member (the "specified time period"). The maximum duration of the specified time period is established by the Exchange and announced via a Regulatory Circular. The current maximum duration of the specified time period is a trading session.

<sup>3</sup> The term "System" means the automated trading system used by the Exchange for the trading of securities. See Exchange Rule 100.

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

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

Under the current rule, Members may establish an Allowable Order Rate<sup>4</sup> and/or an Allowable Contract Execution Rate.<sup>5</sup> When a Member's order is entered or when an execution of a Member's order occurs, the System will look back over the specified time period to determine whether the order entered or the execution that occurred triggers the Risk Protection Monitor.<sup>6</sup> Members may establish whether the Risk Protection Monitor, when triggered, will (i) prevent the System from receiving any new orders in all series in all classes from the Member; or (ii) prevent the System from receiving any new orders in all series in all classes from the Member and cancel all existing Day orders in all series in all classes from the Member; or (iii) send a notification that the Risk Protection Monitor has been triggered without any further preventative or cancellation action by the System.<sup>7</sup>

When engaged, the Risk Protection Monitor allows the Member to interact with existing orders entered prior to triggering the Risk Protection Monitor and allows the Member to continue to send cancel messages and receive reports of executions resulting from those orders. The Risk Protection Monitor shall remain engaged until the Member communicates with the Exchange staff to enable the acceptance of new orders.<sup>8</sup>

#### The Proposal

First, the Exchange proposes to amend current Rule 519A(a) and (b) by consolidating the two paragraphs into one unified, cohesive paragraph describing the Risk Protection Monitor

<sup>4</sup> The Allowable Order Rate is the number of orders entered during the specific time period that has been established by the Member.

<sup>5</sup> The Allowable Contract Execution Rate is the number of contracts executed during the specific time period that has been established by the Member.

<sup>6</sup> The Exchange notes that the specific time period does not need to be the same for both the Allowable Order Rate and Allowable Contract Execution Rate (*i.e.*, there can be one specified time period for Allowable Order Rate and a different specified time period for Allowable Contract Execution Rate). In order to be consistent in the rule, under the proposal there can also be one Corresponding Specified Time Period (as described below) for both the Allowable Order Rate and a different Corresponding Specified Time Period for Allowable Contract Execution Rate. See proposed Rule 519A(b).

<sup>7</sup> See Exchange Rule 519A(a). As discussed below, the Risk Protection Monitor will not cancel any existing Good Til Cancelled ("GTC") orders. GTC Orders will remain in the System available for trading when the Risk Protection Monitor is engaged. See Rule 519A, Interpretations and Policies .02.

<sup>8</sup> See current Exchange Rule 519A(b). The communication from the Member to Exchange staff can either be via email or phone.

feature, its functionality, the ability of Members to establish and configure multiple Risk Protection Monitor settings, and the ability of Members to determine one of three alternative actions taken by the Risk Protection Monitor once it is triggered.

Proposed Rule 519A will continue to include the basic description of the Risk Protection Monitor described above. The proposed amendments will reflect that the Risk Protection Monitor maintains one or more Member-configurable Allowable Order Rate settings and Allowable Contract Execution Rate settings (collectively, "Risk Protection Monitor settings"). The Exchange believes that providing Members with the ability to establish multiple Risk Protection Monitor settings enhances Members' ability to account for sudden market movements due to extreme market volatility, and for heightened activity in one particular option or group of options in a particular industry or segment of the market due to news or other factors affecting the activity surrounding such option or options. Members may also simultaneously account for normal or even sluggish activity in less active options by establishing higher Risk Protection Monitor settings and a longer specified time period during which the Risk Protection Monitor engages the counting program.

Amended Rule 519A(a), Voluntary Risk Protection Functionality,<sup>9</sup> will also continue to include a choice of three possible outcomes for the Member once the System triggers the Risk Protection Monitor (*i.e.*, when the Risk Protection Monitor setting has been reached during the specified time period), all of which are contained in the current rule. Specifically, once engaged, the Risk Protection Monitor will then, as determined by the Member: Automatically either (A) prevent the System from receiving any new orders in all series in all classes from the Member; (B) prevent the System from receiving any new orders in all series in all classes from the Member and cancel all existing orders with a time-in-force of Day in all series in all classes from the Member; or (C) send a notification to the Member without any further preventative or cancellation action by the System. As under the current rule when engaged, the Risk Protection Monitor will still allow the Member to interact with existing orders entered prior to exceeding the Allowable Order

Rate setting or the Allowable Contract Execution Rate setting, including sending cancel order messages and receiving trade executions from those orders. The Risk Protection Monitor will remain engaged until the Member communicates with the Help Desk to enable the acceptance of new orders.

The Exchange believes that the ability of a Member to choose among three outcomes once the Risk Protection Monitor is triggered enhances the risk protections afforded to Members by the Exchange and thus provides a tool by which Members can further use the Risk Protection Monitor, once triggered, by tailoring the outcome to their acceptable risk tolerance levels.

#### Mandatory Use of the Risk Monitor Mechanism

In addition to the consolidation of current Rules 519A(a) and (b) into one paragraph (new paragraph (a)), the Exchange proposes to adopt new Rule 519A(b), Mandatory Participation, to state that Members must establish at least one Allowable Order Rate setting with a corresponding specified time period of not less than one second, and not to exceed ten seconds, as established by the Exchange and communicated to Members via Regulatory Circular (a "Corresponding Specified Time Period") and at least one Allowable Contract Execution Rate setting (with a Corresponding Specified Time Period). The Exchange believes that establishing the Corresponding Specified Time Period within these parameters will provide minimum and maximum guidelines for Members, making their required use of the Risk Protection Monitor more efficient and streamlined.

The Risk Protection Monitor settings must be configured by the Member such that the Risk Protection Monitor, when triggered, will perform one of two steps set forth in proposed Rule 519A(a): Either (A) prevent the System from receiving any new orders in all series in all classes from the Member; or (B) prevent the System from receiving any new orders in all series in all classes from the Member and cancel all existing orders with a time-in-force of Day in all series in all classes from the Member. Under the mandatory provision of proposed Rule 519A(b), the simple Member notification option included in section (C) of proposed Rule 519A(a) would not be available.

The purpose of this proposed provision is to mandate the use of the Risk Protection Monitor so that Members and the investing public are assured that the Risk Protection Monitor is active for all orders submitted to the

<sup>9</sup> For clarity and ease of reference, the Exchange is proposing to add the heading "Voluntary Risk protection Functionality" to new Rule 519A(a), and the heading "Mandatory Participation" to new Rule 519A(b).

Exchange. The Exchange notes that other exchanges have similar risk protection tools and one has mandated a Member's use of similar functionality.<sup>10</sup>

Proposed Rule 519A(b) would also state that Members may establish additional Allowable Order Rate settings and additional Allowable Contract Execution Rate settings, and any such additional settings may be configured to perform the step set forth in either (A), (B), or (C) of Rule 519(a) as described above, upon engagement of the Risk Protection Monitor.

As a technical matter, the Exchange proposes to amend Rule 519A, Interpretations and Policies .01(c), to make it consistent with the proposed amended Rule. The current Rule states that the Risk Protection Monitor will prevent the System from receiving any new orders in all series in all classes from the Member and, if designated by the Member's instructions, cancel all existing Day orders in all series in all classes from the Member. "Day orders" are not defined in the Exchange's rules and therefore the Exchange proposes to replace the term "Day orders" with "orders with a time-in-force of Day."

The purpose of the proposed rule change is to enhance the risk protections afforded to Members by the Exchange by mandating use of the RPM and by permitting Members to establish multiple RPM Settings which can be tailored to the Member's acceptable risk tolerance levels.

The Exchange anticipates that the proposed new Risk Protection Monitor functionality will be deployed on the Exchange beginning November 7, 2016.

## 2. Statutory Basis

MIAX believes that its proposed rule change is consistent with Section 6(b) of the Act<sup>11</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>12</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.

The Exchange believes that Members will benefit from the proposed mandatory use of the Risk Protection Monitor, coupled with the ability of members to tailor their use of the Risk Protection Monitor to their risk tolerance levels. Members are vulnerable to the risk from system or other error or a market event, that may cause them to send a large number of orders or receive multiple, automatic executions before they can adjust their order exposure in the market. Without adequate risk management tools, such as the Risk Protection Monitor, Members could reduce the amount of order flow and liquidity that they provide to the market. Such actions may undermine the quality of the markets available to customers and other market participants. Accordingly, the proposed amendments to the Risk Protection Monitor, especially its mandated use, should instill additional confidence in Members that submit orders to the Exchange that their risk tolerance levels are protected, and thus should encourage such Members to submit additional order flow and liquidity to the Exchange with the understanding that they must have this protection, thereby removing impediments to and perfecting the mechanisms of a free and open market and a national market system and, in general, protecting investors and the public interest.

In addition, providing Members with the ability to establish multiple RPM settings provides Members with more tools to use in managing their specific risks based on their individual risk tolerance levels. This facilitates transactions in securities because, as noted above, the Members will have more confidence that protections are in place that reduce the risks from potential system errors and market events. As a result, the modified functionality, together with the mandated use of the Risk Protection Monitor, has the potential to promote just and equitable principles of trade.

### *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 necessary or appropriate in furtherance of the purposes of the Act. On the contrary, the Exchange believes that the amendments to the Risk Protection Monitor help promote competition by enabling Members to trade more aggressively on the Exchange, with the

understanding that there are multiple, configurable risk management tools in place in the System. The Exchange believes the proposed changes will not impose any burden on intra-market competition because the use of the Risk Protection Monitor is now required of all Members.

The Exchange further believes that the proposed mandatory risk protections should promote inter-market competition, and result in more competitive order flow to the Exchange by protecting market participants from system errors or market events that may cause them to send a large number of orders or receive multiple, automatic executions before they can adjust their order exposure in the market.

### *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>13</sup> and Rule 19b-4(f)(6)<sup>14</sup> thereunder.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)<sup>15</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. In its filing with the Commission, the Exchange requests that the Commission waive the 30-day operative delay. The Exchange requests waiver of the 30-day operative delay so that Members may benefit from the proposed new functionality and so that the Exchange is able to deploy the functionality on its scheduled deployment date of November 7, 2016. For these reasons, the Commission believes that waiver of

<sup>10</sup> International Securities Exchange LLC ("ISE") Rule 714(d) mandates the use of its Market Wide Risk Protection tool by establishing default values that apply to members that do not submit the required parameters, but does not establish exchange-mandated minimum or maximum parameters. BATS BZX Exchange ("BZX") Rule 21.16(b)(ii) lists a succession of "Specified Engagement Triggers" that may be set optionally by the BATS User, and thus does not mandate the use of its Risk Monitor Mechanism.

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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>15</sup> 17 CFR 240.19b-4(f)(6)(iii).

the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposed rule change to be operative upon filing.<sup>16</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 Number SR-MIAX-2016-39 on the subject line.

##### Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-MIAX-2016-39. 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 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-2016-39 and should be submitted on or before December 7, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Brent J. Fields,**

*Secretary.*

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79274; File No. SR-Phlx-2016-79]

### Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing of Partial Amendment No. 2 and Order Granting Approval of a Proposed Rule Change, as Modified by Partial Amendment No. 2, To Amend PHLX Rule 1017, Openings in Options

November 9, 2016.

#### I. Introduction

On August 4, 2016, NASDAQ PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission (the "Commission"), 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> a proposed rule change to amend its rules governing the opening of trading in options series on the Exchange. The proposed rule change was published for comment in the **Federal Register** on August 22, 2016.<sup>3</sup> The Commission received no comment letters regarding the proposed rule change. On October 3, 2016, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute

proceedings to determine whether to disapprove the proposed rule change.<sup>5</sup> On November 7, 2016, the Exchange filed Partial Amendment No. 1 to the proposed rule change ("Partial Amendment No. 1").<sup>6</sup> On November 8, 2016, the Exchange filed Partial Amendment No. 2 to the proposed rule change, which superseded Partial Amendment No. 1 ("Partial Amendment No. 2").<sup>7</sup> The Commission is publishing this order to approve the proposed rule change, as modified by Partial Amendment No. 2.

#### II. Description

The Exchange has proposed to reorganize and amend current Rule 1017, which describes the opening of trading in option series on the Exchange.<sup>8</sup>

##### A. Definitions

The Exchange proposes to revise the introductory language to Rule 1017(a) to state that it would conduct an electronic opening for all option series traded on Phlx using its trading system ("system").<sup>9</sup> In addition, the Exchange proposes to revise Phlx Rule 1017(a) to define several of the terms used in proposed Phlx Rule 1017. The Exchange proposes to define "Opening Process" by cross-referencing Rule 1017(d),<sup>10</sup> "Opening Price" by cross-referencing

<sup>5</sup> See Securities Exchange Act Release No. 79024, 81 FR 69892 (October 7, 2016). The Commission designated a longer period within which to take action on the proposed rule change and designated November 20, 2016, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

<sup>6</sup> Partial Amendment No. 1 is available at: <https://www.sec.gov/comments/sr-phlx-2016-79/phlx201679-1.pdf>.

<sup>7</sup> In Partial Amendment No. 2, Phlx amends its proposed rule change to: (1) Specify that references to "quotes" refer to two-sided quotes; (2) provide additional rationale for the OQR and for boundaries that protect the Opening Price from trading through the limit price(s) of interest within OQR, which is unable to fully execute at the Opening Price; (3) state that in the event the Exchange routes to away markets and uses the away market price as the Opening Price, the Exchange will enter on its order book any unfilled interest at a price equal to or inferior than the Opening Price and the Exchange would route orders that would execute through the Opening Price; (4) explain that each Imbalance Message would be set for the same length of time; (5) include additional rationale for proposed changes to routing during the Opening Process; (6) provide examples for how certain parts of the Opening Process operate; and (7) revise the filing and the Exhibit 5 to state that the Exchange may open with the PBBO only if there are no routable orders locking the ABBO. Partial Amendment No. 2 is available at: <https://www.sec.gov/comments/sr-phlx-2016-79/phlx201679-2.pdf>.

<sup>8</sup> For a complete description on the proposal, please refer to the Notice, *supra* note 3 and Partial Amendment No. 2, *supra* note 7.

<sup>9</sup> See Phlx Rule 1017(a).

<sup>10</sup> See Phlx Rule 1017(a)(i).

<sup>16</sup> For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>17</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. 78588 (August 16, 2016), 81 FR 56733 ("Notice").

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