

exercise limits as proposed).³² Therefore, the Exchange believes the proposed rule change will enhance intermarket competition by providing investors with a choice of exchange venues on which to trade cash-settled FLEX ETF Options.

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

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 from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act³³ and Rule 19b-4(f)(6)(iii) thereunder.³⁴

A proposed rule change filed under Rule 19b-4(f)(6)³⁵ normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii),³⁶ 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 so that the proposed rule change may become operative upon filing. The Exchange states, among other things, that waiver of the 30-day operative delay will protect investors by providing them with an immediate choice and an additional venue where they can trade cash-settled FLEX ETF Options. The Commission approved a substantially similar proposal by another exchange that was subject to notice and comment and found consistent with the Act.³⁷ For these reasons, and because the proposed rule change does not raise any novel regulatory issues that have not been addressed, the Commission believes waiving the 30-day operative delay is

consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.³⁸

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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CBOE-2023-036 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-CBOE-2023-036. 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 website (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CBOE-2023-036 and should be submitted on or before August 29, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁹

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023-16885 Filed 8-7-23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98045; File No. SR-MIAX-2023-19]

Self-Regulatory Organizations; MIAX International Securities Exchange LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend MIAX Rule 307, Position Limits

August 2, 2023.

I. Introduction

On April 21, 2023, Miami International Securities Exchange LLC ("MIAX" 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"),¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Exchange Rule 307, Position Limits, to establish a process for adjusting option position limits following a stock split or reverse stock split in the underlying security. The proposed rule change was published for comment in the **Federal Register** on May 8, 2023.³ On June 14, 2023, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the

³² See *supra* note 12.

³³ 15 U.S.C. 78s(b)(3)(A).

³⁴ 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.

³⁵ 17 CFR 240.19b-4(f)(6).

³⁶ 17 CFR 240.19b-4(f)(6)(iii).

³⁷ See *supra* note 12.

³⁸ 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).

³⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 97421 (May 2, 2023), 88 FR 29725 ("Notice").

⁴ 15 U.S.C. 78s(b)(2).

proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.⁵ The Commission has received one comment regarding the proposal.⁶ This order institutes proceedings pursuant to Section 19(b)(2)(B) of the Act⁷ to determine whether to approve or disapprove the proposed rule change.

II. Description of the Proposal

Currently, Exchange Rule 307(d) establishes option position limits of 25,000 contracts, 50,000 contracts, 75,000 contracts, 200,000 contracts, or 250,000 contracts on the same side of the market for the same underlying security or such other number of option contracts as may be fixed from time to time by the Exchange. The position limit applicable to an option is based on the trading volume and outstanding shares of the underlying security.⁸ Exchange Rule 307(e) states that the Exchange will review the status of underlying securities every six months to determine which position limit should apply. A higher limit will be effective on the date set by the Exchange, and any change to a lower limit will take effect after the last expiration then trading, unless the requirement for the same or a higher

limit is met at the time of the intervening six month review.⁹ If, subsequent to a six month review, an increase in volume and/or outstanding shares would make a stock eligible for a higher position limit prior to the next review, the Exchange in its discretion may immediately increase such position limit.¹⁰

The Exchange proposes to amend Exchange Rule 307 to make permanent the position limit changes that currently occur when an underlying security undergoes a corporate stock split.¹¹ The Exchange states that following a stock split, the Options Clearing Corporation (“OCC”) adjusts the position limit for options on the underlying security by the factor of the split.¹² The Exchange states, for example, that when a stock underlying an option with a position limit of 250,000 contracts undergoes a four-for-one stock split, the option will have a new position limit of 1,000,000 contracts.¹³ The Exchange further states that although the stock split is a permanent corporate action in the underlying stock, the position limit adjustment is temporary and lasts only until the time of expiration of the last option listed at the time of the stock split.¹⁴

Proposed Exchange Rule 307(g) would apply the split adjustment factor to the current position limit to establish a new option position limit following a stock split in the underlying security.¹⁵ Specifically, proposed Exchange Rule 307(g)(1) states that the position limit that was in effect at the time of the stock split shall be adjusted by multiplying the current position limit value in effect for the underlying by the stock split ratio.¹⁶ (For example, if the current position limit is 250,000 contracts and there is a four-for-one (4:1) stock split in the underlying, the new position limit would be 1,000,000 contracts (4 × 250,000)). Proposed Exchange Rule 307(g)(2) further states that the position limit that was in effect at the time of a reverse stock split shall be adjusted by dividing the current position limit value in effect for the underlying by the reverse stock split ratio. For example, if the current

position limit is 250,000 contracts and there is a one-for-two (1:2) reverse stock split in the underlying, the new position limit would be 125,000 contracts (250,000/2). Further, for reverse stock splits, the new position limit would be the greater of the adjusted position limit or the lowest position limit defined in Exchange Rule 307(d).¹⁷

The Exchange states that its proposal presents a logical approach to addressing stock splits in underlying securities because it maintains the integrity of the position limit to shares outstanding ratio pre- and post-split, and promotes consistency and stability in the marketplace.¹⁸ The Exchange states, by way of example, that a position limit of 250,000 contracts on an underlying security that has 4,000,000,000 shares outstanding represents control of 25,000,000 shares or 0.625% of the total shares outstanding.¹⁹ If the underlying security has a four-for-one stock split, the number of shares outstanding would increase to 16,000,000,000.²⁰ The Exchange states that to maintain the same position limit to shares outstanding ratio, the option position limit should increase fourfold to 1,000,000 contracts, where control of 100,000,000 shares would represent control of 0.625% of the total shares outstanding.²¹

The Exchange states that, today, when the last option listed at the time of the stock split expires, the position limit is re-evaluated according to the criteria in Exchange Rule 307(d)(1)–(5), (where the maximum contract limit is 250,000 contracts), and the position limit is permanently readjusted in accordance with that criteria.²² The Exchange states that the reversion of the position limit, even to the maximum limit of 250,000 contracts, unnecessarily restricts trading by imposing a stricter position limit relative to the number of shares outstanding post-stock split than existed pre-stock split.²³ The Exchange states that its proposal will maintain the position limit to shares outstanding ratio so that the pre-split ratio and post-split ratio are identical, and will eliminate any market disruptions that may occur as a result of the current process for handling stock splits.²⁴

The Exchange also proposes to amend Exchange Rule 307(e) to apply the split

⁵ See Securities Exchange Act Release No. 97727 (June 14, 2023), 88 FR 40366 (June 21, 2023). The Commission designated August 6, 2023, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

⁶ See letter from Ellen Greene, Managing Director, Equities & Options Market Structure, SIFMA, to Vanessa Countryman, Secretary, Commission, dated July 5, 2023 (“SIFMA Letter”).

⁷ 15 U.S.C. 78s(b)(2)(B).

⁸ Exchange Rule 307(d) establishes the following position limits: 25,000 contracts for an option on an underlying security that does not meet the requirements for a higher option contract limit; 50,000 contracts for an option on an underlying security that has either a most recent six month trading volume of at least 20 million shares, or a most recent six month trading volume of at least 15 million shares and at least 40 million shares outstanding; 75,000 contracts for an option on an underlying security that has either a most recent six month trading volume of at least 40 million shares, or a most recent six month trading volume of at least 30 million shares and at least 120 million shares outstanding; 200,000 contracts for an option on an underlying security that has either a most recent six month trading volume of at least 80 million shares or a most recent six month trading volume of at least 60 million shares and at least 240 million shares outstanding; and 250,000 contracts for an option on an underlying security that has either a most recent six month trading volume of at least 100 million shares, or a most recent six month trading volume of at least 75 million shares and at least 300 million shares outstanding. In addition, Exchange Rule 307, Interpretation and Policy .01 establishes position limits over 250,000 contracts for options on certain underlying exchange-traded funds. See Notice, 88 FR at 29726.

⁹ See Exchange Rule 307(e).

¹⁰ *Id.*

¹¹ See Notice, 88 FR at 29726–7.

¹² See Notice, 88 FR at 29727. The Exchange does not believe that the OCC immediately adjusts position limits for reverse stock splits. See *id.* at n.8.

¹³ See Notice, 88 FR at 29727.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Proposed Exchange Rule 307(g)(3) states that for purposes of Exchange Rule 307(g), the term “stock” shall pertain solely to equity securities and not be inclusive of exchange-traded funds.

¹⁷ See proposed Exchange Rule 307(g)(2).

¹⁸ See Notice, 88 FR at 29727.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

factor to the reevaluation process provided in that rule. The Exchange proposes to amend Exchange Rule 307(e) to provide that for underlying securities whose position limit has been adjusted pursuant to paragraph (g), the split factor shall be used for analysis under paragraph (d). For example, paragraph (d)(5) establishes the position limit based on either the most recent six-month trading volume of the underlying security totaling at least 100 million shares, or the most recent six-month trading volume of the underlying security totaling at least 75 million shares and the underlying security having at least 300 million share outstanding. Therefore, to be eligible for the 250,000-contract limit, an underlying stock that underwent a four-for-one stock split would be required to have either most-recent six-month trading volume of at least 400 million shares ($100,000,000 \times 4$), or most-recent six-month trading volume of at least 300 million shares ($75,000,000 \times 4$) with at least 1,200,000,000 shares outstanding ($300,000,000 \times 4$). For reverse stock splits, the split factor would be similarly applied and used as a divisor in the calculations rather than as a multiplier.

The Exchange states that the proposal provides a uniform and consistent approach for reevaluating position limits for underlying securities that were subject to a stock split because the split factor is properly applied (multiplied for share splits and divided for reverse share splits) to each threshold value under Exchange Rule 307(d) to establish the proper position limit.²⁵ The Exchange states that the current reversion process, in which position limits are adjusted at the time of the stock split but revert back to the original position limit when the last listed option at the time of the split expires, does not benefit investors or the public interest because the original position limit is no longer meaningfully related to the current shares outstanding.²⁶ The Exchange states that the proposal maintains the established position limit relative to shares outstanding pre- and post-stock split and provides a defined calculation in the Exchange's rule to account for stock splits in underlying securities.²⁷ In addition, the Exchange states that the proposal provides a corollary method for handling reverse stock splits that employs similar logic.²⁸

The Exchange states that in August 2020 the industry experienced an issue

with a four-for-one stock split in Apple Inc. ("AAPL") that the proposal is tangentially designed to address.²⁹ The Exchange states that prior to the stock split, there were approximately 4,000,000,000 shares of AAPL outstanding and the position limit for AAPL was 250,000 contracts (25,000,000 shares).³⁰ The Exchange states that on August 28, 2020, the OCC indicated that that effective August 31, 2020, a contract multiplier of four and a strike divisor of four would be applied to AAPL contracts and strikes.³¹ The Exchange states that the OCC also adjusted the position limit for AAPL by the same factor, setting the position limit to 100,000,000 shares (1,000,000 contracts).³² The Exchange states that when the last AAPL option listed at the time of the stock split in 2020 expired in 2022, the OCC reverted back to the original position limit for AAPL of 25,000,000 shares (250,000 contracts).³³ The Exchange states that although this position limit technically adheres to the Exchange's rules, it is more restrictive than the original position limit.³⁴ The Exchange states that prior to the stock split, AAPL had approximately 4,000,000,000 shares outstanding and the position limit of 250,000 contracts represented control of 25,000,000 shares or 0.625% of the outstanding shares.³⁵ The Exchange further states that, after the stock split, AAPL had approximately 16,000,000,000 shares outstanding.³⁶ The Exchange states that the immediate adjustment of the position limit from 250,000 contracts to 1,000,000 contracts reflects control of 100,000,000 shares or 0.625% of the shares outstanding, which retains the pre-stock split ratio.³⁷ The Exchange states that readjusting the position limit back to 25,000,000 shares (250,000 contracts) when there are 16,000,000,000 shares outstanding reduces the position limit to 0.156% of the shares outstanding, making the post-stock split position limit more restrictive than the pre-stock split position limit.³⁸

The Exchange states that the reversion to the pre-stock split position limit

disrupts the market in a number of ways.³⁹ The Exchange states that the reversion to the pre-split position limit prevents market participants from effectively pursuing their trading and investment strategies because the position limit relative to shares outstanding has become more restrictive.⁴⁰ In addition, the Exchange states that the reversion to the pre-stock split position limit introduces an element of risk because market participants must unwind their post-split positions to remain compliant with position limit rules.⁴¹ The Exchange also states that the reversion to the pre-split position limit may negatively impact trading volumes because market participants that use option contracts to hedge their risks will not be able to maintain the same levels of market exposure.⁴²

Using AAPL as an example, the Exchange states that pre-split, a market participant could have had an options position of 250,000 contracts that represented 0.0625% [sic] of the total shares outstanding and that, post-split, the market participant could have had an options position of 1,000,000 contracts, which would still represent 0.0625% [sic] of the total shares outstanding.⁴³ The Exchange states that after the reversion to the pre-split position limit (250,000 contracts), the market participant would be forced to reduce its trading activity because the maximum position limit would then represent 0.1563% of the total shares outstanding.⁴⁴ The Exchange states that this reduction in trading volume also represents a reduction in available liquidity.⁴⁵ The Exchange further states that robust liquidity facilitates price discovery and benefits competition by improving bid/ask spreads, and that tighter bid/ask spreads lead to better execution prices.⁴⁶ The Exchange states that the reversion to the pre-split position limit negatively impacts liquidity, trading volume, and possibly execution prices.⁴⁷

The Exchange states that other options exchanges could adopt similar rules to harmonize position limit adjustments as a result of stock splits in

²⁹ *Id.*

³⁰ *Id.*

³¹ See Notice, 88 FR at 29728, citing OCC Memo #47509, Apple Inc.—4 for 1 Stock Split (August 28, 2020) available on its public website at <https://infomemo.theocc.com/infomemos?number=47509>.

³² See Notice, 88 FR at 29728. The Exchange states that the OCC publishes position limits each day on its website.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.* The Commission understands the percentage figure referenced by the Exchange in this example should be 0.625%, not 0.0625%.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

²⁵ *Id.*

²⁶ See Notice, 88 FR at 29728.

²⁷ *Id.*

²⁸ *Id.*

the underlying securities.⁴⁸ The Exchange states that all market participants are able to determine position limits on a daily basis because the OCC publishes a Position Limit file and a Position Limit Change file, which reflects position limit adjustments and provides the Start Date and Starting Position Limit coupled with the End Date and Ending Position Limit.⁴⁹

III. Proceedings To Determine Whether To Approve or Disapprove SR-MIAX-2023-19 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act⁵⁰ to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposal, as discussed below. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comment on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,⁵¹ the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to, the consistency of the proposed rule change with the Act and, in particular, Section 6(b)(5) of the Act,⁵² which requires that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Under the Commission's Rules of Practice, the "burden to demonstrate that a proposed rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on the self-regulatory organization that proposed the rule change."⁵³ The description of a proposed rule change,

its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,⁵⁴ and any failure of a self-regulatory organization to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.⁵⁵

As discussed above, the Exchange proposes to adopt new rule provisions that would automatically adjust an option's position limit proportional to and following a stock split or reverse stock split in the underlying security. Specifically, proposed Exchange Rule 307(g)(1) would provide that, following a stock split, the new position limit for options on the stock would be a value equal to the option position limit in effect at the time of the split multiplied by the stock split ratio. For a reverse stock split, the position limit in effect at the time of the reverse stock split would be adjusted by dividing the position limit value by the reverse stock split ratio. In addition, the Exchange proposes to amend Exchange Rule 307(e) to provide that, for an option with a position limit that has been adjusted pursuant to proposed Exchange Rule 307(g), the split factor would be used for the position limit analysis in Exchange Rule 307(d).

The Exchange states that the current reversion to the pre-stock split position limit following the expiration of the last option listed at the time of the split prevents market participants from effectively pursuing their trading and investment strategies because the option position limit relative to shares outstanding becomes more restrictive.⁵⁶ The Exchange also states that the reversion to the pre-stock split position limit introduces an element of risk because market participants must unwind their post-split positions prior to the reversion to the pre-split position limit level to remain compliant with position limit rules.⁵⁷ Further, the Exchange states that the reversion to the pre-split position limit may negatively impact trading volumes because market participants that use option contracts to hedge their risks would not be able to maintain the same levels of market exposure.⁵⁸

The Commission has received one comment regarding the proposal.⁵⁹ The commenter expressed broad support for the proposal, reiterating many of the statements made by the Exchange. According to the commenter, the reversion to the original position limit when the last listed option at the time of a split expires renders the limit no longer meaningfully related to the current shares outstanding, and unnecessarily restricts trading by imposing a stricter position limit relative to the number of shares outstanding post-stock split.⁶⁰ The commenter stated that the proposal would eliminate this disparate treatment between the underlying stock split and the options position limit because both adjustments would be permanent.⁶¹ The commenter also stated that the proposal maintains the integrity of the position limit to shares outstanding ratio both pre- and post-split, provides a consistent and uniform approach for reevaluating position limits on underlying securities that were subject to a stock split, and creates stability in the marketplace by preserving the expectations of market participants who are trading and hedging in the options contracts subject to the position limit changes.⁶² In addition, the commenter stated that, besides AAPL, several other companies with significant market capitalization have undergone recent stock splits, including Tesla Inc., Alphabet Inc. and Nvidia Corporation ("NVDA").⁶³ The commenter stated that NVDA shares underwent a four-for-one stock split, increasing the option position limit from 250,000 contracts to 1,000,000 contracts until the last contract expired in June 2023, at which point the limit reverted to 250,000 contracts.⁶⁴ The commenter stated that allowing the position limit to remain at 1,000,000 contracts would allow investors who are trading and hedging in the options contracts to manage their positions consistent with the new amount of shares outstanding.⁶⁵

Position and exercise limits serve as a regulatory tool designed to address manipulative schemes and adverse market impact surrounding the use of options.⁶⁶ Currently, the maximum stock option position limits permitted

⁵⁹ See SIFMA Letter.

⁶⁰ *Id.* at 1–2.

⁶¹ *Id.* at 2.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ See, e.g., Securities Exchange Act Release No. 68086 (October 23, 2012), 77 FR 65600 (October 29, 2012) (SR-CBOE-2012-066).

⁴⁸ *Id.*

⁴⁹ See Notice, 88 FR at 29728–9.

⁵⁰ 15 U.S.C. 78s(b)(2)(B).

⁵¹ *Id.*

⁵² 15 U.S.C. 78f(b)(5).

⁵³ Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

⁵⁴ See *id.*

⁵⁵ See *id.*

⁵⁶ See Notice, 88 FR at 29728.

⁵⁷ *Id.*

⁵⁸ *Id.*

under exchange rules are 250,000 contracts. Although OCC provides a temporary adjustment to option position limits following a stock split, exchange rules currently do not provide for the automatic adjustment of an option's position limit proportional to splits in the underlying stock. The proposal is novel because it would amend the Exchange's rules to permit such automatic position limit adjustments, including adjustments that could result in increases in stock option position limits to levels that exceed 250,000 contracts. For example, in 2022, Amazon.com, Inc. ("Amazon") underwent a 20:1 stock split.⁶⁷ Under the proposal, the position limit for options on a stock that undergoes a 20:1 split would increase by a factor of 20—for example, from 250,000 contracts to 5,000,000 contracts—regardless of the most recent six-month trading volume or number of shares outstanding of the underlying stock. Even a more modest position limit increase, such as a fourfold increase for an option on a stock that undergoes a 4:1 stock split, would be a substantial increase from current levels. The proposed automatic increase in position limits for options on stocks that undergo a stock split raises the potential for adverse impacts in the market for the underlying stocks.

As discussed above, the Exchange and the commenter state that increasing the option position limit by the stock split factor will allow a market participant to continue to maintain an options position representing the same percentage of outstanding shares of the underlying stock following a stock split. However, the trading volume in the underlying stock—not the ability to establish an options position representing a consistent percentage of the outstanding shares pre- and post-split—is one of the relevant metrics for determining the position limit for options on stocks.⁶⁸ Neither the Exchange nor the commenter have provided data indicating that trading volume in a stock generally increases following a stock split, or that any such increases, to the extent that they exist, generally are sufficient to support an increase in the option position limit by an amount equal to the stock split factor. For example, neither the Exchange nor the commenter present data demonstrating that, in general, the trading volume in a stock that undergoes a 4:1 stock split increases to

such an extent that the position limit for options on that stock should increase fourfold over the pre-split option position limit. On the contrary, the Commission understands that some data suggest that trading volume in a stock may be unchanged or decrease following a stock split.⁶⁹

Further, the proposal does not explain why it would be appropriate for a stock option potentially to have a split-factor-adjusted position limit that is higher than what is allowed by Exchange Rule 307(d) for corresponding underlying stock-volume-traded measures. For example, under Exchange Rule 307(d), a most recent six-month trading volume in the underlying security of at least 20 million shares qualifies the option for a 50,000-contract position limit, and a most recent six-month trading volume in the underlying security of at least 40 million shares qualifies the option for a 75,000-contract position limit. Under the proposal, if an option at the 50,000-contract limit had a most recent six-month trading volume in its underlying stock of 20 million shares and the stock split two-for-one, the option's position limit would increase to 100,000 contracts and could remain there so long as the underlying stock's most recent six-month trading volume was at least 40 million shares. Under Exchange Rule 307(d), however, a most recent six-month trading volume of 40 million shares in the underlying security qualifies an option for a 75,000-contract limit, not a 100,000-contract limit. The proposal does not explain why this and other potential discrepancies with position limits currently allowed by Exchange Rule 307(d) are appropriate

for options with stock-split adjusted position limits.

In addition, although the Exchange states that the reversion to pre-split option position limits prevents market participants from effectively pursuing their trading, hedging, and investment strategies following a stock split, the proposal provides no details to support these assertions, such as the number of customers affected or the trading, hedging, or investment strategies that these customers are unable to execute because of lower post-split position limits. Similarly, although the Exchange states that the reversion to pre-split position limits negatively impacts liquidity, trading volume, and possibly execution prices,⁷⁰ the proposal provides no data to support these assertions.

The proposal also does not describe how the Exchange would implement the proposed split-factor adjusted position limit increases or the proposed review of their appropriateness. The proposal does not specify, for example, whether the Exchange intends to follow the OCC's policy of increasing the option position limit immediately after a stock split and allowing the new limit to remain in effect until the last option listed at the time of the stock split expires, regardless of the trading volume or shares outstanding of the underlying stock. Similarly, the proposal does not specify the timing for the proposed split-factor adjusted reviews in Exchange Rule 307(e). Exchange Rule 307(e) currently provides for a six-month review of option position limits. However, the proposal does not specify, for example, whether the review for purposes of determining the appropriateness of a split-factor adjusted position limit would occur six months after the stock split, six months following the expiration of the last option listed at the time of the stock split, or at some other point in time following the stock split.

Finally, the Exchange does not propose a corresponding change to the option exercise limits in Exchange Rule 309. Apart from the exemptions in Exchange Rule 308, Exchange Rule 309(a)(1) generally prohibits members from exercising within any five consecutive business days aggregate long positions in any class of options traded on the Exchange in excess of 25,000 or 50,000 or 75,000 or 200,000 or 250,000 option contracts or such other number of option contracts as may be fixed from time to time by the Exchange as the exercise limit for that class of options. It is not clear whether the

⁶⁷ See Amazon.com, Inc. Current Report (Form 8-K) (March 9, 2022), available at <https://www.sec.gov/Archives/edgar/data/1018724/000101872422000009/amzn-20220309.htm>.

⁶⁸ See, e.g., Exchange Rule 307(d).

⁶⁹ A Cboe study on the impact of stock splits on trading activities finds that split-adjusted median executed share volume in mega-capitalization stocks increased slightly one-week post-split but, in the two-week to six-month period post-split, the median executed share volume decreased about 48%, compared to volume a week pre-split. See Cboe study on the impact of stock split on trading activities at: <https://www.cboe.com/insights/posts/stock-splits-lead-to-split-results-in-trading/>. This study also finds that the median number of options contracts traded in mega-capitalization stocks decreased approximately 49% one week post-split and remained down through the six-month period post-split. Further, this study finds that split-adjusted median executed share volume in large-capitalization stocks increased slightly two weeks post-split but then decreased in the one to six-month period post-split, and that split-adjusted median executed share volume in mid- and small-cap stocks decreased in the one-week to six-month period post-split. In addition, the Commission understands that some evidence suggests that, as a general matter, share trading volume may be unchanged or decrease after a stock split. See, e.g., Patrick Dennis, *Stock Splits and Liquidity: the Case of the Nasdaq-100 Index Tracking Stock*, the Financial Review, 38, 2003, 415–433; Thomas E. Copeland, *Liquidity Changes Following Stock Splits*, the Journal of Finance, 34, 1, 1979, 115–141.

⁷⁰ See Notice, 88 FR at 29728.

proposed change to option position limits would accomplish the goals of the proposal without a corresponding change to Exchange Rule 309(a)(1).⁷¹

Accordingly, the proposal does not provide an adequate basis for the Commission to conclude that the proposal would be consistent with Section 6(b)(5) of the Act.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their data, views, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is consistent with Section 6(b)(5), or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of data, views, and arguments, the Commission will consider, pursuant to Rule 19b-4 under the Act,⁷² any request for an opportunity to make an oral presentation.⁷³

The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposal in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on its concerns expressed above regarding the proposal's consistency with the Act, and seeks commenters' views as to whether the proposal could have an adverse market impact.

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by August 29, 2023. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by

September 12, 2023. 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. Please include File No. SR-MIAX-2023-19 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-2023-19. 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 website (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-MIAX-2023-19 and should be submitted on or before August 29, 2023. Rebuttal comments should be submitted September 12, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷⁴

Sherry R. Haywood.

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98047; File No. SR-FINRA-2022-031]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change To Adopt FINRA Rules 6151 (Disclosure of Order Routing Information for NMS Securities) and 6470 (Disclosure of Order Routing Information for OTC Equity Securities)

August 2, 2023.

I. Introduction

On November 16, 2022, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to require members to (i) publish order routing reports for orders in OTC Equity Securities,³ and (ii) submit their order routing reports for both OTC Equity Securities and NMS securities⁴ to FINRA for publication on the FINRA website. The proposed rule change was published for comment in the **Federal Register** on December 6, 2022.⁵ On January 18, 2023, pursuant to Section 19(b)(2) of the Exchange Act,⁶ 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 approve or disapprove the proposed rule change.⁷ On March 3, 2023, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change.⁸ On May 31,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ FINRA Rule 6420(f) defines an "OTC Equity Security" as any equity security that is not an NMS stock, other than a Restricted Equity Security. FINRA Rule 6420(k) defines a "Restricted Equity Security" as any equity security that meets the definition of "restricted security" as contained in Rule 144(a)(3) under the Securities Act of 1933. "NMS stock" means any NMS security other than an option. See 17 CFR 242.600(b)(55).

⁴ "NMS securities" include any security or class of securities for which transaction reports are collected, processed, and made available to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options. See 17 CFR 242.600(b)(54).

⁵ See Securities Exchange Act Release No. 96415 (November 30, 2022), 87 FR 74672 ("Notice").

⁶ 15 U.S.C. 78s(b)(2).

⁷ See Securities Exchange Act Release No. 96699, 88 FR 4260 (January 24, 2023).

⁸ See Securities Exchange Act Release No. 97039, 88 FR 14653 (March 9, 2023).

⁷¹ Although Exchange Rule 309(c) states that "limits shall be determined in the manner described in Rule 307," Exchange Rule 309(a)(1) establishes a maximum exercise limit of 250,000 contracts.

⁷² 17 CFR 240.19b-4.

⁷³ Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Pub. L. 94-29 (June 4, 1975), grants to the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

⁷⁴ 17 CFR 200.30-3(a)(57).