

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-74509; File No. SR-MIAX-2015-04)

March 13, 2015

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Order Approving a Proposed Rule Change to Amend MIAX Rule 402

I. Introduction

On January 16, 2015, Miami International Securities Exchange LLC (“MIAX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend its listing standards under Exchange Rule 402 to eliminate a requirement that the Exchange obtain a comprehensive surveillance sharing agreement (“CSSA”) before listing and trading options that overlie certain exchange-traded fund shares (“ETFs”), provided such ETFs are listed pursuant to generic listing standards on an equities exchange for portfolio depositary receipts and index fund shares based on international or global indexes under which a CSSA with a foreign market is not required. The proposed rule change was published for comment in the Federal Register on January 30, 2015.<sup>3</sup> The Commission received one comment letter supporting the proposed rule change.<sup>4</sup> This order approves the proposed rule change.

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<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. 74131 (January 26, 2015), 80 FR 5161 (SR-MIAX-2015-04) (“Notice”).

<sup>4</sup> See Letter to Brent J. Fields, Secretary, Commission, from Elizabeth King, Secretary and General Counsel, New York Stock Exchange, dated February 6, 2015 (“NYSE Letter”) (stating that “NYSE Group agrees with . . . and is supportive of MIAX’s efforts to make options available as a risk management tool for those ETFs listed on an equities exchange pursuant to generic listing standards without the requirement for a CSSA”).

## II. Description of the Proposal

The Exchange allows for the listing and trading of options on ETFs that satisfy certain listing standards.<sup>5</sup> These rules require, in part, that (i) any non-U.S. component securities of an index or portfolio of securities on which the ETFs are based that are not subject to CSSAs do not in the aggregate represent more than 50% of the weight of the index or portfolio;<sup>6</sup> (ii) component securities of an index or portfolio of securities on which the ETFs are based for which the primary market is in any one country that is not subject to a CSSA do not represent 20% or more of the weight of the index;<sup>7</sup> and (iii) component securities of an index or portfolio of securities on which the ETFs are based for which the primary market is in any two countries that are not subject to CSSAs do not represent 33% or more of the weight of the index.<sup>8</sup> The generic listing standards on equities exchanges for the listing of portfolio depositary receipts and index fund shares based on international or global indexes do not, however, contain a parallel requirement regarding CSSAs.<sup>9</sup>

The Exchange proposes to amend its listing standards to enable the Exchange to list and

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<sup>5</sup> See MIAX Rule 402(i).

<sup>6</sup> See MIAX Rule 402(i)(5)(ii)(A) (renumbered as 402(i)(E)(2)(ii)(A) as part of the proposed rule change).

<sup>7</sup> See MIAX Rule 402(i)(5)(ii)(B) (renumbered as 402(i)(E)(2)(ii)(B) as part of the proposed rule change).

<sup>8</sup> See MIAX Rule 402(i)(5)(ii)(C) (renumbered as 402(i)(E)(2)(ii)(C) as part of the proposed rule change).

<sup>9</sup> See, e.g., NYSE MKT Rule 1000, Commentary .03(a)(B); NYSE MKT Rule 1000A, Commentary .02(a)(B); NYSE Arca Equities Rule 5.2(j)(3), Commentary .01(a)(B); NYSE Arca Equities Rule 8.100, Commentary .01(a)(B); NASDAQ Rule 5705(a)(3)(A)(ii); NASDAQ Rule 5705(b)(3)(A)(ii); BATS Rule 14.11(b)(3)(A)(ii); and BATS Rule 14.11(c)(3)(A)(ii). See also Securities Exchange Act Release Nos. 54739 (November 9, 2006), 71 FR 66993 (November 17, 2006) (SR-Amex-2006-78); 55621 (April 12, 2007), 72 FR 19571 (April 18, 2007) (SR-NYSEArca-2006-86); and 55269 (February 9, 2007), 72 FR 7490 (February 15, 2007) (SR-NASDAQ-2006-050).

trade options on certain ETFs without a CSSA provided that such ETFs that underlie options are listed on an equities exchange pursuant to the generic listing standards for portfolio depository receipts and index fund shares based on international or global indexes under which a CSSA is not required.<sup>10</sup> Accordingly, the proposed rule change would provide a limited exception to the requirement regarding CSSAs under the Exchange's listing standards only in circumstances where the underlying ETF was listed on an equities exchange pursuant to generic listing standards for international or global indexes that do not require such exchange to enter into a CSSA with a foreign market.<sup>11</sup> The requirement for the Exchange to enter into a CSSA with a foreign market would continue to apply with respect to products that do not fit under the proposed exception.<sup>12</sup> In addition, options on ETFs that may be listed and traded without a CSSA under this proposal would be subject to, in all other respects, the Exchange's existing listing and trading rules that apply to options on ETFs and would be captured under the Exchange's surveillance program for options on ETFs.<sup>13</sup>

Finally, the Exchange proposes several technical and non-substantive changes to the formatting of Rule 402(i), including relocating current Rule 402(i)(5)(ii)(E) to proposed Rule 402(i)(E)(1)(iii) and the re-numbering of current Rule 402(i)(5)(ii) to proposed Rule 402(i)(E)(2)(ii). In addition, the Exchange proposes making corrections to inaccurate citations located in Rule 403(g)(1) and (2), so that Rule 403(g)(1) properly cites to Rule 402(i)(E)(1)(i)

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<sup>10</sup> See Proposed MIAX Rule 402(i)(E)(2)(i). See also NYSE MKT Rule 1000, Commentary .03(a)(B); NYSE MKT Rule 1000A, Commentary .02(a)(B); NYSE Arca Equities Rule 5.2(j)(3), Commentary .01(a)(B); NYSE Arca Equities Rule 8.100, Commentary .01(a)(B); NASDAQ Rule 5705(a)(3)(A)(ii); NASDAQ Rule 5705(b)(3)(A)(ii); BATS Rule 14.11(b)(3)(A)(ii); and BATS Rule 14.11(c)(3)(A)(ii).

<sup>11</sup> Id.

<sup>12</sup> See Proposed MIAX Rules 402(i)(E)(2)(ii)(A)-(C).

<sup>13</sup> See Notice, *supra* note 3.

regarding closed-end ETFs and Rule 403(g)(2) properly cites to Rule 402(i)(E)(1)(ii) regarding open-end ETFs.

### III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act<sup>14</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>15</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>16</sup> which requires, among other things, that the Exchange's rules be designed 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.

MIAX proposes to eliminate the requirement that it obtain a CSSA with the applicable foreign market before trading options on certain ETFs that track broad-based indexes of securities.<sup>17</sup> CSSAs help to ensure that the listing exchange has the ability to obtain the information necessary to detect and deter potential trading abuses.<sup>18</sup> According to the Exchange, it believes that this proposed listing standard for options on ETFs is reasonable for international and global indexes, and, when applied in conjunction with the other listing requirements, would

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<sup>14</sup> 15 U.S.C. 78f.

<sup>15</sup> Additionally, in approving the proposed rule change, 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> 15 U.S.C. 78f(b)(5).

<sup>17</sup> See Proposed MIAX Rule 402(i)(E)(2)(i). See also NYSE MKT Rule 1000, Commentary .03(a)(B); NYSE MKT Rule 1000A, Commentary .02(a)(B); NYSE Arca Equities Rule 5.2(j)(3), Commentary .01(a)(B); NYSE Arca Equities Rule 8.100, Commentary .01(a)(B); NASDAQ Rule 5705(a)(3)(A)(ii); NASDAQ Rule 5705(b)(3)(A)(ii); BATS Rule 14.11(b)(3)(A)(ii); and BATS Rule 14.11(c)(3)(A)(ii).

<sup>18</sup> See Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952, 70959 (December 22, 1998).

result in options overlying ETFs that are sufficiently broad-based in scope and therefore not readily susceptible to manipulation.<sup>19</sup> Moreover, the Exchange believes that the proposed rule change would benefit investors by providing valuable risk management tools.<sup>20</sup> The NYSE Group agrees with these statements by the Exchange and supports the proposal.<sup>21</sup>

The Commission approved generic listing standards for ETFs based on international or global indexes in 2006.<sup>22</sup> At that time, the Commission determined that for certain ETFs based on broad-based indexes of securities, the generic listing standards for equities exchanges need not require the exchange to obtain a CSSA to list and trade such ETFs.<sup>23</sup> These generic ETF listing standards contain quantitative criteria with respect to components included in the ETF's underlying index that provide minimum thresholds regarding trading volume, market capitalization, number of index components, and index concentration limits.<sup>24</sup> They do not,

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<sup>19</sup> See Notice, *supra* note 3.

<sup>20</sup> Id.

<sup>21</sup> See NYSE Letter, *supra* note 4.

<sup>22</sup> See Securities Exchange Act Release No. 54739, *supra* note 9 (SR-Amex-2006-78). Subsequently, other exchanges filed similar proposals that were approved by the Commission. See, e.g., Securities Exchange Act Release Nos. 55621, *supra* note 9 (approving SR-NYSEArca-2006-86); and 55269, *supra* note 9 (approving SR-NASDAQ-2006-050).

<sup>23</sup> See id.

<sup>24</sup> For example, with respect to ETFs for portfolio depositary receipts based on international or global indexes, the generic listing standards generally contain the following requirements with respect to the underlying index: (1) component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum market value of at least \$100 million; (2) component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum worldwide monthly trading volume over the most recent six-month period of at least 250,000 shares; (3) that the index observe certain concentration limits (*e.g.*, that no component may exceed 25% of the weight of the index and that the five most heavily weighted components may not exceed 60% of the weight of the index); (4) that there be a minimum number of 20 component stocks in the index; and (5) that each component either be an exchange-listed NMS stock or, if a non-U.S. stock, be listed and traded on an

however, require the listing exchange to obtain a CSSA with the home country market for the underlying index components.<sup>25</sup> The Commission stated that a CSSA with the home country market was not required, because the listing standards provided for minimum levels of liquidity, concentration, and pricing transparency for index components.<sup>26</sup> In addition, the Commission noted that the generic listing standards for ETFs based on global or international indexes applied in conjunction with the other applicable listing requirements would “permit the listing only of ETFs that are sufficiently broad-based in scope to minimize potential manipulation . . . [and] are designed to preclude ETFs from becoming surrogates for trading in unregistered securities.”<sup>27</sup>

MIAX now seeks to establish parallel listing standards for options. The Commission believes that it is consistent with the Act for the Exchange to list and trade options that overlie ETFs, provided such ETFs are listed pursuant to generic listing standards on equities exchanges for portfolio depositary receipts and index fund shares based on international or global indexes under which a CSSA with a foreign market is not required.<sup>28</sup> All of the other listing criteria under MIAX’s rules would continue to apply to any such options. In addition, the Commission notes that the requirement for MIAX to obtain a CSSA will continue to apply to other products that do not fit this limited exception. The Commission believes that the proposed rule change

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exchange that has last-sale reporting. See, e.g., NYSE MKT Rule 1000, Commentary .03; NYSE Arca Equities Rule 8.100, Commentary .01; NASDAQ Rule 5705(a); and BATS Rule 14.11(b). The requirements with respect to the underlying index under the generic listing standards for index fund shares based on international or global indexes are substantially similar. See, e.g., NYSE MKT Rule 1000A, Commentary .02; NYSE Arca Equities Rule 5.2(j)(3), Commentary .01; NASDAQ Rule 5705(b); and BATS Rule 14.11(c).

<sup>25</sup> See, e.g., Securities Exchange Act Release No. 54739, supra note 9.

<sup>26</sup> Id. at 71 FR 66995 n.18. See also supra note 24 and accompanying text.

<sup>27</sup> See Securities Exchange Act Release No. 54739, supra note 9, at 71 FR 66997.

<sup>28</sup> See supra note 24 and accompanying text.

should facilitate listing and trading of additional investment options for market participants seeking efficient trading and hedging vehicles and thereby, benefit investors by providing them with valuable risk management tools.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>29</sup> that the proposed rule change (File No. SR-MIAX-2015-04) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>30</sup>

Jill M. Peterson  
Secretary

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<sup>29</sup> 15 U.S.C. 78s(b)(2).

<sup>30</sup> 17 CFR 200.30-3(a)(12).