

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-85138; File No. SR-MIAX-2019-02)

February 14, 2019

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Exchange Rule 521, Nullification and Adjustment of Options Transactions Including Obvious Errors

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 6, 2019, Miami International Securities Exchange, LLC (“MIAX Options” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Rule 521, Nullification and Adjustment of Options Transactions Including Obvious Errors.

The text of the proposed rule change is available on the Exchange’s website at <http://www.miaxoptions.com/rule-filings/> at MIAX Options’ 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

On October 12, 2018, the Securities and Exchange Commission (“SEC”) approved a proposal by the MIAX Exchange (the “Exchange”) to list and trade on the Exchange, options on the SPIKES™ Index, a new index that measures expected 30-day volatility of the SPDR S&P 500 ETF Trust.³ To establish the settlement value for the Index, a final settlement price calculation will occur once per month, on the morning of SPIKES Index options expiration.⁴

The Exchange proposes to amend Exchange Rule 521, Nullification and Adjustment of Options Transactions Including Obvious Errors, to adopt a provision specifically related to its volatility index product. Currently, subparagraph (b)(1), Transactions at the Open, of Rule 521, provides that for a transaction occurring as part of the Opening Process⁵ (as described in Rule 503) the Exchange will determine the Theoretical Price⁶ if there is no NBB (National Best Bid) or NBO (National Best Offer) for the affected series just prior to the erroneous transaction or if the bid/ask differential of the NBB and NBO just prior to the erroneous transaction is equal to or greater than the Minimum Amount set forth in the chart contained in sub-paragraph (b)(3) of this

³ See Securities Exchange Act Release No. 84417 (October 12, 2018), 83 FR 52865 (October 18, 2018) (SR-MIAX-2018-14) (Order Granting Approval of a Proposed Rule Change to List and Trade Options on the SPIKES™ Index).

⁴ See Exchange Rule 503.02.

⁵ See Exchange Rule 503(f).

⁶ See Exchange Rule 521(b).

rule.⁷ If the bid/ask differential is less than the Minimum Amount, the Theoretical Price is the NBB or NBO just prior to the erroneous transaction. The Exchange now proposes to adopt new subparagraph (A) to state that for transactions occurring in any option series being used to calculate the final settlement price of a volatility index on the final settlement day, the Theoretical Price is the first quote after the transaction(s) in question that does not reflect the erroneous transaction(s), provided that the quote size is for at least the overall size of the opening trade, if the quote size is for less than the overall size of the opening trade, then paragraph (c) and (d) shall not apply.

For erroneous sell transactions, the size of the bid would be used and for erroneous buy transactions, the size of the offer would be used. For example, if the opening trade in Series XYZ is for a total of 200 contracts and the bid or offer, as applicable, of the first quote after the transaction(s) in question that does not reflect the erroneous transaction(s) is for 500 contracts, the transaction in question would qualify for treatment under the Exchange's obvious error rule. If the bid or offer, as applicable, of the quote is for only 100 contracts, then the transaction in question would not be subject to consideration under the Exchange's obvious error rule. Upon the completion of the final settlement price calculation the proposed provision would no longer be applicable and all provisions of Rule 521 would again be in force.

By establishing a size threshold for certain transactions occurring during the Exchange's Opening Process, the proposal ensures that there is sufficient liquidity in a series for which a valid Theoretical Price can be established for use in determining whether a transaction meets the

⁷ If the bid price at the time of the trade was below \$2.00 the Minimum Amount is \$0.75, similarly if the bid price at the time of the trade is between \$2.00 and \$5.00, the Minimum Amount is \$1.25; above \$5.00 to \$10.00, \$1.50; above \$10.00 to \$20.00, \$2.50; above \$20.00 to \$50.00, \$3.00; above \$50.00 to \$100.00, \$4.50; above \$100, \$6.00. See Exchange Rule 521(b)(3).

conditions necessary to qualify as an Obvious⁸ or Catastrophic Error.⁹ Further, due to the importance and finality of the final settlement price for expiring SPIKES Index Options, establishing a threshold based upon transaction size for obvious and catastrophic error consideration, and only for those options being used in the final settlement price calculation, ensures the timely completion of the settlement price calculation and protects the integrity of the calculation process from being unduly impacted by relatively small transactions.

Using the size of a transaction as the threshold for determining whether the transaction in question warrants consideration for obvious or catastrophic error review under the rule is a widely accepted standard and long standing practice in the industry.¹⁰ The Exchange notes that its proposed provision is substantially similar in all material respects to a provision found in the Cboe Exchange's rule pertaining to the treatment of transactions in option series being used to calculate the final settlement price of a volatility index on the final settlement day.¹¹ Further, the Exchange notes that the industry has undertaken an effort to harmonize obvious error handling across all option exchanges and the Exchange's proposal aligns to currently accepted practices.¹²

⁸ See Exchange Rule 521(c).

⁹ See Exchange Rule 521(d).

¹⁰ See Securities Exchange Act Release No. 59981 (May 27, 2009), 74 FR 26447 (June 2, 2009) (SR-CBOE-2009-024) (Order Granting Approval of a Proposed Rule Change Related to Its Obvious Error Rules).

¹¹ See Cboe Exchange Rule 6.25(b)(1)(a).

¹² See Securities Exchange Act Release Nos. 74918 (May 8, 2015), 80 FR 27781 (May 14, 2015) (SR-MIAX-2015-35); 74911 (May 8, 2015), 80 FR 27717 (May 14, 2015) (SR-BOX-2015-18); 74898 (May 7, 2015), 80 FR 27354 (May 13, 2015) (SR-CBOE-2015-039); 74919 (May 8, 2015), 80 FR 27766 (May 15, 2015) (SR-PHLX-2015-43).

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act¹³ in general, and furthers the objectives of Section 6(b)(5) of the Act¹⁴ 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 regulating, clearing, settling, processing information with respect to, and 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 proposed rule promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market and a national market system and, in general, protects investors and the public interest by ensuring that there is sufficient liquidity in the market by which to derive a Theoretical Price for options being used in the final index settlement value calculation. Additionally, the proposed rule promotes just and equitable principles of trade and removes impediments to and perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest by ensuring that the SPIKES index settlement value calculation is completed on a timely basis without unnecessary interruption.

Additionally, the proposed rule promotes cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, by harmonizing the Exchange's obvious error rule with that of another exchange that has a similar process for determining the settlement price of an index.¹⁵

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ See supra note 10.

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.

The Exchange does not believe the proposed rule change will impose any burden on inter-market competition as the proposed rule change is not a competitive filing and is designed to harmonize the Exchange’s obvious error rule with that of the Cboe Exchange, which similarly offers a volatility index product that requires the calculation of a final settlement price.

Additionally, the Exchange does not believe the proposed rule change will impose any burden on intra-market competition as the rules of the Exchange apply equally to all Members¹⁶ of the Exchange.

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 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 Act¹⁷ and Rule 19b-4(f)(6) thereunder.¹⁸

¹⁶ The term “Member” means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed “members” under the Exchange Act. See Exchange Rule 100.

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹⁹ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)²⁰ permits the Commission to 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. The Exchange believes that waiver of the operative delay is consistent with the protection of investors and the public interest because it would ensure that the Exchange will have a provision immediately available for handling obvious errors in option series being used to calculate the final settlement price of a volatility index on the final settlement day. For this reason, the Commission believes that waiver of 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 as operative upon filing.²¹

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 change should be approved or disapproved.

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.

¹⁹ 17 CFR 240.19b-4(f)(6).

²⁰ 17 CFR 240.19b-4(f)(6)(iii).

²¹ 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).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-MIAX-2019-02 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-2019-02. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying

information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MIAX-2019-02 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Eduardo A. Aleman
Deputy Secretary

²² 17 CFR 200.30-3(a)(12).