

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-79331; File No. SR-MIAX-2016-43)

November 16, 2016

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Exchange Rule 605 Market Maker Orders

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 November 3, 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, II, and III 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 Exchange Rule 605 (Market Maker Orders).

The text of the proposed rule change is available on the Exchange’s website at

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Exchange Rule 605 (Market Maker Orders) to (i) provide that a MIAX Market Maker³ may not enter good 'til cancelled ("GTC") orders⁴ in option classes to which the MIAX Market Maker is not appointed, and (ii) add a comparable provision setting forth the types of orders that an Electronic Exchange Member ("EEM")⁵ may enter for the proprietary account of a non-MIAX Market Maker.⁶

Rule 605 presently governs the submission of orders by MIAX Market Makers, differentiating between orders submitted in classes to which the Market Maker is appointed and orders submitted in classes to which the Market Maker is not appointed. Paragraph (a) governs option classes to which the Market Maker is appointed. Pursuant to paragraph (a), Market Makers may not enter market orders or GTC orders in their appointed classes. Paragraph (b) governs option classes other than those to which the Market Maker is appointed. Subparagraph (b)(1) provides that Market Makers may enter all types of orders that are permitted to be entered

³ The term "Market Maker" refers to "Lead Market Makers", "Primary Lead Market Makers" and "Registered Market Makers", collectively. See Exchange Rule 100.

⁴ A Good 'til Cancelled or "GTC" order is an order to buy or sell which remains in effect until it is either executed, cancelled or the underlying option expires. See Exchange Rule 516(l).

⁵ The term "Electronic Exchange Member" means the holder of a Trading permit who is not a Market Maker. Electronic Exchange members are deemed "members" under the Exchange Act. See Exchange Rule 100.

⁶ The term "non-MIAX Market Maker" means a market participant that is market maker registered as such on another options exchange. See Exchange Fee Schedule, Section 1)a)ii), Other Market Participant Fees, in the notes table.

by Non-Customer⁷ participants under the Rules, except for market orders. Subparagraphs (b)(2) and (b)(3) place limitations on the overall percentage of executions that can occur in the non-appointed classes. Specifically, subparagraph (b)(2) limits a Registered Market Maker's⁸ total number of contracts executed in non-appointed option classes to 25% of the Registered Market Maker's total number of contracts executed in its appointed option classes, and subparagraph (b)(3) limits a Lead Market Maker's⁹ total number of contracts executed in non-appointed option classes to 10% of the Lead Market Maker's total number of contracts executed in its appointed option classes. Paragraph (c) governs priority of Market Maker orders, providing that Market Maker orders will always be allocated with other Professional Interest¹⁰ (such as orders from broker-dealers, firms, non-Priority Customers¹¹ and non-priority Market Maker quotes) and after both Priority Customer interest and priority Market Maker quotes have been satisfied. The Exchange is not proposing to amend paragraph (a), subparagraphs (b)(2) or (b)(3), or paragraph (c).

⁷ The term "Non-Customer" means a person or entity that is a broker or dealer in securities. See Exchange Rule 100.

⁸ The term "Registered Market Maker" means a Member registered with the Exchange for the purpose of making markets in securities traded on the Exchange, who is not a Lead Market Maker and is vested with the rights and responsibilities specified in Chapter VI of these Rules with respect to Registered Market Makers. See Exchange Rule 100.

⁹ The term "Lead Market Maker" means a Member registered with the Exchange for the purpose of making markets in securities traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VI of these Rules with respect to Lead Market Makers. When a Lead Market Maker is appointed to act in the capacity of a Primary Lead Market Maker, the additional rights and responsibilities of a Primary Lead Market Maker specified in Chapter VI of these Rules will apply. See Exchange Rule 100.

¹⁰ The term "Professional Interest" means (i) an order that is for the account of a person or entity that is not a Priority Customer, or (ii) an order or non-priority quote for the account of a Market Maker. See Exchange Rule 100.

¹¹ The term "Priority Customer" means an order for the account of a Priority Customer. See Exchange Rule 100.

The Exchange is proposing to amend subparagraph (b)(1) to provide that a Market Maker may not enter GTC orders in option classes to which the Market Maker is not appointed. Thus, as amended, pursuant to subparagraph (b)(1), a Market Maker may enter all order types permitted to be entered by Non-Customer participants under the Rules, except for market orders and GTC orders, in classes of options to which the Market Maker is not appointed. The purpose of this amendment is to make the permissible order types for Market Makers in non-appointed option classes consistent with the permissible order types in their appointed option classes. Accordingly, in both appointed and non-appointed option classes, Market Makers may enter all order types, except for market orders and GTC orders. The Exchange believes that making the permissible order types for Market Makers consistent in both appointed and non-appointed options classes simplifies order types across the Exchange for such participants. The Exchange also believes that GTC orders offer no advantage to Market Makers over day limit orders (which are a permissible order type for Market Makers in both appointed and non-appointed option classes) under the Exchange's market structure, including, but not limited to, under the priority and trade allocation rules (Exchange Rule 514) and various risk protection mechanism rules applicable to Market Makers (such as, for example, Exchange Rule 612, Aggregate Risk Manager). When the Exchange initially adopted Exchange Rule 605, the Exchange determined to permit Market Makers to enter GTC orders in non-appointed option classes. However, since adoption, the Exchange has observed that Market Makers generally have not entered GTC orders in their non-appointed option classes. Accordingly, since this is an unused order type for Market Makers and in order to promote consistency across the Exchange of available order types for Market Makers, the Exchange now proposes that Market Makers may not enter GTC orders in

non-appointed option classes so that the permissible order types for Market Makers in non-appointed option classes are the same as those for Market Makers in appointed option classes.

The Exchange is also proposing to add new paragraph (d) to Rule 605 to establish the permissible order types that an EEM may enter for the proprietary account of a non-MIAX Market Maker. Pursuant to proposed paragraph (d), the permissible order types that an EEM may enter for the proprietary account of a non-MIAX Market Maker includes all order types permitted to be entered under the Rules by Members, except for market orders and GTC orders. Accordingly, the Exchange is proposing to make the permissible order types for non-MIAX Market Makers consistent with the permissible order types for MIAX Market Makers. The Exchange believes that making the permissible order types for the accounts of non-MIAX Market Makers consistent with the permissible order types for MIAX Market Makers simplifies order types across the Exchange for such participants. As discussed above, the Exchange also believes that GTC orders offer no advantage to non-MIAX Market Makers over day limit orders (which are a permissible order type for non-MIAX Market Makers) under the Exchange's market structure, including, but not limited to, under the priority and trade allocation rules (Exchange Rule 514) and various risk protection mechanism rules applicable to EEMs (such as, for example, Exchange Rule 519, MIAX Order Monitor, and Exchange Rule 519A, Risk Protection Monitor). The Exchange further believes that non-MIAX Market Makers (and, for that matter, MIAX Market Makers) are sophisticated professionals and thus generally do not use market orders. When the Exchange initially adopted Exchange Rule 605, the Exchange did not place any limitation on the types of orders that could be entered by an EEM for the proprietary account of a non-MIAX Market Maker. However, since adoption, the Exchange has observed that EEMs generally have not entered GTC orders or market orders for the proprietary account of non-

MIAX Market Makers. Accordingly, since these are unused order types for non-MIAX Market Makers and in order to promote consistency across the Exchange of available order types for both non-MIAX Market Makers and Market Makers, the Exchange now proposes that EEMs may not enter GTC orders or market orders for the proprietary accounts of non-MIAX Market Makers so that the permissible order types available to non-MIAX Market Makers are the same as those for Market Makers.

The Exchange believes that its proposal to define the permissible order types that an EEM may enter for the proprietary account of a non-MIAX Market Maker to include all order types permitted to be entered under the Rules by Members, except for market orders and GTC orders, is reasonable, equitable and not unfairly discriminatory because the same rule applies identically to MIAX Market Makers. Thus, the Exchange is treating all market makers (both MIAX Market Makers and non-MIAX Market Makers) the same, with respect to permissible order types for such market participants.

The Exchange notes that there is no uniform treatment of permissible order types for market makers among the various options exchanges. Some exchanges place no limitation on the types of orders that can be entered by market makers, such as NYSE Arca, Inc. (“NYSE Arca”) and NYSE MKT LLC (“NYSE MKT”)¹². Both such exchanges permit a market maker to enter all order types permitted to be entered by users under the rules, in both appointed and non-appointed option classes. Other exchanges do place certain limitations on permissible order types, with varying degree. Some differentiate between appointed and non-appointed options classes, and some don’t. For example, International Securities Exchange, LLC (“ISE”) permits opening only orders, IOC orders, market orders, fill-or-kill orders, sweep orders, complex orders,

¹² See NYSE Arca Rule 6.37C and NYSE Mkt Rule 925.2NY.

and block-size orders in appointed classes.¹³ It permits all order types permissible for non-customers in non-appointed classes.¹⁴ NASDAQ PHLX LLC (“PHLX”) permits limit on opening, IOC, sweep, and day limit in appointed classes; and limit on opening, IOC, sweep, day limit, and GTC in non-appointed classes.¹⁵ Accordingly, the Exchange believes that each options exchange generally determines permissible order types for market makers in its trading environment based on the exchange’s individual business policy, objectives, and trading system. The Exchange’s proposal reflects its policy and objectives, and it treats all market makers uniformly with respect to permissible order types. Therefore, the Exchange believes that the structure that it is proposing is reasonable, equitable, and not unfairly discriminatory.

The Exchange will announce the implementation date of the proposed rule change by Regulatory Circular to be published no later than 60 days following the operative date of the proposed rule. The implementation date will be no later than 60 days following the issuance of the Regulatory Circular.

2. Statutory Basis

MIAX believes that its proposed rule change is consistent with Section 6(b) of the Act¹⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act¹⁷ 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

¹³ See ISE Rule 805.

¹⁴ Id.

¹⁵ See PHLX Rule 1080(b).

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(5).

open market and a national market system and, in general, to protect investors and the public interest.

In particular, the Exchange believes this proposed rule change promotes just and equitable principles of trade because it simplifies order types across the Exchange for Market Makers. It eliminates order types that generally have not been entered by Market Makers and non-MIAX Market Makers. It makes consistent the types of orders that can be entered for both Market Makers and non-MIAX Market Makers. It makes the permissible order types for Market Makers in non-appointed option classes consistent with the permissible order types in their appointed option classes.

The Exchange believes that making the permissible order types for Market Makers consistent in both appointed and non-appointed options classes simplifies order types across the Exchange for such participants. The Exchange also believes that GTC orders offer no advantage to Market Makers over day limit orders (which are a permissible order type for Market Makers in both appointed and non-appointed option classes) under the Exchange's market structure, including, but not limited to, under the priority and trade allocation rules (Exchange Rule 514) and various risk protection mechanism rules applicable to Market Makers (such as, for example, Exchange Rule 612, Aggregate Risk Manager). The Exchange has observed that Market Makers generally have not entered GTC orders in their non-appointed option classes. Accordingly, since this is an unused order type for Market Makers and in order to promote consistency across the Exchange of available order types for Market Makers, the Exchange believes that its proposed rule change to provide that Market Makers may not enter GTC orders in non-appointed option classes so that the permissible order types for Market Makers in non-appointed option classes are

the same as those for Market Makers in appointed option classes promotes just and equitable principles of trade.

The Exchange believes that its proposal to define the permissible order types that an EEM may enter for the proprietary account of a non-MIAX market maker to include all order types permitted to be entered under the Rules by Members, except for market orders and GTC orders, is reasonable, equitable and not unfairly discriminatory because the same rule applies identically to MIAX Market Makers. Thus, the Exchange is treating all market makers (both MIAX Market Makers and non-MIAX market makers) the same, with respect to permissible order types for such market participants. The Exchange also believes that GTC orders offer no advantage to non-MIAX Market Makers over day limit orders (which are a permissible order type for non-MIAX Market Makers) under the Exchange's market structure, including, but not limited to, under the priority and trade allocation rules (Exchange Rule 514) and various risk protection mechanism rules applicable to EEMs (such as, for example, Exchange Rule 519, MIAX Order Monitor, and Exchange Rule 519A, Risk Protection Monitor). The Exchange further believes that non-MIAX Market Makers (and, for that matter, MIAX Market Makers) are sophisticated professionals and thus generally do not use market orders. The Exchange has observed that EEMs generally have not entered GTC orders or market orders for the proprietary account of non-MIAX Market Makers. Accordingly, since these are unused order types for non-MIAX Market Makers and in order to promote consistency across the Exchange of available order types for both non-MIAX Market Makers and Market Makers, the Exchange believes that its proposal that EEMs may not enter GTC orders or market orders for the proprietary accounts of non-MIAX Market Makers so that the permissible order types available to non-MIAX Market Makers are the same as those for Market Makers promotes 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. The Exchange operates in a highly competitive market comprised of fourteen U.S. options exchanges in which sophisticated and knowledgeable market participants can, and do, send order flow to competing exchanges if they deem trading practices at a particular exchange to be onerous or cumbersome. The proposed rule change allows the Exchange to make consistent across the Exchange the permissible order types available for both MIAX Market Makers and non-MIAX market makers. This consistency places all such market participants on an equal footing, and, as a consequence, will not impose any burden on competition.

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 Act¹⁸ and Rule 19b-4(f)(6)¹⁹ thereunder.

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 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.

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 e-mail to rule-comments@sec.gov. Please include File Number SR-MIAX-2016-43 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 20549-1090.

All submissions should refer to File Number SR-MIAX-2016-43. 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; 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-2016-43 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.²⁰

Brent J. Fields
Secretary

²⁰ 17 CFR 200.30-3(a)(12).