

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69354; File No. SR-MIAX-2013-15)

April 9, 2013

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Order Approving, on an Accelerated Basis, Proposed Rule Change Relating to Limit Up Limit Down Functionality

I. Introduction

On March 25, 2013, Miami International Securities Exchange LLC (the “Exchange” or “MIAX”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”),² and Rule 19b-4 thereunder,³ a proposed rule change to provide for how the Exchange proposes to treat market-making quoting obligations in response to the Regulation NMS Plan to Address Extraordinary Market Volatility. The proposed rule change was published for comment in the Federal Register on March 29, 2013.⁴ On April 8, 2013, the Exchange submitted Amendment No. 1 to the proposed rule change.⁵ The Commission received no comment letters on the proposal. This order approves the proposed rule change on an accelerated basis.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ See Securities Exchange Act Release No. 692347 (March 25, 2013), 78 FR 19344 (“Notice”).

⁵ In Amendment No. 1, the Exchange removed language from proposed Rule 530(h) to clarify that its treatment of options overlying securities that are subject to a trading pause in the Limit Up-Limit Down context is intended to be the same as what is currently set forth in Exchange Rule 504(c), which provides generally for the treatment of options overlying securities that are subject to a trading pause. Because the changes made in Amendment No. 1 do not materially alter the substance of the proposed rule change or raise any novel regulatory issues, Amendment No. 1 is not subject to notice and comment.

II. Background

On May 6, 2010, the U.S. equity markets experienced a severe disruption that, among other things, resulted in the prices of a large number of individual securities suddenly declining by significant amounts in a very short time period before suddenly reversing to prices consistent with their pre-decline levels.⁶ This severe price volatility led to a large number of trades being executed at temporarily depressed prices, including many that were more than 60% away from pre-decline prices. One response to the events of May 6, 2010, was the development of the single-stock circuit breaker pilot program, which was implemented through a series of rule filings by the equity exchanges and by FINRA.⁷ The single-stock circuit breaker was designed to reduce extraordinary market volatility in NMS stocks by imposing a five-minute trading pause when a trade was executed at a price outside of a specified percentage threshold.⁸

To replace the single-stock circuit breaker pilot program, the equity exchanges filed a National Market System Plan⁹ pursuant to Section 11A of the Act,¹⁰ and Rule 608 thereunder,¹¹

⁶ The events of May 6 are described more fully in a joint report by the staffs of the Commodity Futures Trading Commission (“CFTC”) and the Commission. See Report of the Staffs of the CFTC and SEC to the Joint Advisory Committee on Emerging Regulatory Issues, “Findings Regarding the Market Events of May 6, 2010,” dated September 30, 2010, available at <http://www.sec.gov/news/studies/2010/marketevents-report.pdf>.

⁷ For further discussion on the development of the single-stock circuit breaker pilot program, see Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (“Limit Up-Limit Down Plan” or “Plan”).

⁸ See Securities Exchange Act Release Nos. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) and Securities Exchange Act Release No. 62883 (September 10, 2010), 75 FR 56608 (September 16, 2010) (SR-FINRA-2010-033) (describing the “second stage” of the single-stock circuit breaker pilot) and Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (describing the “third stage” of the single-stock circuit breaker pilot).

⁹ NYSE Euronext filed on behalf of New York Stock Exchange LLC (“NYSE”), NYSE Amex LLC (“NYSE Amex”), and NYSE Arca, Inc. (“NYSE Arca”), and the parties to the proposed National Market System Plan, BATS Exchange, Inc., BATS Y-Exchange,

which featured a “limit up-limit down” mechanism (as amended, the “Limit Up-Limit Down Plan” or “Plan”).

The Plan sets forth requirements that are designed to prevent trades in individual NMS stocks from occurring outside of the specified price bands. The price bands consist of a lower price band and an upper price band for each NMS stock. When one side of the market for an individual security is outside the applicable price band, i.e., the National Best Bid is below the Lower Price Band, or the National Best Offer is above the Upper Price band, the Processors¹² are required to disseminate such National Best Bid or National Best Offer¹³ with a flag identifying that quote as non-executable. When the other side of the market reaches the applicable price band, i.e., the National Best Offer reaches the lower price band, or the National Best Bid reaches the upper price band, the market for an individual security enters a 15-second Limit State, and the Processors are required disseminate such National Best Offer or National Best Bid with an appropriate flag identifying it as a Limit State Quotation. Trading in that stock would exit the Limit State if, within 15 seconds of entering the Limit State, all Limit State Quotations were

Inc., Chicago Board Options Exchange, Incorporated (“CBOE”) , Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC, and National Stock Exchange, Inc. (collectively with NYSE, NYSE MKT, and NYSE Arca, the “Participants”). On May 14, 2012, NYSE Amex filed a proposed rule change on an immediately effective basis to change its name to NYSE MKT LLC (“NYSE MKT”). See Securities Exchange Act Release No. 67037 (May 21, 2012) (SR-NYSEAmex-2012-32).

¹⁰ 15 U.S.C. 78k-1.

¹¹ 17 CFR 242.608.

¹² As used in the Plan, the Processor refers to the single plan processor responsible for the consolidation of information for an NMS Stock pursuant to Rule 603(b) of Regulation NMS under the Exchange Act. See id.

¹³ “National Best Bid” and “National Best Offer” has the meaning provided in Rule 600(b)(42) of Regulation NMS under the Exchange Act. See id.

executed or canceled in their entirety. If the market does not exit a Limit State within 15 seconds, then the Primary Listing Exchange will declare a five-minute trading pause, which is applicable to all markets trading the security.

The Primary Listing Exchange may also declare a trading pause when the stock is in a Straddle State, i.e., the National Best Bid (Offer) is below (above) the Lower (Upper) Price Band and the NMS Stock is not in a Limit State. In order to declare a trading pause in this scenario, the Primary Listing Exchange must determine that trading in that stock deviates from normal trading characteristics such that declaring a trading pause would support the Plan's goal to address extraordinary market volatility.¹⁴

On May 31, 2012, the Commission approved the Plan as a one-year pilot, which shall be implemented in two phases.¹⁵ The first phase of the Plan was implemented on April 8, 2013.¹⁶

¹⁴ As set forth in more detail in the Plan, all trading centers would be required to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the display of offers below the Lower Price Band and bids above the Upper Price Band for an NMS Stock. The Processors would be able to disseminate an offer below the Lower Price Band or bid above the Upper Price Band that nevertheless may be inadvertently submitted despite such reasonable policies and procedures, but with an appropriate flag identifying it as non-executable; such bid or offer would not be included in National Best Bid or National Best Offer calculations. In addition, all trading centers would be required to develop, maintain, and enforce policies and procedures reasonably designed to prevent trades at prices outside the price bands, with the exception of single-priced opening, reopening, and closing transactions on the Primary Listing Exchange.

¹⁵ See "Limit Up-Limit Down Plan," *supra* note 7. See also Securities Exchange Act Release No. 68953 (February 20, 2013), 78 FR 13113 (February 26, 2013) (Second Amendment to Limit Up-Limit Down Plan by BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Inc., *et al.*) and Securities Exchange Act Release No. 69062 (March 7, 2013), 78 FR 15757 (March 12, 2013) (Third Amendment to Limit Up-Limit Down Plan by BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Inc., *et al.*)

¹⁶ See "Second Amendment to Limit Up-Limit Down Plan," *supra* note 15.

III. Description of the Proposal

1. Market Maker Quoting Obligations

In light of the Plan, the Exchange has proposed to adopt Rule 530(f) to address market maker quoting obligations when an underlying security enters a Limit or Straddle state. Specifically, MIAX proposed in Rule 530(f)(1)(i)-(iv) to suspend, when the security underlying an option is in a Limit or Straddle State, the following market maker quoting obligations: (i) the bid/ask differential requirements set forth in Exchange Rule 603(b)(4); (ii) the minimum quote size requirement set forth in Exchange Rule 604(b)(2); (iii) the two-sided quote requirement set forth in Exchange Rule 604(c); and (iv) the continuous quote requirement set forth in Exchange Rule 604(e). Concerning the calculation of a market maker's continuous quoting obligation, the Exchange will exclude the amount of time an NMS stock underlying a MIAX option is in a Limit State or Straddle State from the total amount of time in the trading day when calculating the percentage of the trading day MIAX Market Makers are required to quote.

The Exchange represented that market makers should be relieved of these quoting obligations during Limit and Straddle States because during such periods, market makers could not be certain whether they could buy or sell an underlying security, or if they could, at what price or quantity. The Exchange's corresponding proposal to suspend the maximum quotation spread requirement during Limit or Straddle States is intended to encourage market makers to choose to provide liquidity during such states. According to the Exchange, allowing options market makers the flexibility to choose whether to enter quotes, and to do so without restrictions on the bid-ask differential, the minimum size of the quote, and the ability to enter one-sided quotes, is necessary to encourage market makers to provide liquidity in options classes overlying securities that may enter a Limit State or Straddle State. The Exchange proposed Rule 530(f)(2)

to make clear that a market maker's relief from the quoting obligations described above shall terminate when the Limit or Straddle state no longer exists in the affected underlying stock.

2. Market Maker Participation Guarantees

MIAX additionally proposed in Rule 530(f)(3) to maintain, unchanged, its scheme concerning the priority of quotes and orders during Limit and Straddle states. Specifically, MIAX has proposed to keep the provisions of Exchange Rule 514 unaffected during Limit or Straddle states when a market maker receives relief from its quoting obligations.

Exchange Rule 514 describes, among other things, priority of quotes and orders on the Exchange, allocation methods used on the Exchange, and participation guarantees granted to certain Market Makers. Rule 514(g) details the Primary Lead Market Maker ("PLMM") participation guarantee and Rule 514(h) describes the Directed Lead Market Maker ("DLMM") participation guarantee. The participation guarantees set forth in Exchange Rule 514 only apply if the affected PLMM or DLMM has submitted a priority quote at the NBBO. The Exchange represented that, although proposed rule 530(f)(1) would relieve market makers, including PLMMs and DLMMs, from their quoting obligations during Limit or Straddle states, maintaining participation guarantees could encourage market makers to provide liquidity at the NBBO during such states.

3. Priority Quotes

Similarly, the Exchange proposed in Rule 530(g)(2)(i) to consider all market maker quotes submitted during Limit or Straddle states that result in an execution to be "priority quotes," notwithstanding the usual criteria governing priority quotes that would otherwise be

applicable under Rule 517(b).¹⁷ When a quote is deemed a priority quote, it receives precedence for allocation purposes over all “Professional Interest.”¹⁸

MIAX represented that the purpose of this proposed rule is to provide an incentive for Market Makers to submit quotations during Limit and Straddle states by affording their quotes priority quote status, ensuring them of priority executions over professional interest when they assume the risk of quoting at or near the NBBO during times of extreme volatility. As with the participation guarantees, a market maker quote is deemed a priority quote during such states only if it participates in an execution at the NBBO.

4. Opening Process

Proposed Rule 530(g) sets forth changes in the manner in which the Exchange’s System will function during Limit and Straddle States. Specifically Proposed Rule 530(g)(1) describes the functionality of the Exchange’s Opening Process¹⁹ when a Straddle State or Limit State occurs before and during the Opening Process.

¹⁷ The otherwise applicable criteria governing priority quotes are: (A) the bid/ask differential of a Market Maker’s two-sided quote pair must be valid width (no wider than the bid/ask differentials outlined in Rule 603(b)(4)); (B) the initial size of both of the Market Maker’s bid and the offer must be in compliance with the requirements of Rule 604(b)(2); (C) the bid/ask differential of a Market Maker’s two-sided quote pair must meet the priority quote width requirements defined below in subparagraph (ii) for each option; and (D) either of the following are true: (1) At the time a locking or crossing quote or order enters the System, the Market Maker’s two-sided quote pair must be valid width for that option and must have been resting on the Book; or (2) Immediately prior to the time the Market Maker enters a new quote that locks or crosses the MBBO, the Market Maker must have had a valid width quote already existing (i.e., exclusive of the Market Maker’s new marketable quote or update) among his two-sided quotes for that option. See Exchange Rule 517(b)(i).

¹⁸ See Exchange Rule 517(b). “Professional Interest” is defined in Exchange Rule 100 to include orders for the account of a person or entity that is a broker or dealer in securities or places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

¹⁹ The Exchange’s Opening Process is described in greater detail in Exchange Rule 503.

Proposed Rule 530(g)(1)(i) provides that Opening Process shall be delayed for options overlying an NMS Stock that entered a Straddle State or a Limit State prior to the opening of trading such overlying options. As proposed, the Opening Process shall begin when such Straddle or Limit State has ended and there is not a halt or Trading Pause in effect. The Exchange therefore will not open an option overlying an NMS Stock that is in a Limit State or Straddle State.

Proposed Rule 530(g)(1)(ii) addresses scenarios where the Exchange's Opening Process has started but not yet completed when the underlying NMS Stock enters a Straddle or Limit State. When the affected option is in the Opening Process but trading has not begun, the Opening Process will be terminated if the underlying NMS Stock is in a Limit or Straddle State. The Opening Process will begin anew in the affected overlying options when such Limit or Straddle State has ended and there is not a halt or Trading Pause in effect. Thus, if an Opening Process is occurring, it will cease and the Exchange shall re-commence the Opening Process from the beginning once the Limit or Straddle State is no longer present.

5. Trading Pauses and Opening after a Trading Pause

Proposed Rule 530(h) provides that the Exchange will halt trading in options overlying an NMS Stock that is subject to a trading pause. The Exchange clarified in Amendment No. 1 that proposed Rule 530(h) is intended merely to clarify that current Exchange Rule 504(c) – the generally applicable rule concerning the treatment of options overlying securities subject to a trading pause – shall equally apply when an underlying security becomes subject to a trading pause as a result of the Plan.

Proposed Rule 530(i) provides that the Exchange will open trading following a trading pause pursuant to the Exchange's opening procedures contained in Rule 503. Proposed Rule

530(i) further adds that the Exchange may resume trading in options contracts overlying an affected NMS Stock if trading on the Primary Listing Exchange has not resumed within ten minutes of receipt of a trading pause and at least one exchange has resumed trading in such NMS Stock.

IV. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to a national securities exchange.²⁰ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,²¹ which, among other things, requires a national securities exchange to be so organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange, and 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 regulation, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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.

The Commission finds that the proposal to suspend a market maker's obligations when the underlying security is in a Limit or Straddle State is consistent with the Act. During a Limit or Straddle State, there may not be a reliable price for the underlying security to serve as a

²⁰ In approving the proposed rule changes, the Commission has considered their impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²¹ 15 U.S.C. 78f(b).

benchmark for market makers to price options. In addition, the absence of an executable bid or offer for the underlying security will make it more difficult for market makers to hedge the purchase or sale of an option. Given these significant changes to the normal operating conditions of market makers, the Commission finds that the Exchange's decision to suspend a market maker's obligations in these limited circumstances is consistent with the Act.

The Commission notes, however, that the Plan was approved on a pilot basis and its Participants will monitor how it is functioning in the equity markets during the pilot period. To this end, the Commission expects that, upon implementation of the Plan, the Exchange will continue monitoring the quoting requirements that are being amended in this proposed rule change and that it will determine if any necessary adjustments are required to ensure that they remain consistent with the Act.

The Commission also finds that the proposal to maintain participation guarantees and priority quote treatment for market makers who participate in an execution at the NBBO during a Limit or Straddle state is consistent with the Act. To the extent that market makers are only eligible for such benefits if they are quoting at the best price on the Exchange, this proposal is reasonably designed to incentivize market makers to quote more aggressively when the underlying security has entered into a limit up-limit down state than they might otherwise quote, potentially providing additional liquidity and price discovery.

Lastly, the Commission finds that the Exchange's proposals concerning its Opening Process and use of trading halts when an underlying security is subject to a trading pause are consistent with the Act. The Exchange's proposal to delay its Opening Process for an option if the underlying has entered a Limit or Straddle is reasonably designed to avoid opening an option

during a time when the price of the underlying security may be uncertain.²² Similarly, the Commission finds that it is reasonable for the Exchange to halt trading in an option when the underlying security is subject to a trading pause under the Plan. This element of the Exchange's proposal is consistent with how the Exchange currently treats options when an underlying security is subject to a trading pause,²³ and is also consistent with the practice of other exchanges in this respect.²⁴

In addition, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act²⁵ for approving the proposed rule change on an accelerated basis. This proposal is related to the Plan, which became operative on April 8, 2013. Accelerating approval will allow the proposed rule change, and any attendant benefits, to take effect as shortly after the Plan's implementation date as possible. Accordingly, the Commission finds that good cause exists for approving the proposed rule change on an accelerated basis.

²² The Exchange's proposal concerning its Opening Process is also consistent with what other exchanges have proposed. See, e.g., Phlx Rule 1047(f)(i).

²³ See Exchange Rule 504(c).

²⁴ See, e.g., CBOE Rule 6.3.06; NYSE Arca Rule 6.65(b); Phlx Rule 1047(e).

²⁵ 15 U.S.C. 78s(b)(2)

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act²⁶ that the proposed rule change (SR-MIAX-2013-15), as modified by Amendment No. 1, is approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷

Kevin M. O'Neill
Deputy Secretary

²⁶ 15 U.S.C. 78f(b)(2).

²⁷ 17 CFR 200.30-3(a)(12).