

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-70505; File No. SR-MIAX-2013-44)

September 25, 2013

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by Miami International Securities Exchange LLC to Amend Exchange Rule 604 in Connection with Market Maker Continuous Quoting Obligations

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 September 17, 2013, 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 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 604 in connection with Market Maker continuous quoting obligations.

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 Exchange proposes to amend Rule 604 to exclude intra-day add-on series (“Intra-day Adds”) from the Market Makers’ continuous quoting obligations on the day such series are added for trading. Additionally, the proposed rule change clarifies in the Interpretations and Policies to Rule 604 that: (1) Lead Market Makers (“LMMs”)³ may still receive directed orders and participation entitlements in all Intra-day Adds on the day such series are added for trading provided the LMM is quoting the Intra-day Add and meets all other directed order and participation entitlement requirements set forth in Rules 514(h) and (i); and (2) Primary Lead Market Makers (“PLMMs”)⁴ may still receive participation entitlements in all Intra-day Adds on the day such series are added for trading provided the PLMM is quoting the Intra-day Add and meets all other participation entitlement requirements set forth in Rules 514(g) and (i). The proposal is based on the recently approved change by Chicago Board Options Exchange,

³ Exchange Rule 100 defines a Lead Market Maker as 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.

⁴ Exchange Rule 100 defines a Primary Lead Market Maker as a Lead Market Maker appointed by the Exchange to act as the Primary Lead Market Maker for the purpose of making markets in securities traded on the Exchange. The Primary Lead Market Maker is vested with the rights and responsibilities specified in Chapter VI of these Rules with respect to Primary Lead Market Makers.

Incorporated (“CBOE”).⁵

Intra-day Adds are series that can be added to the System after the opening of trading on the Exchange. These series may be added at any time during the trading day and differ from other newly added series, which are added prior to the opening of trading. In the event a series is added after the opening of trading, the Exchange will disseminate a Listings Alert to Members and anyone else subscribing to MIAX notices and publications advising that a new series has been listed. Listing Alerts are also publically available on the Exchange’s website. Any Market Maker with an appointment in the class in which the series is added will be permitted to quote in the new series.

Currently, Exchange Rule 604 imposes certain obligations on Market Makers, including obligations to provide continuous quotes. Specifically, Rule 604(e)(1) requires a PLMM to provide continuous two-sided quotes (i.e., 90% of the time) in the lesser of 99% of the non-adjusted option series, or 100% of the non-adjusted option series minus one put-call pair, in each class in which the PLMM is assigned. Rule 604(e)(2) requires an LMM to provide continuous two-sided quotes (i.e., 90% of the time) in at least 90% of the non-adjusted option series in each of the LMM’s appointed classes. And, Rule 604(e)(3) requires a Registered Market Maker (“RMM”)⁶ to provide continuous two-sided quotes throughout the trading day (i.e., 90% of the time) in 60% of the non-adjusted series that have a time to expiration of less than nine months in

⁵ See Securities Exchange Act Release Nos. 69338 (April 8, 2013), 78 FR 21981 (April 12, 2013) (SR-CBOE-2013-019) (Order approving); 68944 (February 15, 2013), 78 FR 12377 (February 22, 2013) (SR-CBOE-2013-019).

⁶ Exchange Rule 100 defines a Registered Market Maker as 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.

each of the RMM's appointed classes. The proposed rule change seeks to exclude Intra-day Adds from these continuous quoting obligations.

In order to comply with their continuous quoting obligations, Market Makers have automated quoting systems in place that use complex calculations based on a variety of market factors to compute quotes in their appointed classes and transmit these quotes to the Exchange's trading System. The Market Maker quoting system computations also factor in their market risk models. It is the Exchange's understanding that for some Market Makers their quoting systems will not automatically produce continuous quotes in Intra-day Adds on the trading day during which those series are added. These Market Makers have indicated that the only way they could quote in series on the trading day during which they are added would be to completely shut down and restart their systems. As a result, the Exchange further understands that several Market Makers would not be able to quote Intra-day Adds during the trading day on which such series are added (although the Market Makers generally would be able to quote these series upon the opening of the next trading day, assuming those series continue to be listed on the Exchange). The required work on Market Makers' systems to allow them to quote Intra-day Adds, would be significant and costly.

The inability to quote Intra-day Adds makes it extremely difficult for Market Makers to comply with their obligation to quote in a substantial percentage of series in their appointed classes during a trading day on which Intra-day Adds are added in those classes. For example, if there are 1,000 series listed in an LMM's appointed class and the LMM is quoting in 900 of these series, the LMM is in compliance with the current minimum requirement to quote in 90% of series in its appointed class (assuming the LMM quotes in this number of series 90% of the trading day). However, if an Intra-day Add is added in the LMM's appointed class during the

trading day, and the LMM's system does not automatically quote in this series, then the LMM would not comply, as it would be quoting in 900 of 1,001 series. This noncompliance would be compounded if more than one Intra-day Add is listed in a class during the same trading day. Further, if in an effort to be in compliance, Market Makers turned their systems off to quote in Intra-day Adds on the trading day during which those series are added, then the Market Makers could satisfy the standard to quote in a minimum percentage of series in their appointed classes but would risk violating their obligation to quote for minimum percentage of the trading day. Theoretically, Market Makers might also need to repeatedly turn their systems off to accommodate multiple Intra-day Adds.

The Exchange believes that it would be impracticable, particularly given that a number of Market Makers who use their systems to quote on multiple markets and not solely on the Exchange, for Market Makers to turn off their systems to accommodate quoting in Intra-day Adds on the day during which those series are added on the Exchange. In addition, the Exchange believes this would interfere with the continuity of its market and reduce liquidity, which would ultimately harm investors and contradicts the purpose of the Market Maker continuous quoting obligation. This proposed rule change excludes Intra-day Adds from these continuous quoting obligations to address this conflict.

The Exchange believes this proposed relief would result in a minimal reduction, if any, in liquidity in these series. Market Makers' quoting systems would add these series the next trading day, so if there is any slight reduction in liquidity in these few series, it would only last for a short period of time (until the following trading day). Additionally, this potential small reduction in liquidity would be far outweighed by the reduction in liquidity that the Exchange believes

would result from the withdrawals from and reductions in applications for Market Maker appointments if the Exchange did not provide this relief.

The current quoting obligation in Intra-day Adds is a minor part of a Market Maker's overall obligations. Market Makers will still be obligated to provide continuous two-sided markets in a substantial number of series in their appointed classes. Further, Market Makers would still be obligated to quote the Intra-day Adds the following day, and, thus, their quoting relief is very short lived and could, potentially, only last a few hours or until the opening of trading the following day. The Exchange believes that the burden of continuous electronic quoting in the extremely small number of series Intra-day Adds represent is counter to the Exchange's efforts to continuously increase liquidity in its listed option classes. The Exchange believes the proposed rule change will continue to ensure that Market Makers create a fair and orderly market in the option classes to which they are assigned, as it does not absolve Market Makers from providing continuous electronic quotes in a significant percentage of series of each class for a substantial portion of the trading day. Market Makers must engage in activities that constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, including (1) competing with other Market Makers to improve markets in all series of options classes comprising their appointments; (2) making markets that, absent changed market conditions, will be honored in accordance with firm quote rules; and (3) updating market quotations in response to changed market conditions in their appointed options classes and to assure that any market quote it causes to be disseminated is accurate.

The proposed rule change also clarifies that while PLMMs and LMMs will not be required to provide continuous quotes in Intra-day Adds on the day during which such series are added for trading, PLMMs and LMMs may still receive a participation entitlement in such series

if they elect to quote in that series and otherwise satisfy the entitlement requirements set forth in Rule 514. Specifically, the Exchange is proposing to revise the Interpretations and Policies to Rule 604 to provide that (1) LMMs may still receive directed orders and participation entitlements in all Intra-day Adds on the day during which such series are added for trading in which they are quoting provided the LMM meets all other entitlement requirements set forth in Rules 514(h) and (i); and (2) PLMMs may still receive participation entitlements in all Intra-day Adds on the day during which such series are added for trading in which they are quoting provided the PLMM meets all other entitlement requirements set forth in Rules 514(g) and (i). LMMs already receive directed orders and participation entitlements in series they are not required to quote. For example, the continuous quoting requirement of Rule 604 currently does not apply to LMMs quoting option series with a time to expiration of nine months or greater. Interpretations and Policies .01 currently provides that LMMs may receive directed orders and participation entitlements when quoting such long-term series, provided the LMM meets all other entitlement requirements as set forth in Rules 514(h) and (i). In addition, an LMM is currently required to provide continuous electronic quotes in at least 90% of the non-adjusted option series of each multiply listed option class allocated to it for 90% of the trading day. If the LMM elects to quote in 100% of the non-adjusted series in an option class allocated to it, it can receive directed orders and participation entitlements in all of those series when quoting at the best price, including the 10% of the series in which it is not required to quote. Finally, with respect to PLMMs, the continuous quoting requirement of Rule 604 currently does not apply to PLMMs quoting adjusted option series; if a PLMM elects to quote an adjusted option series, it can receive the participation entitlement provided the PLMM meets all other entitlement requirements as set forth in Rules 514(g) and (i). Thus, under the proposed rule change, the

market would continue to function as it does now. The Exchange believes this benefit is appropriate, as it provides incentives for PLMMs and LMMs to quote in as many series as possible in their appointed classes, even those series in which the Rules do not require them to continuously quote.

The Exchange does not believe that the proposed rule change would adversely affect the quality of the Exchange's markets or lead to a material decrease in liquidity. Rather, the Exchange believes that its current market structure, with its high rate of participation by Market Makers, permits the proposed rule change without fear of losing liquidity. The Exchange also believes that market-making activity and liquidity could materially decrease without the proposed rule change to exclude Intra-day Adds from Market Maker continuous quoting obligations on the trading day during which they are added for trading. The Exchange believes that this proposed relief will encourage Market Makers to continue appointments and other Members to request Market Maker appointments, and, as a result, expand liquidity in options classes listed on the Exchange to the benefit of the Exchange, its Members and public customers. The Exchange believes that its Market Makers would be disadvantaged without this proposed relief. Other Members and public customers would also be disadvantaged if Market Makers withdrew from appointments in options classes, resulting in reduced liquidity and volume in those classes. Additionally, the Exchange believes that the proposed rule change to clarify that PLMMs and LMMs may receive participation entitlements in Intra-day Adds on the day during which such series are added for trading if they satisfy the other entitlement requirements as set forth in Exchange Rules, even if the Rules do not require the Market Makers to continuously quote in those series, will incent Market Makers to quote in series in which they are not required to quote, which may increase liquidity in their appointed classes.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b)⁷ of the Act. Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁸ requirements that the rules of an exchange be 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 facilitation [sic] 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposed rule change to exclude Intra-day Adds during the day that such series are added for trading from Market Makers’ quoting obligations promotes just and equitable principles of trade because it promotes liquidity and continuity in the marketplace and would prevent interruptions in quoting or reduced liquidity that may otherwise result. The Exchange also believes that the proposed rule change supports the quality of the Exchange’s markets because it does not significantly change the current quoting obligations of Market Makers. Market Makers must still provide continuous electronic quotes for a significant part of the trading day in a substantial number of series of each appointed class. The proposed relief is offset by a Market-Maker’s obligation to quote in these series beginning the next trading

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

day. With respect to RMMs, even if the RMM does not quote Intra-day Adds on the trading day during which they are added, this would be further offset by the RMM's continued obligation to quote in these series when requested by an Exchange Official. Accordingly, the proposed rule change supports the quality of the Exchange's trading markets by helping to ensure that Market Makers will continue to be obligated to quote in Intra-day Adds if, and when, the need arises and on an ongoing basis following the trading day during which the series are added. The Exchange believes this proposed change is reasonable and is offset by Market-Makers' continued responsibilities to provide significant liquidity to the market to the benefit of market participants.

The Exchange believes this proposed rule change, on balance, is a minor change and should not impact the quality of the Exchange's trading markets. Among other things, Intra-day Adds represent an insignificant percentage of series listed on the Exchange each day. The Exchange further believes that the potential small reduction in liquidity in Intra-day Adds that may result from the proposed relief would be far outweighed by the significant reduction in liquidity in appointed classes that the Exchange believes could occur from withdrawals from and reductions in applications for Market-Maker appointments without the proposed relief. The proposed rule change also removes impediments to and allows for a free and open market, while protecting investors, by promoting additional transparency regarding Market-Makers' obligations and benefits in the Exchange Rules. In addition, the Exchange believes that the proposed rule change is designed to not permit unfair discrimination among Market Makers, as the proposed rule change provides the proposed relief for all Market Makers.

The proposed rule change to clarify that LMMs may receive directed orders and participation entitlements, and PLMMs may receive participation entitlements in Intra-day Adds in their appointed classes in which they are quoting, even though they are not required to quote

such series, further supports the quality of the Exchange's trading markets because it encourages LMMs and PLMMs to quote in as many series as possible, which ultimately benefits all investors. This benefit is offset by the LMMs' and PLMMs' continued quoting obligations and the fact that their quotes in these "non-required" series must still satisfy all of their other obligations under the Rules. The Exchange also believes that this proposed change is consistent with its current practice, pursuant to which (1) LMMs receive directed orders and participation entitlements in long-term series, adjusted series and additional series in which they elect to quote above the minimum percentage of series in which they are required to continuously quote under the Rules; and (2) PLMMs receive participation entitlements in adjusted series.

For the foregoing reasons, the Exchange believes that the proposed rule change is appropriate and consistent with the Act.

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 not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change to exclude Intra-day Adds during the day which such series are added for trading from Market Makers' quoting obligations will cause any unnecessary burden on intra-market competition because it provides the same relief to a group of similarly situated market participants, that is, Market Makers. The Exchange does not believe the proposed change will cause any unnecessary burden on inter-market competition because Intra-day Adds are a very small portion of series on the Exchange. The Exchange further believes that the potential small reduction in liquidity in Intra-day Adds that may result from the proposed relief would be far outweighed by the significant reduction in liquidity in appointed classes that the Exchange believes could occur from withdrawals from and reductions in

applications for Market-Maker appointments without the proposed relief. In addition, the Exchange believes that the proposed rule change will in fact relieve any burden on, or otherwise promote, competition. The Exchange believes that excluding Intra-day Adds on the day during which they are added for trading from Market-Maker obligations will promote trading activity on the Exchange to the benefit of the Exchange, its Members, and market participants.

The Exchange does not believe the proposed rule change to clarify that LMMs and PLMMs may receive participation entitlements in Intra-day Adds in their appointed classes in which they are quoting, even though they are not required to quote, provided the other requirements set forth in the Rules are satisfied, will cause any unnecessary burden on intra-market competition because it too provides the same relief to a group of similarly situated market participants, that is all LMMs and PLMMs. The Exchange does not believe the proposed change will cause any unnecessary burden on inter-market competition because LMMs are currently entitled to receive directed orders and participation entitlements, and PLMMs are currently entitled to receive participation entitlements on series they are not obligated to quote in under the Rules. In addition, the Exchange believes that the proposed rule change will in fact promote competition. The Exchange believes allowing LMMs to receive directed orders and participation entitlements, and PLMMs to receive participation entitlements in Intra-day Adds will promote trading activity on the Exchange because it will provide incentives to LMMs and PLMMs to quote in such series though not obligated to do so, to the benefit of the Exchange, its Members, and market participants.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰ Because the 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.¹¹

A proposed rule change filed under Rule 19b-4(f)(6)¹² normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹³ 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 proposal may become operative immediately upon filing. The Commission notes that waiver of the operative delay would permit the Exchange to implement the changes proposed herein immediately.

Under the proposal, the Exchange would amend certain of its rules pertaining to the trading of options in order to exclude Intra-day Adds from Market Makers' continuous quoting

⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁰ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of 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.

¹¹ 17 CFR 240.19b-4(f)(6)(iii).

¹² 17 CFR 240.19b-4(f)(6).

¹³ 17 CFR 240.19b-4(f)(6)(iii).

obligations on the day such series are added for trading. If, and only if, they are in fact quoting them, LMMs and PLMMs will be eligible to receive directed orders and participation entitlements in all Intra-day Adds on the day such series are added for trading, provided the LMM or PLMM meets all other directed order and participation entitlement requirements. The Exchange notes that eliminating the continuous quoting obligations for Intra-day Adds will ensure fair competition among the exchanges and encourage greater liquidity on the Exchange to the benefit of investors. Further, the Exchange represents that the proposed rule change also will promote consistency among the competing options exchanges that have Intra-day Adds and reduce the current compliance burdens imposed on Market Makers by the application of different continuous quoting standards.

The Commission notes that MIAX's proposal is based on a proposal submitted by another exchange that the Commission approved,¹⁴ and it raises no novel regulatory issues. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.¹⁵

At any time within 60 days of the filing of such 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

¹⁴ See supra note 5. The Commission notes that it did not receive any comments on CBOE-2013-019.

¹⁵ 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 15U.S.C. 78c(f).

Commission shall institute proceedings under Section 19(b)(2)(B)¹⁶ of the Act to determine whether the proposed rule change 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-2013-44 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-MIAX-2013-44. 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 at 100 F

¹⁶ 15 U.S.C. 78s(b)(2)(B).

Street, NE, Washington, DC 20549-1090 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-2013-44 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.¹⁷

Kevin M. O'Neill
Deputy Secretary

¹⁷ 17 CFR 200.30-3(a)(12).