

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-74496; File No. SR-MIAX-2015-03)

March 13, 2015

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Order Granting Approval to Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Adopt a “Risk Protection Monitor” Functionality Under Proposed MIAX Rule 519A and Amend the “Aggregate Risk Monitor” Functionality Under MIAX Rule 612

I. Introduction

On January 8, 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”)¹ and Rule 19b-4 thereunder,² a proposed rule change to establish a voluntary Risk Protection Monitor functionality for orders (the “RPM”) and codify existing functionality regarding the Exchange’s Aggregate Risk Manager for quotes (the “ARM”). On January 20, 2015, the Exchange filed Amendment No.1 to the proposal.³ The proposed rule change, as modified by Amendment No. 1, was published for comment in the Federal Register on January 28, 2015.⁴ The Commission did not receive any comments on the proposed rule change. This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposal

The Exchange proposes new MIAX Rule 519A to establish a voluntary RPM that will be available to all MIAX members. The Exchange also proposes clarifying amendments to current

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the Exchange proposed changes to the Form 19b-4, Exhibit 1, and Exhibit 5 to clarify that once triggered, the Risk Protection Monitor described therein will apply to orders in all series in all classes of options from the Exchange Member.

⁴ See Securities Exchange Act Release No. 74118 (January 22, 2015), 80 FR 4605 (“Notice”).

MIAX Rule 612, which describes the Exchange’s ARM functionality that is applicable to quoting activity by MIAX Market Makers.

A. Risk Protection Monitor

According to the Exchange, the RPM is intended to provide new risk protection functionality for orders entered by members. Under new MIAX Rule 519A, MIAX’s automated trading system (the “System”) will maintain a counting program (the “counting program”) for each participating member. Member participation in the counting program will be voluntary. The counting program will count (i) the number of orders entered by the member on the Exchange within a specified time period that has been established by the member (the “specified time period”), and (ii) the number of contracts traded via an order entered by the member on the Exchange within the specified time period.⁵ The Exchange will establish a maximum duration for any specified time period and announce that maximum duration via a Regulatory Circular. To use the RPM functionality, members must establish an Allowable Order Rate and/or an Allowable Contract Execution Rate. The Allowable Order Rate is the maximum number of permissible orders (as specified by the member) entered during the specified time period designated by the member. The Allowable Contract Execution Rate is the maximum number of permissible contracts (as specified by the member) executed during the specified time period designated by the member.

If the RPM functionality is elected by a member, the System will trigger the RPM whenever the counting program determines that the member has entered a number of orders that exceeds the member’s specified Allowable Order Rate during the specified time period, or

⁵ In its filing, the Exchange noted that members may establish different specified time periods for the purpose of counting orders and the purpose of counting contracts traded via an order entered by the member under the RPM, and thus, the length of the specified time period for each purpose need not be the same. See Notice, supra note 4, at 4605 n.7.

executed a number of contracts that exceeds the member's specified Allowable Contract Execution Rate during the specified time period.⁶

Under new MIAX Rule 519A, a member may establish whether the RPM, once triggered, will: (i) prevent the System from receiving any new orders in all series in all classes from the member; (ii) prevent the System from receiving any new orders in all series in all classes from the member and cancel all existing Day orders in all series in all classes from the member; or (iii) send a notification that the RPM has been triggered without any further preventative actions or cancellations by the System. Once engaged, the RPM will automatically take whatever action has been specified in advance by the member. However, PRIME Orders, PRIME Solicitation Orders, Auction or Cancel Orders ("AOC Order"), Opening Orders ("OPG Order"), or Good 'til Cancel Orders ("GTC Order") will not participate in the RPM.⁷ When engaged, the RPM will allow the member to interact with existing orders that were entered prior to the member exceeding the Allowable Order Rate or the Allowable Contract Execution Rate, including sending cancel order messages and receiving trade executions from those orders. The RPM will remain engaged until the member communicates with the Exchange's help desk (the "Help

⁶ In the Notice, the Exchange provided examples demonstrating how the System will determine when the Allowable Order Rate or Allowable Contract Execution Rate for an individual member is exceeded. See Notice, supra note 4, at 4606-07.

⁷ Interpretation and Policy .02 to new MIAX Rule 519A provides that PRIME Orders, PRIME Solicitation Orders, and GTC Orders will not participate in the RPM. The System will include PRIME Orders, PRIME Solicitation Orders, and GTC Orders in the counting program for purposes determining when the RPM is triggered. PRIME Orders, PRIME Solicitation Orders and Customer-to-Customer Orders will each be counted as two orders for the purpose of calculating the Allowable Order Rate. Once engaged, however, the RPM will not cancel any existing PRIME Orders, PRIME Solicitation Orders, AOC Orders, OPG Orders, or GTC Orders that are marked as Day orders.

Desk”) to re-enable the System to accept new orders from the member. The Exchange noted that this communication from the member to the Help Desk may be sent either via email or phone.⁸

In addition, the Exchange also proposes to allow members to group with other members so that the RPM would apply collectively to the group. The members in such a group must designate a group owner and may form a group together if: (i) there is at least 75% common ownership between the group’s members, as reflected on each firm’s Form BD, Schedule A; or (ii) there is written authorization signed by all members in the group, and the group owner maintains exclusive control of all orders sent to the Exchange from each MPID within the group. A clearing firm also may elect to group together with several members so that the RPM applies collectively to that group of members, provided that: (i) the clearing firm must be designated as the group owner; (ii) the clearing firm must serve as the clearing firm for all the MPIDs of the group; and (iii) there must be written authorization signed by the clearing firm and each member of the group.

In general, the RPM for groups will operate in the same manner as it does for individual members, except that that the counting program and RPM protections will apply to the group as a whole. Thus, the counting program will count the number of orders entered and the number of contracts traded resulting from orders entered by all MPIDs in the group collectively, and the System will trigger the RPM when the group collectively exceeds either the Allowable Order Rate or Allowable Contract Execution Rate for the group.⁹ Once engaged, pursuant to the group owner’s instructions, the RPM will automatically either: (i) prevent the System from receiving any new orders in all series in all classes from each MPID in the group; (ii) prevent the System

⁸ See Notice, supra note 4, at 4606 n.10.

⁹ In the Notice, the Exchange provided examples demonstrating how the System will determine when the Allowable Order Rate or Allowable Contract Execution Rate is exceeded for a group. See Notice, supra note 4, at 4608.

from receiving any new orders in all series in all classes from each MPID in the group and cancel all existing Day orders in all series in all classes from the group, or (iii) send a notification without any further preventative action or cancellations by the System. Only the designated group owner may re-enable the acceptance of new orders for all the members of the group, via a request to the Help Desk. In instances when a clearing firm has grouped several members for the purpose of the RPM, the clearing firm may only elect to receive warning notifications indicating that a specific percentage of an Allowable Order Rate or an Allowable Contract Execution Rate has been met, unless one member of the group maintains exclusive control of all orders routed through all MPIDs within the group.

In addition, members may elect to receive warning notifications from MIAX indicating that a specific percentage of an Allowable Order Rate or an Allowable Contract Execution Rate has been met. The Exchange also proposes that, at the request of a member, or if necessary to maintain a fair and orderly market, the Help Desk may pause and restart the specified time period used by the counting program or clear and reset any calculated Allowable Order Rate or Allowable Contract Execution Rate.

B. Aggregate Risk Manager

The Exchange also proposes to codify what it represents is existing functionality regarding the ARM under MIAX Rule 612.¹⁰ Under MIAX Rule 612, the System maintains a counting program for each Market Maker who is required to submit continuous two-sided quotations pursuant to MIAX Rule 604 in each of its assigned option classes. The ARM counting program counts the number of contracts traded by a Market Maker's quotes in an assigned option class within a specified time period that has been established by the Market

¹⁰ See Notice, supra note 4, at 4609.

Maker; MIAX Rule 612 states that the specified time period for the ARM cannot exceed 15 seconds. Under the ARM, a Market Maker also establishes for each option class an Allowable Engagement Percentage. The System engages the ARM in a particular option class when the counting program has determined that a Market Maker has traded during the specified time period a number of contracts equal to or above its Allowable Engagement Percentage.¹¹ Once engaged, the ARM automatically removes the Market Maker's quotations on MIAX in all series of that particular option class until the Market Maker submits a new revised quotation.

The Exchange proposes to amend MIAX Rule 612 in two regards. First, the Exchange proposes to codify in its rules an existing requirement for a Market Maker to send a message to MIAX specifically to disengage the ARM and allow quoting before the Market Maker can begin to quote again in that class. As noted above, MIAX Rule 612 currently provides that once engaged, the ARM will automatically remove the Market Maker's quotations from MIAX in all series of that particular option class until the Market Maker submits a new revised quotation. The Exchange proposes to add rule text to MIAX Rule 612(b)(1) requiring a Market Maker also to send a notification to the System of its intent to reengage quoting in order to disengage the ARM. Second, the Exchange proposes to clarify, in new Interpretation and Policy .01 to Rule

¹¹ The Allowable Engagement Percentage cannot be less than 100%. The System calculates the Allowable Engagement Percentage by first determining the percentage that the number of contracts executed in an individual option in a class represents relative to the Market Maker's disseminated Standard quote and/or Day eQuote in that individual option ("option percentage"). See MIAX Rule 612(b)(2)(i). When the System calculates the option percentage, the number of contracts executed in that option class will be automatically offset by the number of contracts that are executed on the opposite side of the market in the same option class during the specified time period. See MIAX Rule 612(b)(3). The counting program will then combine the individual option percentages to determine the option class percentage ("class percentage"). See MIAX Rule 612(b)(2)(ii). When the class percentage equals or exceeds the Market Maker's Allowable Engagement Percentage, the ARM will be triggered. See *id.*

612, that eQuotes¹² do not participate in the ARM. The Exchange states that the System does not include contracts traded through the use of an eQuote in the counting program for purposes of Rule 612, and that eQuotes will remain in the System available for trading when the Aggregate Risk Manager is engaged.¹³

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange.¹⁴ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁵ which requires, among other things, that the rules of a national securities 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 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 believes that the RPM may help members, and member groups, to mitigate the potential risks associated with the execution of an unacceptable level of orders that result from, e.g., technology issues with electronic trading systems. The Commission also notes that other exchanges have established risk protection

¹² An eQuote “is a quote with a specific time in force that does not automatically cancel and replace a previous Standard quote or eQuote,” and “can be cancelled by the Market Maker at any time, or can be replaced by another eQuote that contains specific instructions to cancel an existing eQuote.” See MIAX Rule 517(a)(2).

¹³ See Notice, supra note 4, at 4609.

¹⁴ 15 U.S.C. 78f. In approving this proposed rule change, the Commission notes that it has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁵ 15 U.S.C. 78f(b)(5).

mechanisms for members and/or market makers that are similar in many respects to MIAX's proposal.¹⁶ While the concept of member groups may be unique to MIAX's proposal, the Commission believes that MIAX has designed that portion of the proposed rule to be consistent with the Act, including Section 6(b)(5), as it may foster cooperation and coordination with clearing transactions and protect investors and the public interest by providing a mechanism to reduce the risk of abnormal trading activity across multiple participants under common control or where the group otherwise provides written opt-in consent.

The Commission notes that the RPM is a voluntary mechanism. The Commission reminds members electing to use the RPM to be mindful of their obligations to, among other things, seek best execution of orders they handle on an agency basis. A broker-dealer has a legal duty to seek to obtain best execution of customer orders, and the decision to utilize the RPM, including the parameters set by the member for the RPM, must be consistent with this duty.¹⁷ For instance, under the proposal, members have unfettered discretion to set the Allowable Order Rate and Allowable Contract Execution Rate for the RPM. While MIAX neglected to affirmatively establish minimum and maximum permissible settings for the RPM in its rule, the Commission expects MIAX periodically to assess whether the RPM functionality is operating in a manner that is consistent with the promotion of fair and orderly markets. In addition, the Commission expects that members will consider their best execution obligations when

¹⁶ See, e.g., BATS Exchange ("BATS") Rule 21.16 (Risk Monitor Mechanism available to all BATS Users); NASDAQ Options Market ("NOM") Rule Chapter VI, Section 19 (Risk Monitor Mechanism available to all NOM Participants); BOX Options Exchange Rule 7280 (Bulk Cancellation of Trading Interest available to Options Participants); and Chicago Board Options Exchange ("CBOE") Rule 8.18 (Quote Risk Monitor Mechanism available to certain CBOE Market-Makers and CBOE Trading Permit Holders associated with certain CBOE Market-Makers).

¹⁷ See Securities Exchange Act Release Nos. 37619A (Sept. 6, 1996), 61 FR 48290 (Sept. 12, 1996) ("Order Handling Rules Release"); 51808 (June 9, 2005), 70 FR 37496, 37537-8 (June 29, 2005).

establishing the minimum and maximum parameters for the RPM.¹⁸ For example, an abnormally low Allowable Order Rate set over an abnormally long specified time period should be carefully scrutinized, particularly if a member's order flow to MIAX contains agency orders. To the extent that the RPM is set to overly-sensitive parameters, a member should consider the effect of its chosen settings on its ability to receive a timely execution on marketable agency orders that it sends to MIAX in various market conditions.¹⁹ The Commission cautions that brokers considering their best execution obligations should be aware that the agency orders they represent may be rejected on account of the RPM.

In addition, under the proposal, once the RPM is engaged, PRIME Orders, PRIME Solicitation Orders, GTC Orders, AOC Orders, and OPG Orders will not participate in the RPM.²⁰ The Commission notes that these are unique order types.²¹ The Commission believes that these exceptions appear to be reasonably designed to not interfere with the operation of the PRIME and PRIME Solicitation auctions and also to restrict application of the RPM to specific types of orders, whose terms limit their application to specialized purposes for which members may not want or need order protection to apply.

¹⁸ The Commission reminds broker-dealers that they must examine their procedures for seeking to obtain best execution in light of market and technology changes and modify those practices if necessary to enable their customers to obtain the best reasonably available prices. See Order Handling Rules Release, supra note 17, at 48323.

¹⁹ For example, a marketable agency order that would have otherwise executed on MIAX might be prevented from reaching MIAX on account of other interest from the member that causes it to exceed its Allowable Order Rate and, thus, triggers the RPM, resulting in the System blocking new orders from the member.

²⁰ See supra note 7.

²¹ For example, the Exchange argues that PRIME Orders submitted pursuant to MIAX Rule 515A have been guaranteed an execution at the time of acceptance into the System and, therefore, should not be cancelled when the RPM is engaged, because the execution has effectively already occurred. See Notice, supra note 4, at 4609.

The proposed rule change also codifies existing functionality in the ARM with respect to the procedures for resuming quoting and the non-participation of eQuotes. The Commission notes that the clarification of ARM procedures in Rule 612 could eliminate potential confusion for members regarding the need to affirmatively notify MIAX that the member wishes to re-start quoting following an ARM event as well as internal inconsistency in the rule about the inapplicability of ARM to eQuotes.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²² that the proposed rule change (SR-MIAX-2015-03), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

Brent J. Fields
Secretary

²² 15 U.S.C. 78s(b)(2).

²³ 17 CFR 200.30-3(a)(12).