

#### 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.<sup>16</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>17</sup> 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 up-limit down state is consistent with the Act. When the underlying is in a Limit or Straddle State or is subject to a Trading Halt,<sup>18</sup> there may not be a reliable price for the underlying security to serve as a 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.

<sup>16</sup> 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).

<sup>17</sup> 15 U.S.C. 78f(b).

<sup>18</sup> The Commission notes that, pursuant to BATS Rule 20.5, BATS will halt trading in the option when the trading in the underlying is halted as a result of a circuit breaker. Therefore, the proposal to suspend market maker quoting obligations when the underlying is subject to a trading halt would apply to other, non-circuit breaker-related instances when the underlying is no longer trading, but, pursuant to Rule 20.3, BATS has elected to continue trading the overlying option.

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 determine if any necessary adjustments are required to ensure that they remain consistent with the Act.

In addition, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act<sup>19</sup> for approving the proposed rule change on an accelerated basis. The proposal is in part related to the Plan, which will become operative on April 8, 2013.<sup>20</sup> Without accelerated approval, the proposed rule change, and any attendant benefits, would take effect after the Plan's implementation date. Accordingly, the Commission finds that good cause exists for approving the proposed rule change on an accelerated basis.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act<sup>21</sup> that the proposed rule change (SR-BATS-2013-016) is approved on an accelerated basis.

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

**Kevin M. O'Neill,**  
Deputy Secretary.

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69342; File No. SR-MIAX-2013-12]

#### Self-Regulatory Organizations; Miami International Securities Exchange LLC; Order Granting Accelerated Approval of a Proposed Rule Change Relating to Obvious Errors in Limit or Straddle States

April 8, 2013.

#### I. Introduction

On March 22, 2013, 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 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to provide for how the Exchange proposes to treat erroneous options transactions in response to the Regulation NMS Plan to Address Extraordinary Market Volatility (the "Plan"). The proposed rule change was published for comment in the **Federal Register** on March 27, 2013.<sup>3</sup> The Commission received one comment letter on the proposal.<sup>4</sup> This order approves the proposed rule change on an accelerated basis.

#### II. Description of the Proposed Rule Change

Since May 6, 2010, when the financial markets experienced a severe disruption, the equities exchanges and the Financial Industry Regulatory Authority have developed market-wide measures to help prevent a recurrence. In particular, on May 31, 2012, the Commission approved the Plan, as amended, on a one-year pilot basis.<sup>5</sup> The Plan is designed to prevent trades in individual NMS stocks from occurring outside of specified Price Bands, creating a market-wide limit up-limit down mechanism that is intended to address extraordinary market volatility in NMS Stocks.<sup>6</sup>

In connection with the implementation of the Plan, the Exchange proposes to adopt Commentary .06 to Rule 521 to exclude trades that occur during a Limit State or Straddle State from the obvious error or catastrophic error review procedures pursuant to Rule 521 for a one year pilot basis following the adoption of the proposed rule change.<sup>7</sup> The Exchange proposes to adopt new Rule 530(j) to apply to erroneous transactions in options when the underlying NMS Stock has entered either a Limit or Straddle State. In addition, the Exchange proposes to retain the ability to review all erroneous transactions that occur during Limit States and Straddle

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Securities Exchange Act Release No. 69210 (March 22, 2013), 78 FR 18637 ("Notice").

<sup>4</sup> See Letter to Elizabeth M. Murphy, Secretary, Commission, from Douglas M. Schafer, Executive Vice President, Chief Information Officer, MIAX, dated February [sic] 5, 2013 ("MIAX Letter").

<sup>5</sup> Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498.

<sup>6</sup> Unless otherwise specified, capitalized terms used in this rule filing are based on the defined terms of the Plan.

<sup>7</sup> The Exchange stated that members of the Exchange staff have spoken to its member organizations about obvious and catastrophic errors during a Limit State or Straddle State and that the Exchange has received generally favorable feedback concerning its proposed rule change, given the built-in customer protections in the Exchange system.

<sup>19</sup> 15 U.S.C. 78s(b)(2).

<sup>20</sup> See *supra* note 15.

<sup>21</sup> 15 U.S.C. 78f(b)(2).

<sup>22</sup> 17 CFR 200.30-3(a)(12).

States resulting only from a verifiable disruption or malfunction of an Exchange execution, dissemination or communication system pursuant to new Rule 530(j).

Rule 521 provides a process by which a transaction may be nullified or adjusted when the execution price of a transaction deviates from the option's theoretical price by a certain amount. Generally, the theoretical price of an option is the National Best Bid and Offer ("NBBO") of the option. In certain circumstances, Exchange officials have the discretion to determine the theoretical price.<sup>8</sup>

The Exchange believes that none of these methods is appropriate during a Limit State or Straddle State. Under Rule 521(b)(1), the theoretical price is determined with respect to the NBBO for an option series just prior to the trade. According to the Exchange, during a Limit State or Straddle State, options prices may deviate substantially from those available prior to or following the state. The Exchange believes this provision would give rise to much uncertainty for market participants as there is no bright line definition of what the theoretical price should be for an option when the underlying NMS stock has an unexecutable bid or offer or both. Because the approach under Rule 521(b)(1) by definition depends on a reliable NBBO, the Exchange does not believe that approach is appropriate during a Limit State or Straddle State. Additionally, because the Exchange system will only trade through the theoretical bid or offer if the Exchange or the participant (via an ISO order) has accessed all better priced interest away in accordance with the Options Order Protection and Locked/Crossed Markets Plan, the Exchange believes potential trade reviews of executions that occurred at the participant's limit price and also in compliance with the aforementioned Plan could harm liquidity and also create an advantage to either side of an execution depending

on the future movement of the underlying stock.

With respect to Rule 521(b)(2), affording discretion to the Exchange Official to determine the theoretical price and thereby, ultimately, whether a trade is busted or adjusted and to what price, the Exchange notes that it would be difficult to exercise such discretion in periods of extraordinary market volatility and, in particular, when the price of the underlying security is unreliable. The Exchange again notes that the theoretical price in this context would be subjective.<sup>9</sup> Ultimately, the Exchange believes that adding certainty to the execution of orders in these situations should encourage market participants to continue to provide liquidity to the Exchange, thus promoting fair and orderly markets. On balance, the Exchange believes that removing the potential inequity of nullifying or adjusting executions occurring during Limit States or Straddle States outweighs any potential benefits from applying these provisions during such unusual market conditions.

In response to these concerns, the Exchange proposes to adopt Commentary .06 to Rule 521, which provides that transactions in MIAX options that overly an NMS stock are not subject to obvious error or catastrophic error review under Rule 521 during a Limit State or Straddle State. In addition, the Exchange proposes to adopt new Rule 530(j) to allow the Exchange to review all erroneous transactions occurring during Limit States and Straddle States that resulted only from a verifiable disruption or malfunction of an Exchange execution, dissemination or communication system. Accordingly, the Exchange is proposing to incorporate the relevant portions of Rule 521 into proposed Rule 530(j) to establish the process for such review. Proposed Rule 530(j) also will include analogous language to that used in current Rule 521 regarding mutual agreement by the parties to an erroneous transaction during a trading halt (*i.e.*, trades on the Exchange will be nullified when (i) the trade occurred during a trading halt in the affected option on the Exchange, or (ii) respecting equity options, the trade occurred during a trading halt on the primary market for the underlying security) and the relevant elements of Rule 521 regarding the review procedure, requests for

review and appeals from decisions to bust a trade.

### III. Discussion

The Commission finds that the Exchange's proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>10</sup> Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>11</sup> in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

In the filing, the Exchange notes its belief that suspending certain aspects of Rule 521 during a Limit State or Straddle State will ensure that limit orders that are filled during a Limit or Straddle State will have certainty of execution in a manner that promotes just and equitable principles of trade and removes impediments to, and perfects the mechanism of, a free and open market and a national market system. The Exchange believes the application of the current rule would be impracticable given what it perceives will be the lack of a reliable NBBO in the options market during Limit States and Straddle States, and that the resulting actions (*i.e.*, nullified trades or adjusted prices) may not be appropriate given market conditions. In addition, given the Exchange's view that options prices during Limit States or Straddle States may deviate substantially from those available shortly following the Limit State or Straddle State, the Exchange believes that providing market participants time to re-evaluate a transaction executed during a Limit or Straddle State will create an unreasonable adverse selection opportunity that will discourage participants from providing liquidity during Limit States or Straddle States. Ultimately, the Exchange believes that adding certainty to the execution of orders in these situations should encourage market participants to continue to provide liquidity to the Exchange during Limit States and

<sup>8</sup> Specifically, under Rule 521, the theoretical price is determined in one of three ways: (i) If the series is traded on at least one other options exchange the last National Best Bid price with respect to an erroneous sell transaction and the last National Best Offer price with respect to an erroneous buy transaction, just prior to the trade; (ii) as determined by an Exchange Official, if there are no quotes for comparison purposes, or if the bid/ask differential of the NBBO for the affected series, just prior to the erroneous transaction, was at least two times the standard bid/ask differential as permitted for pre-opening quotes under Rule 603(b)(4); or (iii) for transactions occurring as part of the Exchange's automated opening system, the Theoretical Price shall be the first quote after the transaction(s) in question that does not reflect the erroneous transaction(s).

<sup>9</sup> The Exchange also notes that the determination of theoretical price under Rule 521(b)(3) applies to trades executed during openings. Because the Exchange does not intend to open an option during a Limit State or Straddle State, this provision will not apply.

<sup>10</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

Straddle States, thus promoting fair and orderly markets.

The Exchange, however, has proposed this rule change based on its expectations about the quality of the options market during Limit States and Straddle States. The Exchange states, for example, that it believes that application of the obvious and catastrophic error rules would be impracticable given the potential for lack of a reliable NBBO in the options market during Limit States and Straddle States. Given the Exchange's recognition of the potential for unreliable NBBOs in the options markets during Limit States and Straddle States, the Commission is concerned about the extent to which investors may rely to their detriment on the quality of quotations and price discovery in the options markets during these periods. This concern is heightened by the Exchange's proposal to exclude electronic trades that occur during a Limit State or Straddle State from the obvious error or catastrophic error review procedures pursuant to Rule 521. The Commission urges investors and market professionals to exercise caution when considering trading options under these circumstances. Broker-dealers also should be mindful of their obligations to customers that may or may not be aware of specific options market conditions or the underlying stock market conditions when placing their orders.

While the Commission remains concerned about the quality of the options market during the Limit and Straddle States, and the potential impact on investors of executing in this market without the protections of the obvious or catastrophic error rules that are being suspended during the Limit and Straddle States, it believes that certain aspects of the proposal could help mitigate those concerns.

First, despite the removal of obvious and catastrophic error protection during Limit States and Straddle States, the Exchange states that there are additional measures in place designed to protect investors. For example, the Exchange states that by rejecting market orders, and cancelling pending market orders, only those orders with a limit price will be executed during a Limit State or Straddle State. Additionally, the Exchange notes the existence of SEC Rule 15c3-5 requiring broker-dealers to have controls and procedures in place that are reasonably designed to prevent the entry of erroneous orders. The Exchange will also continue to review erroneous transactions occurring during Limit or Straddle States that resulted from a verifiable disruption or malfunction of an Exchange execution,

dissemination or communication system under proposed Rule 530(j). Finally, the Exchange states that the MIAx System is designed with built-in protection mechanisms to prevent trade through the NBBO price at the time of receipt of an order by more than one Minimum Price Variation. Therefore, on balance, the Exchange believes that removing the potential inequity of nullifying or adjusting executions occurring during Limit States or Straddle States outweighs any potential benefits from applying certain provisions during such unusual market conditions.

Finally, the Exchange has proposed that the changes be implemented on a one year pilot basis. The Commission believes that it is important to implement the proposal as a pilot. The one year pilot period will allow the Exchange time to assess the impact of the Plan on the options marketplace and allow the Commission to further evaluate the effect of the proposal prior to any proposal or determination to make the changes permanent. To this end, the Exchange has committed to: (1) Evaluate the options market quality during Limit States and Straddle States; (2) assess the character of incoming order flow and transactions during Limit States and Straddle States; and (3) review any complaints from members and their customers concerning executions during Limit States and Straddle States. Additionally, the Exchange has agreed to provide the Commission with data requested to evaluate the impact of the elimination of the obvious error rule, including data relevant to assessing the various analyses noted above. On April 5, 2013, the Exchange submitted a letter stating that it would provide specific data to the Commission and the public and certain analysis to the Commission to evaluate the impact of Limit States and Straddle States on liquidity and market quality in the options markets.<sup>12</sup> This

<sup>12</sup> In particular, the Exchange represented that, at least two months prior to the end of the one year pilot period of proposed Rule 6.65A(c), it would provide to the Commission an evaluation of (i) the statistical and economic impact of Straddle States on liquidity and market quality in the options market and (ii) whether the lack of obvious error rules in effect during the Limit States and Straddle States are problematic. In addition, the Exchange represented that each month following the adoption of the proposed rule change it would provide to the Commission and the public a dataset containing certain data elements for each Limit State and Straddle State in optionable stocks. The Exchange stated that the options included in the dataset will be those that meet the following conditions: (i) The options are more than 20% in the money (strike price remains greater than 80% of the last stock trade price for calls and strike price remains greater than 120% of the last stock trade price for puts when the Limit State or Straddle State is reached); (ii) the option has at least two trades during the

will allow the Commission, the Exchange, and other interested parties to evaluate the quality of the options markets during Limit States and Straddle States and to assess whether the additional protections noted by the Exchange are sufficient safeguards against the submission of erroneous trades, and whether the Exchange's proposal appropriately balances the protection afforded to an erroneous order sender against the potential hazards associated with providing market participants additional time to review trades submitted during a Limit State or Straddle State.

Finally, the Commission notes that the Plan, to which these rules relate, will be implemented on April 8, 2013. Accordingly, for the reasons stated above, and in consideration of the April 8, 2013 implementation date of the Plan, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> for approving the Exchange's proposal prior to the 30th day after the publication of the notice in the **Federal Register**.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>14</sup> that the proposed rule change (SR-MIAx-2013-12), be, and hereby is, approved on an accelerated basis.

Limit State or Straddle State; and (iii) the top ten options (as ranked by overall contract volume on that day) meeting the conditions listed above. For each of those options affected, each dataset will include, among other information: stock symbol, option symbol, time at the start of the Limit State or Straddle State and an indicator for whether it is a Limit State or Straddle State. For activity on the Exchange in the relevant options, the Exchange has agreed to provide executed volume, time-weighted quoted bid-ask spread, time-weighted average quoted depth at the bid, time-weighted average quoted depth at the offer, high execution price, low execution price, number of trades for which a request for review for error was received during Limit States and Straddle States, an indicator variable for whether those options outlined above have a price change exceeding 30% during the underlying stock's Limit State or Straddle State compared to the last available option price as reported by OPRA before the start of the Limit or Straddle state (1 if observe 30% and 0 otherwise), and another indicator variable for whether the option price within five minutes of the underlying stock leaving the Limit State or Straddle State (or halt if applicable) is 30% away from the price before the start of the Limit State or Straddle State. See MIAx Letter, *supra* note 4.

<sup>13</sup> 15 U.S.C. 78s(b)(2). The Commission noticed substantially similar rules proposed by NYSE MKT LLC and NYSE Arca, Inc. with a full 21 day comment period. See Securities Exchange Act Release No. 69033, 78 FR 15067 (March 8, 2013) and Securities Exchange Act Release No. 69032, 78 FR 15080 (March 8, 2013).

<sup>14</sup> 15 U.S.C. 78s(b)(2).

<sup>15</sup> 17 CFR 200.30-3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## DEPARTMENT OF STATE

[Public Notice 8272]

### State Department Advisory Committee on Private International Law; Closed Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App § 10(a), the Department of State announces a meeting of the full Advisory Committee on Private International Law (ACPIL) to take place on May 13, 2013, at the Department of State, Washington, DC.

Pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App § 10(d), and 5 U.S.C. 552b(c)(9)(B), it has been determined that this ACPIL meeting will be closed to the public because the ACPIL will be discussing matters the public disclosure of which would be likely to significantly frustrate Department negotiations in an upcoming international forum.

For more information, contact Tricia Smeltzer at 202-776-8423 or [smeltzertk@state.gov](mailto:smeltzertk@state.gov), or Niesha Toms at 202-776-8420, [tomsnn@state.gov](mailto:tomsnn@state.gov).

Dated: April 5, 2013.

**Michael Coffee,**

*Attorney-Adviser, Private International Law.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Agency Information Collection Activities: Requests for Comments; Clearance of New Approval of Information Collection: Critical Parts for Airplane Propellers

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval for a new information collection. The **Federal Register** Notice with a 60-day comment period soliciting

comments on the following collection of information was published on January 28, 2013, vol. 78, no. 18, pages 5859-5860. The Federal Aviation Administration (FAA) is amending the airworthiness standards for airplane propellers. This action will define what a propeller critical part is, require the identification of propeller critical parts by the manufacturer, and establish engineering, manufacture, and maintenance processes for those parts. These processes will be required to be recorded and maintained within company manuals. The intended effect of this rule is to ensure the continued airworthiness of propeller critical parts by requiring a system of processes to identify and manage these parts throughout their service life. Adopting this rule will eliminate regulatory differences between part 35 and European Aviation Safety Agency (EASA) propeller critical parts requirements, thereby simplifying airworthiness approvals for exports.

**DATES:** Written comments should be submitted by June 11, 2013.

#### FOR FURTHER INFORMATION CONTACT:

Kathy DePaepe at (405) 954-9362, or by email at: [Kathy.A.DePaepe@faa.gov](mailto:Kathy.A.DePaepe@faa.gov).

#### SUPPLEMENTARY INFORMATION:

*OMB Control Number:* 2120-XXXX.

*Title:* Critical Parts for Airplane

Propellers.

*Form Numbers:* There are no forms associated with this information collection activity.

*Type of Review:* Clearance of a new information collection.

*Background:* On December 1, 2011, FAA published a notice of proposed rulemaking titled "Critical Parts for Airplane Propellers" (76 FR 74749). This activity contains new Paperwork Reduction Act recordkeeping requirements that were not addressed in that notice of proposed rulemaking, and which are addressed here. The rule will require that U.S. companies who manufacture critical parts for airplane propellers update their manuals to record engineering, manufacture, and maintenance processes for propeller critical parts. The required manual updates will be used by the propeller manufacturer to show compliance with the propeller critical parts requirements. There are currently three U.S. companies who will be required to revise their manuals to include these processes.

*Respondents:* Three manufacturers.

*Frequency:* This is a one time requirement.

*Estimated Average Burden per*

*Response:* 40 hours.

*Estimated Total Annual Burden:* 120 hours.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov), or faxed to (202) 395-6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on April 8, 2013.

**Albert R. Spence,**

*FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES-200.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Agency Information Collection Activities: Requests for Comments; Clearance of New Approval of Information Collection: Safety Awareness, Feedback, and Evaluation (SAFE) Program

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval for a new information collection. The information collected will be used by FAA Flight Standards Service to improve the quality and delivery of the services and products provided to their stakeholders.