

B. Self-Regulatory Organization's Statement on Burden on Competitions.

CME does not believe that the proposed rule change will have any impact, or impose any burden, on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

CME has not solicited, and does not intend to solicit, comments regarding this proposed rule change. CME has not received any unsolicited written comments from interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has been filed pursuant to Section 19(b)(3)(A)⁶ of the Act and paragraph (f)(4)(i) of Rule 19b-4⁷ thereunder and will become effective on filing. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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 may be submitted by using the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>), or send an email to rule-comment@sec.gov. Please include File No. SR-CME-2013-02 on the subject line.

- Paper comments should be sent 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-CME-2013-02. This file number should be included on the subject line if email 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 Web site (<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 inspection and copying in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of CME. 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-CME-2013-02 and should be submitted on or before April 15, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

Kevin M. O'Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69176; File No. SR-MIAX-2013-08]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Revise and Clarify Market Maker Continuous Quoting Obligations

March 19, 2013.

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 March 8, 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, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Rules 406, 503, 603 and 604 to revise and clarify Market Maker continuous quoting obligations.

The text of the proposed rule change is provided in *Exhibit 5*. The text of the proposed rule change is also available on the Exchange's Web site 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 in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The purpose of the proposed rule change is to revise and clarify the continuous quoting obligations of Market Makers. Specifically, (i) decrease the percentage of time a Primary Lead Market Maker ("PLMM") is required to continuously quote from 99% to 90%; (ii) clarify which series the continuous quoting obligations apply to for all Market Makers; (iii) set forth how the continuous quoting obligations are applied; and (iv) set forth how compliance with the continuous quoting obligations will be determined. Each of these changes, which are described in detail below, will make MIAX's Market Maker obligations more consistent with market maker obligations at other options exchanges. MIAX is also proposing to clarify certain other rules related to the Market Maker obligations as described below.

Continuous Quoting

The only substantive change in the continuous quoting obligations for Market Makers being proposed herein is the reduction in the percentage of time for which a PLMM is required to provide continuous quotes in an

⁶ *Supra* note 3.

⁷ *Supra* note 4.

appointed option class on a given trading day, the rest of the proposed changes relate to clarifying which series in an option class the requirements apply, the manner in which the obligations will apply and how compliance will be determined. Rule 604(e)(1)(i) currently requires PLMMs to provide continuous two-sided Standard quotes and/or Day eQuotes in their appointed option classes, which for purposes of the paragraph means 99% of the time. The Exchange now proposes to reduce the percentage of time a PLMM is required to provide continuous quotes in its appointed option classes to 90% of the time. This proposed rule change is comparable to the rules of the other options exchanges.³ The reduction to 90% of the time also makes the obligation for PLMMs consistent with the obligations for MIAX's other categories of Market Maker, Lead Market Maker ("LMM") and Registered Market Maker ("RMM"). The Exchange does not believe that the proposed rule change will adversely affect the quality of the Exchange's markets or lead to a material decrease in liquidity. Rather the Exchange believes that making MIAX's PLMM obligations consistent with obligations at other options exchanges may increase the number of Market Makers willing to be appointed PLMM to make markets and provide liquidity at the Exchange.

The Exchange also proposes to amend Rule 604(e)(1)(ii) and adopt new subparagraph (iii) to clarify which series within an options class the continuous quoting standard will apply for PLMMs. The percentage of series requirement for PLMMs remains the same (the lesser of 99% or 100% minus one put-call pair in each class), but subparagraph (e)(1)(ii) is amended to include a definition of "put-call pair" and to provide that the continuous quoting standard will now only apply to "non-adjusted option series". The term "non-adjusted option series" is not defined in the rule, however, new subparagraph (e)(1)(iii) defines "adjusted option series" as an option series wherein one option contract represents the delivery of something other than 100 shares of the underlying security.⁴ Thus, a "non-adjusted option series" is a standard option contract representing the

delivery of 100 shares of the underlying security. New subparagraph (e)(1)(iii) also clarifies that the continuous quoting standard does not apply to adjusted series; which limitation and definition is in place at other options exchanges.⁵

Rule 604(e)(1)(ii) is also being amended to provide that PLMM's continuous quoting requirement will be applied to all options classes collectively, rather than on a class-by-class basis and compliance will be determined on a monthly basis. The Exchange believes that applying the quoting requirements for PLMMs collectively across all options classes and reviewing such compliance over a monthly basis is a fair and more efficient way for the Exchange and market participants to evaluate compliance with the continuous quoting requirements.⁶ Applying the continuous quoting requirement collectively across all option classes rather than on a class-by-class basis, is beneficial to Market Makers by providing some flexibility to choose which series in their appointed classes they will continuously quote—increasing the continuous quoting obligation in the series of one class to allow for a decrease in the continuous quoting obligation in the series of another class. This flexibility, however, does not diminish the Market Maker's obligation to continuously quote a significant part of the trading day in a significant percentage of series. This flexibility is especially important for classes that have relatively few series and may prevent the PLMM, in particular, from breaching the continuous quoting requirement when failing to quote 90% of the trading day (as proposed) in more than one series in an appointed class. In addition, determining compliance with the continuous quoting requirement on a monthly basis does not relieve the PLMM of the obligation to provide continuous two-sided quotes on a daily basis, nor will it prohibit the Exchange from taking disciplinary action against a PLMM for failing to meet the continuous quoting obligation each trading day. Compliance on a monthly

basis allows the Exchange to review the PLMM's daily compliance in the aggregate and determine the appropriate disciplinary action for single or multiple failures to comply with the continuous quoting requirement during the month period. The Exchange believes that the proposal will not diminish, and in fact may increase, market making activity on the Exchange, by establishing quoting compliance standards that are reasonable and are already in place on other options exchanges.⁷

Rules 604(e)(2) and (e)(3), which govern the continuous quoting requirements for LMMs and RMMs are being amended in much the same way as Rule 604(e)(1) is being amended for PLMMs, except that since LMMs and RMMs already are at a "90% of the time" standard for continuous quoting, no changes to that requirement will be made for LMMs and RMMs. New paragraph (e)(2)(iii) to Rule 604 governing which series the continuous quoting obligations do not apply for LMMs includes series with a time to expiration of nine months or greater. This provision, which is already in place for RMMs,⁸ eliminates the continuous quoting requirement for LMMs when quoting the long-term option contracts described in MIAX Rule 406.⁹ It should be noted that not applying the continuous quoting requirement to long-term option series does not prevent LMMs from quoting those series, nor does it prevent LMMs from receiving directed orders in accordance with the provisions set forth in Rule 514(h) and (i), which require, among other things, for [sic] the Directed LMM to be at the NBBO in order to receive the Directed LMM participation entitlement. The Exchange believes that continuing to provide the Directed LMM participation entitlement is appropriate because it provides an incentive for LMMs to quote in as many series as possible, even long term option series, which they will no longer be required to continuously quote. Further, the Exchange does not believe eliminating the LMM requirement to continuously quote in long term option series will adversely affect the quality of the Exchange's markets or lead to a material decrease in liquidity since PLMMs will continue to be required to continuously quote in long term option series. Also, eliminating the LMM requirement to continuously quote in

⁵ CBOE Rules 8.13, 8.15A, 8.85 and 8.93; NASDAQ Options Market ("NOM") Chapter VII, Section 6(d).2; NYSE Arca 6.37B, Commentary .01 and NYSE Amex Rule 925.1NY.

⁶ On the basis of the daily reports, the Exchange will continue to inform PLMMs if they are failing to achieve their quoting requirements. Moreover, on the basis of daily monitoring activity, the Exchange can determine whether PLMMs violated any other Exchange rules such as, for example, Rule 301 regarding just and equitable principles of trade. Such daily monitoring will allow the Exchange to investigate unusual activity and to take appropriate regulatory action.

⁷ PHLX Rule 1014(b)(ii)(D)(1) and (2); NYSE Amex Rule 925.1NY; and NYSE Arca Rule 6.37B.

⁸ See Rule 604(e)(3)(i).

⁹ See CBOE Rule 8.7(d)(iii); NYSE Amex Rule 925.1NY, Commentary .01; PHLX Rule 1014(b)(ii)(D)(4); NOM Chapter VII, Section 6(d).2; and NYSE Arca 6.37B, Commentary .01

³ See NYSE Amex LLC ("NYSE Amex") Rules 925.1NY and 964.1NY; NYSE Arca, Inc. ("NYSE Arca") Rules 6.37B and 6.88; NASDAQ OMX PHLX LLC ("PHLX") Rule 1014(b)(ii)(D)(1); and Chicago Board Options Exchange, Incorporated ("CBOE") Rule 1.1(ccc).

⁴ The rules and requirements governing the adjustment of options contracts are set forth in Article VI, Section 11A of The Options Clearing Corporation By-Laws.

long term option series will benefit the Exchange's efforts at quote mitigation.

Finally, paragraph (e)(2)(ii) for LMMs and paragraph (e)(3)(i) for RMMs have been revised so that their continuous quoting requirements will be applied to all options classes collectively, rather than on a class-by-class basis and compliance will be determined on a monthly basis. The Exchange believes that applying the quoting requirements for LMMs and RMMs collectively across all options classes traded by an LMM or RMM and reviewing such compliance over a monthly basis is a fair and more efficient way for the Exchange and market participants to evaluate compliance with the continuous quoting requirements.¹⁰ Applying the continuous quoting requirement collectively across all option classes rather than on a class-by-class basis, is beneficial to Market Makers by providing some flexibility to choose which series in their appointed classes they will continuously quote. This flexibility, however, does not diminish the Market Maker's obligation to continuously quote a significant part of the trading day in a significant percentage of series. This flexibility is especially important for classes that have relatively few series and may prevent the LMM, in particular, from breaching the continuous quoting requirement when failing to quote 90% of the trading day in more than one series in an appointed class. In addition, determining compliance with the continuous quoting requirement on a monthly basis does not relieve the LMMs and RMMs of the obligation to provide continuous two-sided quotes on a daily basis, or will it prohibit the Exchange from taking disciplinary action against an LMM or RMM for failing to meet the continuous quoting obligation each trading day. Compliance on a monthly basis allows the Exchange to review the LMM's or RMM's daily compliance in the aggregate and determine the appropriate disciplinary action for single or multiple failures to comply with the continuous quoting requirement during the month period. The Exchange believes that the proposal will not diminish, and in fact may increase, market making activity on the Exchange, by establishing quoting

¹⁰ On the basis of the daily reports, the Exchange will continue to inform LMMs and RMMs if they are failing to achieve their quoting requirements. Moreover, on the basis of daily monitoring activity, the Exchange can determine whether LMMs or RMMs violated any other Exchange rules such as, for example, Rule 301 regarding just and equitable principles of trade. Such daily monitoring will allow the Exchange to investigate unusual activity and to take appropriate regulatory action.

compliance standards that are reasonable and are already in place on other options exchanges.¹¹

Bid/Ask Differentials

In conjunction with the changes to the continuous quoting obligations, the Exchange seeks to clarify the provision in Rule 603(b)(4) governing bid/ask differentials. As part of a Market Maker's general obligations to maintain a fair and orderly market, Market Makers are required to price option contracts fairly by bidding and offering so as to create differences of no more than a certain amount depending on whether the quoting is occurring before the opening or after the opening. Rule 603(b)(4) is being separated into three subparagraphs; the first subparagraph will contain the bid/ask differential requirement for quoting after the opening, the second subparagraph will contain the bid/ask differential requirement for quoting prior to the opening and the third subparagraph, which applies to both previous subparagraphs, indicates that the Exchange may establish bid/ask differentials other than the ones specified in subparagraphs (i) and (ii). MIAX seeks this flexibility, which is used at other options exchanges, to establish bid/ask differentials for long-term options, options on select high-priced stocks and exchange-traded funds, and in other special circumstances such as periods of high volatility.¹²

Long-Term Option Contracts—Rule 406

Rule 406 describes Long-Term Option Contracts as option contracts that expire twelve to thirty nine months from the time they are listed. Rule 406 further provides “[s]trike price interval, bid/ask differential and continuity rules shall not apply to such options series until the time to expiration is less than nine (9) months.” The Exchange is proposing to eliminate the reference to “continuity rules” since the Exchange chose not to adopt such rules¹³ and add a reference to continuous quoting rules since continuous quoting obligations do not apply to long-term option contracts being quoted by LMMs and RMMs. Rule 406(a) is also being revised to include

¹¹ PHLX Rule 1014(b)(ii)(D)(1) and (2); NYSE Amex Rule 925.1NY; and NYSE Arca Rule 6.37B.

¹² CBOE Rule 8.7(b)(iv) provides that the CBOE can establish bid/ask differential requirements on a class-by-class basis.

¹³ Continuity rules have been eliminated at other options exchanges; see Securities Exchange Act Release No. 60897 (October 28, 2009) 74 FR 57217 (November 4, 2009) (SR-ISE-2009-85) citing Securities Exchange Act Release No. 60295 (July 13, 2009) 74 FR 35215 (July 20, 2009) (SR-CBOE-2009-49).

references to rule numbers where appropriate.

2. Statutory Basis

MIAX believes that its proposed rule change is consistent with Section 6(b) of the Act¹⁴ in general, and furthers the objectives of Section 6(b)(5) of the Act¹⁵ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest, and it is not designed to permit unfair discrimination among customers, brokers, or dealers.

In particular, the Exchange believes this proposed rule change promotes just and equitable principles of trade because it reduces a burden and unnecessary restrictiveness on PLMMs. The Exchange still imposes many obligations on all Market Makers, including PLMMs, to maintain a fair and orderly market in their appointed classes, which the Exchange believes eliminates the risk of a material decrease in liquidity. While the time during which PLMMs must provide continuous quotes will be slightly reduced, PLMMs will still be obligated to provide continuous quotes for a significant part of the trading day in a significant percentage of series in each appointed class.

Accordingly, the proposal supports the quality of MIAX's markets by helping to ensure that PLMMs will continue to be obligated to quote in series when necessary. The benefit provided to the PLMM from the proposed reduction in required quoting time is offset by the required percentage of series in which the PLMM must provide continuous quotes. Ultimately, the benefit the proposed rule change confers upon PLMMs is offset by the continued responsibilities to provide significant liquidity to the market to the benefit of market participants.

In addition, the Exchange believes this proposed rule change promotes just and equitable principles of trade because it reduces a burden and unnecessary restrictiveness on LMMs. Eliminating the LMM requirement to continuously quote in long term option series will contribute to the Exchange's efforts at quote mitigation without impacting the liquidity and quality of

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(5).

the Exchange's markets in those long term option series. Allowing LMMs to continue to receive directed orders in long term option series and the Directed LMM participation entitlement, when they no longer have the requirement to continuously quote such long term series is appropriate because it encourages LMMs to quote the long term series, which benefits all investors by supporting the quality and liquidity of the market in such series. This benefit is offset by the LMM's continued quoting obligations in other series and the fact that directed LMMs must still satisfy all of their other obligations in order to receive the Directed LMM participation entitlement.

The proposed rule change also protects investors and the public interest by creating more uniformity and consistency among the Exchange's rules related to Market-Maker quoting obligations. The proposed rule change allows the Exchange to require PLMMs to provide continuous quotes in a percentage of series in their appointed classes for a portion of the trading day that is the same as that of market-makers at other exchanges, which the Exchange believes will ultimately make the Exchange more competitive and help remove impediments to and promote a free and open market. For the foregoing reasons, the Exchange believes that the balance between the benefits provided to Market-Makers and the obligations imposed upon Market-Makers by the proposed rule change is appropriate.

Further, providing Market Makers with flexibility by providing the continuous quoting obligation collectively across all option classes will not diminish the Market Maker's obligation to continuously quote a significant part of the trading day in a significant percentage of series. Additionally, with respect to compliance standards, the Exchange believes that adopting the proposed standards will enhance compliance efforts by Market Makers and the Exchange, and are consistent with the requirement currently in place on other exchanges. The proposal ensures that compliance standards for continuous quoting will be the same on the Exchange as on other options exchanges. The Exchange believes that the proposal will not diminish and in fact may increase, market making activity on the Exchange, by establishing a quoting compliance standard that is reasonable and is already in place on other options exchanges.

Finally, in determining to revise requirements for its Market Makers, MIAX is mindful of the balance between

the obligations and the benefits bestowed on its Market Makers. The proposal will change obligations currently in place for Market Makers; however, the Exchange does not believe that these changes reduce the overall obligations applicable to Market Makers. In this respect, the Exchange notes that its Market Makers are subject to many obligations, including the obligation to maintain a fair and orderly market in their appointed classes, which the Exchange believes eliminates the risk of a material decrease in liquidity. MIAX continues to believe the balance of obligations and benefits is appropriate given the following: (i) Although the percentage of the trading day PLMMs will be required to quote will decrease from 99% to 90%, PLMMs will continue to have heightened quoting requirements based on the significant percentage of series PLMMs are required to quote, the proposed change is also consistent with requirements in place at other option exchanges and with requirements for other MIAX Market Makers; (ii) the proposed clarification in the rule text of which series the continuous quoting obligations apply to does not diminish the continuous quoting obligation and is consistent with requirements in place at other option exchanges; and (iii) the flexibility being provided by the proposal to apply the continuous quoting obligation collectively across all option classes also does not diminish the Market Maker's obligations and is consistent with requirements in place at other options exchanges. MIAX believes that its proposal is consistent with the Act in that providing clarification and flexibility does not detract from the overall market making obligations of Market Makers. The requirement that a market maker hold itself out as willing to buy and sell options for its own account on a regular or continuous basis is better supported by these proposed revisions and clarifications. Accordingly, the benefits the proposed rule change confers upon Market Makers are offset by the continued responsibilities to provide significant liquidity to the market to the benefit of all market participants.

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. MIAX's proposal to revise and clarify the Market Makers' continuous quoting obligations is consistent with what is already occurring on other markets. By

providing Market Maker obligations that are more consistent with market maker obligations in place at other option exchanges, competition for the liquidity providing services of market makers is enhanced. MIAX is better able to compete for the services of market makers when its requirements for market makers are consistent with the other options exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited or [sic] received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act¹⁶ and Rule 19b-4(f)(6)¹⁷ thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

Number SR-MIAX-2013-08 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-2013-08. This file number should be included on the subject line if email 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 Web site (<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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such 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-2013-08 and should be submitted on or before April 15, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Kevin M. O'Neill,
Deputy Secretary.

[FR Doc. 2013-06717 Filed 3-22-13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69180; File No. SR-NASDAQ-2013-046]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Elimination of SPY Position Limits

March 19, 2013.

Pursuant to 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 March 11, 2013, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by NASDAQ. 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

NASDAQ proposes to eliminate position limits for options on the SPDR® S&P 500® exchange-traded fund ("SPY ETF"),³ which list and trade under the symbol SPY.

The text of the proposed rule change is available on the Exchange's Web site at <http://www.nasdaq.cchwallstreet.com>, at the principal office of the Exchange, 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 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ "SPDR®," "Standard & Poor's®," "S&P®," "S&P 500®," and "Standard & Poor's 500" are registered trademarks of Standard & Poor's Financial Services LLC. The SPY ETF represents ownership in the SPDR S&P 500 Trust, a unit investment trust that generally corresponds to the price and yield performance of the SPDR S&P 500 Index.

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

1. Purpose

The purpose of the proposed rule change is to add new rule text in a new section entitled "Supplementary Material" at the end of Chapter III, Section 7 (Position Limits) to specifically state that there shall be no position limits for SPY options subject to a Pilot Program.

Background

Position limits serve as a regulatory tool designed to address potential manipulative schemes and adverse market impact surrounding the use of options. The Exchange understands that the Commission, when considering the appropriate level at which to set option position and exercise limits, has considered the concern that the limits be sufficient to prevent investors from disrupting the market in the security underlying the option.⁴ This consideration has been balanced by the concern that the limits "not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market-makers from adequately meeting their obligations to maintain a fair and orderly market."⁵

SPY options are currently the most actively traded option class in terms of average daily volume ("ADV").⁶ The Exchange believes that, despite the popularity of SPY options as evidenced by their significant volume, the current position limits on SPY options could be a deterrent to the optimal use of this product as a hedging tool. The Exchange further believes that position limits on SPY options may inhibit the ability of certain large market participants, such as mutual funds and other institutional investors with substantial hedging needs, to utilize SPY options and gain meaningful exposure to the hedging function they provide.

The Exchange believes that current experience with the trading of SPY

⁴ See Securities Exchange Act Release No. 40969 (January 22, 1999), 64 FR 4911, 4912-4913 (February 1, 1999) (SR-CBOE-98-23) (citing H.R. No. IFC-3, 96th Cong., 1st Sess. at 189-91 (Comm. Print 1978)).

⁵ *Id.* at 4913.

⁶ SPY ADV was 2,156,482 contracts in April 2012. ADV for the same period for the next four most actively traded options was: Apple Inc. (option symbol AAPL)—1,074,351; S&P 500 Index (option symbol SPX)—656,250; PowerShares QQQ TrustSM, Series 1 (option symbol QQQ)—573,790; and iShares® Russell 2000® Index Fund (option symbol IWM)—550,316.

¹⁸ 17 CFR 200.30-3(a)(12).