

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- 76303; File No. SR-MIAX-2015-61)

October 29, 2015

Self-Regulatory Organizations: Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Adopt Rule 321 Business Continuity and Disaster Recovery Plans Testing Requirements for Designated Members

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 October 21, 2015, 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 adopt Rule 321, Business Continuity and Disaster Recovery Plans Testing Requirements for Designated Members.

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 is proposing to adopt new Rule 321 to require those MIAX Members designated by the Exchange to participate in certain scheduled testing of the Exchange's business continuity and disaster recovery plans ("BC/DR plans"), as required by Section 1004 of Regulation Systems Compliance and Integrity ("Regulation SCI").³

As adopted by the Securities and Exchange Commission ("Commission"), Regulation SCI applies to certain self-regulatory organizations (including the Exchange), alternative trading systems ("ATs"), plan processors, and exempt clearing agencies (collectively, "SCI entities"), and will require these SCI entities to comply with requirements with respect to the automated systems central to the performance of their regulated activities. Among the requirements of Regulation SCI is Rule 1001(a)(2)(v), which requires the Exchange and other SCI entities to maintain "[b]usiness continuity and disaster recovery plans that include maintaining backup and recovery capabilities sufficiently resilient and geographically diverse and that are reasonably designed to achieve next business day resumption of trading and two-hour resumption of critical SCI systems following a wide-scale disruption." The Exchange takes pride in the reliability and availability of its systems. Historically, MIAX systems have been up and available more than 99.999% of the time; yet as a precaution, MIAX has and intends to continue to put extensive time and resources toward planning for system failures and

³ See Securities Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72252 (December 5, 2014) (the "Reg SCI Adopting Release").

to implement and maintain robust BC/DR plans consistent with the Rule. As set forth below, in connection with Regulation SCI, the Exchange is proposing to require certain Members to participate in testing of the operation of the Exchange's BC/DR plans.

With respect to an SCI entity's BC/DR plans, paragraph (a) of Rule 1004 of Regulation SCI requires each SCI entity to: "[e]stablish standards for the designation of those members or participants that the SCI entity reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of such plans." Paragraph (b) of Rule 1004 further requires each SCI entity to "[d]esignate members or participants pursuant to the standards established in paragraph (a) of [Rule 1004] and require participation by such designated members or participants in scheduled functional and performance testing of the operation of such plans, in the manner and frequency specified by the SCI entity, provided that such frequency shall not be less than once every 12 months." In order to comply with Regulation SCI, the Exchange proposes to adopt Rule 321 governing mandatory participation in testing of Exchange disaster recovery plans and systems, as described below.

First, in paragraph (a) of Rule 321, the Exchange proposes to include language from paragraph (a) of Rule 1004 of Regulation SCI to summarize the Exchange's obligation pursuant to the rule. Specifically, the Exchange proposes to state that "[p]ursuant to Regulation Systems Compliance and Integrity ("Regulation SCI"), 17 CFR 242.1000 et seq. and with respect to the Exchange's business continuity and disaster recovery plans, including its disaster recovery systems, the Exchange is required to establish standards for the designation of Members that the Exchange reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of such plans." The Exchange further proposes that paragraph (a) indicate that "[t]he Exchange has established

standards and will designate Members according to those standards” as set forth in the proposed Rule. In addition, the Exchange proposes to make clear that all Members are permitted to connect to the Exchange’s disaster recovery systems as well as to participate in testing of such systems. Proposed paragraph (a) is consistent with the Commission’s adoption of Regulation SCI, which encouraged “SCI entities to permit non-designated members or participants to participate in the testing of the SCI entity’s BC/DR plans if they request to do so.”⁴

Second, in paragraph (b) of Rule 321, the Exchange proposes to specify the criteria that will result in a Member receiving a designation requiring it to connect to the Exchange’s disaster recovery systems and to participate in functional and performance testing as announced by the Exchange, which shall occur at least once every 12 months. Specifically, proposed paragraph (b) would require all Members that account for a meaningful percentage of the Exchange’s volume to connect to the Exchange’s disaster recovery systems and to participate in functional and performance testing.

The Exchange notes that it encourages all Members to connect to the Exchange’s disaster recovery systems and to participate in testing of such systems. In fact, the Exchange provides logical ports to all Members that connect to Exchange disaster recovery systems without additional charge in order to help reduce the economic burden of maintaining connectivity to Exchange disaster recovery systems. However, in adopting the requirements of Rule 321(b), including both the requirement to maintain connectivity to Exchange disaster recovery systems and to participate in mandatory testing of such systems, the Exchange intends to subject to the Rule only those Members that the Exchange believes are necessary to maintain fair and orderly markets at the Exchange. The Exchange believes that designating Members to participate in mandatory testing because they account for a meaningful percentage of the Exchange’s overall

⁴ See id at p. 72350.

volume is a reasonable means to ensure the maintenance of a fair and orderly market on the Exchange.

In addition to paragraphs (a) and (b) described above, the Exchange also proposes to adopt Interpretation and Policy .01, which would provide additional detail regarding the notice that will be provided to Members that have been designated pursuant to paragraph (b) of the Rule as well as the Exchange's notice of the applicable measuring calendar quarter and method for measuring the volume threshold. As proposed, Interpretation and Policy .01 would state that for purposes of identifying Members that account for a meaningful percentage of the Exchange's overall volume ("meaningful percentage"), the Exchange will measure volume executed on the Exchange during a calendar quarter to be determined by the Exchange ("measurement quarter") and announced via circular distributed to Members. The meaningful percentage will also be determined by the Exchange and published in a circular distributed to Members. The meaningful percentage applicable in any measurement quarter will be published in advance of such measurement quarter and will not apply retroactively to any measurement quarter completed or in progress. The Exchange will publish the first circular consistent with this proposal prior to the Regulation SCI compliance date of November 3, 2015. The proposed Interpretation and Policy would also require the Exchange to notify individual Members that are subject to proposed paragraph (b) based on the applicable calendar quarter's volume following the completion of such calendar quarter. The Exchange believes the proposed notice requirements will provide Members with proper advance notice in the event they become subject to proposed Rule 321(b) to become compliant with such Rule, including allowing for adequate time to make any necessary infrastructure changes to connect to the Exchange's disaster recovery systems for a Member that is not already connected.

2. Statutory Basis

MIAX believes that its proposed rule change is consistent with Section 6(b) of the Act⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act⁶ 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. The proposal will ensure that the Members necessary to ensure the maintenance of a fair and orderly market are properly designated consistent with Rule 1004 of Regulation SCI. Specifically, the proposal will adopt criteria with respect to the designation of Members that are required to participate in the testing of the Exchange's BC/DR plans, as well as appropriate notification regarding such designation. As set forth in the SCI Adopting Release, "SROs have the authority, and legal responsibility, under Section 6 of the Exchange Act, to adopt and enforce rules (including rules to comply with Regulation SCI's requirements relating to BC/DR testing) applicable to their members or participants that are designed to, among other things, 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."⁷ The Exchange believes that this proposal is consistent with such authority and legal responsibility.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

⁷ See supra note 4.

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 that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the proposal is not a competitive proposal but rather is necessary for the Exchange's compliance with Regulation SCI.

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

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 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 Act⁸ and Rule 19b-4(f)(6)⁹ thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹⁰ normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii)¹¹ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 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.

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 17 CFR 240.19b-4(f)(6)(iii).

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 believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it will allow the Exchange to incorporate changes required under Regulation SCI, such as establishing standards for designating BCP/DR Participants, prior to the November 3, 2015 compliance date. Therefore, the Commission designates the proposed rule change to be operative upon filing.¹²

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:

- 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-2015-61 on the subject line.

Paper comments:

¹² For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-MIAX-2015-61. 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, 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 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-2015-61 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.¹³

Robert W. Errett
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).