

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-89786; File No. SR-MIAX-2020-30)

September 8, 2020

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Adopt Exchange Rule 1326, Transfer of Positions

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 4, 2020, Miami International Securities Exchange, LLC (“MIAX” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ 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 new Exchange Rule 1326, Transfer of Positions.

The text of the proposed rule change is available on the Exchange’s website at <http://www.miaxoptions.com/rule-filings/> at MIAX’s principal office, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

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 Exchange proposes to adopt new Exchange Rule 1326, Transfer of Positions, to provide a process by which Members⁵ may transfer option positions in limited circumstances. This proposed rule specifies the specific limited circumstances under which a Member may effect transfers of positions. This rule would permit market participants to move positions from one account to another without first exposure of the transaction on the Exchange. This rule would permit transfers upon the occurrence of significant, non-recurring events. The proposed rule change is similar to Nasdaq ISE Options 6, Section 5.

Currently, the rules of the Exchange do not specifically address transfers of option positions between accounts, individuals, or entities. The Exchange, however, plans on aligning its Rule with its competitors by allowing transfers in situations similar to those permitted on other exchanges. The proposed rule will establish Exchange policy with respect to transfers of options positions in certain limited circumstances.

⁵ The term "Member" means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed "members" under the Exchange Act. See Exchange Rule 100.

Permissible Transfers

The Exchange proposes to adopt new Exchange Rule 1326, titled “Transfer of Positions” to provide for the circumstances pursuant to which Members may transfer their options positions without first exposing the order. This rule states that a Member must be on at least one side of the transfer. This rule is similar to Nasdaq ISE Options 6, Section 5.

The Exchange proposes to provide in paragraph (a) that, existing positions in options listed on the Exchange of a Member, or non-Member, that are to be transferred on, from, or to the books of a Clearing Member⁶ may be transferred off the Exchange if the transfer involves one or more of the following events:

- (1) pursuant to Rule 301, an adjustment or transfer in connection with the correction of a bona fide error in the recording of a transaction or the transferring of a position to another account, provided that the original trade documentation confirms the error;
- (2) the transfer of positions from one account to another account where no change in ownership is involved (i.e., accounts of the same Person (as defined in Rule 100)), provided the accounts are not in separate aggregation units or otherwise subject to information barrier or account segregation requirements;
- (3) the consolidation of accounts where no change in ownership is involved;
- (4) a merger, acquisition, consolidation, or similar non-recurring transaction for a Person;
- (5) the dissolution of a joint account in which the remaining Member assumes the positions of the joint account;

⁶ The term “Clearing Member” means a Member that has been admitted membership in the Clearing Corporation pursuant to the provisions of the rules of the Clearing Corporation. See Exchange Rule 100.

- (6) the dissolution of a corporation or partnership in which a former nominee of the corporation or partnership assumes the positions;
- (7) positions transferred as part of a Member's capital contribution to a new joint account, partnership, or corporation;
- (8) the donation of positions to a not-for-profit corporation;
- (9) the transfer of positions to a minor under the Uniform Gifts to Minors Act; or
- (10) the transfer of positions through operation of law from death, bankruptcy, or otherwise.

The proposed rule change makes clear that the transferred positions must be on, from, or to the books of a Clearing Member. The proposed rule change states that existing positions of a Member or a non-Member may be subject to a transfer, except under specified circumstances in which a transfer may only be effected for positions of a Member.⁷ The Exchange notes transfers of positions in Exchange listed options may also be subject to applicable laws, rules, and regulations, including rules of other self-regulatory organizations.⁸ Except as explicitly provided in the proposed rule text, the proposed rule change is not intended to exempt position transfers from any other applicable rules or regulations, and proposed paragraph (h) makes this clear in the rule.

The proposed Exchange Rule 1326(b) codifies Exchange guidance regarding certain restrictions on permissible transfers relating to netting of open positions and to margin and haircut treatment, unless otherwise permitted by paragraph (f). No position may net against another position ("netting"), and no position transfer may result in preferential margin or haircut

⁷ See proposed paragraph (a)(5) and (7).

⁸ See proposed paragraph (h).

treatment.⁹ Netting occurs when long positions and short positions in the same series “offset” against each other, leaving no position, or a reduced position. For example, if a Member wanted to transfer 100 long calls to another account that contained short calls of the same options series as well as other positions, even if the transfer is permitted pursuant to one of the ten permissible events listed in the Proposed Rule, the Member could not transfer the offsetting series, as they would net against each other and close the positions.

However, netting is permitted for transfers on behalf of a Market Maker account for transactions in multiply listed options series on different options exchanges, but only if the Market Maker nominees are trading for the same Member, and the options transactions on the different options exchanges clear into separate exchange-specific accounts because they cannot easily clear into the same Market Maker account at the Clearing Corporation. In such instances, all Market Maker positions in the exchange-specific accounts for the multiply listed class would be automatically transferred on their trade date into one central Market Maker account (commonly referred to as a “universal account”) at the Clearing Corporation. Positions cleared into a universal account would automatically net against each other. Option exchanges permit different naming conventions with respect to Market Maker account acronyms (for example, lettering versus numbering and number of characters), which are used for accounts at the Clearing Corporation. A Market Maker may have a nominee with an appointment in class XYZ on the Exchange, and have another nominee with an appointment in class XYZ on another exchange, but due to account acronym naming conventions, those nominees may need to clear

⁹ For example, positions may not transfer from a customer, joint back office, or firm account to a Market Maker account. However, positions may transfer from a Market Maker account to a customer, joint back office, or firm account (assuming no netting of positions occurs).

their transactions into separate accounts (one for Exchange transactions and another for transactions on the other exchange) at the Clearing Corporation rather than into a universal account (in which account the positions may net). The proposed rule change permits transfers from these separate exchange-specific accounts into the Market Maker's universal account in this circumstance to achieve this purpose.

Transfer Price

The Exchange proposes to state that the transfer price, to the extent it is consistent with applicable laws, rules, and regulations, including rules of other self-regulatory organizations, and tax and accounting rules and regulations, at which a transfer is effected may be: (1) the original trade prices of the positions that appear on the books of the trading Clearing Member, in which case the records of the transfer must indicate the original trade dates for the positions; provided, transfers to correct bona fide errors pursuant to proposed subparagraph (a)(1) must be transferred at the correct original trade prices; (2) mark-to-market prices of the positions at the close of trading on the transfer date; (3) mark-to-market prices of the positions at the close of trading on the trade date prior to the transfer date;¹⁰ or (4) the then-current market price of the positions at the time the transfer is effected.¹¹

This proposed rule change provides market participants that effect transactions with flexibility to select a transfer price based on the circumstances of the transfer and their business. However, for corrections of bona fide errors, because those transfers are necessary to correct processing errors that occurred at the time of the transaction, those transfers would occur at the

¹⁰ For example, for a transfer that occurs on a Tuesday, the transfer price may be based on the closing market price on Monday.

¹¹ See proposed paragraph (c).

original transaction price, as the purpose of the transfer is to create the originally intended result of the transaction.

Prior Written Notice

Proposed Exchange Rule 1326(d) requires a Member and its Clearing Member(s) (to the extent the Member is not self-clearing) to submit to the Exchange, in a manner determined by the Exchange, written notice prior to effecting a transfer from or to the account(s) of a Member.¹² The notice must indicate: the Exchange-listed options positions to be transferred; the nature of the transaction; the enumerated provision(s) under proposed paragraph (a) pursuant to which the positions are being transferred; the name of the counterparty(ies); the anticipated transfer date; the method for determining the transfer price; and any other information requested by the Exchange.¹³ The proposed notice will ensure the Exchange is aware of all transfers so that it can monitor and review them (including the records that must be retained pursuant to proposed paragraph (e)) to determine whether they are effected in accordance with the Rules.

Additionally, requiring notice from the Member(s) and its Clearing Member(s) will ensure both parties are in agreement with respect to the terms of the transfer. As noted in proposed subparagraph (d)(2), receipt of notice of a transfer does not constitute a determination by the Exchange that the transfer was effected or reported in conformity with the requirements of proposed Rule 1326. Notwithstanding submission of written notice to the Exchange, Members

¹² This notice provision applies only to transfers involving a Member's positions and not to positions of non-Members parties, as they are not subject to the Rules. In addition, no notice would be required to effect transfers to correct bona fide errors pursuant to proposed subparagraph (a)(1) or transfers of positions from one account to another where no change in ownership is involved pursuant to proposed paragraph (a)(2).

¹³ See proposed paragraph (d)(1).

and Clearing Members that effect transfers that do not conform to the requirements of the proposed Rule will be subject to appropriate disciplinary action in accordance with the Rules.

Records

The proposed Exchange Rule 1326(e) requires that each Member and each Clearing Member that is a party to a transfer must make and retain records of the information provided in the written notice to the Exchange pursuant to proposed subparagraph (e), as well as information on the actual Exchange-listed options that are ultimately transferred, the actual transfer date, and the actual transfer price (and the original trade dates, if applicable), and any other information the Exchange may request the Member or Clearing Member to provide.¹⁴

Presidential Exemption

Proposed paragraph 1326(f) provides exemptions approved by the Exchange's Chief Executive Officer or President (or senior-level designee). Specifically, this provision is in addition to the exemptions set forth in proposed paragraph (a). The Exchange proposes that the Exchange Chief Executive Officer or President (or senior-level designee) may grant an exemption from the requirement of this proposed Rule, on his or her own motion or upon application of the Member (with respect to the Member's positions) or a Clearing Member (with respect to positions carried and cleared by the Clearing Members). The Chief Executive Officer, the President, or his or her designee, may permit a transfer if necessary or appropriate for the maintenance of a fair and orderly market and the protection of investors and is in the public interest, including due to unusual or extraordinary circumstances. For example, an exemption may be granted if the market value of the Person's positions would be compromised by having to comply with the requirement to trade on the Exchange pursuant to the normal auction process or

¹⁴ See proposed paragraph (e).

when, in the judgment of the Chief Executive Officer, President, or his or her designee, market conditions make trading on the Exchange impractical.¹⁵

Routine, Recurring Transfers

The Exchange proposes to state that the transfer procedure set forth in Rule 1326 is intended to facilitate non-routine, nonrecurring movements of positions.¹⁶ The transfer procedure is not to be used repeatedly or routinely in circumvention of the normal auction market process.

Exchange-Listed Options

Lastly, the Exchange proposes paragraph (h) which notes that the transfer procedure set forth in the proposed Rule is only applicable to positions in options listed on the Exchange. Transfers of positions in Exchange-listed options may also be subject to applicable laws, rules, and regulations, including rules of other self-regulatory organizations. Transfers of non-Exchange listed options and other financial instruments are not governed by this proposed Rule.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act¹⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act¹⁸ 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 regulating, clearing, settling, processing information with respect to, and 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.

¹⁵ See proposed paragraph (f).

¹⁶ See proposed paragraph (g).

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(5).

Specifically, the Exchange believes the proposed transfer rule is consistent with the Section 6(b)(5)¹⁹ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)²⁰ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that permitting transfers in very limited circumstances is reasonable to allow a Member to accomplish certain goals efficiently. The proposed rule permits transfers in situations involving dissolutions of entities or accounts, for purposes of donations, mergers or by operation of law. As noted above for example, a Member that is undergoing a structural change and a one-time movement of positions may require a transfer of positions or a Member that is leaving a firm that will no longer be in business may require a transfer of positions to another firm. Also, a Member may require a transfer of positions to make a capital contribution. The above-referenced circumstances are non-recurring situations where the transferor continues to maintain some ownership interest or manage the positions transferred. By contrast, repeated or routine transfers between entities or accounts – even if there is no change in beneficial ownership as a result of the transfer – is inconsistent with the purposes for which the

¹⁹ 15 U.S.C. 78f(b)(5).

²⁰ Id.

proposed rule will be adopted. Accordingly, the Exchange believes that such activity should not be permitted under the rules and thus, seeks to adopt language in proposed paragraph (g) that the transfer of positions procedures set forth in the proposed rule are intended to facilitate non-recurring movements of positions.

The proposed rule change will provide market participants that experience these limited, non-recurring events with an efficient and effective means to transfer positions in these situations. The Exchange believes the proposed rule change regarding permissible transfer prices provides market participants with flexibility to determine the price appropriate for their business, which maintain cost bases in accordance with normal accounting practices and removes impediments to a free and open market.

The proposed rule change which requires notice and maintenance of records will ensure the Exchange is able to review transfers for compliance with the Rules, which prevents fraudulent and manipulative acts and practices. The requirement to retain records is consistent with the requirements of Rule 17a-3 and 17a-4 under the Act.

Similar to Nasdaq ISE and Cboe rules,²¹ the Exchange would permit a presidential exemption. The Exchange believes that this exemption is consistent with the Act because the Exchange's Chief Executive Officer or President (or senior-level designee) would consider an exemption in very limited circumstances. The transfer process is intended to facilitate non-routine, nonrecurring movements of positions and, therefore, is not to be used repeatedly or routinely in circumvention of the normal auction market process. The proposed Rule specifically provides within the rule text that the Exchange's Chief Executive Officer or President (or senior-level designee) may in his or her judgment allow a transfer if it is necessary or appropriate for

²¹ See Nasdaq ISE Options 6, Section 5; and Cboe Rule 6.7.

the maintenance of a fair and orderly market and the protection of investors and is in the public interest, including due to unusual or extraordinary circumstances such as the market value of the Person's positions will be comprised by having to comply with the requirement to trade on the Exchange pursuant to the normal auction process or, when in the judgment of the President or his or her designee, market conditions make trading on the Exchange impractical. These standards within paragraph (f) of the proposed rule are intended to provide guidance concerning the use of this exemption which is intended to provide the Exchange with the ability to utilize the exemption for the maintenance of a fair and orderly market and the protection of investors and is in the public interest. The Exchange believes that the exemption is consistent with the Act because it would allow the Exchange's Chief Executive Officer or President (or senior-level designee) to act in certain situations which comply with the guidance within paragraph (f) which is intended to protect investors and the general public. Although Cboe's rule grants an exemption to the President (or senior-level designee),²² the Exchange has elected to parallel the Nasdaq ISE and grant an exemption to the Exchange's Chief Executive Officer or President (or senior-level designee), who are similarly situated within the Exchange's organization as senior-level individuals.²³

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.

The Exchange does not believe the proposed rule change will impose an undue burden on intra-market competition as the transfer procedure may be utilized by any Member and the rule

²² See Cboe Rule 6.7(f).

²³ See Nasdaq ISE Options 6, Section 5(f).

will apply uniformly to all Members. Use of the transfer procedure is voluntary, and all Members may use the procedure to transfer positions as long as the criteria in the proposed rule are satisfied. With the establishment of the proposed rule, a Member that experiences limited permissible, non-recurring events would have an efficient and effective means to transfer positions in these situations. The Exchange believes the proposed rule change regarding permissible transfer prices provides market participants with flexibility to determine the price appropriate for their business, which determine prices in accordance with normal accounting practices and removes impediments to a free and open market. The Exchange does not believe the proposed notice and record requirements are unduly burdensome to market participants. The Exchange believes the proposed requirements are reasonable and will ensure the Exchange is aware of transfers and would be able to monitor and review the transfers to ensure the transfer falls within the proposed rule.

Adopting an exemption, similar to Nasdaq ISE Options 6, Section 5(f), to permit the Exchange's Chief Executive Officer or President (or senior-level designees) to grant an exemption, in addition to the limited circumstances of the proposed rule, in his or her judgment, does not impose an undue burden on competition. Such an exemption would only be applied when in the judgement of the Chief Executive Officer, or President or his or her designee, the transfer is necessary or appropriate for the maintenance of a fair and orderly market and the protection of investors and is in the public interest, including due to unusual or extraordinary circumstances, such as the possibility that the market value of a Person's positions would be compromised by having to comply with the requirement to trade on the Exchange pursuant to the normal auction process or when market conditions make trading on the Exchange impractical.

The Exchange does not believe the proposed rule change will impose an undue burden on inter-market competition. The proposed position transfer procedure is not intended to be a competitive trading tool. The proposed rule change permits, in limited circumstances, a transfer to facilitate non-routine, nonrecurring movements of positions. As provided for in proposed paragraph (g), it would not be used repeatedly or routinely in circumvention of the normal auction market process. In addition, proposed paragraph (f) provides within the rule text that the Exchange's Chief Executive Officer or President (or senior-level designee) may in his or her judgment allow a transfer for the maintenance of a fair and orderly market and the protection of investors and is in the public interest. The Exchange believes that the exemption does not impose an undue burden on competition as the Exchange's Chief Executive Officer or President (or senior-level designee) would apply the exemption consistent with the guidance laid out in the proposed rule text. Additionally, as discussed above, the proposed rule change is similar to Cboe Rule 6.7 and Nasdaq ISE Options 6, Section 5. The Exchange believes having similar rules related to position transfers to those of other options exchanges will reduce the administrative burden on market participants of determining whether their transfers comply with multiple sets of rules.

As such, 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.

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 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 from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act²⁴ and Rule 19b-4(f)(6) thereunder.²⁵

A proposed rule change filed under Rule 19b-4(f)(6)²⁶ normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²⁷ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay to so that it may adopt the proposed position transfer rules as soon as possible which, according to the Exchange, would benefit investors and the general public because it will provide Members with the ability to request a transfer, for limited, non-recurring types of transfers, without the requirement for exposing those orders on the Exchange. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposed rule change does not present any unique or novel regulatory issues and is substantively identical to provisions in Cboe Rule 6.7 and Nasdaq ISE Options 6, Section 5. Accordingly, the Commission hereby waives the operative delay and designates the proposal operative upon filing.²⁸

²⁴ 15 U.S.C. 78s(b)(3)(A).

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

²⁶ 17 CFR 240.19b-4(f)(6).

²⁷ 17 CFR 240.19b-4(f)(6)(iii).

²⁸ 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).

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 will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-MIAX-2020-30 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-MIAX-2020-30. 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MIAX-2020-30 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.²⁹

J. Matthew DeLesDernier
Assistant Secretary

²⁹ 17 CFR 200.30-3(a)(12).