

than trading in others. The Commission believes that it is reasonable to allow each MQP Company to choose to participate in the Program and to determine whether it is desirable to incentivize MQP Market Makers through the Supplemental MQP Fee to improve the market quality of certain MQP Securities. Further, as discussed above, the payment of the Supplemental MQP Fee will be transparent to the marketplace, as this information will be disclosed on the Exchange's Web site.<sup>118</sup>

#### IV. Section 11(d)(1) of the Exchange Act

Section 11(d)(1) of the Exchange Act<sup>119</sup> generally prohibits a broker-dealer from extending or maintaining credit, or arranging for the extension or maintenance of credit, on shares of new issue securities, if the broker-dealer participated in the distribution of the new issue securities within the preceding 30 days. The Commission's view is that shares of open-end investment companies and unit investment trusts registered under the 1940 Act, such as ETF shares, are distributed in a continuous manner, and broker-dealers that sell such securities are therefore participating in the "distribution" of a new issue for purposes of Section 11(d)(1).<sup>120</sup>

The Division of Trading and Markets, acting under delegated authority, granted an exemption from Section 11(d)(1) and Rule 11d1-2 thereunder for broker-dealers that have entered into an agreement with an ETF's distributor to place orders with the distributor to purchase or redeem the ETF's shares ("Broker-Dealer APs").<sup>121</sup> The SIA Exemption allows a Broker-Dealer AP to extend or maintain credit, or arrange for the extension or maintenance of credit, to or for customers on the shares of qualifying ETFs subject to the condition that neither the Broker-Dealer AP, nor any natural person associated with the Broker-Dealer AP, directly or indirectly (including through any affiliate of the Broker-Dealer AP), receives from the fund complex any payment, compensation, or other economic incentive to promote or sell the shares of the ETF to persons outside the fund complex, other than non-cash compensation permitted under NASD Rule 2830(l)(5)(A), (B), or (C). This

condition is intended to eliminate special incentives that Broker-Dealer APs and their associated persons might otherwise have to "push" ETF shares.

The MQP will permit certain ETFs to voluntarily incur increased listing fees payable to the Exchange. In turn, the Exchange will use the fees to make incentive payments to market makers that improve the liquidity of participating issuers' securities, and thus enhance the market quality for the participating issuers. Incentive payments will be accrued for, among other things, executing purchases and sales on the Exchange. Receipt of the incentive payments by certain broker-dealers will implicate the condition of the SIA Exemption from the new issue lending restriction in Section 11(d)(1) of the Exchange Act discussed above. The Commission's view is that the incentive payments market makers will receive under the proposal are indirect payments from the fund complex to the market maker and that those payments are compensation to promote or sell the shares of the ETF. Therefore, a market maker that also is a Broker-Dealer AP for an ETF (or an associated person or an affiliate of a Broker-Dealer AP) that receives the incentives will not be able to rely on the SIA Exemption from Section 11(d)(1). This does not mean that Broker-Dealer APs cannot participate in the MQP; it merely means they cannot rely on the SIA Exemption while doing so. Thus, Broker-Dealer APs that participate in the MQP will need to comply with Section 11(d)(1) unless there is another applicable exemption.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>122</sup> that the proposed rule change (SR-NASDAQ-2012-137), as modified by Amendment Nos. 1 and 3 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>123</sup>

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

[FR Doc. 2013-06882 Filed 3-25-13; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69187; File Nos. SR-NYSE-2013-08; NYSEMKT-2013-07]

### Self-Regulatory Organizations; New York Stock Exchange LLC; NYSE MKT LLC; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Changes Amending the Attestation Requirement of Rules 107C and 107C-Equities, Respectively, To Allow a Retail Member Organization To Attest That "Substantially All" Orders Submitted to The Retail Liquidity Program Will Qualify as "Retail Orders"

March 20, 2013.

On January 17, 2013, New York Stock Exchange LLC ("NYSE") and NYSE MKT LLC ("NYSE MKT" and together with NYSE, the "Exchanges") filed with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> proposed rule changes to allow Retail Member Organizations ("RMOs") to attest that "substantially all," rather than all, orders submitted to the Retail Liquidity Program qualify as "Retail Orders." The proposed rule changes were published for comment in the **Federal Register** on February 4, 2013.<sup>3</sup> To date, the Commission has received one comment on the proposals.<sup>4</sup>

Section 19(b)(2) of the Act<sup>5</sup> provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for these filings is March 21, 2013.

The Commission is extending the 45-day time period for Commission action on the proposed rule changes. The Commission finds that it is appropriate

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

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

<sup>3</sup> See Securities Exchange Act Release Nos. 68747 (Jan. 28, 2013), 78 FR 7824 (SR-NYSE-2013-08); and 68746 (Jan. 28, 2013), 78 FR 7842 (SR-NYSEMKT-2013-07).

<sup>4</sup> See Letter to the Commission from Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association (SIFMA), dated March 11, 2013.

<sup>5</sup> 15 U.S.C. 78s(b)(2).

<sup>118</sup> See *supra* note 38 and accompanying text.

<sup>119</sup> 15 U.S.C. 78k(d)(1).

<sup>120</sup> See, e.g., Exchange Act Release Nos. 6726 (Feb. 8, 1962), 27 FR 1415 (Feb. 15, 1962) and 21577 (Dec. 18, 1984), 49 FR 50174 (Dec. 27, 1984).

<sup>121</sup> See Letter from Catherine McGuire, Chief Counsel, Division of Trading and Markets, Securities and Exchange Commission to Securities Industry Association (Nov. 21, 2005) ("SIA Exemption").

<sup>122</sup> 15 U.S.C. 78s(b)(2).

<sup>123</sup> 17 CFR 200.30-3(a)(12).

to designate a longer period to take action on the proposed rule changes so that it has sufficient time to consider the Exchanges' proposals, which would lessen the attestation requirements of RMOs that submit "Retail Orders" eligible to receive potential price improvement through the respective Retail Liquidity Programs, and to consider the comment letter that has been submitted in connection with the proposed rule changes.

Accordingly, pursuant to Section 19(b)(2) of the Act,<sup>6</sup> the Commission designates May 5, 2013 as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule changes (File Numbers SR-NYSE-2013-08 and SR-NYSEMKT-2013-07).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

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

[FR Doc. 2013-06877 Filed 3-25-13; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69193; File No. SR-BOX-2013-06]

### Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change To List and Trade Option Contracts Overlying 1,000 Shares of the SPDR S&P 500 Exchange-Traded Fund

March 20, 2013.

On January 18, 2013, BOX Options Exchange LLC ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade options overlying 1,000 shares of the SPDR S&P 500 exchange-traded fund. The proposed rule change was published for comment in the *Federal Register* on February 4, 2013.<sup>3</sup> The Commission received two comment letters on this proposal.<sup>4</sup>

Section 19(b)(2) of the Act<sup>5</sup> provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is March 21, 2013. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider this proposed rule change, which would allow the listing of a new option product, the comment letters that have been submitted in connection with this proposed rule change, and any response to the comment letters submitted by the Exchange.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,<sup>6</sup> designates May 5, 2013 as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR-BOX-2013-06).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

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

[FR Doc. 2013-06879 Filed 3-25-13; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69181; File No. SR-MIAX-2013-07]

### Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt MIAX Rule 530, Limit Up-Limit Down

March 19, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

Corporate Secretary, General Counsel, NYSE Markets, NYSE Euronext, dated February 25, 2013 and Edward T. Tilly, President and Chief Operating Officer, Chicago Board Options Exchange, Incorporated, dated February 25, 2013.

<sup>5</sup> 15 U.S.C. 78s(b)(2).

<sup>6</sup> 15 U.S.C. 78s(b)(2).

<sup>7</sup> 17 CFR 200.30-3(a)(31).

("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 7, 2013, Miami International Securities Exchange LLC ("MIAX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the 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 new Exchange Rule 530, Limit Up-Limit Down ("LULD"), to provide for how the Exchange intends to treat options orders in response to the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS, as it may be amended from time to time (the "Plan"). The Plan establishes procedures to address extraordinary volatility in NMS Stocks (as defined below). The proposed rule outlines MIAX's LULD processing for options overlying such NMS Stocks.

The text of the proposed rule change is provided in *Exhibit 5*.<sup>3</sup> 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](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 the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The purpose of the proposed rule change is to adopt MIAX Rule 530 to provide for how the Exchange proposes

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

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

<sup>3</sup> The Commission notes that Exhibit 5 is attached to the filing, not to this Notice.

<sup>6</sup> 15 U.S.C. 78s(b)(2).

<sup>7</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 68759 (January 29, 2013), 78 FR 7835.

<sup>4</sup> See letters to Elizabeth M. Murphy, Secretary, Commission, from Janet McGinness, EVP &