SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95470]

Order Determining That the Financial Industry Regulatory Authority Conditionally May Access Certain Security-Based Swap Data Obtained by Security-Based Swap Data Repositories

AGENCY: Securities and Exchange Commission.

ACTION: Data access determination order.

SUMMARY: Pursuant to section 13(n)(5)(G)(v) of the Securities Exchange Act of 1934 (''Exchange Act''), and rule 13n–4(b)(9)(x) thereunder, the Securities and Exchange Commission (''Commission'') is issuing an order determining that it would be appropriate to require security-based swap data repositories to make security-based swap data available to Financial Industry Regulatory Authority (''FINRA'').

DATES: This data access determination order is effective September 16, 2022.

FOR FURTHER INFORMATION CONTACT: Carol McGee, Associate Director, Office of Derivatives Policy and Trading Practices, at (202) 551–5870, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Background

A. Exchange Act Data Access Framework

Two entities currently are registered with the Commission as security-based swap data repositories (''SDRs'').[1] Among other responsibilities, SDRs are required to make security-based swap data available to certain recipients upon request.[2] Recipients may include certain specified entities,[3] as well as ''[a]ny other person that the Commission determines to be appropriate, conditionally or unconditionally, by order'' (including foreign authorities).[4] Access further is conditioned on there being in effect an arrangement between the Commission and the entity seeking access to address the confidentiality of the security-based swap data made available,[5] and on the Commission being notified of the request.[6]

Pursuant to this data access framework, FINRA has requested that the Commission issue an order determining that it would be appropriate to require SDRs to make security-based swap data available to FINRA.[7] For the reasons discussed below, the Commission is issuing the order. In connection with this order, the Commission and FINRA also are entering into an arrangement addressing the parameters of FINRA's access to security-based swap data held by SDRs, and the protections afforded to the data.[8]

B. Criteria for Making Access Determinations

The Commission has stated that it expects to consider a variety of factors in making access determinations, and that it may impose conditions in connection with those determinations. Relevant factors include whether the data provided ''would be subject to robust confidentiality safeguards, such as safeguards set forth in the relevant jurisdiction's statutes, rules or regulations with regard to disclosure of confidential information by an authority or its personnel, and/or safeguards set forth in the authority's internal policies and procedures.'' [9]

The Commission also may consider ''the relevant authority's interest in access to security-based swap data based on the relevant authority's regulatory mandate or legal responsibility or authority.'' [10] In addition, the Commission may take into account ''any other factors that are appropriate to the determination, including whether such a determination would be in the public interest, and whether the relevant authority agrees to provide the Commission and other U.S. authorities with reciprocal assistance in matters within their jurisdiction.'' [11]

[1] *See* Exchange Act Release No. 91798, (May 7, 2021), 86 FR 26115, 26116 n.14 (May 12, 2021) (approving registration application of DTCC Data Repository (U.S.), LLC; Exchange Act Release No. 92189 (Jun. 16, 2021), 86 FR 32703 (Jun. 22, 2021) (approving registration application of ICE Trade Vault, LLC).

[2] Exchange Act section 13(n)(5)(G); 17 CFR 240.13n–4(b)(9). Those provisions in part require that the SBSDR provide notice of the data request to the Commission, and specifies that access be ''on a confidential basis pursuant to [Exchange Act] section 24.'' Exchange Act section 24, 15 U.S.C. 78x, generally addresses disclosures of information by the Commission and its personnel. In relevant part section 24 provides that the Commission may, ''in its discretion and upon a showing that such information is needed,'' provide all records and other information ''to such persons, both domestic and foreign, as the Commission by rule deems appropriate if the person receiving such records or information provides such assurances of confidentiality as the Commission deems appropriate.'' *See* Exchange Act section 24(c); *see also* 17 CFR 240.24c–1(b) (providing that the Commission may, upon ''such assurances of confidentiality as the Commission deems appropriate,'' provide non-public information to persons such as domestic and foreign governments or their political subdivisions, authorities, agencies or instrumentalities, self-regulatory organizations and foreign financial authorities).

[3] The following entities may access security-based swap data without the need for an additional Commission order: (i) the Board of Governors of the Federal Reserve System (''Board'') and any Federal Reserve Bank; (ii) the Office of the Comptroller of the Currency; (iii) the Federal Deposit Insurance Corporation; (iv) the Farm Credit Administration; (v) the Federal Housing Finance Agency; (vi) the Financial Stability Oversight Council (''FSOC''); (vii) the Commodity Futures Trading Commission (''CFTC''); (viii) the Department of Justice (''DOJ''); and (ix) the Office of Financial Research (''OFR''). *See* 17 CFR 240. 13n–4(b)(9); *see also* Exchange Act section 13(n)(5)(G)(v) (in part identifying ''each appropriate prudential regulator'' as well as FSOC, CFTC and DOJ). For those entities, data access still is predicated on other conditions, including the required confidentiality arrangement.

[4] 17 CFR 240.13n–4(b)(9)(x); *see also* Exchange Act section 13(n)(5)(G)(v).

[5] 17 CFR 240.13n–4(b)(10) (also stating that the arrangement shall be deemed to satisfy the Exchange Act section 13(n)(5)(H) requirement that the SBSDR receive a written agreement from the entity stating that the entity shall abide with the section 24 confidentiality requirements relating to the security-based swap information provided).

[6] Exchange Act section 13(n)(5)(G); 17 CFR 240. 13–4(b)(9). 17 CFR 240.13nc–4(d) further provides that the SBSDR shall satisfy the notification requirement by informing the Commission of its receipt of the first request for security-based swap data from a particular entity, and to maintain records of all information related to the initial and subsequent requests for data access from that entity.

[7] Letter from Stephanie Dumont, FINRA, to Vanessa Countryman, Secretary, Commission, dated August 11, 2022 (''FINRA request'').

[8] *See* Confidentiality Arrangement Between the U.S. Securities and Exchange Commission and the Financial Industry Regulatory Authority Concerning Access to Security-Based Swap Data Obtained by Registered Security-Based Swap Data Repositories, dated August 11, 2022 (available at [URL]) (''Confidentiality Arrangement'').

[9] Exchange Act Release No. 78716 (Aug. 29, 2016), 81 FR 60585 (Sep. 2, 2016) (adopting relevant amendments to 17 CFR 240.13n–4) (''Adopting Release''). The Commission also noted that it expected to consider whether there is a memorandum of understanding or other arrangement between the Commission and the relevant authority designed to protect the confidentiality of the security-based swap data provided to the authority (further noting that such a memorandum of understanding or other arrangement also would satisfy the statutory requirement that a security-based swap data repository obtain a confidentiality agreement from the authority). *See id.* at 60589 & n.60.

[10] Accordingly, determination orders ''typically would incorporate conditions that specify the scope of a relevant authority's access to data, and that limit this access in a manner that reflects the relevant authority's regulatory mandate or legal responsibility or authority,'' including conditions that address factors such as the domiciles of the counterparties to the security-based swap or of the underlying reference entities. Limiting access to information in this manner ''should be expected to help minimize the risk of unauthorized disclosure, misappropriation or misuse of security-based swap data, as each relevant authority will only have access to information within its regulatory mandate, or legal responsibility or authority.'' *Id.* at 60589. The Commission separately stated that the confidentiality arrangement between the Commission and the authority also may ''incorporate conditions that specify the scope of the relevant authority's access to data, and that limit this access in a manner that reflects the relevant authority's regulatory mandate or legal responsibility or authority.'' *Id.* at 60592.

[11] *Id.* at 60589.

C. Additional Aspects to the Determinations

The Commission has explained that it may take various approaches in deciding whether to impose additional conditions in connection with determination orders, such as issuing orders of limited duration.[12] The Commission also has stated that it may revoke a determination at any time (such as if an authority fails to maintain the confidentiality of the security-based swap data it has been provided), and that, even absent a revocation, an authority's access to data would cease upon the termination of the arrangements used to satisfy the confidentiality condition.[13]

The Commission has expressed the expectation that SDRs would provide relevant authorities with access to security-based swap data in accordance with the determination orders, and that the Commission generally does not expect to be involved in reviewing, signing-off on or otherwise approving relevant authorities' requests for security-based swap data from repositories that are made in accordance with a determination order.[14] The Commission also has stated that it has not prescribed any specific processes to govern a repository's treatment of requests for access.[15]

II. FINRA'S Data Access Request

FINRA is a self-regulatory organization that is registered with the Commission as a national securities association pursuant to Exchange Act section 15A. As such, the Exchange Act in part requires that FINRA be organized and have the capacity to enforce the compliance of member firms (and of persons associated with members) with requirements under the Exchange Act and with FINRA's own rules.[16]

A. Use of the Data

FINRA states that access to security-based swap data will enhance its ability to conduct effective reviews, examinations and investigations into potential violations of rules by FINRA members with respect to their security-based swap activities. Access would allow FINRA to incorporate security-based swap data into cross-market and cross-product surveillance, which would enhance FINRA's ability to detect practices such as manipulation and insider trading.[17] FINRA also anticipates using the security-based swap data in additional ways, including monitoring of member firms' compliance with financial responsibility requirements.[18]

B. Confidentiality Considerations

FINRA's request describes policies and procedures governing data privacy and data security that promote the appropriate safeguarding of data. Those include policies and procedures related to data classification guidelines, end-user practices and procedures for safeguarding data, reporting loss, and ensuring that only authorize users gain access. Those also include data security policies establishing technical security controls for systems and applications.[19]

For purposes of those privacy policies and procedures, FINRA states that it will treat the security-based swap data as ''Restricted Confidential Information,'' and that FINRA will implement special handling guidelines that will address access to the data and its use, handling and storage.[20] The confidentiality arrangement that the Commission is entering into with FINRA incorporates related safeguards.[21]

III. Determination and Associated Terms and Conditions

The Commission concludes that it is appropriate to require SDRs to make security-based swap data available to FINRA, subject to there being in effect a confidentiality arrangement between FINRA and the Commission. In reaching this conclusion, the Commission recognizes that FINRA plays an important role in promoting member firms' (and their associated persons') compliance with the federal securities laws, and the Commission concludes that access to security-based swap data will facilitate effective cross-market surveillance involving security-based swap activity.[22] FINRA's confidentiality framework and the confidentiality arrangement between the Commission and FINRA further will help ensure that FINRA will afford the security-based swap data appropriate protections—once FINRA has implemented special handling guidelines for the data.

Taking these factors as a whole, the Commission concludes that such a determination is in the public interest. By virtue of this order, the Exchange Act places an affirmative obligation upon SBSDRs to provide FINRA with access to security-based swap data consistent with the scope of the order, subject to the applicable terms and conditions, including a confidentiality arrangement between the Commission and FINRA being in effect, and FINRA implementing special handling guidelines, following consultation with Commission staff, to address access to the data and its use, handling and storage.[23]

IV. Conclusion

For the reasons discussed above, the Commission determines that it would be appropriate to require security-based swap data repositories to make security-based swap data available to FINRA.

It is hereby ordered, pursuant to Exchange Act section 13(n)(5)(G)(v) and

---

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] *See* Exchange Act section 15A(b)(2); *see also* section 19(g)(1)(B) (in part requiring securities associations' compliance with Exchange Act requirements and association rules).

[17] FINRA request at 4–5.

[18] *Id.* at 6.

[19] *Id.*

[20] *Id.*

[21] As noted above, *see* note 8, *supra,* and accompanying text, the Commission is entering into a confidentiality arrangement with FINRA, addressing the parameters of FINRA's access to security-based swap data maintained by SDRs, as well as the confidentiality protections that FINRA will afford to the security-based swap data. These include provisions stating that FINRA will afford security-based swap data the highest level of protection under its policy framework for confidentiality procedures, and that, to the maximum extent practicable, FINRA will afford the security-based swap data confidentiality protections that are not less rigorous than applicable confidentiality protections afforded to Consolidated Audit Trail data. Confidentiality Arrangement para. 19. The Confidentiality Arrangement further provides that FINRA may disclose security-based swap information as required by FINRA rules related to disciplinary complaints or disciplinary decisions, and actions related to statutory disqualifications, suspensions, cancellations, expulsions or bars, subject to prior written consent by the Commission. Confidentiality Arrangement para. 20. In addition, FINRA conducts surveillance and exercises regulatory services on behalf of other self-regulatory organizations pursuant to Regulatory Services Agreements (''RSAs''). The Confidentiality Arrangement provides that FINRA may share confidential information pursuant to an RSA only if the client itself has entered into a separate confidentiality arrangement with the Commission, in connection with access to the information, that specifically provides that FINRA may share the information with the client. Confidentiality Arrangement para. 21.

[22] In reaching this conclusion, the Commission has considered the possibility of using more focused scopes of access, such as by limiting FINRA's access to data involving security-based swaps in which a member firm or associated person is a counterparty, guarantor or underlier to a security-based swaps. The Commission concludes, however, that this type of more limited access to security-based swap data would not sufficiently facilitate cross-market surveillance of improper activities such as insider trading and front-running, particularly given the possibility that wrongdoers may seek to avoid surveillance by using third-parties to engage in transactions in the security-based swap market.

[23] The Commission anticipates providing notice to SDRs in the event the relevant confidentiality arrangement no longer is in effect. Consistent with 17 CFR 240.13n–4(b)(10), this would terminate the SDRs' obligation to provide data access pursuant to the arrangement.

Exchange Act rule 13n–4(b)(9)(x), that FINRA may access security-based swap data obtained by security-based swap data repositories. Such access is conditioned on there being in effect an arrangement between the Commission and FINRA to address the confidentiality of the security-based swap information made available to FINRA. Such access further is conditioned on FINRA developing and implementing special handling guidelines as described above, following consultation with Commission staff, to promote the confidentiality afforded to the security-based swap data, prior to FINRA accessing the data.

By the Commission.

Dated: August 11, 2022.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–17641 Filed 8–16–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95478; File No. SR–MIAX–2022–27]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Amend Certain Fees and Rebates for Transactions in SPIKES Options

August 11, 2022.

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 July 29, 2022, 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.

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

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule (the ''Fee Schedule'') to amend the MIAX Options Exchange Fee Schedule (the ''Fee Schedule'') to amend certain fees and rebates for transactions in SPIKES options (defined below).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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.

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 amend Section (1)(b)(i) of the Fee Schedule to: (1) amend certain fees and rebates for Simple and Complex transactions in SPIKES options; [3] (2) adopt a new ''Routing EEM Rebate Program'' [4] for certain SPIKES option orders routed to the Exchange; (3) remove the Market Turner Incentive Program; and (4) amend certain PRIME [5] and cPRIME [6] fees for orders in SPIKES options.

Background

On October 12, 2018, the Exchange received approval from the Commission to list and trade on the Exchange options on the SPIKES® Index, a new index that measures expected 30-day volatility of the SPDR S&P 500 ETF Trust (commonly known and referred to by its ticker symbol, ''SPY'').[7] The Exchange adopted its initial SPIKES options transaction fees on February 15, 2019 and adopted a new section of the Fee Schedule—Section 1)a)xi), SPIKES—for those fees.[8] SPIKES options began trading on the Exchange on February 19, 2019.

Proposed Changes to the Table of Fees for Simple and Complex Orders in SPIKES Options

The Exchange proposes to amend Section (1)(b)(i) of the Fee Schedule to amend the table of Simple and Complex Fees for transactions in SPIKES options. The Exchange charges Simple and Complex fees by origin type to each market participant that places resting liquidity in SPIKES options, *i.e.,* quotes or orders on the MIAX System,[9] which are assessed the ''maker'' fee (each a ''Maker''). The Exchange also charges Simple and Complex fees by origin type to each market participant that executes against (remove) resting liquidity in SPIKES options, which are assessed a higher ''taker'' fee (each a ''Taker'').

Currently, with respect to Simple and Complex Maker fees, the Exchange charges the following, regardless of the contra-side origin: (i) $0.00 per contract for SPIKES options orders for Priority Customers,[10] Market Makers,[11] and Firm Proprietary quotes or orders; and (ii) $0.10 per contract for SPIKES options orders for Non-MIAX Market Makers, Broker-Dealers, and Public Customers that are not Priority

[3] SPIKES is a ''Proprietary Product.'' The term ''Proprietary Product'' means a class of options that is listed exclusively on the Exchange. *See* Fee Schedule, Section (1)(b)(i), note ''Δ'' and Exchange Rule 100.

[4] An ''Electronic Exchange Member'' or ''EEM'' means the holder of a Trading Permit who is not a Market Maker. Electronic Exchange Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[5] The Price Improvement Mechanism (''PRIME'') is a process by which a Member may electronically submit for execution (''Auction'') an order it represents as agent (''Agency Order'') against principal interest, and/or an Agency Order against solicited interest. *See* Exchange Rule 515A(a).

[6] ''cPRIME'' is the process by which a Member may electronically submit a ''cPRIME Order'' (as defined in Rule 518(b)(7)) it represents as agent (a ''cPRIME Agency Order'') against principal or solicited interest for execution (a ''cPRIME Auction''), subject to the conditions set forth in Exchange Rule 515A, Interpretation and Policy .12. *See* Exchange Rule 515A, Interpretation and Policy .12.

[7] *See* Securities Exchange Act Release No. 84417 (October 12, 2018), 83 FR 52865 (October 18, 2018) (SR–MIAX–2018–14) (Order Granting Approval of a Proposed Rule Change by Miami International Securities Exchange, LLC to List and Trade on the Exchange Options on the SPIKES® Index).

[8] *See* Securities Exchange Release No. 85283 (March 11, 2019), 84 FR 9567 (March 15, 2019) (SR–MIAX–2019–11). The Exchange initially filed the proposal on February 15, 2019 (SR–MIAX–2019–04). That filing was withdrawn and replaced with SR–MIAX–2019–11. On September 30, 2020, the Exchange filed its proposal to, among other things, reorganize the Fee Schedule to adopt new Section (1)(b), Proprietary Products Exchange Fees, and moved the fees and rebates for SPIKES options into new Section (1)(b)(i). *See* Securities Exchange Act Release No. 90146 (October 9, 2020), 85 FR 65443 (October 15, 2020) (SR–MIAX–2020–32).

[9] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[10] A ''Priority Customer'' means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial accounts(s). A ''Priority Customer Order'' means an order for the account of a Priority Customer. *See* Exchange Rule 100.

[11] The term ''Market Makers'' refers to ''Lead Market Makers'', ''Primary Lead Market Makers'' and ''Registered Market Makers'' collectively. *See* Exchange Rule 100.