



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-73212; File No. SR-MIAX-2014-39]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to List and Trade Options on Certain Market Vectors ETFs

September 25, 2014

I. Introduction

On July 28, 2014, the Miami International Securities Exchange LLC (“MIAX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade options on shares of the Market Vectors Brazil Small-Cap ETF, Market Vectors Indonesia Index ETF, Market Vectors Poland ETF, and Market Vectors Russia ETF (collectively “Market Vectors ETFs”). The proposed rule change was published for comment in the Federal Register on August 12, 2014.³ No comments were received on the proposed rule change. This order institutes proceedings under Section 19(b)(2)(B) of the Act to determine whether to approve or disapprove the proposed rule change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 72777 (August 6, 2014), 79 FR 47165 (“Notice”). The Commission notes that MIAX also submitted a similar proposed rule change to list and trade options on shares of certain iShares ETFs. See Securities Exchange Act Release No. 72492 (June 27, 2014), 79 FR 38099 (July 3, 2014) (MIAX-2014-30). The Commission is similarly instituting proceedings to determine whether to approve or disapprove that proposed rule change as well.

II. Description of the Proposed Rule Change

The Exchange proposes to list for trading on the Exchange options on shares of the Market Vectors ETFs. According to the Exchange, the Market Vectors ETFs are registered pursuant to the Investment Company Act of 1940 as management investment companies designed to hold a portfolio of securities that track the Market Vectors Brazil Small-Cap Index (“Brazil Small-Cap Index”), which consists of stocks traded primarily on BM&FBOVESPA; the Market Vectors Indonesia Index (“Indonesia Index”), which consists of stocks traded primarily on the Indonesia Stock Exchange; Market Vectors Poland Index (“Poland Index”), which consists of stocks traded primarily on the Warsaw Stock Exchange; and the Market Vectors Russia Index (“Russia Index”), which consists of stocks traded primarily on the Moscow Exchange.⁴

MIAX Rule 402 establishes the Exchange’s initial listing standards for equity options (the “Listing Standards”) that must be satisfied for the Exchange to list and trade options on the shares of open-end investment companies, such as the Market Vectors ETFs.⁵ Options on the Market Vectors ETFs do not meet the Listing Standards. In particular, options on the Market Vectors ETFs do not meet the requirement concerning the existence of a comprehensive surveillance sharing agreement (“CSSA”) between MIAX and its foreign counterpart.⁶

Accordingly, the Exchange may not list and trade options on the Market Vectors ETFs.

⁴ See Notice, supra note 3. Market Vectors Index Solutions created and maintains the Brazil Small-Cap Index, Indonesia Index, Poland Index, and Russia Index.

⁵ MIAX Rule 402(i) provides the Listing Standards for shares or other securities (“Exchange-Traded Fund Shares”) that are traded on a national securities exchange and are defined as an “NMS stock” under Rule 600 of Regulation NMS.

⁶ See MIAX Rule 402(i)(5)(ii)(B). This rule requires that “component securities of an index or portfolio of securities on which the Exchange Traded Fund Shares are based for which the primary market is in any one country that is not subject to a comprehensive surveillance agreement do not represent 20% or more of the weight of the index.”

According to the Exchange, it has attempted, but not entered into, CSSAs with the applicable foreign markets. In its proposal, the Exchange requested that the Commission allow the listing and trading of options on shares of the Market Vectors ETFs without a CSSA. Instead, the Exchange proposes to rely on agreements between the Commission and the applicable foreign regulators. Specifically, the Exchange cited to the agreements between the Commission and (i) the Comissao de Valores Mobiliarios (“CVM”),⁷ which has responsibility for the Brazilian exchanges and over-the-counter markets, and (ii) the Federal Commission on Securities and the Capital Market of the Government of the Russian Federation (“FCSCM”), a forerunner of the Federal Commission on Securities Market of Russia, which has responsibility for Russian stock exchanges.⁸ In addition, the Exchange noted that the Indonesia Financial Services Authority, which has responsibility for the Indonesian stock exchanges, the Polish Financial Supervision Authority, which has responsibility for Polish stock exchanges, and the Commission are signatories to the International Organization of Securities Commissions Multilateral Memorandum of Understanding.

III. Proceedings to Determine Whether to Approve or Disapprove SR-MIAX-2014-39 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act⁹ to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change, as discussed below. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as

⁷ See Notice, supra note 3, (citing to MOU with the CVM dated as of July 24, 2012).

⁸ See Notice, supra note 3 (citing to the MOU with the FCSCM dated December 6, 1995).

⁹ 15 U.S.C. 78s(b)(2)(B).

described in greater detail below, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,¹⁰ the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to, the proposed rule change's consistency with Section 6(b)(5) of the Act,¹¹ which require that the rules of a national securities exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data and arguments with respect to the concerns identified above, as well as any other concerns they may have with the proposed rule change. In particular, the Commission invites the written views of interested persons concerning whether the proposal is inconsistent with Section 6(b)(5)¹² or any other provision of the Act, or the rules and regulation thereunder.

Although there do not appear to be any issues relevant to approval or disapproval which would

¹⁰ Id. Section 19(b)(2)(B) of the Exchange Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. See id. The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding. See id.

¹¹ 15 U.S.C. 78f(b)(5).

¹² Id.

be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.¹³

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by **[INSERT DATE 35 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposed rule change, in addition to any other comments they may wish to submit about the proposed rule change.

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-2014-39 on the subject line.

Paper comments:

- 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-2014-39. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

¹³ Section 19(b) (2) of the Act, as amended by the Securities Act Amendments of 1975, Pub. L. 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

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 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-2014-39 and should be submitted on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Rebuttal comments should be submitted by **[INSERT DATE 35 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Kevin M. O'Neill,
Deputy Secretary.

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¹⁴ 17 CFR 200.30-3(a)(57).

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