



**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-97421; File No. SR-MIAX-2023-19]**

**Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing of a Proposed Rule Change to Amend Exchange Rule 307, Position Limits**

May 2, 2023.

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> notice is hereby given that on April 21, 2023, 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 Exchange Rule 307, Position Limits.

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

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

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

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 Exchange Rule 307, Position Limits, to adopt new paragraph (g) to codify the process for adjusting position limits as a result of a stock split<sup>3</sup> or reverse stock split<sup>4</sup> in the underlying security.

Background

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<sup>3</sup> A stock split is a corporate action in which a company issues additional shares to shareholders, increasing the total by the specified ratio based on the shares they held previously. A stock split happens when a company increase the number of its shares to boost the stock's liquidity. Although the number of shares outstanding increases by a specific multiple, the total dollar value of all shares outstanding remains the same because a split does not fundamentally change the company's value. The most common split ratios are 2-for-1 or 3-for-1 (sometimes denoted as 2:1 or 3:1). This means that for every share held before the split, each stockholder will have two or three shares, respectively, after the split. Example of a stock split, in August 2020, Apple (AAPL) split its shares 4-for-1. Right before the split, each share was trading around \$540. After the split, the price per share at the market open was \$135 (approximately \$540 / 4). An investor who owned 1,000 share of the stock pre-split would have owned 4,000 shares post-split. Apple's outstanding shares increased from 3.4 billion to approximately 13.6 billion, while the market capitalization remained largely unchanged at \$2 trillion. Adam Hayes, *What a Stock Split Is and How It Works, With an Example*, Investopedia (June 7, 2022), <https://www.investopedia.com/terms/s/stocksplit.asp> (last visited 4/17/2023).

<sup>4</sup> A reverse stock split is a type of corporate action that consolidates the number of existing shares of stock into fewer (higher-priced) shares. A reverse stock split divides the existing total quantity of shares by a number such as five or ten, which would then be called a 1-for-5 or 1-for-10 reverse split, respectively. A reverse stock split is also known as stock consolidation, stock merge, or share rollback and is the opposite of a stock split, where a share is divided (split) into multiple parts. Say a pharmaceutical company has ten million outstanding shares in the market, which are trading for \$5 per share. As the share price is lower, the company management may wish to artificially inflate the per-share price. They decide to go for the 1-for-5 reverse stock split, which essentially means merging five existing share into one new share. Once the corporate action exercise is over, the company will have 2 million new shares (10 million / 5), with each share now costing \$25 each (\$5 x 5). Akhilesh Ganti, *Reverse Stock Split: What It Is, How It Works, Examples*, Investopedia (July 11, 2022), <https://www.investopedia.com/terms/r/reversesplit.asp> (last visited 4/17/2023).

Currently, Exchange Rule 307(d) provides that position limits shall be determined in the following manner: (1) a 25,000 contract limit applies to those to those options having an underlying security that does not meet the requirements for a higher option contract limit; (2) To be eligible for the 50,000 contract limit, either the most recent six (6) month trading volume of the underlying security must have totaled at least twenty (20) million shares, or the most recent six (6) month trading volume of the underlying security must have totaled at least fifteen (15) million shares and the underlying security must have at least forty (40) million shares currently outstanding; (3) To be eligible for the 75,000 contract limit, either the most recent six (6) month trading volume of the underlying security must have totaled at least forty (40) million shares or the most recent six (6) month trading volume of the underlying security must have totaled at least thirty (30) million shares and the underlying security must have at least 120 million shares currently outstanding; (4) To be eligible for the 200,000 contract limit, either the most recent six (6) month trading volume of the underlying security must have totaled at least eighty (80) million shares or the most recent six (6) month trading volume of the underlying security must have totaled at least sixty (60) million shares and the underlying security must have at least 240 million shares currently outstanding; (5) To be eligible for the 250,000 contract limit, either the most recent six (6) month trading volume of the underlying security must have totaled at least 100 million shares or the most recent six (6) month trading volume of the underlying security must have totaled at least seventy-five (75) million shares and the underlying security must have at least 300 million shares currently outstanding.

The Rule also provides that, every six (6) months, the Exchange will review the status of underlying securities to determine which limit should apply. A higher limit will be effective on the date set by the Exchange, while any change to a lower limit will take effect after the last expiration then trading, unless the requirement for the same or a higher limit is met at the time of the intervening six (6) month review. If, however, subsequent to a six (6) month review, an increase in volume and/or outstanding shares would make a stock eligible for a higher position

limit prior to the next review, the Exchange in its discretion may immediately increase such position limit.<sup>5</sup> Additionally, Interpretations and Policies .01 of the Rule establishes position limits that exceed the highest limit (250,000 contracts) available by Rule for certain underlying securities.

The Securities and Exchange Commission (the “Commission”) has recognized that position limits (and exercise limits) serve as a regulatory tool designed to address potential manipulative schemes and adverse market impact surround [sic] the use of options. In the past, the Commission has stated that:<sup>6</sup>

Since the inception of standardized options trading, the options exchanges have had rules limiting the aggregate number of options contracts that a member or customer may hold or exercise. These position and exercise limits are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate the underlying market so as to benefit the option position, or that might contribute to disruptions in the underlying market. In addition, such limits serve to reduce the possibility of disruption in the options market itself, especially in illiquid options classes.<sup>7</sup>

### Proposal

The Exchange now proposes to amend its position limit rule, Exchange Rule 307, to codify and make permanent the position limit changes that currently occur when an underlying security undergoes a corporate stock split. Currently, when an underlying undergoes a stock

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<sup>5</sup> See Exchange Rule 307(e).

<sup>6</sup> See Securities Exchange Act Release No. 47346 (February 11, 2003), 68 FR 8316 (February 20, 2003) (SR-CBOE-2002-26) (Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to the Proposed Rule Change Increasing Position and Exercise Limits for Options on the DIAMONDS Trust).

<sup>7</sup> See Securities Exchange Act Release No. 93525 (November 4, 2021), 86 FR 62584 (November 10, 2021) (SR-CBOE-2021-029) (Notice of Filing of Amendment Nos. 2 and 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendments Nos. 1, 2, and 3, To Increase Position Limits for Options on Two Exchange-Traded Funds).

split, its position limit is adjusted by the Options Clearing Corporation by the factor of the split.<sup>8</sup> For example, an underlying that has a position limit of 250,000 contracts that undergoes a four-for-one stock split will have a new position limit of 1,000,000 contracts. However, while the stock split is a permanent corporate action in the underlying, the position limit adjustment is temporary and lasts only until the time that the last option listed at the time the stock split occurred expires.<sup>9</sup>

To address this issue, the Exchange proposes to similarly apply the adjustment factor to the current position limit, by adopting paragraph (g), Corporate Actions, to Exchange Rule 307, and new subparagraph (g)(1) to describe the Exchange's process for handling stock splits. Additionally, the Exchange proposes to adopt new subparagraph (g)(2) to describe the Exchange's process for handling reverse stock splits.

Specifically, new subparagraph (g)(1) will provide that the position limit that was in effect at the time of the stock split shall be adjusted by multiplying the current position limit value in effect for the underlying by the stock split ratio.<sup>10</sup> The Exchange also proposes to include an example in its rule text to illustrate the operation of the rule by stating, if the current position limit is 250,000 contracts and there is a four-for-one (4:1) stock split in the underlying, the new position limit would be 1,000,000 contracts (4 x 250,000).

Similarly, new subparagraph (g)(2) will provide that the position limit that was in effect at the time of the reverse stock split shall be adjusted by dividing the current position limit value in effect for the underlying by the reverse stock split ratio.<sup>11</sup> The Exchange also proposes to include an example in its rule text to illustrate the operation of the rule by stating, if the current position limit is 250,000 contracts and there is one-for-two (1:2) reverse stock split in the

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<sup>8</sup> The Exchange does not believe that the OCC immediately adjusts position limits for reverse stock splits.

<sup>9</sup> It is the Exchange's understanding and belief that this is the OCC's process.

<sup>10</sup> See proposed Exchange Rule 307(g)(1).

<sup>11</sup> See proposed Exchange Rule 307(g)(2).

underlying, the new position limit would be 125,000 contracts (250,000 / 2). The Exchange also proposes to adopt rule text to provide that the new position limit will be the greater of the adjusted position limit or the lowest position limit defined in paragraph (d).

The Exchange believes that its proposal presents a logical approach to addressing stock splits in underlying securities as it maintains the integrity of the position limit to shares outstanding ratio, both pre and post-split, and promotes consistency and stability in the marketplace. For example, a position limit of 250,000 contracts on an underlying security that has 4,000,000,000 shares outstanding represents control of 25,000,000 shares or 0.625% of the total shares outstanding. If the underlying security has a four-for-one stock split, the number of shares outstanding would increase to 16,000,000,000. Therefore, to maintain the same position limit to shares outstanding ratio the position limit should accordingly increase fourfold to 1,000,000 contracts, where control of 100,000,000 shares would represent control of 0.625% of the total shares outstanding.

Currently, the scenario described above occurs when there is a stock split, however, when the last option listed at the time of the stock split expires, the position limit is re-evaluated in accordance to the criteria described in Exchange Rule 307(d)(1) – (5), (where the maximum contract limit is 250,000),<sup>12</sup> and the position limit is permanently re-adjusted in accordance to the Rule. However, the reversion of the position limit, even to the maximum limit of 250,000 contracts, unnecessarily restricts trading by imposing a stricter position limit relative to the number of shares outstanding post-stock split than existed pre-stock split. The Exchange's proposal will maintain the position limit ratio to shares outstanding so that the pre-split ratio and post-split ratio are identical, and will eliminate any market disruptions that may occur as a result of the current process for handling stock splits.

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<sup>12</sup> See Exchange Rule 307(d)(5).

Additionally, the Exchange proposes to amend 307(e) to facilitate the six month reevaluation process on underlyings that have undergone a split. Specifically, the Exchange proposes that the split factor be used for analysis purposes under paragraph (d) of Rule 307. The Exchange proposes to adopt rule text that will provide that, for underlying securities whose position limit has been adjusted pursuant to proposed paragraph (g), the split factor shall be used for analysis under paragraph (d). For example, under Exchange Rule 307(d)(5) to be eligible for the 250,000 contract limit, either the most recent six (6) month trading volume of the underlying security must have totaled at least 100 million shares or the most recent six (6) month trading volume of the underlying security must have totaled at least seventy-five (75) million shares and the underlying security must have at least 300 million shares currently outstanding. Under the Exchange's proposal to use the split factor for analysis under paragraph (d), in the event of a four-for-one split in the underlying each threshold would be increased by the split factor and increased fourfold. Therefore the first test would require a six month trading volume of 400 million shares (100,000,000 x 4), and the second test would require a six month trading volume of 300 million shares (75,000,000 x 4) and the underlying security would be required to have at least 1,200,000,000 shares currently outstanding (300,000,000 x 4). The Exchange proposes to take a similar approach with reverse stock splits, and proposes to adopt rule text to provide that, for reverse stock splits, the split factor would be similarly applied and used as a divisor in the calculations rather than as a multiplier.

Additionally, the Exchange proposes to adopt new subparagraph (3) to paragraph (g) to state that, for the purposes of paragraph (g), the term "stock" shall pertain solely to equity securities and not be inclusive of Exchange Traded Funds. Rule 307 provides position limits for both equity securities and Exchange Traded Funds,<sup>13</sup> and the Exchange's believes that adopting this rule text provides specificity regarding the scope of the Exchange's proposal.

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<sup>13</sup> See Interpretations and Policies .01 of Rule 307.

The Exchange believes its proposal provides a uniform and consistent approach for reevaluating position limits for underlyings that were subject to a stock split, as the split factor is properly applied (multiplied for share splits and divided for reverse share splits) to each threshold value under paragraph (d) to establish the proper position limit.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act<sup>14</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>15</sup> 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.

The Exchange believes that its proposal would remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general protect investors and the public interest because it provides a method for addressing position limit changes as a result of stock splits occurring in the underlying instrument. Currently, position limits are adjusted at the time of the stock split but revert back to the original position limit when the last listed option at the time of the split expires, which does not benefit investors or the public interest, as the original position limit is no longer meaningfully related to the current shares outstanding. The Exchange also believes that clarifying that its proposal applies only to equity stocks and not to Exchange Traded Funds will avoid investor confusion.

The Exchange believes that its proposal is designed to prevent fraudulent and manipulative acts and practices as the proposal maintains the established position limit relative to shares outstanding pre and post stock split. The Exchange believes its proposal promotes just

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<sup>14</sup> 15 U.S.C. 78f(b).

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

and equitable principles of trade, fosters cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to transactions in securities, as the proposal provides a defined calculation in the Exchange's rule to account for stock splits in underlying securities. Additionally, the Exchange proposes a corollary method for handling reverse stock split that employs similar logic.

The Exchange notes that the industry recently experienced an issue with a stock split in Apple Inc. ("AAPL") that this proposal is tangentially designed to address. In August of 2020, AAPL underwent a four-for-one stock split. Prior to the stock split there were approximately 4,000,000,000 shares of AAPL outstanding<sup>16</sup> and the position limit for AAPL was 250,000 contracts (25,000,000 shares). On August 28, 2020, the Options Clearing Corporation (the "OCC") published a Memo indicating that effective August 31, 2020, a contract multiplier of 4 and a strike divisor of 4 would be applied to AAPL contracts and strikes.<sup>17</sup> The OCC also adjusted the position limit for AAPL by the same factor, setting the equity position limit to 100,000,000 shares (1,000,000 contracts). Position limits are published daily by the OCC on its website.<sup>18</sup> However, when the last AAPL option listed at the time of the stock split in 2020 expired in 2022, the OCC reverted back to the original equity position limit for AAPL of 25,000,000 shares (250,000 contracts). Although this position limit technically adheres to Exchange rules,<sup>19</sup> it is more restrictive than the original position limit. Prior to the stock split AAPL had approximately 4,000,000,000 shares outstanding and the position limit of 250,000 contracts represented control of 25,000,000 shares or 0.625% of the shares outstanding. After

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<sup>16</sup> Apple Inc. Form 10-Q for the Quarterly Period Ended June 27, 2020 states that 4,275,634,000 shares of common stock were issued and outstanding as of July 17, 2020.

<sup>17</sup> See OCC Memo #47509, Apple Inc. – 4 for 1 Stock Split (August 28, 2020) available on its public website at <https://infomemo.theocc.com/infomemos?number=47509>.

<sup>18</sup> See <https://www.theocc.com/market-data/market-data-reports/series-and-trading-data/position-limits>.

<sup>19</sup> See Exchange Rule 307(e).

the stock split AAPL had approximately 16,000,000,000 shares outstanding.<sup>20</sup> The immediate adjustment of the position limit from 250,000 contracts to 1,000,000 contracts reflects control of 100,000,000 shares or 0.625% of the shares outstanding which retains the pre-stock split ratio. Re-adjusting the position limit back to 25,000,000 shares (250,000 contracts) when there are 16,000,000,000 shares outstanding reduces the position limit to 0.156% of the shares outstanding, making the post-stock split position limit more restrictive than the pre-stock split position limit.

This reversion to the pre-stock split position disrupts the market in a number of ways. First, it prevents market participants from effectively pursuing their trading and investment strategies in the same fashion as they had pre-stock split as the position limit relative to shares outstanding becomes more restrictive. Secondly, the reversion to the pre-stock split position limit introduces an element of risk as market participants must unwind their post-stock split positions prior to the occurrence of the reversion back to the pre-stock split position limit level to remain compliant with position limit rules. Finally, the reversion of the position limit may negatively impact trading volumes, as market participants that use option contracts to hedge their risks will not be able to maintain the same levels of market exposure.

Using AAPL as an example, pre-split, a market participant could have had an options position of 250,000 contracts that represented 0.0625% of the total shares outstanding. Post-split, the market participant could have an options position of 1,000,000 contracts, which would still represent 0.0625% of the total shares outstanding. When the reversion back to the pre-split position limit occurs (250,000 contracts) the market participant is forced to reduce its trading activity as the maximum position limit now represents 0.1563% of the total shares outstanding. This reduction in trading volume also represents a reduction in available liquidity. Robust liquidity facilitates price discovery and benefits competition by improving bid/ask spreads,

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<sup>20</sup> Apple Inc. Form 10-Q for the Quarterly Period Ended June 25, 2022, states that 16,070,752,000 shares of common stock were issued and outstanding as of July 15, 2022.

tighter bid/ask spreads lead to better execution prices. Therefore, the reversion to the pre-split position limit negatively impacts liquidity, trading volume, and possibly execution prices.

The Exchange believes that its proposed formula for reevaluating position limits for underlyings that have undergone a stock split or reverse stock split would remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general protect investors and the public interest because it provides a uniform and consistent approach for re-evaluating position limits.

Each option exchange has a similar position limit rule,<sup>21</sup> and the minimum position limit value is used by the OCC. The Exchange believes its proposal will allow each exchange to adopt a similar provision to their position limit rule to harmonize position limit adjustments as a result of stock splits in underlying securities. The Exchange believes this will foster cooperation and coordination with persons engaged in regulating and processing information with respect to transactions in securities by standardizing the calculation of position limits for underlying securities that undergo a stock split. All market participants are able to determine position limits on a daily basis as each day the Options Clearing Corporation publishes a Position Limit file. Additionally, the OCC publishes a Position Limit Change file which reflects position limit adjustments and provides the Start Date and Starting Position Limit coupled with the End Date and Ending Position Limit, to alert the industry participants to position limit changes. Therefore, the Exchange believes that its proposal is designed to promote just and equitable principles of trade and to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to transactions in securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

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<sup>21</sup> See e.g., Cboe Exchange Rule 8.30; Box Exchange Rule 3120, Nasdaq Phlx, Options 9, Section 13; Nasdaq ISE, Options 9, Section 13; NYSE Arca 6.8-O; and NYSE American Rule 904.

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 that the proposed rule change will impose any burden on intra-market competition as the rules of the Exchange apply equally to all Members of the Exchange and all Members of the Exchange are required to adhere to the position limits established by the Exchange's rules.

The Exchange does not believe that the proposed rule change will impose any burden on inter-market competition as the proposal is not competitive in nature. The Exchange believes that all option exchanges will adopt substantively similar proposals for establishing position limits for underlying securities that undergo a stock split or reverse stock split, such that the Exchange's proposal would benefit competition.

For these reasons, 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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MIAX-2023-19 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-2023-19. This file number should be included on the subject line if email 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 (<https://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. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR-MIAX-2023-19

and should be submitted on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>22</sup> 17 CFR 200.30-3(a)(12).