III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the 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 consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the obvious error pilot program to continue uninterrupted while the industry gains further experience operating under the Plan to address extraordinary market volatility, and avoid any investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing. At any time within 60 days of 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 that Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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 email to rule-comments@sec.gov. Please include File Number SR–CBOE–2015–18 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–CBOE–2015–18. 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 Web site (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 Web site 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–CBOE–2015–18, and should be submitted on or before March 18, 2015.

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

Brent J. Fields,
Secretary.

[Federal Register: 02/25/2015; 10:00 a.m. (Washington, DC)]

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SEcurities and Exchange Commission


Self-Regulatory Organizations; Miami International Securities Exchange LLC; Order Disapproving Proposed Rule Changes To List and Trade Options on Shares of the iShares ETFs and Market Vectors ETFs

February 19, 2015.

I. Introduction

On June 17, 2014, 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 (“Exchange Act” or “Act”)1 and Rule 19b–4 thereunder,2 a proposed rule change to list and trade options on shares of the iShares MSCI Brazil Capped ETF, iShares MSCI Chile Capped ETF, iShares MSCI Peru Capped ETF, and iShares MSCI Spain Capped ETF (collectively “iShares ETFs”). The proposed rule change was published for comment in the Federal Register on July 3, 2014.3 On August 13, 2014, the Commission extended the time period in which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change, to October 1, 2014.4 On September 23, 2014, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change.5 The Commission received a letter from MIAX on the proposal.6 On December 17, 2014, the Commission issued a notice of designation of a longer period for Commission action on proceedings to determine whether to approve or disapprove the proposed rule change.7

In addition, on July 28, 2014, the Exchange filed with the Commission a proposed rule change to list and trade options on shares of the Market Vectors

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Brazil Small-Cap ETF, Market Vectors Indonesia Index ETF, Market Vectors Poland Index 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. On September 25, 2014, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change. The Commission received a letter from MIAX on the proposal. On January 27, 2015, the Commission issued a notice of designation of a longer period for Commission action on proceedings to determine whether to approve or disapprove the proposed rule change. This order disapproves the iShares ETFs Proposal and the Market Vectors ETFs Proposal.

II. Description of the Proposal

The Exchange proposes to list for trading on the Exchange options on shares of the iShares and Market Vectors ETFs. In its proposals, the Exchange states that the iShares 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 MSCI Brazil 25/50 Index (“Brazil Index”), which consists of stocks traded primarily on BM&FBOVESPA; MSCI Chile Investable Market Index (IMI) 25/50 (“Chile Index”), which consists of stocks traded primarily on the Santiago Stock Exchange; MSCI All Peru Capped Index (“Peru Index”), which consists of stocks traded primarily on Bolsa de Valores de Lima; and MSCI Spain 25/50 Index (“Spain Index”), which consists of stocks traded primarily on Bolsa de Madrid. Similarly, 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; the 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. MIAX Rule 402 establishes the Exchange’s initial listing standards for equity options (the “Listing Standards”) pursuant to which the Exchange can list and trade options on the shares of open-end investment companies, such as the iShares ETFs and Market Vectors ETFs. According to the Exchange, options on the iShares ETFs and Market Vectors ETFs do not meet the requirement that the 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 sharing agreement (“CSSA”), not represent 20% or more of the weight of the index. Accordingly, the Exchange may not list and trade options on the iShares ETFs or Market Vectors ETFs without a separate proposed rule change filed with and approved by the Commission.

According to the Exchange, it has attempted, but not entered into, CSSAs with the applicable foreign markets. In its proposals, the Exchange requested that the Commission allow it to rely on agreements between the Commission and the applicable foreign regulators, in place of the requirement to have a CSSA, with respect to the listing and trading of options on shares of the iShares ETFs and Market Vectors ETFs. Specifically, the Exchange cited the agreements between the Commission and the Comissao de Valores Mobiliarios (“CVM”), which has responsibility for the Brazilian exchanges and over-the-counter markets; the Superintendencia de Valores y Seguros de Chile (“SVS”), which has the responsibility for the Chilean securities markets; the Comision Nacional del Mercado de Valores (“CNMV”), which has the responsibility for the Spanish stock exchanges; and 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 the Russian stock exchanges. 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 the Polish stock exchanges; the Superintendencia del Mercado de Valores, which has responsibility for the Peruvian stock exchanges, and the Commission are signatories to the International Organization of Securities Commissions Multilateral Memorandum of Understanding.

In its letter, MIAX stated its belief that the proposals were consistent with the requirements of the Act and that the Commission should approve the filings. In addition, MIAX believes that its proposals are consistent with the approach previously allowed by the Commission. Specifically, MIAX noted that the Commission has, in the past, allowed exchanges to rely on agreements between the Commission and foreign regulators in lieu of a CSSA between an exchange and the applicable foreign market. The Exchange believes...
the proposed rule changes are consistent with Section 6 of the Act "by avoiding the regulatory compliance issue of improperly listing the ETFs without CSSAs, or without Commission approval, while providing a clear mechanism to acquire surveillance and trading information when necessary from a foreign regulator via the Commission." 23

III. Discussion

Under section 19(b)(2)(C) of the Act, the Commission shall approve a proposed rule change of a self-regulatory organization ("SRO") if it finds that such proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder that are applicable to such organization. 24 The Commission shall disapprove a proposed rule change if it does not make such a finding. 25

After careful consideration, the Commission does not find that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. 26 In particular, the Commission does not find that the proposed rule changes are consistent with Section 6(b)(5) of the Act, which requires that the rules of a national securities exchange be designed, among other things, "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." 27

As noted by MIAX, the Commission has permitted an SRO to rely on an agreement between the Commission and the applicable foreign regulator in the absence of a CSSA only if the SRO receives an assurance from the Commission that such an agreement can be relied on for surveillance purposes and provides, at a minimum, for the exchange of transaction, clearing and customer information necessary to conduct an investigation. 28 This assurance is necessary, because the Commission may enter into a variety of agreements with foreign regulators some of which may be unrelated to the sharing of surveillance information.

After carefully and thoroughly reviewing the agreements cited by the Exchange in its proposals, the Commission is unable to provide the necessary assurance that such agreements can be relied on for surveillance purposes. 29 Accordingly, the Commission cannot approve MIAX's request to allow the listing and trading of options on iShares ETFs and Market Vectors ETFs, upon reliance on agreements entered into between the Commission and the applicable foreign regulators in place of a CSSA, in satisfaction of the Exchange's Listing Standards. 30 According to MIAX, such approval would be necessary to make the ETFs compliant with all of the applicable Listing Standards. 31

The Commission notes that Rule 701(b)(3) of its Rules of Practice reiterates that "[t]he burden to demonstrate that a proposed rule change is consistent with the Exchange Act . . . is on the self-regulatory organization that proposed the rule change." 32 For the reasons articulated above, the Commission does not believe that MIAX has met that burden in this case.

IV. Conclusion

For the foregoing reasons, the Commission does not find that the proposed rule changes are consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5) of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule changes (SR–MIAX–2014–30 and SR–MIAX–2014–39) be, and hereby are, disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority. 33

Brent J. Fields,
Secretary.