

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-77507; File No. SR-MIAX-2016-08)

April 4, 2016

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing of a Proposed Rule Change to Amend the Exchange's Amended and Restated By-Laws

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 March 29, 2016, 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 Exchange's Amended and Restated By-Laws.

The text of the proposed rule change is available on the Exchange's website at 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

¹ 15 U.S.C. 78s(b)(1).

² 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 its Amended and Restated By-Laws (“By-Laws”) to eliminate the last sentence of Article II, Section 2.2(d)³, the last sentence of Article II, Section 2.2(g)(ii)⁴ and the last sentence of Article IV, Section 4.2(b)⁵ as well as the defined terms set forth in Article I (p) and (oo)⁶ which are used only in connection with the foregoing By-Law provisions proposed to be eliminated. Article I of the By-Laws will be re-lettered accordingly.

³ Article II, Section 2.2(d) of the By-Laws reads in relevant part: In the event a Director appointed after the Effective Date becomes a member of the board of directors or similar governing body of a Specified Entity, such individual shall immediately cease to be a Director of the Company and the resulting vacancy shall be filled pursuant to the provisions of Article II, Section 2.2(e).

⁴ Article II, Section 2.2(g)(ii) of the By-Laws reads in relevant part: In the event an individual designated as an Observer becomes a member of the board of directors or similar governing body of a Specified Entity after the Effective Date, such individual shall immediately cease to be an Observer and the resulting vacancy shall be filled pursuant to the provisions of Article II, Section 2.2(e).

⁵ Article IV, Section 4.2(b) of the By-Laws reads in relevant part: In the event a committee member appointed after the Effective Date becomes a member of the board of directors or similar governing body of a Specified Entity, such individual shall immediately cease to be event a committee member and the resulting vacancy shall be filled pursuant to the provisions of Article IV.

⁶ The term “Specified Entity” means (i) any U.S. securities option exchange (or facility thereof) or U.S. alternative trading system on which securities options are traded (other than the Company or any of its affiliates) that lists for trading any option contract that competes with an Exchange Contract, (ii) any person that owns or controls such U.S. securities option exchange or U.S. alternative trading system, and (iii) any affiliate of a person described in clause (i) or (ii) above. See By-Laws Article I (oo). The term “Exchange Contract” means a contract that is then listed for trading by the Exchange or that is contemplated by the then current business plan of the Company to be listed for trading by the Exchange within ninety (90) days following such date. See By-Laws Article I (p).

These By-Law provisions restrict an individual who is a Director⁷, Observer⁸ or committee member of MIAX from also serving as a member of the board of directors or similar governing body of a Specified Entity and would cause such individual to immediately cease being a Director, Observer or committee member, as applicable, of the Exchange's Board of Directors ("Board") upon such individual becoming a member of the board of directors or similar governing body of a Specified Entity. The term "Specified Entity" generally refers to any U.S. securities option exchange (or facility thereof) or U.S. alternative trading system on which securities options are traded which competes with the Exchange, or an affiliate of the foregoing.⁹

This restriction was added to the By-Laws in connection with the Equity Rights Program ("ERP")¹⁰ established by the Exchange in 2013.¹¹ This prohibition was intended to prevent any potential conflicts of interest that might arise by virtue of such MIAX Director, Observer or committee member also serving as a member of the governing body of a competitor. MIAX has since learned through experience that such prohibition is unnecessarily restrictive because (1)

⁷ The term "Director" means the persons elected or appointed to the [MIAX] Board of Directors from time to time in accordance with the LLC Agreement [of MIAX] and these By-Laws in their capacity as managers of the Company. See By-Laws Article I (j).

⁸ The term "Observer" means a person invited to attend meetings of the [MIAX] Board of Directors in a nonvoting observer capacity as further described in Article II, Section 2.2(g)(i)-(iii) of the By-Laws. See By-Laws Article II, Section 2.2(g).

⁹ See supra note 6.

¹⁰ Pursuant to the ERP, units representing the right to acquire equity in the Exchange's parent holding company, Miami International Holdings, Inc., were issued to participating Members in exchange for payment of an initial purchase price or the prepayment of certain transaction fees and the achievement of certain liquidity addition volume thresholds on the Exchange over a fixed period of time. The By-Laws were also then amended to incorporate rights granted to Members participating in the ERP to appoint representation on the MIAX Board.

¹¹ See Securities Exchange Act Release No. 70498 (September 25, 2013), 78 FR 60348 (October 1, 2013) (SR-MIAX-2013-43) and Securities Exchange Act Release No. 71172 (December 23, 2013), 78 FR 79530 (December 30, 2013) (SR-MIAX-2013-58).

any such potential conflicts of interest are more effectively and more efficiently addressed by other means, and (2) it results in the unavailability to MIAX (or to its competitors) of many excellent Board (or other governing body) candidates.

MIAX has found that potential conflicts of interest are best addressed through such vehicles as the covenant of good faith and fair dealing and fiduciary duties applicable to limited liability company (“LLC”) managers under the Delaware Limited Liability Company Act (“LLC Act”)¹² and self-regulatory obligations imposed upon directors of a self-regulatory organization (“SRO”) such as MIAX under the Act¹³, which generally apply to Directors, Observers and committee members of MIAX, as well as the confidentiality agreements that MIAX generally enters into with Directors, Observers and committee members, By-Law provisions directly addressing potential conflicts of interest¹⁴ and MIAX policies relating to confidentiality of MIAX information and addressing the aforementioned fiduciary and other obligations of company directors generally and as directors of a SRO. MIAX has also found that any potential benefit that could be derived from prohibiting a MIAX Director, Observer or committee member from also serving as member of a governing body of a competitor is by far out-weighted by the loss to MIAX of the experience, knowledge and expertise of potential Board members who are disqualified from such service simply by virtue of their service as a member of a governing body of a competitor. The proposed rule change is designed to enable MIAX to engage the best suited

¹² 6 Del. C. § 18-101 et seq. Fiduciary duties of LLC managers include the duty of loyalty (requires managers to serve the best interest of the company and avoid conflicts of interest) and the duty of care (requires managers to act as a prudent person would in similar circumstances).

¹³ 15 U.S.C. 78 et seq.

¹⁴ See By-Laws Article II, Section 2.20.

and most qualified leaders to serve in the capacity of Director, Observer or committee member, regardless of their service on the governing body of a competitor.

Further, MIAX has reviewed the rules of other U.S. securities option exchanges and noted that most other option exchanges do not restrict their board (or other governing body) members from sitting on the board of directors or other governing body of another options exchange.¹⁵

2. Statutory Basis

MIAX believes that this proposed rule change is consistent with Section 6(b) of the Act¹⁶ in general, and furthers the objectives of Sections 6(b)(1) and 6(b)(5) of the Act¹⁷ in particular, in that it enables the Exchange to be so organized as to have the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its Members and persons associated with its Members with, the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange; and that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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.

¹⁵ None of the BATS Exchange, Inc., BOX Options Exchange LLC, Chicago Board Options Exchange, Incorporated, Nasdaq OMX PHLX LLC, Nasdaq Options Market or International Securities Exchange, LLC have such a restriction. Only one U.S. securities options exchange restricts those of its directors designated by its founding firm members (i.e., investors in its strategic founding transaction) from sitting on the board of directors or other governing body of another options exchange. See Amended and Restated Limited Liability Company Agreement of NYSE Amex Options LLC, Article VIII, 8.1(h). See also Securities Exchange Act Release No. 71408 (January 27, 2014), 79 FR 5481 (January 31, 2014) (SR-NYSEMKT-2014-08) (Exhibit 5A).

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(1) and (b)(5).

MIAX is proposing to eliminate the restriction in its By-Laws prohibiting a Director, Observer or committee member of the Exchange's Board of Directors from simultaneously serving as a member of the governing body of a competitor. This proposed rule change is consistent with and will facilitate a Board structure and composition by MIAX that will strengthen its ability to carry out the purposes of the Act and comply with the provisions of the Act and the rules and regulations thereunder, and to enforce compliance by Exchange Members and persons associated with Exchange Members with the provisions of the Act and the rules and regulations thereunder and the rules of the Exchange. This proposed rule change is also consistent with the protection of investors and the public interest. Specifically, the proposed rule change will allow for the selection by MIAX of nominees best qualified to serve as Directors, Observers or committee members on the Exchange's Board of Directors based on the overall strategic needs of the Board, the Exchange and its constituents, regardless of such individuals' service as a member of the governing body of a competitor. (Conversely, this proposed rule change will also allow for the selection by MIAX's competitors of nominees best qualified to serve on their governing bodies, regardless of such individuals' service on the Exchange's Board). In addition, the proposed rule change will alleviate the disruption that might occur if a Director, Observer or committee member of MIAX were to become a member of the board of directors or similar governing body of a Specified Entity and thereby immediately cease to be a Director, Observer or committee member of MIAX, thus resulting in the loss of a valuable Director, Observer or committee member and a vacancy on the MIAX Board which the Exchange would have to divert efforts to refill, and potentially disrupting compliance with MIAX's Board composition requirements as set forth in its By-Laws.

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

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 proposed change to the By-Laws relates to the corporate governance of MIAX, and as such, is not a competitive filing and does not impose a burden on competition.

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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-MIAX-2016-08 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-2016-08. This file number should be included on the subject line if e-mail 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 (<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 the 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-2016-08 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Robert W. Errett
Deputy Secretary

¹⁸ 17 CFR 200.30-3(a)(12).