

**Exhibit 5**

New text is double-underlined;  
Deleted text is in [brackets]

**AMENDED AND RESTATED  
BY-LAWS  
OF  
MIAX EMERALD, LLC  
(a Delaware limited liability company)**

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**ARTICLE I  
Definitions**

When used in these By-Laws, unless the context otherwise requires, the terms set forth below shall have the following meanings:

(a) – (w) No change.

(x) “Member Representative Director” means a Director who has been [appointed as such to the initial Board of Directors pursuant to Article II, Section 2.5 of these By-Laws, or] elected by the LLC Member after having been nominated by the Member Nominating Committee or by an Exchange Member pursuant to these By-Laws and confirmed as the nominee of Exchange Members after majority vote of Exchange Members, if applicable. A Member Representative 4 Director may, but is not required to be an officer, director, employee, or agent of an Exchange Member.

(y) – (bb) No change.

(cc) “Observer” shall mean a person affiliated with an Exchange Member that is elected by the LLC Member to be an observer to the Board, after having been nominated by the Member Nominating Committee, all as set forth in Section 2.21 below.

(dd) “Observer Threshold” means the minimum percentage of issued and outstanding shares of common stock or securities exercisable or convertible into shares of common stock of the LLC Member that an Exchange Member (including its affiliates) must own in order to qualify for a person affiliated with such Exchange Member being elected as an Observer to the Board, all as set forth in Section 2.21 below. The Observer Threshold shall be equal to at least one percent (1%) of the issued and outstanding shares of common stock of the LLC Member, taking into account securities that are exercisable or convertible into shares of common stock of the LLC Member.

[(cc)](ee) “person” shall mean a natural person, partnership, corporation, limited liability company, entity, government, or political subdivision, agency or instrumentality of a government.

[(dd)](ff) “person associated with an Exchange Member” or “associated person of an Exchange Member” means any partner, officer, or director of an Exchange Member (or person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such Exchange Member, or any employee of such Exchange Member.

[(ee)](gg) “Record Date” means a date at least thirty-five (35) days before the date announced as the date for the annual meeting of the LLC Member and set as the last date on which Exchange Members may petition to add to the List of Candidates and used to determine whether Exchange Members are entitled to vote on the final List of Candidates.

[(ff)](hh) “registered broker or dealer” means any registered broker or dealer, as defined in Section 3(a)(48) of the Act, that is registered with the Commission under the Act.

[(gg)](ii) “Regulatory Funds” means fees, fines, or penalties derived from the regulatory operations of the Company. “Regulatory Funds” shall not be construed to include revenues derived from listing fees, market data revenues, transaction revenues, or any other aspect of the commercial operations of the Company, even if a portion of such revenues are used to pay costs associated with the regulatory operations of the Company.

[(hh)](jj) “Rules” or “Exchange Rules” shall have the same meaning as set forth in Section 3(a)(27) of the Act.

[(ii)](kk) “statutory disqualification” shall have the same meaning as in Section 3(a)(39) of the Act.

## **ARTICLE II** **Board of Directors**

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### **Section 2.2 Composition of the Board**

(a) No change.

(b) At all times the Board of Directors shall consist of one (1) Director who is the Chief Executive Officer of the Company and sufficient numbers of Non-Industry (including Independent), Industry and Member Representative Directors to meet the following composition requirements:

(i) The number of Non-Industry Directors, including at least one Independent Director, shall equal or exceed the sum of the number of Industry Directors and Member Representative Directors elected pursuant to Article II, Section 2.4[ or Section 2.5]; and

(ii) The number of Member Representative Directors shall be at least twenty (20) percent of the Board.

(c) No change.

(d) No change.

[(e) The current Board of Directors consists of the Directors elected by the LLC Member and set forth on Schedule C to the LLC Agreement (the “Current Directors”). In addition to the Current Directors, interim Member Representative Directors shall be elected to the Board of Directors pursuant to the provisions set forth in Article II, Section 2.5 below (the “Interim Member Representative Directors”). The Current Directors and the Interim Member Representative Directors (together, the “Interim Directors”) shall not be divided into classes as set forth in Section 2.3(b) and shall serve only until the first annual meeting of the LLC Member following the approval of the Company as a national securities exchange by the Commission, which meeting shall be held within ninety (90) days after the Exchange’s application for registration as a national securities exchange is granted.]

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## **Section 2.5 [Interim Directors][Reserved]**

[(a) The Interim Directors of the Board of Directors shall be appointed by the LLC Member and shall serve until the first annual meeting of the LLC Member following the approval of the Company as a national securities exchange by the Commission, which meeting shall be held within ninety (90) days after the Exchange’s application for registration as a national securities exchange is granted. The Interim Member Representative Directors shall be appointed in accordance with the provisions of this Section 2.5.

(b) The Interim Member Representative Directors shall be appointed by the LLC Member by a consent in writing signed by the LLC Member pursuant to the provisions of Article III, Section 3.3 below and in accordance with this Section 2.5 (the “LLC Member Consent”). At least thirty (30) days prior to the date announced as the effective date for the LLC Member Consent (the “Consent Date”), the LLC Member shall report to the Secretary the initial nominees for Interim Member Representative Director positions on the Board that have been approved and submitted by the LLC Member (the “Initial Interim Member Representative Director Nominees”). At least twenty five (25) days prior to the Consent Date the Secretary shall notify the Exchange Member Applicants of those Initial Interim Member Representative Director Nominees (the “Interim Member Representative Director Nominee Notice”). Exchange Member Applicants may identify other candidates (“Interim Member Representative Director Petition Candidates” for purposes of this Section 2.5) for the Interim Member Representative Director positions by delivering to the Secretary, no later than fourteen (14) days after the date of the Interim Member

Representative Director Nominee Notice (the “Interim Record Date” for purposes of this Section 2.5), a written petition, which shall designate the candidate by name and office and shall be signed by Executive Representatives of ten percent (10%) or more of the Exchange Member Applicants. An Exchange Member Applicant may endorse as many candidates as there are Interim Member Representative Director positions to be filled. No Exchange Member Applicant, together with its affiliates, may account for more than fifty percent (50%) of the signatures endorsing a particular candidate, and any signatures of such Exchange Member Applicant, together with its affiliates, in excess of the fifty percent (50%) limitation shall be disregarded. Exchange Member Applicants means persons and entities who have submitted the Initial Documents for membership in the Exchange, who would meet the qualifications for membership based on the information contained in the Initial Documents. Initial Documents means: either the Exchange Membership Pre-Application Survey or the Exchange Participant Connectivity Request Form.

(c) Each petition for an Interim Member Representative Director Petition Candidate must include a completed questionnaire used to gather information concerning Interim Member Representative Director candidates and must be filed with the Company (the Company shall provide the form of questionnaire upon the request of any Exchange Member Applicant).

(d) If no valid petitions from Exchange Member Applicants are received by the Interim Record Date, the Initial Interim Member Representative Director Nominees approved and submitted by the LLC Member pursuant to Section 2.5(b) shall be nominated as Interim Member Representative Directors. If one or more valid petitions from Exchange Member Applicants are received by the Interim Record Date, the Secretary shall include such additional nominees, along with the Initial Interim Member Representative Director Nominees, on a list of nominees (the “List of Interim Member Representative Director Candidates”). Upon completion, the List of Interim Member Representative Director Candidates shall be sent by the Secretary to all Exchange Member Applicants that were Exchange Member Applicants on the Interim Record Date by electronic transmission to confirm the nominees for the Interim Member Representative Director positions. The List of Interim Candidates shall be accompanied by a notice regarding the time and date of an election (the “Interim Election Notice”) to be held electronically no sooner than five (5) days after the Interim Election Notice is delivered to confirm the Exchange Member Applicants’ selections of nominees for Interim Member Representative Directors.

(e) With respect to the election held to determine the final nomination of Interim Member Representative Directors, each Exchange Member Applicant shall have the right to cast one (1) vote for each available Interim Member Representative Director nomination; provided, however, that any such vote must be cast for a person on the List of Interim Candidates and that no Exchange Member Applicant, together with its affiliates, may account for more than twenty percent (20%) of the votes cast for a candidate, and any votes cast by such Exchange Member Applicant, together with its affiliates, in excess of such twenty percent (20%) limitation shall be disregarded. The votes shall be cast by electronic transmission as set forth in a notice to the Exchange Member Applicants sent by the Company prior to such election. Only votes received prior to 5:00 p.m. Eastern Time on the date of the election shall count for the nomination of a Member Representative Director. The persons on the List of Interim Candidates who receive the most votes shall be selected as the nominees for the Interim Member Representative Director positions to be elected by the LLC Member pursuant to the Consent on the Consent Date.

(f) In the event of a tie vote for two or more Interim Member Representative Director positions, the tie will be broken by lot in a manner determined by the LLC Member.]

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### **Section 2.9 Removal and Resignation**

(a) Except as hereinafter provided, any Director or Observer may be removed or expelled with or without cause by the LLC Member, and a Director may be removed by the Board of Directors in the manner provided by Article II, Section 2.9(b) below; provided, however, that any Member Representative Director may only be removed for cause, which shall include, without limitation, such Director being subject to a statutory disqualification.

(b) No change.

(c) Any Director or Observer may resign at any time either upon notice of resignation to the Chairman of the Board, the President or the Secretary. Any such resignation shall take effect at the time specified therein or, if the time is not specified, upon receipt thereof, and the acceptance of such resignation, unless required by the terms thereof, shall not be necessary to make such resignation effective.

### **Section 2.10 Place of Meetings; Mode**

Any meeting of the Board may be held at such place, within or without the State of Delaware, as shall be designated in the notice of such meeting, but if no such designation is made, then the meeting will be held at the principal business office of the Company. Members of the Board or any committee of the Board or any Observer may participate in a meeting of the Board or committee by conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

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### **Section 2.18 Compensation of Board and Committee Members**

The Board may provide for reasonable compensation of the Chairman, the Directors,<sup>2</sup>[ and] the members of committees, and Observers. The Board may also provide for reimbursement of reasonable expenses incurred by such persons in connection with the business of the Company.

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### **Section 2.20 Conflicts of Interest; Contracts and Transactions Involving Directors**

(a) A Director, Observer or a member of any committee may not participate in the consideration or decision of any matter relating to a particular Exchange Member, company, or

individual if such Director, Observer or committee member has a material interest in, or a professional, business, or personal relationship with, that Exchange Member, company, or individual, or if such participation shall create an appearance of impropriety. In any such case, the Director, Observer or committee member shall recuse himself or herself or shall be disqualified. If a member of the Board or any committee is recused from consideration of a matter, any decision on the matter shall be by a vote of a majority of the remaining members of the Board or applicable committee.

(b) No contract or transaction between the Company and one or more of its Directors, Observers or officers, or between the Company and any other corporation, partnership, association, or other organization in which one or more of its Directors, Observers or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason if: (i) the material facts pertaining to such Director's, Observer's or officer's relationship or interest and the contract or transaction are disclosed or are known to the Board or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative vote of a majority of the disinterested Directors, even though the disinterested Directors be less than a quorum; or (ii) the material facts are disclosed or become known to the Board or committee after the contract or transaction is entered into, and the Board or committee in good faith ratifies the contract or transaction by the affirmative vote of a majority of the disinterested Directors, even though the disinterested Directors be less than a quorum.

### **Section 2.21 Observers**

(a) Number. There may be up to three (3) Observers to the Board at any time, as determined by the LLC Member in its sole and absolute discretion. No current Observer may be affiliated with another current Observer or current Director of the Board.

(b) Term. The term of office for each Observer shall be three (3) years from the date of their election. An Observer may serve for any number of terms, consecutive or otherwise. Observers shall be divided into up to three (3) classes, designated Class I, Class II, and Class III. Observers shall serve staggered three-year terms, with the term of one class expiring each year. In order to commence such staggered three-year terms, Observers in Class I shall serve until the second annual election of the Board of Directors, Observers in Class II shall initially serve until the third annual election of the Board of Directors, and Observers in Class III shall initially serve until the fourth annual election of the Board of Directors. Commencing with the second annual election of the Board of Directors, the term for each class of Observers elected at such time shall be three years from the date of their election. Notwithstanding the foregoing, in the case of any new Observer as contemplated by Article II, Section 2.21(a), such Observer shall be added to a class, as determined by the Board at the time of such Observer's initial election or appointment, and shall have an initial term expiring at the same time as the term of the class to which such Observer has been added. The Exchange Member affiliated with an Observer must continue to satisfy the Observer Threshold for the duration of the Observer's term. If the Exchange Member affiliated with an Observer fails to meet the Observer Threshold at any time during the duration of the Observer's term, the Observer's term shall immediately terminate at such time. The Exchange Member affiliated with an Observer has an ongoing obligation to immediately notify the Company if such Exchange Member no longer meets the Observer Threshold.

(c) **Nomination and Election Process.** An Exchange Member that meets the requirements for the Observer Threshold and as specified in this Section 2.21 may submit candidate names to the Member Nominating Committee for consideration for nomination as an Observer. The Member Nominating Committee shall consult with the Nominating Committee and the Chairman and Chief Executive Officer for the purpose of nominating candidates for election as an Observer to the Board at the annual meeting of the LLC Member. The Nominating Committee shall nominate only those persons whose names have been submitted by the Member Nominating Committee. The LLC Member shall elect the persons nominated by the Nominating Committee to be Observers to the Board at the annual meeting of the LLC Member.

(d) **Rights and Obligations.** The Company shall invite the Observers to attend all meetings of its Board of Directors in a non-voting observer capacity, and, in this respect, shall give Observers copies of all notices, minutes, consents, and other materials that it provides to Directors, at the same time and in the same manner as provided to such Directors; provided, however, that such Observers shall agree in writing to hold in confidence and trust and to act in a fiduciary manner with respect to all information so provided; and provided further, that the Company reserves the right to withhold any information and to exclude any such Observers from any meeting or portion thereof if access to such information or attendance at such meeting could adversely affect the attorney-client privilege between the Company and its counsel or result in disclosure of trade secrets or a conflict of interest.

### ARTICLE III The LLC Member

#### **Section 3.1 Annual Meeting; Election of Directors and Other Matters**

(a) The annual meeting of the LLC Member shall be held at such place and time as determined by the Board for the purpose of electing Directors, Observers, and members of the Nominating Committee and Member Nominating Committee, and for conducting such other business as may properly come before the meeting. Written notice of the annual meeting stating the place, date and hour of the meeting shall be given to the LLC Member not less than ten (10) nor more than sixty (60) days before the date of the meeting.

[(b) The Interim Directors, including the Interim Member Representative Directors, shall be appointed prior to the Company's commencement of operations as an Exchange. The first annual meeting of the LLC Member shall be held within ninety (90) days after the Company's application for registration as a national securities exchange is granted.]

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### ARTICLE V Nominating Committees

#### **Section 5.1 Election of Nominating Committee and Member Nominating Committee**

The Nominating Committee and the Member Nominating Committee shall each be elected on an annual basis by vote of the LLC Member. [The LLC Member shall appoint the initial Nominating Committee and Member Nominating Committee consistent with the compositional requirements of this Article V within fifteen (15) days after the Exchange's application for registration as a national securities exchange is granted. Because the first annual meeting of the LLC Member is intended to be held within ninety (90) days after the Exchange's application for registration as a national securities exchange is granted, the initial Nominating Committee and Member Nominating Committee shall serve until the second annual meeting of the LLC Member. Not later than sixty (60) days prior to the date announced as the date for each annual meeting of the LLC Member commencing with the second annual meeting of the LLC Member, the Nominating Committee and the Member Nominating Committee shall nominate candidates to serve on the succeeding year's Nominating Committee and Member Nominating Committee, as applicable, and notify the Secretary of such nominees. Such candidates shall be voted on by the LLC Member at the annual meeting of the LLC Member.] Additional candidates for the Member Nominating Committee may be nominated and elected pursuant to the same process as provided for in Article II, Section 2.4.

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### **Section 5.3 Member Nominating Committee**

The Member Nominating Committee shall nominate candidates for each Member Representative Director position on the Board that is to be elected by Exchange Members or the LLC Member under the terms of these By-Laws. The Member Nominating Committee shall consult with the Nominating Committee and the Chairman and Chief Executive Officer for the purpose of nominating candidates for election as an Observer to the Board pursuant to Section 2.21(c) of these By-Laws. Each member of the Member Nominating Committee shall be a Member Representative member and shall not be required to be a Director of the Company.

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## **ARTICLE X** **Miscellaneous Provisions**

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### **Section 10.3 Participation in Board and Committee Meetings**

All meetings of the Board (and any committees of the Company) pertaining to the self-regulatory function of the Company (including disciplinary matters) shall be closed to all persons other than members of the Board, Observers, officers, staff, counsel or other advisors whose participation is necessary or appropriate to the proper discharge of such regulatory functions and any representatives of the Commission. In no event shall members of the Board of Directors of Miami International Holdings, Inc. who are not also members of the Board, or any officers, staff, counsel or advisors of Miami International Holdings, Inc. who are not also officers, staff, counsel or advisors of the Company (or any committees of the Company), be allowed to participate in any

meetings of the Board (or any committee of the Company) pertaining to the self-regulatory function of the Company (including disciplinary matters).

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