

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-71541; File No. SR-MIAX-2013-58)

February 12, 2014

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Amend the Exchange's By-Laws

I. Introduction

On December 9, 2013, Miami International Securities Exchange, LLC ("MIAX" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 ("Act"), and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend the By-Laws of MIAX ("MIAX By-Laws" and, as amended, the "MIAX Amended and Restated By-Laws"). The proposed rule change was published for comment in the Federal Register on December 30, 2013.<sup>3</sup> The Commission received no comments on the proposal. On February 11, 2014, the Exchange filed Amendment No. 1 to the proposal.<sup>4</sup> The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Background and Description of the Proposal

On September 13, 2013, the Exchange filed an immediately effective proposed rule

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

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

<sup>3</sup> See Securities Exchange Act Release No. 71172 (December 23, 2013), 78 FR 79530 (December 30, 2013) (SR-MIAX-2013-58) ("Notice").

<sup>4</sup> In Amendment No. 1, the Exchange amended the proposed rule text to provide that an ERP Member that is already represented on the MIAX Board of Directors, including as a Member Representative Director, would not be permitted to also hold an ERP Director position. Such ERP Members could, however, hold an Observer appointment on the MIAX Board of Directors. See infra Section V; see also infra notes 17, 44.

change to establish an Equity Rights Program (“ERP”).<sup>5</sup> Pursuant to the ERP, members of the Exchange that elected to participate in the program were issued units representing the right to acquire equity in the Exchange’s parent holding company, Miami International Holdings (“MIH”) in exchange for (1) payment of an initial purchase price or the prepayment of certain transaction fees and (2) the achievement of certain liquidity volume thresholds on the Exchange over a 23-month period.<sup>6</sup> In that September 2013 filing to implement the ERP, the Exchange stated that “[w]hen a participating Member acquires a certain number of units, the Member can appoint one director to the MIH Board [of Directors] and/or the MIAX Board [of Directors].”<sup>7</sup> In this December 2013 filing, the Exchange now proposes to amend the MIAX By-Laws to provide for the right of members that participate in the ERP to nominate or appoint a representative to the MIAX Board of Directors (“MIAX Board” or “Board”),<sup>8</sup> as well as to make other changes, including certain non-substantive changes.<sup>9</sup>

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<sup>5</sup> See Securities Exchange Act Release No. 70498 (September 25, 2013), 78 FR 60348 (October 1, 2013) (SR-MIAX-2013-43) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Implement an Equity Rights Program) (“ERP Notice”).

<sup>6</sup> See Notice, supra note 3, 78 FR at 79530-79531; and ERP Notice, supra note 5, 78 FR at 60348.

<sup>7</sup> See ERP Notice, supra note 5, 78 FR at 60350 n.9 and accompanying text. In that filing, the Commission noted that MIAX would need to submit a separate proposed rule change to make changes to its corporate governance documents to accommodate aspects of the proposal that involve or affect the boards of either MIAX or MIH. See id.

<sup>8</sup> Among other changes discussed herein, the Exchange proposes to add a number of definitions for key terms used to incorporate provisions related to the ERP. See generally MIAX Amended and Restated By-Laws, Article I. The Commission notes that MIAX has not proposed, and the Commission is therefore not presently approving, any changes that would impact directly the MIH Board of Directors.

<sup>9</sup> See Notice, supra note 3, 78 FR at 79530-79531. The non-substantive changes include the deletion from the MIAX By-Laws of provisions that specifically referenced past deadlines and events that have since occurred. See id. at 79532.

Specifically, the Exchange proposes that an ERP Member<sup>10</sup> that is not otherwise represented on the MIAX Board may have the right to nominate one ERP Director<sup>11</sup> or appoint an Observer<sup>12</sup> to the Board, as applicable.<sup>13</sup> As proposed, ERP Directors will be classified as “Industry Directors”<sup>14</sup> with attendant voting rights, while Observers will be invited to attend

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<sup>10</sup> See MIAX Amended and Restated By-Laws, Article I(n) defining “ERP Member” as “an Exchange Member who acquired Units pursuant to an ERP Agreement sufficient to acquire an ERP Director or an Observer position.” MIAX Amended and Restated By-Laws, Article I(qq) defines “Unit” as “a combination of securities or types of securities packaged together as one.” MIAX Amended and Restated By-Laws, Article I(q) generally defines “Exchange Member” as “any registered broker or dealer that has been admitted to membership in the national securities exchange operated by [MIAX].” MIAX Amended and Restated By-Laws, Article I(l) defines “ERP Agreement” as “the agreement pursuant to which Units were issued.”

<sup>11</sup> See MIAX Amended and Restated By-Laws, Article I(m) defining “ERP Director” as “an Industry Director who has been nominated by an ERP Member and appointed to the Board of Directors.”

<sup>12</sup> See MIAX Amended and Restated By-Laws, Article I(gg) and Article II, Section 2.2 providing that “‘Observer’ has the meaning set forth in Article II, Section 2.2 of [the MIAX] By-Laws.” As described further below, an “Observer” is a person, appointed pursuant to Section 2.2 of the MIAX Amended and Restated By-Laws, that “may be invited to attend meetings of the Board in a non-voting observer capacity.” See MIAX By-Laws Article II, Section 2.2(g).

<sup>13</sup> See MIAX Amended and Restated By-Laws, Article II, Section 2.2(e).

<sup>14</sup> See MIAX Amended and Restated By-Laws, Article I(u) defining “Industry Director” to mean “a Director who (i) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (ii) is an officer, director (excluding an outside director), or employee of an entity that owns more than 10% of the equity of a broker or dealer, and the broker or dealer accounts for more than 5% of the gross revenues received by the consolidated entity; (iii) owns more than 5% of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed 10% of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (iv) provides professional services to brokers or dealers, and such services constitute 20% or more of the professional revenues received by the Director or 20% or more of the gross revenues received by the Director’s firm or partnership; (v) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50% or more of the voting stock of a broker or dealer, and such services relate to the director’s, officer’s, or employee’s professional capacity and constitute 20% or more of the

meetings of the Board in a non-voting observer capacity.<sup>15</sup> If an ERP Member is otherwise able to nominate an ERP Director but cannot because, for example, the ERP Member already is represented on the MIAX Board, e.g., as a Member Representative Director,<sup>16</sup> the ERP Member will have the right to appoint an Observer in lieu of such ERP Director nomination.<sup>17</sup> Under the proposal, the Nominating Committee of the MIAX Board will only nominate to ERP Director

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professional revenues received by the Director or member or 20% or more of the gross revenues received by the Director's or member's firm or partnership; or (vi) has a consulting or employment relationship with or provides professional services to the Company or any affiliate thereof or has had any such relationship or provided any such services at any time within the prior three years.”

<sup>15</sup> See MIAX Amended and Restated By-Laws, Article II, Section 2.2(g)(iii). Observers will not be permitted to vote at Board meetings, but will be provided copies of all materials provided to directors provided that the Observer agrees to hold in confidence and trust and to act in a fiduciary manner with respect to all information so provided. See id. Also, MIAX proposes that Observers have the same participation rights as other directors on the Board with respect to meetings pertaining to the self-regulatory function of the Exchange. See MIAX Amended and Restated By-Laws Article X, Section 10.3; see also Notice, supra note 3, 78 FR at 79532. The Exchange reserves the right, however, to withhold any information, and to exclude 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 MIAX and its counsel or result in a disclosure of trade secrets or a conflict of interest. See MIAX Amended and Restated By-Laws, Article II, Section 2.2(g)(iii).

<sup>16</sup> See MIAX Amended and Restated By-Laws, Article I(bb) defining “Member Representative Director” to mean a “Director who has been 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 Director may, but is not required to be an officer, director, employee, or agent of an Exchange Member.”

<sup>17</sup> See Notice, supra note 3, 78 FR at 79531; see also MIAX Amended and Restated By-Laws, Article II, Section 2.2(g)(i). MIAX stated in Amendment No. 1 that an ERP Member that is represented by a Member Representative Director may also be able to appoint an Observer (but would not be able to appoint an ERP Director). Further, an ERP Member that is represented by an ERP Director will not be able to appoint an Observer. See supra note 4.

positions those individuals that have been approved and submitted by the applicable ERP Member with the right to nominate such ERP Director.<sup>18</sup>

Additionally, MIAX proposes to amend its By-Laws to specify that an ERP Member's right to continued representation on the Board in the form of an ERP Director or Observer will be contingent upon the ERP Member meeting certain "Performance Criteria"<sup>19</sup> (i.e., achievement of certain specified liquidity volume thresholds on the Exchange) over a specified "Measurement Period."<sup>20</sup> Thus, ERP Members with the right to nominate an ERP Director or appoint an Observer may lose that right (or such right may convert from the right to nominate an ERP Director to the right to appoint an Observer) if the ERP Member fails to meet the requisite Performance Criteria.<sup>21</sup> In the event of such occurrence, if the ERP Member later satisfies the requisite Performance Criteria for a subsequent Measurement Period, the ERP Member may regain its right to nominate or appoint such ERP Member or Observer.<sup>22</sup> An ERP Director or Observer position will terminate if the nominating or appointing ERP Member effects a transfer of common stock or warrants that results in such ERP Member holding less than 20% of the aggregate number of shares of common stock issued (or issuable pursuant to Units acquired) pursuant to the ERP Agreement.<sup>23</sup>

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<sup>18</sup> See MIAX Amended and Restated By-Laws Article II, Section 2.4(a). The Exchange notes that MIH, as the sole member of the MIAX Exchange, LLC, will then be obligated to vote for the nominated ERP Director. See Notice, supra note 3, 78 FR at 79531.

<sup>19</sup> See MIAX Amended and Restated By-Laws, Article I(hh) defining "Performance Criteria."

<sup>20</sup> See MIAX Amended and Restated By-Laws Article I(z) defining "Measurement Period."

<sup>21</sup> See MIAX Amended and Restated By-Laws Article II, Section 2.3(c) and (d).

<sup>22</sup> See id.

<sup>23</sup> See MIAX Amended and Restated By-Laws Article II, Section 2.3(e).

The Exchange also proposes amendments to the composition of the Board to reflect the addition of ERP Directors. As noted above, MIAX proposes that ERP Directors will be Industry Directors for the purposes of calculating the composition of the MIAX Board, and that Member Representative Directors will not include ERP Directors for the purposes of calculating the composition of the Board.<sup>24</sup> In its proposal, the Exchange notes that there would be no substantive changes to the Board's composition, and that although the Board size will increase, its composition will remain the same.<sup>25</sup> In addition, MIAX proposes to amend By-Law provisions that currently provide for the removal and resignation of directors and the filling of vacancies to reflect that, as for other MIAX directors, ERP Directors may only be removed for cause,<sup>26</sup> and in the case of any vacancy for a reason other than a failure to meet Performance Criteria, as described above, the applicable ERP Member will retain the ability to nominate a person to fill the vacant ERP Director position.<sup>27</sup>

Unrelated to the ERP, MIAX also proposes to add a restriction to the qualifications of any director of the MIAX Board, including an ERP Director, that, in the event a director becomes a member of the board of directors (or similar governing body) of a "Specified Entity,"<sup>28</sup> such individual would immediately cease to be a director of the MIAX Board.<sup>29</sup>

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<sup>24</sup> See Notice, supra note 3, 78 FR at 79531. See also MIAX Amended and Restated By-Laws, Article II, Section 2.2(b).

<sup>25</sup> See Notice, supra note 3, 78 FR at 79531.

<sup>26</sup> See MIAX Amended and Restated By-Laws, Article II, Section 2.9 and Notice, supra note 3, 78 FR at 79532.

<sup>27</sup> See MIAX Amended and Restated By-Laws, Article II, Section 2.8 and Notice, supra note 3, 78 FR at 79532.

<sup>28</sup> See MIAX Amended and Restated By-Laws, Article I(oo) defining "Specified Entity" as "(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

MIAX proposes that this same restriction would apply to Observers (i.e., an individual would lose his or her position as an Observer if that individual became a member of the board of directors of a Specified Entity) and to committee members.<sup>30</sup> Similarly, MIAX proposes to apply to Observers and committee members the same restrictions against statutory disqualification that are currently applicable to MIAX directors.<sup>31</sup>

Finally, the Exchange proposes to make a few non-substantive changes to certain provisions in the By-Laws, such as deleting references to time periods and events that have since passed as well as deleting provisions related to interim directors that are no longer applicable.<sup>32</sup>

### III. Discussion and Commission Findings

The Commission originally approved the governance structure of the Exchange, including the MIAX By-Laws, when it approved MIAX's application for registration as a national securities Exchange.<sup>33</sup> In connection with that approval, the Commission found the MIAX By-Laws to be consistent with the Act, and stated its belief that certain provisions in the MIAX By-Laws are designed to help maintain the independence of MIAX's regulatory function

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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.”

<sup>29</sup> See MIAX Amended and Restated By-Laws Article II, Section 2.2(d). MIAX also proposes that existing directors that may be in violation of this provision would be grandfathered in and not subject to the new restriction. See Notice, supra note 3, 78 FR at 79531.

<sup>30</sup> See MIAX Amended and Restated By-Laws Article II, Section 2.2(g)(ii) and Article IV, Section 4.2(b).

<sup>31</sup> See Notice, supra note 3, 78 FR at 79531; see also MIAX Amended and Restated By-Laws, Article II, Sections 2.2(d) and (g)(ii), and Article IV, Section 4.2(b). As directors, such restrictions will also apply to ERP Directors.

<sup>32</sup> See Notice, supra note 3, 78 FR at 79532.

<sup>33</sup> See Securities Exchange Act Release No. 68341 (December 3, 2012), 77 FR 73065 (December 7, 2012) (“Exchange Registration Release”).

and help facilitate the ability of MIAX to carry out its responsibilities and operate in a manner consistent with the Act.<sup>34</sup> As discussed above, the Exchange recently implemented an ERP, pursuant to which ERP Members that acquire a certain number of Units may appoint either an ERP Director or Observer to the MIAX Board, and the Exchange is now proposing to amend the MIAX By-Laws to incorporate such rights to appoint Board representation, as well as to make other unrelated changes.

The Commission has carefully reviewed the proposed rule change and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>35</sup> In particular, the Commission finds that the proposed rule change is consistent with Sections 6(b)(1) and (3) of the Act,<sup>36</sup> which, among other things, require a national securities exchange to be so organized and have the capacity to be able to carry out the purposes of the Act, 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 assure the fair representation of its members in the selection of its directors and administration of its affairs, and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer.

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<sup>34</sup> See e.g., Exchange Registration Release, supra note 33, 77 FR at 73071 n.88 and accompanying text. The Commission also found certain provisions to be consistent with the requirements of Section 6(b)(3) of the Act (15 U.S.C. 78f(b)(3)). See id. at 73067.

<sup>35</sup> In approving the proposed rule changes, the Commission has considered their impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>36</sup> 15 U.S.C. 78f(b)(1) and (b)(3).



A. Addition of ERP Directors and Related Provisions

The Commission finds that the Exchange's proposal to amend the MIAX By-Laws to provide for the inclusion of ERP Directors on the MIAX Board, including related amendments to add various definitions and provisions for terms of office, nomination and election, filling of vacancies, and removal and resignation, are consistent with the Act.<sup>37</sup> The Commission notes that although the Board may become larger if ERP Directors are added, the composition previously approved by the Commission in connection with MIAX's registration as a national securities exchange<sup>38</sup> will remain the same.<sup>39</sup> ERP Directors will be Industry Directors,<sup>40</sup> and the Board will continue to be comprised of a number of Non-Industry Directors,<sup>41</sup> including at least one Independent Director,<sup>42</sup> that equals or exceeds the sum of the number of Industry Directors and Member Representative Directors.<sup>43</sup> The number of Member Representative

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<sup>37</sup> See MIAX Amended and Restated By-Laws, Article II, Sections 2.2, 2.3, 2.4, 2.8, and 2.9.

<sup>38</sup> See Exchange Registration Release, supra note 33, 77 FR at 73066-73067.

<sup>39</sup> See MIAX Amended and Restated By-Laws, Article II, Section 2.2(a) and (b). Additionally, the Commission notes that the Exchange represents that although its Board size will increase, the current composition will remain the same, and that the proposal will not affect the Member Representative Director calculation in any way. See supra note 25 and accompanying text.

<sup>40</sup> See supra note 14.

<sup>41</sup> See MIAX Amended and Restated By-Law Article I(ee) defining "Non-Industry Director" to mean "a Director who is (i) an Independent Director; or (ii) any other individual who would not be an Industry Director."

<sup>42</sup> See MIAX Amended and Restated By-Law Article I(s) defining "Independent Director" to mean "a Director who has no material relationship with the Company or any affiliate of the Company, or any Exchange Member or any affiliate of any such Exchange Member; provided, however, that an individual who otherwise qualifies as an Independent Director shall not be disqualified from serving in such capacity solely because such Director is a Director of the Company or its LLC Member."

<sup>43</sup> See MIAX Amended and Restated By-Laws, Article II, Section 2.2(b).

Directors will not include ERP Directors, and shall continue to comprise at least 20% of the MIAX Board.<sup>44</sup> Additionally, the process for nomination and election of Member Representative Directors is not impacted by the Exchange's proposal.<sup>45</sup> Accordingly, the Commission finds that the provisions reflecting the possible addition of ERP Directors to the MIAX Board are consistent with the Act, and in particular with Section 6(b)(3) of the Act,<sup>46</sup> in that the MIAX Amended and Restated By-Laws will continue to provide for the fair representation of members in the selection of directors and the administration of the MIAX Exchange, as well as representation of issuers and investors.

The Commission also notes that ERP Directors will be subject to the same duties and obligations as any other member of the MIAX Board, including provisions that are designed to help maintain the independence of the regulatory functions of the Exchange and help facilitate MIAX's ability to carry out its responsibilities and operate in a manner consistent with the Act.<sup>47</sup> For example, ERP Directors will be subject to MIAX Amended and Restated By-Laws provisions requiring the MIAX Board, in connection with managing the business and affairs of MIAX, to consider applicable requirements under Section 6(b) of the Act governing conflicts of interest; requiring the MIAX Board, when evaluating any proposal, to take into account MIAX's status as a self-regulatory organization ("SRO"); and protecting the confidentiality of

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<sup>44</sup> See MIAX Amended and Restated By-Laws, Article II, Section 2.2(b). The Commission notes that the Exchange represents in Amendment No. 1 that an ERP Member that is represented by a Member Representative Director may also be able to appoint an Observer but would not be able to appoint an ERP Director. See infra Section V; see also supra notes 4 and 17.

<sup>45</sup> See MIAX Amended and Restated By-Laws, Article V, Section 5.3.

<sup>46</sup> 15 U.S.C. 78f(b)(3).

<sup>47</sup> See Exchange Registration Release, supra note 33, 77 FR at 73070-73071.

information and records related to the Exchange's SRO function.<sup>48</sup> In this regard, the Commission finds that the provisions reflecting the addition of ERP Directors to the MIAX Board are consistent with the Act, and in particular with Section 6(b)(1), which requires an exchange to be so organized and have the capacity to carry out the purposes of the Act.<sup>49</sup>

B. Addition of Observer Positions and Related Provisions

The Commission finds that the proposed amendments to the MIAX By-Laws that add provisions relating to the appointment of Observers, including related amendments that add various definitions and provisions for appointment and terms of office are consistent with the Act.<sup>50</sup> The Commission also finds that the proposed amendments governing the rights and obligations of Observers are consistent with the Act. The Commission notes that although Observers will generally have the right to attend all meetings of the Board and receive materials provided to directors,<sup>51</sup> they will have the right to attend those meetings only in a non-voting capacity and must agree to hold such information in confidence and trust and to act in a fiduciary

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<sup>48</sup> See MIAX Amended and Restated By-Laws, Article II, Sections 2.1(d) and (e) and Section 2.20, and Article X, Section 10.4. The Commission also notes that the Exchange represented in its filing that ERP Directors will be subject to the same restrictions as current directors, including the provisions noted above. See Notice, supra note 3, 78 FR at 79533. In addition, the Commission notes that other provisions of the MIAX Amended and Restated By-Laws, previously approved by the Commission and designed to help maintain the independence of the Exchange's regulatory function and help facilitate the Exchange's ability to carry out its responsibilities and operate in a manner consistent with the Act, are not being amended by the proposed rule change. Such provisions include those governing the maintenance of MIAX's books and records in the U.S. and the availability of such records to the Commission, the composition of MIAX committees, and the ownership structure of the Exchange. See Exchange Registration Release, supra note 33, 77 FR at 73069-73071. See also MIAX Amended and Restated By-Laws, Article X, Section 10.4; Article IV; and Article I(y).

<sup>49</sup> 15 U.S.C. 78f(b)(1).

<sup>50</sup> See MIAX Amended and Restated By-Laws, Article II, Sections 2.2 and 2.3.

<sup>51</sup> See supra note 15 and accompanying text.

manner with respect to such information.<sup>52</sup> Additionally, the Commission notes that the Exchange states in its proposal that Observers will be subject to the same requirements as members of the Board to maintain the confidentiality of all books and records of the Company reflecting confidential information pertaining to the SRO function of the Company.<sup>53</sup> The Commission also notes that MIAX reserves the right to withhold any information from an Observer and to exclude an Observer from any meeting or portion thereof that could, among other things, result in the disclosure of trade secrets or a conflict of interest.<sup>54</sup> The Commission believes that these restrictions on, and obligations of, Observers are consistent with the Act, particularly Section 6(b)(1),<sup>55</sup> in that they are designed to ensure that MIAX will remain so organized as to have the capacity to carry out the purposes of the Act.

C. Disqualification Due to Statutory Disqualification or Service for a Specified Entity

The Commission finds the proposed provision to provide that an individual serving as a director (including an ERP Director), Observer, or a member of a committee of the Board will cease to hold such position if that individual becomes a member of the board of directors or similar governing body of a Specified Entity,<sup>56</sup> is consistent with the Act. The Commission notes that such provisions would not prohibit an Exchange member from having representation

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<sup>52</sup> See MIAX Amended and Restated By-Laws, Article II, Section 2.2(g)(iii), and Article X, Sections 10.3 and 10.4; see also *supra* note 15.

<sup>53</sup> See Notice, *supra* note 3, 78 FR at 79532.

<sup>54</sup> See MIAX Amended and Restated By-Laws, Article II, Section 2.2(g)(iii); see also *supra* note 15.

<sup>55</sup> 15 U.S.C. 78s(b)(1).

<sup>56</sup> See MIAX Amended and Restated By-Laws, Article II, Sections 2.2(d) and(g)(ii), and Article IV, Section 4.2(b). The Commission notes that this provision will only apply to directors (including ERP Directors), Observers, and committee members appointed after the Effective Date.

on both the MIAX governing body and that of a Specified Entity, but would only prevent the same natural person from serving on the governing body of both MIAX and a Specified Entity. The Commission also finds that the provisions that would prohibit an Observer or committee member from being subject to a statutory disqualification,<sup>57</sup> as is currently the case with respect to MIAX directors,<sup>58</sup> are consistent with the Act. The Commission notes that the Exchange states the prohibitions on statutory disqualification and service on the board (or similar governing body) of a Specified Entity will help to ensure that all directors, ERP Directors, Observers, and committee members are held to the same restrictions against: (1) statutory disqualification, and (2) conflicts of interest that could result from such persons also serving as a member of the board of directors or similar body of a competitor.<sup>59</sup> The Commission finds these provisions to be consistent with the Act, and in particular with Sections 6(b)(1),<sup>60</sup> in that they are designed to help ensure that the Exchange has the capacity to carry out the purposes of the Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 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

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<sup>57</sup> See MIAX Amended and Restated By-Laws, Article II, Section 2.2(g)(2), and Article IV, Section 4.2(b).

<sup>58</sup> See MIAX Amended and Restated By-Laws, Article II, Section 2.2(d).

<sup>59</sup> See Notice, *supra* note 3, 78 FR at 79533.

<sup>60</sup> 15 U.S.C. 78s(b)(1).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MIAX-2013-58 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-MIAX-2013-58. 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, D.C. 20549-1090 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 offices 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-2013-58, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Accelerated Approval of a Proposed Rule Change As Modified by Amendment No. 1

As discussed above, the Exchange submitted Amendment No. 1 to remove the ability of

an ERP Member to appoint an ERP Director if such ERP Member is already represented on the MIAX Board in the capacity of a Member Representative Director. As originally proposed, an ERP Member would have been able to appoint an ERP Director even if such ERP Member was already represented on the Board in the capacity of a Member Representative Director. The Commission notes that this change modifies the Exchange's proposal to reflect current restrictions in place at other exchanges.<sup>61</sup> Further, the change prevents an ERP Member from holding multiple director seats on the MIAX SRO Board and thus is designed to prevent an ERP Member from having a disproportional presence on the Board of the MIAX SRO, which serves as the regulatory body for all MIAX members, including an ERP Member. Thus, the change in Amendment No. 1 is designed to help ensure that the Exchange has the capacity to carry out the purposes of the Act. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>62</sup> for approving the proposed rule change, as modified by Amendment No. 1, prior to the 30th day after the date of publication of notice in the Federal Register.

## VI. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule changes are consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

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<sup>61</sup> See, e.g., Second Amended and Restated Constitution of the International Securities Exchange, LLC, Article III, Section 3.2 (e) (“No Exchange Member shall have more than one officer, director or partner of such Exchange Member elected to the Board of Directors during any term.”).

<sup>62</sup> 15 U.S.C. 78s(b)(2).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act<sup>63</sup> that the proposed rule change, as modified by Amendment No. 1 (SR-MIAX-2013-58), is hereby approved on an accelerated basis. For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>64</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>63</sup> 15 U.S.C. 78s(b)(2).

<sup>64</sup> 17 CFR 200.30-3(a)(12).