

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-75116; File No. SR-MIAX-2015-38)

June 5, 2015

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by Miami International Securities Exchange LLC to Amend the Amended and Restated Certificate of Incorporation and the Amended and Restated By-Laws of the Sole Limited Liability Company Member of MIAX, Miami International Holdings, Inc.

Pursuant to the provisions of 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 May 28, 2015, 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 Amended and Restated Certificate of Incorporation and the Amended and Restated By-Laws of the sole limited liability company member of MIAX, Miami International Holdings, Inc.

The text of the proposed rule change is available on the Exchange’s website at [http://www.miaxoptions.com/filter/wotitle/rule\\_filing](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

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

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

proposed rule change. The text of these statements may be examined at the places specified in 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 certain sections of: (i) the Amended and Restated Certificate of Incorporation (“MIH Certificate of Incorporation”), and (ii) the Amended and Restated By-Laws (“MIH By-Laws”), of the sole limited liability company member of the Exchange, Miami International Holdings, Inc. (“MIH”) to replace all references to MIAX contained therein with references to a new defined term “Controlled National Securities Exchange”. This proposed amendment is based upon use of the identical defined term in the corporate documents of another national securities exchange.<sup>3</sup> The term “Controlled National Securities Exchange” is proposed to be defined as any national securities exchange which MIH shall control, directly or indirectly.<sup>4</sup> As proposed, the defined term “Controlled National Securities Exchange” would be more comprehensive than simple references to MIAX in that it would equally apply to any other national securities exchange that MIH may control, directly or indirectly, in the future. As specifically noted in the proposed MIH Certificate of Incorporation

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<sup>3</sup> See Certificate of Incorporation of International Securities Exchange Holdings, Inc. (“ISE Holdings”), Article Fourth, Section III, Articles Tenth through Fourteenth; Second Amended and Restated By-Laws of ISE Holdings, Article I, Sections 1.4, 1.5 and 1.6, Article X, Section 10.1 and Article XI, Sections 11.1(b) and 11.2(b). See also Securities Exchange Act Release Nos. 59135 (December 22, 2008), 73 FR 79954 (December 30, 2008) (SR-ISE-2008-85).

<sup>4</sup> Such other national securities exchange has defined the term in substantially the same manner as proposed to be defined by MIAX. See Certificate of Incorporation of ISE Holdings, Article Fourth, Section III(a); Second Amended and Restated By-Laws of ISE Holdings, Article I, Section 1.4. See also Securities Exchange Act Release Nos. 59135 (December 22, 2008), 73 FR 79954 (December 30, 2008) (SR-ISE-2008-85).

and MIH By-Laws,<sup>5</sup> such defined term would continue to cover MIAAX (the sole national securities exchange currently controlled, directly or indirectly, by MIH) for so long as MIAAX is controlled, directly or indirectly, by MIH. The Exchange also proposes to amend the MIH Certificate of Incorporation to make other non-substantive revisions which (i) correspond to the aforementioned updated references to “Controlled National Securities Exchange”, and (ii) reflect other minor changes to charter provisions no longer applicable since the Commission granted the Exchange’s registration as a national securities exchange on December 3, 2012.<sup>6</sup>

#### MIH Certificate of Incorporation

The Exchange proposes to amend the MIH Certificate of Incorporation to substitute references to MIAAX with the defined term “Controlled National Securities Exchange” and define it in Article EIGHTH as follows:

For so long as this Corporation shall control, directly or indirectly, one or more national securities exchange (each a “Controlled National Securities Exchange”), including but not limited to Miami International Securities Exchange, LLC, or a facility thereof....

Article EIGHTH would thereby make clear that MIAAX is covered as a Controlled National Securities Exchange. The terminology “Controlled National Securities Exchange”, “a Controlled National Securities Exchange”, or “each Controlled National Securities Exchange” would be substituted in place of the terminology “Miami International Securities Exchange, LLC” or “the Miami International Securities Exchange, LLC” in Article EIGHTH (to require that any amendment to or any repeal of any provision of the MIH Certificate of Incorporation be

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<sup>5</sup> See Amended and Restated Certificate of Incorporation of MIH, Article Eighth; Amended and Restated By-Laws of MIH, Article VI, Section 2.

<sup>6</sup> See Securities Exchange Act Release No. 68341 (December 3, 2012), 77 FR 73089 (December 7, 2012) (File No. 10-207).

submitted to the Board of Directors of each Controlled National Securities Exchange), Article NINTH and Article NINTH subsections (a)(ii), (b)(i), and (b)(ii)(B) (to impose limitations on the voting, transfer and ownership of shares of MIH's capital stock for so long as MIH shall control, directly or indirectly, any Controlled National Securities Exchange).

These changes would (i) enable the MIH Certificate of Incorporation to accommodate the potential future ownership of more than one national securities exchange by MIH, and (ii) ensure that any such future MIH Controlled National Securities Exchange would enjoy and would be subject to the same requirements, limitations and other self-regulatory organization ("SRO") standards as currently apply with respect to MIAX under MIH's charter documents. This amendment would not affect any of the requirements, limitations or other SRO standards which currently, and will continue to, apply with respect to MIAX under MIH's charter documents. No changes to the ownership or corporate structure of MIAX or MIH are proposed by this proposed rule change.

The Exchange also proposes to clarify the defined term "Exchange Member" in Article NINTH, Subsection (a)(ii)(D), so that it would apply to "any Person that is a registered broker or dealer that has been admitted to membership in a Controlled National Securities Exchange" rather than to "any Person that is a registered broker or dealer that has been admitted to membership in the national securities exchange known as Miami International Securities, LLC" as it is currently defined. This change would broaden the defined term "Exchange Member" to include any member of an applicable Controlled National Securities Exchange, so that it would not be limited to members of MIAX alone, and to correspond to the updated references to a Controlled National Securities Exchange replacing MIAX elsewhere in the MIH Certificate of Incorporation.

In addition to the changes set forth above, the Exchange proposes to make the following non-substantive changes to the MIH Certificate of Incorporation: (i) define the Securities Exchange Act of 1934, as amended, as “(the ‘Act’)” in Article FOURTH, subsection D7(a), and (ii) clarify in Article EIGHTH and Article TENTH, Section (b) that the references to the MIH Certificate of Incorporation are references to the “Amended and Restated” Certificate of Incorporation of MIH. The Exchange also proposes to delete dated references to time periods and events that have expired. Specifically, the Exchange proposes to delete text in Articles EIGHTH and NINTH referring to commencement of certain obligations upon the registration of MIAX as a national securities exchange, since such registration was granted on December 3, 2012.<sup>7</sup> These clarifying changes would make the MIH Certificate of Incorporation more concise, clear and understandable for, and eliminate the potential for confusion to, an investor in MIH, a MIAX member or other reader of the MIH Certificate of Incorporation.

#### MIH By-Laws

The Exchange proposes to amend the MIH By-Laws to substitute references to MIAX with the defined term “Controlled National Securities Exchange” and define it in Article VI, Section 2 as “any national securities exchange which this Corporation shall control, directly or indirectly (each, a ‘Controlled National Securities Exchange’), including but not limited to Miami International Securities Exchange, LLC...”. Article VI, Section 2 would thereby make clear that MIAX is covered as a Controlled National Securities Exchange. The terminology “Controlled National Securities Exchange”, “a Controlled National Securities Exchange”, “any Controlled National Securities Exchange”, “each Controlled National Securities Exchange”, or “such Controlled National Securities Exchange” would replace the terminology “Miami

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<sup>7</sup> See supra note 6.

International Securities Exchange, LLC” or “the Miami International Securities Exchange, LLC” in MIH By-Law Article VI, Section 2 (regarding meetings of LLC Members or Stockholders of any Controlled National Securities Exchange), Article VII, Sections 1 through 6 (regarding SRO Function of any Controlled National Securities Exchange), Article XI, Section 2 (regarding liability to exchange members for loss or damage arising out of their use or enjoyment of the facilities of any Controlled National Securities Exchange), and Article XII, Section 1 (requiring that any amendment to or repeal of any MIH By-Law provision be submitted to the Board of Directors of a Controlled National Securities Exchange).

These changes would (i) enable the MIH By-Laws to accommodate the potential future ownership of more than one national securities exchange by MIH, and (ii) ensure that any such future MIH Controlled National Securities Exchange would enjoy and would be subject to the same requirements, limitations and other SRO standards as currently apply with respect to MIAX under MIH’s charter documents. This amendment would not affect any of the requirements, limitations or other SRO standards which currently, and will continue to, apply with respect to MIAX under MIH’s charter documents. No changes to the ownership or corporate structure of MIAX or MIH are proposed by this proposed rule change.

The Exchange also proposes to add a reference to “Stockholders” in the caption of Article VI, Section 2, add a reference to “meeting of stockholders” in the text of Article VI, Section 2, and replace the defined term “LLC Members” with the more generic term “Equityholders” in Article VI, Section 2 so that such MIH By-Law would equally apply to any stockholders of a Controlled National Securities Exchange that is a corporate entity in the same manner as it currently applies to limited liability members of MIAX. This change would correspond to the

updated references to a Controlled National Securities Exchange replacing references to MIAX elsewhere in the MIH By-Laws.

The Exchange believes that the foregoing changes are reasonably designed to ensure that any MIH Controlled National Securities Exchange will enjoy and be subject to the same requirements, limitations and other SRO standards that currently apply under MIH's charter documents with respect to MIAX, the only national securities exchange that is currently controlled, directly or indirectly, by MIH, including limitations upon ownership and voting of MIH capital stock and other requirements designed to preserve the independence of the self-regulatory function of, and Commission oversight over, any Controlled National Securities Exchange. These changes will allow for greater flexibility in the corporate structure of MIH by enabling the MIH Certificate of Incorporation and MIH By-Laws to accommodate the potential future ownership of more than one national securities exchange by MIH. The Exchange notes that no changes to the ownership or corporate structure of either MIAX or MIH have occurred or are being proposed by this proposed rule change.

## 2. Statutory Basis

MIAX believes that this proposed rule change is consistent with Section 6(b) of the Act<sup>8</sup> in general, and furthers the objectives of Sections 6(b)(1) and 6(b)(5) of the Act<sup>9</sup> 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 prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with

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<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(1) and (b)(5).

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.

Specifically, this proposed rule change is consistent with and will facilitate an ownership structure by MIH that will continue to provide the Commission with appropriate oversight tools to ensure that the Commission will have the ability to enforce the Act with respect to not only MIAX, but with respect to any other national securities exchange that may in the future be controlled, directly or indirectly, by MIH, and with respect to MIH as the parent entity of any such Controlled National Securities Exchange. It is further consistent with and will facilitate an ownership structure that will provide the Commission with appropriate oversight tools to ensure that the Commission will have the ability to enforce the Act with respect to MIH's directors, officers, employees and agents to the extent they are involved in the activities of a Controlled National Securities Exchange.

This proposed rule change is also consistent with and will facilitate an ownership structure of any national securities exchange that may in the future be controlled, directly or indirectly, by MIH, by providing such Controlled National Securities Exchange with appropriate oversight tools to carry out the purposes of, and to comply with, the Act, and to enforce compliance by MIH as the parent holding entity, by the Controlled National Securities Exchange's members and persons associated with such members, and by MIH's directors, officers, employees and agents to the extent they are involved in the activities of such Controlled National Securities Exchange, with the Act, the rules and regulations thereunder, and the internal rules of such Controlled National Securities Exchange as applicable.

This proposed rule change is also consistent with and will help to ensure that the requirements, limitations and other SRO standards that currently apply with respect to MIAX pursuant to MIH's charter documents, would also equally apply with respect to any other national securities exchange that MIH may in the future control, directly or indirectly, thereby serving to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and protect investors and the public interest.

For example, the equal application of specifically enumerated requirements regarding the election of directors by MIH as the LLC Member of MIAX,<sup>10</sup> and on other corporate functions of MIH as the parent entity of MIAX, to MIH in its capacity as an Equityholder or parent entity of a Controlled National Securities Exchange, will preserve the independence of the self-regulatory function of, and provide for Commission oversight over, such Controlled National Securities Exchange. Such corporate functions of MIH include those functions concerning confidentiality, record-keeping and cooperation with the Commission to the extent related to the operations, administration, self-regulatory function or other activities of a Controlled National Securities Exchange.<sup>11</sup> MIH charter provisions regarding the foregoing are intended to facilitate the free exercise of the self-regulatory function of a Controlled National Securities Exchange and protect against inappropriate interference with such function.<sup>12</sup> Free exercise of the self-regulatory function of the Controlled National Securities Exchange and protection against inappropriate conflict or interference with such function will be further achieved by requiring

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<sup>10</sup> See Amended and Restated By-Laws of MIH, Article VI, Section 2.

<sup>11</sup> See Amended and Restated By-Laws of MIH, Article VII.

<sup>12</sup> See Amended and Restated By-Laws of MIH, Article VII, Section 1.

that any amendment or repeal of MIH charter provisions be submitted to the Board of Directors of each Controlled National Securities Exchange and filed with and approved by the Commission if required,<sup>13</sup> and by imposing limitations on the voting, transfer and ownership of shares of MIH's capital stock for so long as MIH controls, directly or indirectly, any Controlled National Securities Exchange.<sup>14</sup>

The Exchange's proposed amendments also address other non-substantive revisions which reflect changes since the Commission granted the Exchange's registration as a national securities exchange on December 3, 2012<sup>15</sup> in order to make the MIH Certificate of Incorporation more concise, clear and understandable for, and eliminate the potential for confusion to, an investor in MIH, a MIAAX member or other reader of MIH's charter documents, thereby protecting investors and the public interest.

Finally, this proposed rule change is administrative in nature and does not propose any changes to MIH's or MIAAX's current ownership or corporate structure or MIAAX's operational or trading structure. The Exchange will continue to operate in the same manner following the proposed rule change as it operates today.

**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 changes to the MIH Certificate of Incorporation and MIH By-Laws are administrative in nature and are designed to enable the Exchange to be organized so as to have the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its Exchange

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<sup>13</sup> See Amended and Restated Certificate of Incorporation of MIH, Article Eighth.

<sup>14</sup> See Amended and Restated Certificate of Incorporation of MIH, Article Ninth and Article Ninth subsections (a)(ii), (b)(i), and (b)(ii)(B).

<sup>15</sup> See supra note 6.

Members and persons associated with its Exchange Members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. As such, this is not a competitive filing and thus does not impose any 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

Because the foregoing 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 after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act<sup>16</sup> and Rule 19b-4(f)(6)<sup>17</sup> thereunder.

At any time within 60 days of the 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 the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>17</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-MIAX-2015-38 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-2015-38. 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 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-2015-38, 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.<sup>18</sup>

Robert W. Errett  
Deputy Secretary

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<sup>18</sup> 17 CFR 200.30-3(a)(12).