

would rather harmonize the treatment of Market Orders between the Exchange and NYSE Arca Equities and remove complex functionality and obsolete cross-references, thereby reducing confusion and making the Exchange's rules easier to understand and navigate.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>28</sup> and Rule 19b-4(f)(6) thereunder.<sup>29</sup> Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>30</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>31</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange believes that waiving the operative delay would promote the protection of investors and the public interest because the proposed rule change would reduce the potential for a Market Order to trade at prices away from the prevailing quote and at potentially worse prices for the investor. Likewise, the Exchange believes that

eliminating IOC and tick-sensitive instructions for Market Orders, without delay, would be consistent with the protection of investors and the public interest because these instructions are rarely used and their elimination would simplify the Exchange's offering of order types. The Commission believes that the proposed rule change is consistent with the protection of investors and the public interest, because the proposal would diminish the likelihood of Market Orders trading at prices that would be disadvantageous to investors, and because it would simplify the Exchange's order types by eliminating rarely used complex order functionality. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.<sup>32</sup>

At any time within 60 days of the filing of such 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 under Section 19(b)(2)(B)<sup>33</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2016-35 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-NYSE-2016-35. This file number should be included on the subject line if email is used. To help the

<sup>32</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>33</sup> 15 U.S.C. 78s(b)(2)(B).

Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of 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-NYSE-2016-35 and should be submitted on or before June 15, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>34</sup>

**Robert W. Errett,**  
*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-77876; File No. SR-MIAX-2016-08]

**Self-Regulatory Organizations; Miami International Securities Exchange LLC; Order Granting Approval of Proposed Rule Change to Amend the Exchange's Amended and Restated By-Laws Relating to the Removal of a Board Restriction**

May 20, 2016.

**I. Introduction**

On March 29, 2016, Miami International Securities Exchange LLC (the "Exchange" or "MIAX") filed with the Securities and Exchange Commission (the "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

<sup>34</sup> 17 CFR 200.30-3(a)(12).

<sup>28</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>29</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of 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.

<sup>30</sup> 17 CFR 240.19b-4(f)(6).

<sup>31</sup> 17 CFR 240.19b-4(f)(6)(iii).

(“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend the Exchange’s Amended and Restated By-Laws (“By-Laws”) in order to remove a restriction prohibiting a Director, Observer or committee member of the Exchange’s Board of Directors (“Board”) from simultaneously serving as a member of the governing body of a competitor. The proposed rule change was published for comment in the **Federal Register** on April 8, 2016.<sup>3</sup> The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

## II. Description of the Proposed Rule Change

Currently, the By-Laws restrict an individual who is a Director,<sup>4</sup> Observer,<sup>5</sup> or committee member of the Exchange from also serving as 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.<sup>6</sup> The By-Laws specify that upon any individual who is a Director, Observer, or committee member of the Exchange becoming a member of the board of directors or similar governing body of a Specified Entity, such individual immediately would cease being a Director, Observer or committee member, as applicable, of the Board (“Board Restriction”).<sup>7</sup>

The Exchange states that the Board Restriction was added to the By-Laws in connection with the Equity Rights Program (“ERP”),<sup>8</sup> and was intended to prevent potential conflicts of interest that might arise due to an Exchange Director, Observer or committee member also serving a similar role on the governing body of a competitor.<sup>9</sup> As more fully described in the Notice, the Exchange now proposes to amend the By-Laws to eliminate the Board Restriction.<sup>10</sup> The Exchange states that it has found the Board Restriction to be unnecessarily restrictive, that it unduly limits the availability of qualified candidates from serving on the Exchange Board (or other governing body), and that the potential conflicts of interest that the restriction was designed to address can be more effectively and more efficiently addressed by other means.<sup>11</sup>

## III. Discussion and Commission Findings

After careful review, the Commission 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 and, in particular, with Section 6(b) of the Act.<sup>12</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(1) of the Act,<sup>13</sup> which requires that an exchange be organized and have the capacity to be able 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.

The Exchange represents that its proposed removal of the Board Restriction from the By-Laws is designed to enable MIAAX to engage the best suited and most qualified leaders to serve in the capacity of Director, Observer or committee member of the Exchange and will facilitate a Board structure and composition that will strengthen the Exchange’s ability to comply with the provisions of the Act and enforce compliance by its members with the provisions of the Act. The Exchange also notes that most of its competing option exchanges do not restrict their board members from sitting on the board of directors or other governing body of another options exchange.<sup>14</sup> Further, the Commission notes that it has previously considered and approved the Exchange’s Board structure without the Board Restriction, and determined that the Exchange’s governance provisions were designed to enable the Exchange to carry out its functions and responsibilities under the Act.<sup>15</sup> For these reasons, the Commission finds that the proposed rule change is consistent with the Act.

## IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>16</sup> that the proposed rule change (SR-MIAAX-2016-08) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Robert W. Errett,**  
*Deputy Secretary.*

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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. 77507 (April 4, 2016), 81 FR 20716 (April 8, 2016) (“Notice”).

<sup>4</sup> The term “Director” means the persons elected or appointed to the Board from time to time in accordance with the LLC Agreement of the Exchange and the By-Laws in their capacity as managers of the Exchange. See By-Laws, Article I (j).

<sup>5</sup> The term “Observer” means a person invited to attend meetings of the Board 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).

<sup>6</sup> Specifically, the term “Specified Entity” is defined in the By-Laws to mean (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 Exchange 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).

<sup>7</sup> The Board Restriction was adopted by the Exchange in 2014. See Securities Exchange Act Release Nos. 71172 (December 23, 2013), 78 FR 79530 (December 30, 2013); and 71541 (February 12, 2014), 79 FR 9572 (February 19, 2014) (SR-MIAAX-2013-58).

<sup>8</sup> 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 MIAAX Board. See Securities Exchange Act Release No. 70498 (September 25, 2013), 78 FR 60348 (October 1, 2013) (SR-MIAAX-2013-43) and Securities Exchange Act Release No. 71172 (December 23, 2013), 78 FR 79530 (December 30, 2013) (SR-MIAAX-2013-58).

<sup>9</sup> See Notice, *supra* note 3, at 20717.

<sup>10</sup> Specifically, the Exchange proposes to remove the last sentence of Article II, Section 2.2(d), Article II, Section 2.2(g)(ii), and Article IV, Section 4.2(b) regarding the Board Restriction, and remove the defined terms “Exchange Contract” and “Specified Entity,” set forth in Article I (p) and (oo), respectively, which are used only in connection with the Board Restriction. See Notice, *supra* note 3, at 20717–18.

<sup>11</sup> See Notice, *supra* note 3, at 20717.

<sup>12</sup> 15 U.S.C. 78f(b). In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>13</sup> 15 U.S.C. 78f(b)(1).

<sup>14</sup> See Notice, *supra* note 3, at 20717.

<sup>15</sup> See Securities Exchange Act Release No. 68341 (December 3, 2012), 77 FR 73065, 73070 (December 7, 2012) (File No. 10-207) (order approving MIAAX’s application for registration as a national securities exchange).

<sup>16</sup> 15 U.S.C. 78f(b)(2).

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