

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-70498; File No. SR-MIAX-2013-43)

September 25, 2013

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Implement an Equity Rights Program

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 13, 2013, Miami International Securities Exchange LLC (“Exchange” or “MIAX”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 implement an equity rights program.

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 proposed rule change. The text of these statements may be examined at the places specified in

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

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

Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to implement an equity rights program (“Program”) pursuant to which units representing the right to acquire equity in the Exchange’s parent holding company, Miami International Holdings (“MIH”) would be issued to a participating Member 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 23-month period. The purpose of the Program is to promote the long-term interests of MIAX by providing incentives designed to encourage future MIH owners and MIAX market participants to contribute to the growth and success of MIAX, by being active liquidity providers and takers to provide enhanced levels of trading volume to MIAX’s market, through an opportunity to increase their proprietary interests in MIAX’s enterprise value.

Members that participate in the Program will have two options to choose from: (i) an offering of A-Units; and/or (ii) an offering of B-Units.<sup>3</sup>

A-Units Option

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<sup>3</sup> The Program which provides equity-like consideration in exchange for market making or the provision of liquidity, order flow or volume is open to market participants generally. All MIAX Members may participate subject to their satisfaction of eligibility requirements. To be designated as a participant Member, an applicant must: (i) be a Member in good standing of MIAX; (ii) qualify as an “accredited investor” as such term is defined in Regulation D of the Securities Act of 1933; and (iii) have executed all required documentation for Program participation. See *infra* note 9, and accompanying text. Members may elect to participate in either or both of the options. If either the A-Unit or the B-Unit option is oversubscribed, the units in the oversubscribed option will be allocated on a pro-rata basis that may result in a fractional allocation.

Members that participate in the A-Unit option of the Program will be issued for each unit (i) 101,695 shares of MIH common stock and (ii) warrants to purchase 2,182,639 shares of common stock of MIH in exchange for such participant Member's initial cash capital contribution of \$508,475, and with such warrants being exercisable upon the achievement by the participating Member of certain volume thresholds on the Exchange during a 23-month measurement period commencing September 13, 2013. A total of 10 A-Units will be offered. The total equity ownership of MIH common stock held by any one participant Member will be subject to a cap of 19.9%.<sup>4</sup>

The warrants will vest in six (6) tranches: (i) one (1) tranche, upon initial investment; and (ii) five (5) tranches during a measurement period of months 1 – 23 of the Program. In addition, the participant Members may earn or lose warrants on a pro-rata basis based upon meeting volume commitments during the measurement periods, as detailed below.

Upon the initial investment, the participant Member would receive common shares equal to 101,695 shares of the common stock and 10% of the warrants will vest. A participant Member will be eligible to earn the remaining warrants during measurement periods provided that the participant has achieved a specified percentage of the total national average daily volume

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<sup>4</sup> See Ninth Article (b)(i)(B), Amended and Restated Certificate of Incorporation of Miami International Holdings, Inc., dated August 31, 2012 (providing that no Exchange Member, either alone or together with its Related Persons, may own, directly or indirectly, of record or beneficially, shares constituting more than twenty percent (20%) of any class of capital stock of the Corporation). Any purported transfer of shares or ownership of shares in violation of the ownership cap by a Member would be subject to the limitations of the Certificate of Incorporation, including the non-recognition of voting rights of shares in excess of the cap and a redemption right by MIH for excess shares. See Ninth Article (d) and (e), Amended and Restated Certificate of Incorporation of Miami International Holdings, Inc., dated August 31, 2012.

of options contracts reported to The Options Clearing Corporation (“OCC”) (“OCC ADV”) on MIAX of all option classes listed on MIAX.<sup>5</sup>

The remaining five (5) tranches, of 90% of the warrants, will vest during the following measurement periods: (i) 8.1% of the warrants resulting from months 1-3, with a volume commitment of 0.225% of OCC ADV on MIAX per A-Unit;<sup>6</sup> (ii) 11.7% of the warrants resulting from months 4-5, with a volume commitment of 0.335% of OCC ADV on MIAX per A-Unit; (iii) 19.8% of the warrants resulting from months 6-10, with a volume commitment of 0.445% of OCC ADV on MIAX per A-Unit; (iv) 23.4% of the warrants resulting from months 11-16, with a volume commitment of 0.556% of OCC ADV on MIAX per A-Unit; and (v) 27% of the warrants resulting from months 17-23, with a volume commitment of 0.667% of OCC ADV on MIAX per A-Unit. If a participant Member exceeds 100% of the volume commitment during a tranche’s measurement period, the Member is able to earn, on a pro-rata basis, warrants not earned by other participant Members. If a participant Member reaches 70-99% of the

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<sup>5</sup> If an options class is not listed on MIAX, then the trading volume in that options class will be omitted from the calculation of % OCC ADV. Priority Customer-to-Priority Customer Crossing transactions where no fees are paid to the Exchange, special strategies, and contracts as to which a Member acts solely as clearing agent will not be counted in the number of option contracts executed on the Exchange by any Member. (Incidental Priority Customer-to-Priority Customer transactions, that are not crossing transactions, will be counted in the number of options contracts executed on the Exchange by a Member.) Special strategies for the purpose of calculating trading volume include: (i) dividend strategy; (ii) merger strategy; (iii) short stock interest strategy; (iv) reversal and conversion strategies; (v) jelly roll strategy; and (vi) similar strategies offered by an options exchange that are subject to a fee cap. Trading in special strategies currently is not available on MIAX. Special strategies will be omitted from the calculation of % OCC ADV to the extent it is possible to identify such transactions. Calculation of % OCC ADV will be discounted by 5% of ADV for complex order functionality not yet established on the Exchange until such time that functionality is available on MIAX.

<sup>6</sup> The first measurement period will begin on the date of filing and end November 30, 2013. Therefore, September 13, 2013 through November 30, 2013 will count as months 1-3 for purposes of the measurement period.

volume commitment during a tranche's measurement period, the Member will earn a reduced amount of warrants on a pro-rata basis applicable to such measurement period. If a participant Member fails to reach a minimum of 70% of the volume commitment during a tranche's measurement period, the Member will lose all right to that tranche of warrants. Notwithstanding, in the event a participant Member has not satisfied the volume commitment for any one measurement period (other than measurement period 5), the participant Member will have an opportunity to vest those warrants if such participant Member applies a portion of the Members performance from the measurement period immediately following to the prior measurement period to ensure a minimum of 70% of the volume commitment in prior period and in addition has satisfied the volume commitment for the measurement period immediately following.

#### B-Units Option

Members that participate in the B-Unit option of the Program will be issued for each unit warrants to purchase 1,713,251 shares of common stock of MIH in exchange for the prepayment of Exchange fees in the amount of \$500,000 for the 22-month period commencing October 1, 2013, and with such warrants being exercisable upon the achievement by the participating Member of certain volume thresholds on the Exchange during a 23-month measurement period commencing September 13, 2013. A total of 10 B-Units will be offered. The total equity ownership of MIH common stock held by any one participant Member will be subject to a cap of 19.9%.

The warrants will vest in five (5) tranches during the following measurement periods: (i) 9% of the warrants resulting from months 1-3, with a volume commitment of 0.225% of OCC

ADV on MIAX per B-Unit;<sup>7</sup> (ii) 13% of the warrants resulting from months 4-5, with a volume commitment of 0.335% of OCC ADV on MIAX per B-Unit; (iii) 22% of the warrants resulting from months 6-10, with a volume commitment of 0.445% of OCC ADV on MIAX per B-Unit; (iv) 26% of the warrants resulting from months 11-16, with a volume commitment of 0.556% of OCC ADV on MIAX per B-Unit; and (v) 30% of the warrants resulting from months 17-23, with a volume commitment of 0.667% of OCC ADV on MIAX per B-Unit. If a participant Member exceeds 100% of the volume commitment during any one tranche's measurement period, the Member is able to earn, on a pro-rata basis, warrants not earned by other participant Members. If a participant Member reaches 70-99% of the volume commitment during any one tranche's measurement period, the Member will earn a reduced amount of warrants on a pro-rata basis applicable to such measurement period. If a participant Member fails to reach a minimum of 70% of the volume commitment during the measurement period, the Member will lose all right to that tranche of warrants. Notwithstanding, in the event a participant Member has not satisfied the volume commitment for any one measurement period (other than measurement period 5), the participant Member will have an opportunity to vest those warrants if such participant Member applies a portion of the Members performance from the measurement period immediately following to the prior measurement period to ensure a minimum of 70% of the volume commitment in prior period and in addition has satisfied the volume commitment for the measurement period immediately following.

Once a participant Member has prepaid Exchange fees for the initial 22-month period, each month the participant Member may execute contracts and accumulate transaction fees based

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<sup>7</sup> The first measurement period will begin on the date of filing and end November 30, 2013. Therefore, September 13, 2013 through November 30, 2013 will count as months 1-3 for purposes of the measurement period.

on the prevailing MIAX Options Fee Schedule in effect at the time. Once a B-Unit participant Member has executed contract volume whereby the total accumulated transaction fees equal the prepaid amount, all subsequently executed contracts will be billed and collected at the appropriate rate as defined in the MIAX Options Fee Schedule.

#### Provisions Applicable to Both A-Units and B-Units

Each participant Member will have a standard piggyback registration right to include the common shares and the common shares issuable upon exercise of the warrants should MIH file a Registration Statement under the Securities Exchange Act of 1933 [sic]. Each participant Member will also have the right to participate pro rata in all future offerings of MIH securities for so long as the participant Member holds at least 51% of the common shares purchased by the participating Member directly or issuable upon the exercise of warrants included in at least one B-Unit. MIH will have the right of first refusal to purchase any common shares or warrant shares that a participant Member decides to transfer or sell. Other participant Members will have the secondary right of first refusal to purchase any common shares or warrant shares that a participant Member decides to transfer or sell.

In addition, beginning one (1) year after the last month of the final measurement period, for a period of 90 days, the participant Member will have a right to sell the shares back to MIH at a price per share equal to a fixed percentage of fair market value<sup>8</sup> of the common stock. The right to sell the shares back will reoccur on an annual basis and last for a 90 day period. Years 1 and 2 after the final measurement period, the participant Member may sell back 10% of the common shares vested at a price equal to 50% of the fair market value. Year 3 after the final

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<sup>8</sup> 'Fair market value' means the value of the MIH common stock as determined by a nationally-recognized firm of independent certified public accountants to be jointly selected by the MIH and the participant Member, if such common stock is not publicly traded.

measurement period, the participant Member may sell back 30% of the common shares vested at a price equal to 60% of the fair market value. Year 4 after the final measurement period, the participant Member may sell back 60% of the common shares vested at a price equal to 70% of the fair market value. Year 5 after the final measurement period, the participant Member may sell back 90% of the common shares vested at a price equal to 80% of the fair market value. Year 6 after the final measurement period, the participant Member may sell back 100% of the common shares vested at a price equal to 90% of the fair market value.

When a participating Member acquires a certain number of units, the Member can appoint one director to the MIH Board and/or the MIAX Board.<sup>9</sup> The Exchange notes that the number of non-industry directors on the MIAX Board, including at least one independent director, must equal or exceed the number of industry directors and Member representatives, and that additional new non-industry directors and Member representative directors will need to be added in order to maintain this status. The Exchange also notes that any directors that may be selected by a participating Member would not be counted towards the 20% Member representative requirement on the MIAX Board. In addition, the Exchange notes that a Member is only entitled to a new seat if they are not currently represented on the MIAX board.

All applicants will be subject to the same eligibility and designation criteria, and all participant Members will participate in the Program on the same terms, conditions and restrictions. To be designated as a participant Member, an applicant must: (i) be a Member in good standing of MIAX; (ii) qualify as an “accredited investor” as such term is defined in

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<sup>9</sup> The Commission notes that MIAX will 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 MIAX and Miami International Holdings.



Regulation D of the Securities Act of 1933;<sup>10</sup> and (iii) have executed all required documentation for Program participation. Participant Members must have executed the definitive documentation, satisfied the eligibility criteria required of Program participants enumerated above, and tendered the minimum cash investment or prepayment of fees by September 27, 2013, with a closing to occur on September 30, 2013.

As discussed above, the purpose of the Program is to encourage Members to direct greater trade volume to MIAX to enhance trading volume in MIAX's market. Increased volume will provide for greater liquidity and enhanced price discovery, which benefits all market participants. Other exchanges currently engage in the practice of incentivizing increased order flow in order to attract liquidity providers through equity sharing arrangements.<sup>11</sup> The Program similarly intends to attract order flow, which will increase liquidity, thereby providing greater trading opportunities and tighter spreads for other market participants and causing a corresponding increase in order flow from these other market participants. The Program will similarly reward the liquidity providers that provide this additional volume with a potential proprietary interest in MIAX.

The specific volume thresholds of the Program's measurement periods were set based upon business determinations and analysis of current volume levels. The volume thresholds are intended to incentivize firms to increase the number of orders that are sent to MIAX to achieve

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<sup>10</sup> The purpose of this criterion relates to the ability of MIH to sell shares of common stock pursuant to an exemption from registration under the Securities Act of 1933. The definition of "accredited investor" under Rule 501(a)(1) of the Act includes any broker or dealer registered pursuant to Section 15 of the Act. MIAX Rule 200(b) requires a Member to be registered as a broker or dealer pursuant to Section 15 of the Act, therefore all MIAX Members will satisfy this criterion.

<sup>11</sup> See, e.g., Securities Exchange Act Release Nos. 62358 (June 22, 2010), 75 FR 37861 (June 30, 2010) (SR-NSX-2010-06); 64742 (June 24, 2011), 76 FR 38436 (June 30, 2011) (SR-NYSEAmex-2011-018); 69200 (March 21, 2013), 78 FR 18657 (March 27, 2013) (SR-CBOE-2013-31).

the next threshold. Increasing the number of orders that are sent to MIAX will in turn provide tighter and more liquid markets, and therefore attract more business as well.

MIAX will initiate the measurement period on the date of filing, September 13, 2013.<sup>12</sup> The Exchange will notify Members of the implementation of the Program and the dates of the enrollment period by Regulatory Circular, and will post a copy of this rule filing on its website. Any MIAX Member that is interested in participating in the Program may contact MIAX for more information and legal documentation and will be required to enter into a nondisclosure agreement regarding this additional Program information.

## 2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act<sup>13</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>14</sup> in particular, in 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 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) of the Act<sup>15</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also

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<sup>12</sup> MIAX previously provided notice to Members on August 21, 2013 that the measurement period for the volume thresholds would be commencing on September 3, 2013. See MIAX Regulatory Circular, RC-2013-52. However, MIAX has decided instead to use September 13, 2013, to coincide with the date of filing.

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

<sup>14</sup> 15 U.S.C. 78f(b)(5).

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

believes the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>16</sup> which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

In particular, the proposed rule change is equitable and not unfairly discriminatory, because all Members may elect to participate (or elect to not participate) in the Program and earn units on the same terms and conditions, assuming they satisfy the same eligibility criteria as described above. The eligibility criteria are objective; thus, all Members have the ability to satisfy them. The Board also has authorized MIAX to offer common shares in MIH to any Member that requests designation to participate in the Program and otherwise satisfies the eligibility criteria to ensure that all Members will have the opportunity to own common shares and thus participate in the Program if they so choose. In addition, participant Members will earn warrants on a pro-rata basis upon meeting fixed volume threshold amounts during the measurement periods that will apply to all participant Members.

The Exchange believes that the methodology used to calculate the volume thresholds is fair, reasonable and not unfairly discriminatory because it is based on objective criteria that are designed to omit from the calculation functionality that is not available on the Exchange and types of transactions that are subject to little or no transaction fees. Specifically, the Exchange believes excluding Priority Customer-to-Priority Customer Crossing transactions where no fees are paid to the Exchange, special strategies, and contracts as to which a Member acts solely as clearing agent from the number of option contracts executed on the Exchange by any Member is reasonable and not unfairly discriminatory because participating Members could otherwise game the volume thresholds by executing excess volumes in these types of transactions in which

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<sup>16</sup> 15 U.S.C. 78f(b)(4).

either no transaction fees are charged on the Exchange, or the transaction is subject to a fee cap. The Program is designed to reward participating Members for bringing their orders and quotes to the Exchange to be executed on the Exchange. The Exchange believes it is appropriate to exclude special strategies from the OCC volume calculation since those transactions are not executed on the Exchange. The Exchange believes that omitting clearing only transactions from the calculation to be fair and reasonable because the fact that a Member is clearing a trade is coincidental to the choice of where to execute that trade. And, because clearing only transactions are not executed on the MIAX, they don't fall within the intended transactions that qualify for the Program. In addition, if the Exchange were to reward the party clearing a trade, the Exchange would possibly be double counting that trade - once for the executing party and once for the clearing party. Furthermore, the Exchange believes that counting incidental Priority Customer-to-Priority Customer transactions, which are not crossing transactions, in the number of options contracts executed on the Exchange by a Member is fair and reasonable because in these situations the Priority Customer is not necessarily choosing to execute against another Priority Customer in order to avoid a transaction fee.

The Exchange believes the Program is equitable and reasonable because an increase in volume and liquidity would benefit all market participants by providing more trading opportunities and tighter spreads, even to those market participants that do not participate in the Program. Additionally, the Exchange believes the proposed rule change is consistent with the Act because, as described above, the Program is designed to bring greater volume and liquidity to the Exchange, which will benefit all market participants by providing tighter quoting and better prices, all of which perfects the mechanism for a free and open market and national market system.

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 not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change will improve competition by providing market participants with another option when determining where to execute orders and post liquidity.

The Exchange believes that the proposed change would increase both intermarket and intramarket competition by incenting participant Members to direct their orders to the Exchange, which will enhance the quality of quoting and increase the volume of contracts traded here. To the extent that there is an additional competitive burden on non-participant Members, the Exchange believes that this is appropriate because the Program should incent Members to direct additional order flow to the Exchange and thus provide additional liquidity that enhances the quality of its markets and increases the volume of contracts traded here. To the extent that this purpose is achieved, all of the Exchange's market participants should benefit from the improved market liquidity. Enhanced market quality and increased transaction volume that results from the anticipated increase in order flow directed to the Exchange will benefit all market participants and improve competition on the Exchange.

Given the robust competition for volume among options markets, many of which offer the same products, implementing a program to attract order flow like the one being proposed in this filing is consistent with the above-mentioned goals of the Act. This is especially true for the smaller options markets, such as MIAX, which is competing for volume with much larger exchanges that dominate the options trading industry. As a new exchange, MIAX has a nominal percentage of the average daily trading volume in options, so it is unlikely that the Program could cause any competitive harm to the options market or to market participants. Rather, the

Program is a modest attempt by a small options market to attract order volume away from larger competitors by adopting an innovative pricing strategy, as evidenced by the volume thresholds of the Program that represent fractions of 1% of OCC ADV. The Exchange notes that if the Program resulted in a modest percentage increase in the average daily trading volume in options executing on MIAX, while such percentage would represent a large volume increase for MIAX, it would represent a minimal reduction in volume of its larger competitors in the industry. The Exchange believes that the Program will help further competition, because market participants will have yet another additional option in determining where to execute orders and post liquidity if they factor the benefits of MIAX equity participation into the determination.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>17</sup> 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>17</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

#### 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-2013-43 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-2013-43. 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 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 publicly available. All submissions should refer to File Number SR-MIAX-2013-43 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>

Kevin M. O'Neill  
Deputy Secretary

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