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SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 information *

Add Remove View The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

View

Add Remove

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO] -xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies



The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO] -xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments. Transcripts, Other Communications

Remove

Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

Add Remove

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

Add Remove View The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add

Remove

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

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1. <u>Text of Proposed Rule Change</u>

(a) Miami International Securities Exchange, LLC ("MIAX" or "Exchange"), pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² proposes to amend Exchange Rule 506, Collection and Dissemination of Quotations, by adopting new Exchange Rule 506(c)(ii) to state that the Exchange will make available to subscribers of its MIAX Top of Market ("ToM") data feed the quantity of Priority Customer (defined below) contracts included in the MIAX Best Bids and Offers ("MBBOs") disseminated by the Exchange.

A notice of the proposed rule change for publication in the <u>Federal Register</u> is attached hereto as <u>Exhibit 1</u>, and a copy of the proposed amended rule text is attached hereto as <u>Exhibit 5</u>.

- (b) Not applicable.
- (c) Not applicable.

2. <u>Procedures of the Self-Regulatory Organization</u>

The proposed rule change was approved by the Chief Executive Officer of the Exchange pursuant to authority delegated by the MIAX Board of Directors of the Exchange on December 5, 2012. Exchange staff will advise the Board of Directors of any action taken pursuant to delegated authority. No other action by the Exchange is necessary for the filing of the proposed rule change.

Questions and comments on the proposed rule change may be directed to Richard S. Rudolph, Senior Counsel, at (609) 897-1487.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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3. <u>Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis</u> for, the Proposed Rule Change

a. <u>Purpose</u>

The Exchange proposes to make available to subscribers of its ToM market data product³ the quantity of Priority Customer (defined below) contracts included in the MBBO disseminated by the Exchange in order to provide additional transparency to ToM subscribers regarding the disseminated MBBO. The Exchange does not intend to charge additional fees for the inclusion of Priority Customer size in the aggregate size component of ToM at this time.

Currently, the ToM is a direct data feed that includes: the Exchange's best bid and offer, with aggregate size and last sale information on the MIAX system; opening imbalance condition information; opening and intra-day routing information; Expanded Quote Range information; Post-Halt Notification; and Liquidity Refresh condition information. The ToM data feed includes data that is identical to the data sent to the processor for the Options Price Reporting Authority ("OPRA"). The ToM and OPRA data leave the MIAX system at the same time, as required under Section 5.2(c)(iii)(B) of the Limited Liability Company Agreement of the Options Price Reporting Authority LLC (the "OPRA Plan"), which prohibits the dissemination of proprietary information on any more timely basis than the same information is furnished to the OPRA System for inclusion in OPRA's consolidated dissemination of options information.

The Exchange now proposes to make available additional information in the ToM data feed that specifies the quantity of Priority Customer⁵ contracts that are included in the aggregate

See Securities Exchange Act Release No. 69007 (February 28, 2013), 78 FR 14617 (March 6, 2013) (SR-MIAX-2013-05).

See id.

The term "Priority Customer" means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on

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size of the MBBO. Information regarding the quantity of Priority Customer interest included in the size of the MBBO may provide market participants transparency as to how orders would be allocated when the Priority Customer Overlay⁶ is in effect. When the Priority Customer Overlay is in effect, Priority Customer Orders on the Exchange generally have priority over Professional Interest and all Market Maker interest at the same price. The Exchange believes that the additional information regarding the quantity of Priority Customers contracts may provide certain ToM subscribers an additional tool to use when making routing, quotation, price and size decisions regarding where they should send orders and quotes, and the nature of such orders and quotes (i.e., price and size).

As stated above, the Exchange is not proposing at this time to assess additional fees for the inclusion of Priority Customer size as a component of the information included in the ToM market data product. The Exchange notes that it would file a 19b-4 Rule Filing prior to assessing additional fees for the Priority Customer size component of the information included in the ToM market data product.

Because of the technology changes associated with this rule proposal, the Exchange will announce the implementation date of the proposal in an Exchange Circular to be published no later than 30 days after the publication of the notice in the <u>Federal Register</u>. The implementation

average during a calendar month for its own beneficial accounts(s). See Exchange Rule 100.

The Exchange generally uses a pro-rata allocation model, and deploys certain "Priority Overlays" on a class-by-class basis. One such Priority Overlay is the Priority Customer Overlay. When the Priority Customer Overlay is in effect, the highest bid and lowest offer have priority except that Priority Customer Orders have priority over Professional Interest and all Market Maker interest at the same price. If there are two or more Priority Customer Orders for the same options series at the same price, priority is afforded to such Priority Customer Orders in the sequence in which they are received by the System. See Exchange Rule 514(d)(1).

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date will be no later than 30 days following publication of the Exchange Circular announcing publication of the notice in the <u>Federal Register</u>.

b. <u>Statutory Basis</u>

MIAX believes that its proposed rule change is consistent with Section 6(b)⁷ of the Act in general, and furthers the objectives of Section 6(b)(5)⁸ of the Act 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, and it is not designed to permit unfair discrimination among customers, brokers, or dealers.

The addition of Priority Customer size as a component of the information included in the ToM product is designed to promote just and equitable principles of trade by providing ToM subscribers with market data that should enable them to make informed decisions on trading in MIAX options by using the ToM data to assess current market conditions that directly affect such decisions. The proposal removes impediments to, and is designed to further perfect, the mechanisms of a free and open market and a national market system by making the MIAX market more transparent and accessible to market participants making routing decisions concerning their options orders, and concerning the nature of their quotes.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

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The ToM market data product is also designed to protect investors and the public interest by providing market data to subscribers that offers market participants additional information in order to make decisions concerning their orders and/or quotes.

4. <u>Self-Regulatory Organization's Statement on Burden on Competition</u>

MIAX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

MIAX operates within a highly competitive market in which market participants can readily send order flow to other competing venues if, among other things, they deem allocation rules at a particular venue to be unreasonable or disproportionate. The proposed rule change is intended to offer market participants additional information and transparency in the marketplace, and therefore enhances competition among exchanges by further enabling market participants to make informed order routing and quoting decisions.

5. <u>Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others</u>

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

The Exchange does not consent to an extension of the time period for Commission action.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Pursuant to Section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(6)¹⁰ thereunder,

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6).

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MIAX has designated this proposal as one that effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

MIAX believes that the proposal is non-controversial, because it simply supplements the information included in the existing ToM market data product at no extra charge, which subscribers can use when making quoting, order routing and quantity decisions. The additional transparency provided by the inclusion of Priority Customer size in ToM is important to the protection of investors and the public interest because it is designed to reflect a more accurate picture of the MBBO against which their orders may be executed, which benefits the marketplace as a whole.

The proposed rule change does not impose any significant burden on competition because, as stated above, it is intended to offer market participants additional information and transparency in the marketplace, and therefore actually enhances competition among exchanges by further enabling market participants to make informed order routing and quoting decisions.

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.

MIAX has satisfied this requirement. Furthermore, a proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹¹ normally does not become operative for 30 days after the date

¹¹ 17 CFR 240.19b-4(f)(6).

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of its filing. However, Rule $19b-4(f)(6)^{12}$ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.

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.

8. <u>Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission</u>

The proposed rule change is based on the International Securities Exchange LLC ("ISE")

Top Quote Feed. 13

- Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act
 Not applicable.
- 10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

11. Exhibits

Not applicable.

- 1. Completed notice of proposed rule change for publication in the <u>Federal Register</u>.
- 5. Text of the proposed rule change.

¹² 17 CFR 240.19b-4(f)(6).

See Securities Exchange Act Release No. 65000 (August 1, 2011), 76 FR 47627 (August 5, 2011) (SR-ISE-2011-44).

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EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION (Release No. 34- ; File No. SR-MIAX-2013-18

April_, 2013

Self-Regulatory Organizations: Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by Miami International Securities Exchange LLC Relating to Priority Customer Size

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 24, 2013, 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. <u>Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed</u>
Rule Change

The Exchange is filing a proposal to amend Exchange Rule 506, Collection and Dissemination of Quotations, by adopting new Exchange Rule 506(c)(ii) to state that the Exchange will make available to subscribers of its MIAX Top of Market ("ToM") data feed the quantity of Priority Customer (defined below) contracts included in the MIAX Best Bids and Offers ("MBBOs") disseminated by the Exchange.

The text of the proposed rule change is available on the Exchange's website at http://www.miaxoptions.com/filter/wotitle/rule_filing, at MIAX's principal office, and at the Commission's Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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II. <u>Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change</u>

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 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. <u>Self-Regulatory Organization's Statement of the Purpose of, and Statutory</u> <u>Basis for, the Proposed Rule Change</u>

1. Purpose

The purpose of the proposed rule change is to make available to subscribers of its ToM market data product³ the quantity of Priority Customer (defined below) contracts included in the MBBO disseminated by the Exchange in order to provide additional transparency to ToM subscribers regarding the disseminated MBBO. The Exchange does not intend to charge additional fees for the inclusion of Priority Customer size in the aggregate size component of ToM at this time.

Currently, the ToM is a direct data feed that includes: the Exchange's best bid and offer, with aggregate size and last sale information on the MIAX system; opening imbalance condition information; opening and intra-day routing information; Expanded Quote Range information; Post-Halt Notification; and Liquidity Refresh condition information. The ToM data feed includes data that is identical to the data sent to the processor for the Options Price Reporting Authority ("OPRA"). The ToM and OPRA data leave the MIAX system at the same time, as required under Section 5.2(c)(iii)(B) of the Limited Liability Company Agreement of the

See Securities Exchange Act Release No. 69007 (February 28, 2013), 78 FR 14617 (March 6, 2013) (SR-MIAX-2013-05).

See id.

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Options Price Reporting Authority LLC (the "OPRA Plan"), which prohibits the dissemination of proprietary information on any more timely basis than the same information is furnished to the OPRA System for inclusion in OPRA's consolidated dissemination of options information.

The Exchange now proposes to make available additional information in the ToM data feed that specifies the quantity of Priority Customer⁵ contracts that are included in the aggregate size of the MBBO. Information regarding the quantity of Priority Customer interest included in the size of the MBBO may provide market participants transparency as to how orders would be allocated when the Priority Customer Overlay⁶ is in effect. When the Priority Customer Overlay is in effect, Priority Customer Orders on the Exchange generally have priority over Professional Interest and all Market Maker interest at the same price. The Exchange believes that the additional information regarding the quantity of Priority Customers contracts may provide certain ToM subscribers an additional tool to use when making routing, quotation, price and size decisions regarding where they should send orders and quotes, and the nature of such orders and quotes (i.e., price and size).

As stated above, the Exchange is not proposing at this time to assess additional fees for the inclusion of Priority Customer size as a component of the information included in the ToM market data product. The Exchange notes that it would file a 19b-4 Rule Filing prior to assessing

The term "Priority Customer" means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial accounts(s). See Exchange Rule 100.

The Exchange generally uses a pro-rata allocation model, and deploys certain "Priority Overlays" on a class-by-class basis. One such Priority Overlay is the Priority Customer Overlay. When the Priority Customer Overlay is in effect, the highest bid and lowest offer have priority except that Priority Customer Orders have priority over Professional Interest and all Market Maker interest at the same price. If there are two or more Priority Customer Orders for the same options series at the same price, priority is afforded to such Priority Customer Orders in the sequence in which they are received by the System. See Exchange Rule 514(d)(1).

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additional fees for the Priority Customer size component of the information included in the ToM market data product.

Because of the technology changes associated with this rule proposal, the Exchange will announce the implementation date of the proposal in an Exchange Circular to be published no later than 30 days after the publication of the notice in the <u>Federal Register</u>. The implementation date will be no later than 30 days following publication of the Exchange Circular announcing publication of the notice in the <u>Federal Register</u>.

2. Statutory Basis

MIAX believes that its proposed rule change is consistent with Section 6(b)⁷ of the Act in general, and furthers the objectives of Section 6(b)(5)⁸ of the Act 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, and it is not designed to permit unfair discrimination among customers, brokers, or dealers.

The addition of Priority Customer size as a component of the information included in the ToM product is designed to promote just and equitable principles of trade by providing ToM subscribers with market data that should enable them to make informed decisions on trading in MIAX options by using the ToM data to assess current market conditions that directly affect such decisions. The proposal removes impediments to, and is designed to further perfect, the mechanisms of a free and open market and a national market system by making the MIAX

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

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market more transparent and accessible to market participants making routing decisions concerning their options orders, and concerning the nature of their quotes.

The ToM market data product is also designed to protect investors and the public interest by providing market data to subscribers that offers market participants additional information in order to make decisions concerning their orders and/or quotes.

B. <u>Self-Regulatory Organization's Statement on Burden on Competition</u>

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. .

MIAX operates within a highly competitive market in which market participants can readily send order flow to other competing venues if, among other things, they deem allocation rules at a particular venue to be unreasonable or disproportionate. The proposed rule change is intended to offer market participants additional information and transparency in the marketplace, and therefore enhances competition among exchanges by further enabling market participants to make informed order routing and quoting decisions.

C. <u>Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others</u>

Written comments were neither solicited nor received.

III. <u>Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action</u>

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

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Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act⁹ and Rule $19b-4(f)(6)^{10}$ 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.

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:

MIAX-2013-18 on the subject line.

Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml);
or
Send an e-mail to rule-comments@sec.gov. Please include File Number SR-

Paper comments:

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

⁹ 15 U.S.C. 78s(b)(3)(A).

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.

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All submissions should refer to File Number SR-MIAX-2013-18. 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 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 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 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-MIAX-2013-18 and should be submitted on or before [insert date 21 days from publication in the <u>Federal Register</u>]. For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Kevin M. O'Neill Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

MIAMI INTERNATIONAL SECURITIES EXCHANGE, LLC Rules

Rule 506. Collection and Dissemination of Quotations

- (a) (b) No change.
- (c) Notification of Public Customer and Priority Customer Interest on the Book.
- (i) The Exchange will make available to subscribers to its data feeds and to all market participants through OPRA an indication that there is Public Customer interest included in the MBBOs disseminated by the Exchange.
- (ii) The Exchange will make available to subscribers to its Top of Market (ToM) data feed the quantity of Priority Customer contracts included in the MBBO disseminated by the Exchange.
- (d) No change.
