

OMB APPROVAL

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Required fields are shown with yellow backgrounds and asterisks.

Page 1 of \* 26 **SECURITIES AND EXCHANGE COMMISSION** File No.\* SR - 2013 - \* 33  
 WASHINGTON, D.C. 20549  
 Form 19b-4 Amendment No. (req. for Amendments \*)

Filing by Miami International Securities Exchange, LLC.  
 Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
Pilot <input type="checkbox"/>			Rule		
Extension of Time Period for Commission Action * <input type="checkbox"/>		Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) <input checked="" type="checkbox"/>	Section 3C(b)(2) <input checked="" type="checkbox"/>
Section 806(e)(2) <input checked="" type="checkbox"/>	

Exhibit 2 Sent As Paper Document  Exhibit 3 Sent As Paper Document

**Description**  
 Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).  
 Amend Exchange Rules 521 and 530

**Contact Information**  
 Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name \* James Last Name \* Morgan  
 Title \* Associate Counsel and Assistant Vice President  
 E-mail \* jmorgan@miami-holdings.com  
 Telephone \* (609) 897-1484 Fax

**Signature**  
 Pursuant to the requirements of the Securities Exchange Act of 1934,  
 has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.  
 (Title \*)  
 Date 07/03/2013 Vice President and Senior Counsel  
 By Brian O'Neill  
 (Name \*)  
 NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.  
 Persona Not Validated - 1369332978188,

Required fields are shown with yellow backgrounds and asterisks.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

**Form 19b-4 Information \***

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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 \***

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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**

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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**

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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**

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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**

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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**

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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**

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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.

**1. Text of the Proposed Rule Change**

(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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> proposes to amend Exchange Rules 521 and 530.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1, and the text of the proposed rule change is attached hereto as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

**2. Procedures of the Self-Regulatory Organization**

The proposed rule change was approved by the Chief Executive Officer of the Exchange pursuant to authority delegated by the MIAX Board of Directors 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 James Morgan, Associate Counsel and Assistant Vice President at (609) 897-1484.

**3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change****a. Purpose**

The Exchange proposes to amend Rule 521 to (i) provide that opening purchase transactions that occur when the Exchange has prohibited, restricted or limited such opening

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

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

purchase transactions are subject to nullification and (ii) allow the Exchange to review transactions that are believed to be erroneous on motion of the Exchange. Additionally, the Exchange proposes mirroring the proposed amendments to Rule 521 in section (j) of Rule 530. The Exchange recently adopted section (j) of Rule 530 to provide how the Exchange handles erroneous options transactions in response to the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS.<sup>3</sup> As the Exchange developed Rule 530(j) off the basis of Rule 521, the Exchange believes it appropriate to make the corresponding amendments to Rule 530 as proposed in Rule 521. Lastly, the Exchange proposes a technical change to Rule 530(j)(1)(i) to cite to the correct notification provisions of Rule 530(j).

The proposed change is substantially similar to other exchanges – such as Chicago Board Options Exchange (“CBOE”) for the nullification of prohibited opening transactions and Nasdaq Options Market (“NOM”), NYSE Arca, Inc. (“NYSE Arca”), NYSE MKT LLC (“NYSE MKT”), and NASDAQ OMX PHLX (“PHLX”) for review of erroneous transactions on motion of the Exchange.<sup>4</sup>

#### Nullifying Prohibited Opening Transactions

The Exchange proposes to add a provision to both Rule 521 and 530(j) allowing for the nullification of opening purchase transactions in option classes or series subject to a prohibition, restriction or limitation on the creation and increase in long positions. Pursuant to Rule 403(a) the Exchange may determine to prohibit opening purchase transactions if, for example, the security underlying an option fails to meet the standards for continued listing and trading on the

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<sup>3</sup> See Securities Exchange Act Release No. 69342 (April 8, 2013), 78 FR 22017 (April 12, 2013)(SR-MIAX-2013-12).

<sup>4</sup> See Securities Exchange Act Release No. 61576 (February 23, 2010), 75 FR 9990 (March 4, 2010) (SR-NASDAQ-2010-022). See also CBOE Rule 6.25(a)(6); NOM Rules Chapter V Section 6(d)(i); NYSE Arca Rule 6.87(b)(3); NYSE MKT Rule 975NY.(b)(3); and PHLX Rule 1092(e)(i)(B).

Exchange, or an option series is listed on the Exchange in violation of the provisions of Rule 404 and such series are unable to be immediately delisted. Such prohibitions curtail the creation and increase in long positions in the option class or series. The proposed rule change would provide the Exchange the ability to nullify any opening transaction prohibited pursuant to Rule 403.

Thus, for example in the event that the Exchange withdraws approval for an underlying security previously approved by the Exchange for options transactions pursuant to Rule 403, the Exchange may prohibit any opening purchase transaction in series of options of that class previously listed and traded. Currently, a Member who violates the prohibition on opening purchase transactions can be pursued for such a violation through an appropriate regulatory action. However, there is no rule mechanism in the Rules by which to nullify the trade created by the prohibited opening transaction – thus a violator of the Exchange mandated prohibition, even after being subject to a regulatory action, could nonetheless benefit from the violation by keeping the prohibited opening position.

The Exchange believes that the ability to nullify trades resulting in prohibited opening transactions would eliminate any possible windfall from violating Exchange mandated prohibitions and thus strengthen the Exchange's regulatory program. The proposed rule change would provide the Exchange with an additional regulatory tool to promote compliance with Exchange Rules and the maintenance of a fair and orderly marketplace. Lastly, the Exchange notes that the ability to nullify prohibited opening transactions currently exists at CBOE.<sup>5</sup>

#### Reviewing Trades on Exchange Motion

The Exchange proposes to adopt a provision which provides that in the interest of maintaining a fair and orderly market and for the protection of investors, the Chief Regulatory

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<sup>5</sup> See CBOE Rule 6.25(a)(6).

Officer of MIAX or his/her designee who is an officer (collectively “Exchange Officer”), may, on his or her own motion or upon request, determine to review any transaction occurring on the Exchange that is believed to be erroneous.<sup>6</sup> A transaction reviewed pursuant to this provision may be nullified or adjusted only if it is determined by the Exchange Officer that the transaction is erroneous as provided in Rule 521 or 530(j). A transaction would be adjusted or nullified, or just nullified if reviewed under 530(j), in accordance with the provision under which it is deemed an erroneous transaction. The Exchange Officer may be assisted by an Exchange Official that is trained in the application of this Rule for reviewing a transaction(s).

As proposed, the Exchange Officer shall act pursuant to this paragraph as soon as possible after receiving notification of the transaction, and ordinarily would be expected to act on the same day as the transaction occurred. However, because a transaction under review may have occurred near the close of trading or due to unusual circumstances, the proposed Rule provides that the Exchange Officer shall act no later than 9:30 a.m. (ET) on the next trading day following the date of the transaction in question. A party affected by a determination to nullify or adjust a transaction pursuant to this provision may appeal such determination in accordance with Rule 521 or 530(j); however, a determination by an Exchange Officer not to review a transaction, or a determination not to nullify or adjust a transaction for which a review was requested or conducted, is not appealable. The Exchange believes it is appropriate to limit review on appeal to only those situations in which a transaction is actually nullified or adjusted.

This provision is not intended to replace a party’s obligation to request a review, within the required time periods under Rules 521 and 530(j) of any transaction that it believes meets the

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<sup>6</sup> In the event a party to a transaction requests that the Exchange review a transaction, the Exchange Officer nonetheless would need to determine, on his or her own motion, whether to review the transaction.

criteria for an obvious error. And, if a transaction is reviewed and a determination has been rendered pursuant to Rule 521 no additional relief may be granted under this new provision. Moreover, the Exchange does not anticipate exercising this new authority in every situation in which a party fails to make a timely request for review of this transaction pursuant to Rule 521 or 530(j). The Exchange believes this provision should help to protect the integrity of its marketplace by vesting an Exchange Officer with the authority to review a transaction that may be erroneous, in those situations where a party failed to make a timely request for a review.

The Exchange believes that the provision would also be useful in situations where some parties, but not all, to trades around the same time have requested a review. Under the Rule, reviews are currently request-based. Under the proposal, in this situation, the Exchange would be able to invoke this provision to review a series of trades, whether or not all parties requested it.

Lastly, the Exchange notes that the ability to review erroneous transactions on motion of the Exchange currently exists at NOM, NYSE Arca, NYSE MKT, and PHLX.<sup>7</sup>

#### Technical Correction to Rule 530(j)(1)(i)

Rule 530(j)(1)(i) provides that any review pursuant to Rule 530(j) occur within the time frame provided by the Rule. However, the Rule currently incorrectly cites to a nonexistent provision – Rule 530(j)(5)(i). The Exchange proposes correcting the Rule citation so that the time frame contained in proposed Rule 530(j)(2)(i)(A) is properly cited instead.

#### b. Statutory Basis

MIAX believes that its proposed rule change is consistent with Section 6(b) of the Act<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>9</sup> in particular, in that it is

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<sup>7</sup> See NOM Rules Chapter V Section 6(d)(i); NYSE Arca Rule 6.87(b)(3); NYSE MKT Rule 975NY.(b)(3); and PHLX Rule 1092(e)(i)(B).

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.

The proposed addition regarding the nullification of opening transactions in options classes or series in which the Exchange has prohibited opening transactions promotes just and equitable principles of trade by allowing for the nullification of opening transactions in options overlying securities for which the Exchange has withdrawn options trading eligibility. The nullification of such opening transactions eliminates the possibility of unjust enrichment on the part of one participant in the transaction at the expense of the contra party, all to the benefit of the marketplace as a whole. Additionally, the proposed rule change would provide the Exchange with an additional regulatory tool to promote compliance with Exchange Rules and the maintenance of a fair and orderly marketplace.

Proposed Rule 521(e)(1)(ii), which would allow an Exchange Officer to adjust or nullify a transaction on his or her motion in the interest of maintaining a fair and orderly market, protects investors and the public interest by authorizing such Exchange Officer to take affirmative action when a transaction appears erroneous. Investors and the public would have assurances that an Exchange Officer may nullify their erroneous transaction without their own notification. This extra layer of protection in Rule 521 would benefit options investors on the Exchange and the marketplace in general. Additionally, a transaction reviewed pursuant to this

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

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



proposal may be nullified or adjusted only if it is determined by the Exchange Officer that the transaction is erroneous as provided in Rule 521 or 530(j).

**4. Self-Regulatory Organization's Statement on Burden on Competition**

MIAX 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. Specifically, the Exchange believes the proposed changes will not impose any burden on intra-market competition because it applies to all MIAX participants equally. In addition, the Exchange does not believe the proposal will impose any burden on inter-market competition as the proposal is intended to protect investors by adopting an additional safeguard that is available on several competing exchanges. The Exchange notes the proposed changes to its Rules 521 and 530 do not go outside of the scope of the rules of other competing options exchanges. Additionally, consistency among the national securities exchanges regarding the handling of obvious errors reduces the possibility of any regulatory arbitrage on the part of a market participant seeking a forum with a lower regulatory requirement.

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

No written comments were either solicited or received.

**6. Extension of Time Period for Commission Action**

Not applicable.

**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 Act<sup>10</sup> and Rule 19b-4(f)(6)<sup>11</sup> thereunder, the Exchange has designated this proposal as one that effects a change that: (i) does not significantly

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

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.

The Exchange notes the proposal raises no novel issues and seeks to provide the same ability to address potentially erroneous transactions on the Exchange in a manner similar to other competing exchanges.<sup>12</sup> The proposal promotes the protection of investors and the public interest because it provides clarity and certainty for Exchange members engaging in trades on the Exchange when the primary market for the underlying security is subject to a halt, adds a further regulatory tool in the form of nullification against prohibited opening transactions, and creates an additional layer of protection against erroneous transactions through a review of such transactions on Exchange motion. The proposal does not impose a burden on competition because it applies evenly to all Exchange participants and provides consistency to the national options market because the features of this proposal can be found on other option exchanges.

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. Furthermore, a proposed rule change filed pursuant to

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<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> See CBOE Rule 6.25(a)(6); NOM Rules Chapter V Section 6(d)(i); NYSE Arca Rule 6.87(b)(3); NYSE MKT Rule 975NY.(b)(3); and PHLX Rule 1092(e)(i)(B). Specifically, Proposed Rule 521(c)(5) and Rule 530(j)(1)(v) is based on CBOE Rule 6.25(a)(6). Proposed Rule 521(e)(1)(ii) and Rule 530(j)(2)(i)(A) is based on NOM Rules Chapter V Section 6(d)(i), NYSE Arca Rule 6.87(b)(3), NYSE MKT Rule 975NY.(b)(3), and PHLX Rule 1092(e)(i)(B).

Rule 19b-4(f)(6) under the Act<sup>13</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)<sup>14</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.

The Exchange respectfully requests a waiver of the 30 day operative delay in order to best protect its marketplace. Waiver of operative delay is consistent with the protection of investors and the public interest because it would enable market participants to benefit from the additional protections against erroneous transactions in a manner consistent with competing exchanges without delay.

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. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

The new provision of proposed Rule 521(c)(5) and Rule 530(j)(1)(v) is based on CBOE Rule 6.25(a)(6).

The new provision of proposed Rule 521(e)(1)(ii) and Rule 530(j)(2)(i)(A) is based on NOM Rules Chapter V Section 6(d)(i), NYSE Arca Rule 6.87(b)(3), NYSE MKT Rule 975NY.(b)(3), and PHLX Rule 1092(e)(i)(B).

**9. 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**

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<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

Not applicable.

**11. Exhibits**

1. Notice of proposed rule for publication in the Federal Register.

5. Text of proposed changes to rule text.

**EXHIBIT 1**SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-MIAX-2013-33)

July \_\_, 2013

## Self-Regulatory Organizations: Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by Miami International Securities Exchange LLC to Amend Exchange Rules 521 and 530 Regarding Obvious Error Rule

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 July 3, 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. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange is filing a proposal to amend Exchange Rules 521 and 530.

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

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

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

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 purpose of the proposed rule change is to amend Rule 521 to (i) provide that opening purchase transactions that occur when the Exchange has prohibited, restricted or limited such opening purchase transactions are subject to nullification and (ii) allow the Exchange to review transactions that are believed to be erroneous on motion of the Exchange. Additionally, the Exchange proposes mirroring the proposed amendments to Rule 521 in section (j) of Rule 530. The Exchange recently adopted section (j) of Rule 530 to provide how the Exchange handles erroneous options transactions in response to the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS.<sup>3</sup> As the Exchange developed Rule 530(j) off the basis of Rule 521, the Exchange believes it appropriate to make the corresponding amendments to Rule 530 as proposed in Rule 521. Lastly, the Exchange proposes a technical change to Rule 530(j)(1)(i) to cite to the correct notification provisions of Rule 530(j).

The proposed change is substantially similar to other exchanges – such as Chicago Board Options Exchange (“CBOE”) for the nullification of prohibited opening transactions and Nasdaq Options Market (“NOM”), NYSE Arca, Inc. (“NYSE Arca”), NYSE MKT LLC (“NYSE MKT”), and NASDAQ OMX PHLX (“PHLX”) for review of erroneous transactions on motion of the Exchange.<sup>4</sup>

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<sup>3</sup> See Securities Exchange Act Release No. 69342 (April 8, 2013), 78 FR 22017 (April 12, 2013)(SR-MIAX-2013-12).

<sup>4</sup> See Securities Exchange Act Release No. 61576 (February 23, 2010), 75 FR 9990 (March 4, 2010) (SR-NASDAQ-2010-022). See also CBOE Rule 6.25(a)(6); NOM

Nullifying Prohibited Opening Transactions

The Exchange proposes to add a provision to both Rule 521 and 530(j) allowing for the nullification of opening purchase transactions in option classes or series subject to a prohibition, restriction or limitation on the creation and increase in long positions. Pursuant to Rule 403(a) the Exchange may determine to prohibit opening purchase transactions if, for example, the security underlying an option fails to meet the standards for continued listing and trading on the Exchange, or an option series is listed on the Exchange in violation of the provisions of Rule 404 and such series are unable to be immediately delisted. Such prohibitions curtail the creation and increase in long positions in the option class or series. The proposed rule change would provide the Exchange the ability to nullify any opening transaction prohibited pursuant to Rule 403. Thus, for example in the event that the Exchange withdraws approval for an underlying security previously approved by the Exchange for options transactions pursuant to Rule 403, the Exchange may prohibit any opening purchase transaction in series of options of that class previously listed and traded. Currently, a Member who violates the prohibition on opening purchase transactions can be pursued for such a violation through an appropriate regulatory action. However, there is no rule mechanism in the Rules by which to nullify the trade created by the prohibited opening transaction – thus a violator of the Exchange mandated prohibition, even after being subject to a regulatory action, could nonetheless benefit from the violation by keeping the prohibited opening position.

The Exchange believes that the ability to nullify trades resulting in prohibited opening transactions would eliminate any possible windfall from violating Exchange mandated prohibitions and thus strengthen the Exchange's regulatory program. The proposed rule change

would provide the Exchange with an additional regulatory tool to promote compliance with Exchange Rules and the maintenance of a fair and orderly marketplace. Lastly, the Exchange notes that the ability to nullify prohibited opening transactions currently exists at CBOE.<sup>5</sup>

#### Reviewing Trades on Exchange Motion

The Exchange proposes to adopt a provision which provides that in the interest of maintaining a fair and orderly market and for the protection of investors, the Chief Regulatory Officer of MIAX or his/her designee who is an officer (collectively "Exchange Officer"), may, on his or her own motion or upon request, determine to review any transaction occurring on the Exchange that is believed to be erroneous.<sup>6</sup> A transaction reviewed pursuant to this provision may be nullified or adjusted only if it is determined by the Exchange Officer that the transaction is erroneous as provided in Rule 521 or 530(j). A transaction would be adjusted or nullified, or just nullified if reviewed under 530(j), in accordance with the provision under which it is deemed an erroneous transaction. The Exchange Officer may be assisted by an Exchange Official that is trained in the application of this Rule for reviewing a transaction(s).

As proposed, the Exchange Officer shall act pursuant to this paragraph as soon as possible after receiving notification of the transaction, and ordinarily would be expected to act on the same day as the transaction occurred. However, because a transaction under review may have occurred near the close of trading or due to unusual circumstances, the proposed Rule provides that the Exchange Officer shall act no later than 9:30 a.m. (ET) on the next trading day following the date of the transaction in question. A party affected by a determination to nullify or adjust a transaction pursuant to this provision may appeal such determination in accordance

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<sup>5</sup> See CBOE Rule 6.25(a)(6).

<sup>6</sup> In the event a party to a transaction requests that the Exchange review a transaction, the Exchange Officer nonetheless would need to determine, on his or her own motion, whether to review the transaction.



with Rule 521 or 530(j); however, a determination by an Exchange Officer not to review a transaction, or a determination not to nullify or adjust a transaction for which a review was requested or conducted, is not appealable. The Exchange believes it is appropriate to limit review on appeal to only those situations in which a transaction is actually nullified or adjusted.

This provision is not intended to replace a party's obligation to request a review, within the required time periods under Rules 521 and 530(j) of any transaction that it believes meets the criteria for an obvious error. And, if a transaction is reviewed and a determination has been rendered pursuant to Rule 521 no additional relief may be granted under this new provision. Moreover, the Exchange does not anticipate exercising this new authority in every situation in which a party fails to make a timely request for review of this transaction pursuant to Rule 521 or 530(j). The Exchange believes this provision should help to protect the integrity of its marketplace by vesting an Exchange Officer with the authority to review a transaction that may be erroneous, in those situations where a party failed to make a timely request for a review.

The Exchange believes that the provision would also be useful in situations where some parties, but not all, to trades around the same time have requested a review. Under the Rule, reviews are currently request-based. Under the proposal, in this situation, the Exchange would be able to invoke this provision to review a series of trades, whether or not all parties requested it.

Lastly, the Exchange notes that the ability to review erroneous transactions on motion of the Exchange currently exists at NOM, NYSE Arca, NYSE MKT, and PHLX.<sup>7</sup>

#### Technical Correction to Rule 530(j)(1)(i)

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<sup>7</sup> See NOM Rules Chapter V Section 6(d)(i); NYSE Arca Rule 6.87(b)(3); NYSE MKT Rule 975NY.(b)(3); and PHLX Rule 1092(e)(i)(B).

Rule 530(j)(1)(i) provides that any review pursuant to Rule 530(j) occur within the time frame provided by the Rule. However, the Rule currently incorrectly cites to a nonexistent provision – Rule 530(j)(5)(i). The Exchange proposes correcting the Rule citation so that the time frame contained in proposed Rule 530(j)(2)(i)(A) is properly cited instead.

## 2. Statutory Basis

MIAX believes that its proposed rule change is consistent with Section 6(b) of the Act<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>9</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.

The proposed addition regarding the nullification of opening transactions in options classes or series in which the Exchange has prohibited opening transactions promotes just and equitable principles of trade by allowing for the nullification of opening transactions in options overlying securities for which the Exchange has withdrawn options trading eligibility. The nullification of such opening transactions eliminates the possibility of unjust enrichment on the part of one participant in the transaction at the expense of the contra party, all to the benefit of the marketplace as a whole. Additionally, the proposed rule change would provide the Exchange with an additional regulatory tool to promote compliance with Exchange Rules and the maintenance of a fair and orderly marketplace.

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

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

Proposed Rule 521(e)(1)(ii), which would allow an Exchange Officer to adjust or nullify a transaction on his or her motion in the interest of maintaining a fair and orderly market, protects investors and the public interest by authorizing such Exchange Officer to take affirmative action when a transaction appears erroneous. Investors and the public would have assurances that an Exchange Officer may nullify their erroneous transaction without their own notification. This extra layer of protection in Rule 521 would benefit options investors on the Exchange and the marketplace in general. Additionally, a transaction reviewed pursuant to this proposal may be nullified or adjusted only if it is determined by the Exchange Officer that the transaction is erroneous as provided in Rule 521 or 530(j).

**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. Specifically, the Exchange believes the proposed changes will not impose any burden on intra-market competition because it applies to all MIAX participants equally. In addition, the Exchange does not believe the proposal will impose any burden on inter-market competition as the proposal is intended to protect investors by adopting an additional safeguard that is available on several competing exchanges. The Exchange notes the proposed changes to its Rules 521 and 530 do not go outside of the scope of the rules of other competing options exchanges. Additionally, consistency among the national securities exchanges regarding the handling of obvious errors reduces the possibility of any regulatory arbitrage on the part of a market participant seeking a forum with a lower regulatory requirement.

**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>10</sup> and Rule 19b-4(f)(6)<sup>11</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.

### 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

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</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.

- Send an e-mail [to rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MIAX-2013-33 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-2013-33. 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-2013-33 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>12</sup>

Kevin M. O'Neill  
Deputy Secretary

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

## EXHIBIT 5

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

**MIAMI INTERNATIONAL SECURITIES EXCHANGE, LLC Rules**

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**Rule 521. Obvious and Catastrophic Errors**

The Exchange shall either nullify a transaction or adjust the execution price of a transaction that results in an Obvious Error as provided in this Rule.

(a) - (c)(4) No Change

(5) Transactions During Opening Purchase Prohibitions or Restrictions. Trades on the Exchange will be nullified when such a trade represents an opening transaction prohibited pursuant to Rule 403.

(d) **Adjustments.** Where the execution price of a transaction executed as the result of an Obvious Error is adjusted, the adjusted price will be:

(1) the Theoretical Price of the option in the case where the erroneous price is displayed in the market and subsequently executed against quotes or orders that did not exist on the Exchange at the time the erroneous price was entered; or

(2) the last bid or offer, just prior to the transaction, on the exchange that was disseminating the National Best Bid or Offer for the series at the time of the transaction that was the result of an Obvious Error in the case where an erroneous price executes against quotes or orders already existing on the Exchange at the time the erroneous price was entered.

(e) **Obvious Error Procedure.** MIAX Regulatory Control ("MRC") shall administer the application of this Rule as follows:

(1) (i) **Notification.** If a Market Maker or Registered Options Trader ("ROT") on the Exchange believes that he/she participated in a transaction that was the result of an Obvious Error, he/she must notify MRC within fifteen minutes of the transaction. If a Member that initiated the order believes a transaction on the Exchange was the result of an Obvious Error, such Member must notify MRC within twenty minutes of the execution. Absent unusual circumstances, MRC will not grant relief under this Rule unless notification is made within the prescribed time period. Notwithstanding the foregoing, respecting transactions that occur as part of the Exchange's automated opening process, after the twenty minute notification period as described above and until 4:30 p.m. Eastern Time ("ET") on the subject trade date, where parties to the transaction are a non-broker-dealer customer and an Exchange Market Maker, the non-broker-dealer customer may request review of the subject transaction, and the execution price of the transaction will be adjusted to the first quote after the transaction(s) in question that does not

reflect the erroneous transaction(s) (provided the adjustment does not violate the customer's limit price) by an Exchange Official.

**(ii) Procedures for Reviewing Trades on Exchange Motion.** In the interest of maintaining a fair and orderly market for the protection of investors, the Chief Regulatory Officer or designee who is an officer of the Exchange (collectively "Exchange Officer") may, on his or her own motion or upon request, determine to review any transaction occurring on the Exchange that is believed to be erroneous. A transaction reviewed pursuant to this provision may be nullified or adjusted only if it is determined by the Exchange Officer that the transaction is erroneous as provided in Rule 521. A transaction would be adjusted or nullified in accordance with the provision under which it is deemed an erroneous transaction. The Exchange Officer may be assisted by an Exchange Official in reviewing a transaction.

The Exchange Officer shall act as soon as possible after receiving notification of the transaction, and ordinarily would be expected to act on the same day as the transaction occurred. In no event shall the Exchange Officer act later than 9:30 a.m. (ET) on the next trading day following the date of the transaction in question. A party affected by a determination to nullify or adjust a transaction pursuant to this provision may appeal such determination in accordance with Rule 521; however, a determination by an Exchange Officer not to review a transaction, or a determination not to nullify or adjust a transaction for which a review was requested or conducted, is not appealable. If a transaction is reviewed and a determination is rendered pursuant to another provision of Rule 521, no additional relief may be granted under this provision.

**(2) Adjust or Bust.** An Exchange Official will determine whether there is an Obvious Error as defined in this Rule. If it is determined that an Obvious Error has occurred:

(i) where each party to the transaction is a Market Maker on the Exchange, the execution price of the transaction will be adjusted by an Exchange Official, unless both parties agree to nullify the transaction within ten minutes of being notified by MRC of the Obvious Error; or

(ii) where at least one party to the transaction is not a Market Maker on the Exchange, an Exchange Official will nullify the transaction, unless both parties agree to adjust the price of the transaction within 30 minutes of being notified by MRC of the Obvious Error determination. Upon final Exchange Official action, MRC, in conjunction with the MIAX Operations Center ("MOC"), where appropriate, shall promptly notify both parties to the trade.

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### **Rule 530. Limit Up-Limit Down**

(a) – (i) No change.

**(j) Review of Erroneous Transactions Occurring During Limit States and Straddle States.** Once an NMS Stock has entered a Limit or Straddle State, the Exchange shall nullify a transaction in an option overlying such an NMS Stock as provided in this Rule. Rule 530(j) will be effective on a one year pilot basis beginning on the date of implementation of the Plan. The



Exchange will provide the Commission with data and analysis during the duration of this pilot as requested.

(1) Absent Mutual Agreement as provided in paragraph (j)(2)(iii) below, parties to a trade may have a trade nullified if:

(i) any such party makes a documented request within the time specified in Rule 530(j)([5]2)(i)(A); and

(ii) – (iv). No change.

**(v) Transactions During Opening Purchase Prohibitions or Restrictions.**

Trades on the Exchange will be nullified when such a trade represents an opening transaction prohibited pursuant to Rule 403.

(2) **Review Procedure.** MIAX Regulatory Control (“MRC”) shall administer the application of this Rule as follows:

(i) (A) Notification. If a Market Maker on the Exchange believes that he/she participated in a transaction that can be nullified pursuant to section (j) of this Rule, he/she must notify MRC within fifteen minutes of the transaction. If a Member that initiated the order believes a transaction on the Exchange can be nullified pursuant to section (j) of this Rule, such Member must notify MRC within twenty minutes of the execution. Absent unusual circumstances, MRC will not grant relief under this Rule unless notification is made within the prescribed time period. Notwithstanding the foregoing, respecting transactions that occur as part of the Exchange’s automated opening process, after the twenty minute notification period as described above and until 4:30 p.m. Eastern Time (“ET”) on the subject trade date, where parties to the transaction are a non-broker-dealer customer and an Exchange Market Maker, the non-broker-dealer customer may request review of the subject transaction, and the transaction will nullified by an Exchange Official.

(B) Procedures for Reviewing Trades on Exchange Motion. In the interest of maintaining a fair and orderly market for the protection of investors, the Chief Regulatory Officer or designee thereof, who is an officer of the Exchange (collectively “Exchange Officer”) may, on his or her own motion or upon request, determine to review any transaction occurring on the Exchange that is believed to be erroneous. A transaction reviewed pursuant to this provision may be nullified in accordance with section (j) of this Rule. The Exchange Officer may be assisted by an Exchange Official in reviewing a transaction.

The Exchange Officer shall act as soon as possible after receiving notification of the transaction, and ordinarily would be expected to act on the same day as the transaction occurred. In no event shall the Exchange Officer act later than 9:30 a.m. (ET) on the next trading day following the date of the transaction in question. A party affected by a determination to nullify a transaction pursuant to this provision may appeal such determination in accordance with Rule 530; however, a determination by an Exchange Officer not to review a transaction, or a determination not to nullify a transaction for which a review was requested or conducted, is not appealable. If a transaction is reviewed and a determination is rendered pursuant to another provision of Rule 530, no additional relief may be granted under this provision.

(ii) **Bust.** An Exchange Official will determine whether there is a trade that qualifies to be nullified as defined in this Rule.

(3) No change.

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