

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-77876; File No. SR-MIAX-2016-08)

May 20, 2016

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

I. Introduction

On March 29, 2016, Miami International Securities Exchange LLC (the "Exchange" or "MIAX") filed with the Securities and Exchange Commission (the "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend the Exchange's Amended and Restated By-Laws ("By-Laws") in order to remove a restriction prohibiting a Director, Observer or committee member of the Exchange's Board of Directors ("Board") from simultaneously serving as a member of the governing body of a competitor. The proposed rule change was published for comment in the Federal Register on April 8, 2016.<sup>3</sup> The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

Currently, the By-Laws restrict an individual who is a Director,<sup>4</sup> Observer,<sup>5</sup> or committee member of the Exchange from also serving as a member of the board of directors or similar

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

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

<sup>3</sup> See Securities Exchange Act Release No. 77507 (April 4, 2016), 81 FR 20716 (April 8, 2016) ("Notice").

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

governing body of a “Specified Entity.” The term “Specified Entity” generally refers to any U.S. securities option exchange (or facility thereof) or U.S. alternative trading system on which securities options are traded which competes with the Exchange.<sup>6</sup> The By-Laws specify that upon any individual who is a Director, Observer, or committee member of the Exchange becoming a member of the board of directors or similar governing body of a Specified Entity, such individual immediately would cease being a Director, Observer or committee member, as applicable, of the Board (“Board Restriction”).<sup>7</sup>

The Exchange states that the Board Restriction was added to the By-Laws in connection with the Equity Rights Program (“ERP”),<sup>8</sup> and was intended to prevent potential conflicts of interest that might arise due to an Exchange Director, Observer or committee member also

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<sup>5</sup> The term “Observer” means a person invited to attend meetings of the Board in a nonvoting observer capacity as further described in Article II, Section 2.2(g)(i)-(iii) of the By-Laws. See By-Laws, Article II, Section 2.2(g).

<sup>6</sup> Specifically, the term “Specified Entity” is defined in the By-Laws to mean (i) any U.S. securities option exchange (or facility thereof) or U.S. alternative trading system on which securities options are traded (other than the Exchange or any of its affiliates) that lists for trading any option contract that competes with an Exchange Contract, (ii) any person that owns or controls such U.S. securities option exchange or U.S. alternative trading system, and (iii) any affiliate of a person described in clause (i) or (ii) above. See By-Laws, Article I (oo).

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

<sup>8</sup> Pursuant to the ERP, units representing the right to acquire equity in the Exchange’s parent holding company, Miami International Holdings, Inc., were issued to participating Members in exchange for payment of an initial purchase price or the prepayment of certain transaction fees and the achievement of certain liquidity addition volume thresholds on the Exchange over a fixed period of time. The By-Laws were also then amended to incorporate rights granted to Members participating in the ERP to appoint representation on the MIAX Board. See Securities Exchange Act Release No. 70498 (September 25, 2013), 78 FR 60348 (October 1, 2013) (SR-MIAX-2013-43) and Securities Exchange Act Release No. 71172 (December 23, 2013), 78 FR 79530 (December 30, 2013) (SR-MIAX-2013-58).

serving a similar role on the governing body of a competitor.<sup>9</sup> As more fully described in the Notice, the Exchange now proposes to amend the By-Laws to eliminate the Board Restriction.<sup>10</sup> The Exchange states that it has found the Board Restriction to be unnecessarily restrictive, that it unduly limits the availability of qualified candidates from serving on the Exchange Board (or other governing body), and that the potential conflicts of interest that the restriction was designed to address can be more effectively and more efficiently addressed by other means.<sup>11</sup>

### III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with Section 6(b) of the Act.<sup>12</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(1) of the Act,<sup>13</sup> which requires that an exchange be organized and have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange.

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

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

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

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

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

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

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

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

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>16</sup> that the proposed rule change (SR-MIAX-2016-08) be, and hereby is, approved.

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

Robert W. Errett  
Deputy Secretary

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

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