

OMB APPROVAL

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Page 1 of * 46 SECURITIES AND EXCHANGE COMMISSION File No.* SR - 2016 - * 11
 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 *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
			Rule		
Pilot	Extension of Time Period for Commission Action *	Date Expires *	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>	<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) *	Section 806(e)(2) *
<input type="checkbox"/>	<input type="checkbox"/>
	Section 3C(b)(2) *
	<input type="checkbox"/>

Exhibit 2 Sent As Paper Document	Exhibit 3 Sent As Paper Document
<input type="checkbox"/>	<input type="checkbox"/>

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Amend Rule 100 relating to Priority Customer definition.

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 * Deborah Last Name * Carroll

Title * Senior Vice President and Associate General Counsel

E-mail * dcarroll@miami-holdings.com

Telephone * (609) 897-1447 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 05/05/2016 Senior Vice President and Associate General Counsel

By Deborah L. Carroll [Signature Box]

(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 - 1445969825785,

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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 *

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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”)¹ and Rule 19b-4 thereunder,² proposes to amend the definition of Priority Customer in Exchange Rule 100 (Definitions), and to make a technical change to correct a typographical error in the rule text.

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 10, 2015. 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 Deborah L. Carroll, Senior Vice President and Associate General Counsel, at (609) 897-1447.

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 the definition of “Priority Customer” in Rule 100 (Definitions) and to add Interpretations and Policies .01 thereto to specify the manner in which

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

the Exchange will calculate the number of orders submitted by a MIAX participant to determine if such orders should be designated as Priority Customer³ or Professional Interest⁴ orders. The Exchange believes that the proposed rule change would provide additional clarity in the Exchange's Rules and serve to promote the purposes for which the Exchange originally adopted its Priority Customer and Professional Interest rules. This filing is based upon proposals recently submitted by Chicago Board Options Exchange, Incorporated ("CBOE")⁵ and NASDAQ OMX PHLX LLC ("PHLX")⁶ and approved by the Commission.

Background

In general, certain customers that are not "industry professionals", Market Makers or brokers and dealers of securities are granted certain marketplace advantages on most U.S. options exchanges over other market participants, including over those customers that are industry professionals, Market Makers or broker-dealers. The U.S. options exchanges generally categorize persons or entities that are not brokers or dealers in securities that place more than 390 orders per day on average during a calendar month for their own beneficial account(s) to be "industry professionals". Various exchanges refer to persons or entities that meet or exceed the 390 orders

³ 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 listed options orders per day on average during a calendar month for its own beneficial account(s). The term "Priority Customer Order" means an order for the account of a Priority Customer. See Exchange Rule 100 (Definitions).

⁴ The term "Professional Interest" means (i) an order that is for the account of a person or entity that is not a Priority Customer, or (ii) an order or non-priority quote for the account of a Market Maker. See Exchange Rule 100 (Definitions).

⁵ See Securities Exchange Act Release No. 77450 (March 25, 2016), 81 FR 18668 (March 31, 2016) (Order Approving SR-CBOE-2016-005).

⁶ See Securities Exchange Act Release No. 77449 (March 25, 2016), 81 FR 18665 (March 31, 2016) (Order Approving SR-PHLX-2016-10).

per day threshold as “professionals” or “professional customers”,⁷ while other exchanges refer to orders placed for such customers’ beneficial account(s) to be “professional orders” or “professional interests”.⁸ Various exchanges adopted similar rules relating to orders placed by or for these industry professionals for many of the same reasons, including, but not limited to the desire to create more competitive marketplaces and attract retail order flow.⁹ In addition, several of the exchanges noted in their original professional order rule filings, their beliefs that disparate professional order rules and a lack of uniformity in the application of such rules across the

⁷ See BATS Exchange, Inc. (“BZX”) Rule 16.1(a)(45) (Professional); BOX Options Exchange LLC (“BOX”) Rule 100(a)(50) (Professional); CBOE Rule 1.1(ggg) (Professional); C2 Rule 1.1; BX Chapter I, Sec. 1(49) (Professional); PHLX Rule 1000(b)(14) (Professional); and Nasdaq Options Market (“NOM”) Chapter I, Sec. 1(a)(48) (Professional). See also NYSE MKT LLC (“NYSE MKT”) Rule 900.2NY(18A) (Professional Customer); and NYSE Arca, Inc. (“Arca”) Rule 6.1A(4A) (Professional Customer).

⁸ See ISE Rule 100(a)(37C) (Professional Order); ISE Gemini, LLC (“Gemini”) Rule 100(a)(37C) (Professional Order); and MIAX Rule 100 (Professional Interest).

⁹ See, e.g., Securities Exchange Act Release No. 60931 (November 4, 2009), 74 FR 58355, 58356 (November 12, 2009) (Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, Related to Professional Orders) (SR-CBOE 2009-078); Securities Exchange Act Release No. 59287 (January 23, 2009), 74 FR 5694, 5694 (January 30, 2009) (Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of the Proposed Rule Change, as Modified by Amendment Nos. 1 and 2 Thereto, Relating to Professional Account Holders) (SR-ISE-2006-026); Securities Exchange Act Release No. 61802 (March 30, 2010), 75 FR 17193, 17194 (April 5, 2010) (Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of the Proposed Rule Change, as Modified by Amendment No. 2 Thereto, Relating to Professional Orders) (SR-PHLX-2010-005); Securities Exchange Act Release No. 61629 (March 2, 2010), 75 FR 10851, 10851 (March 9, 2010) (Notice of Filing of Proposed Rule Change Relating to the Designation of a “Professional Customer”) (SR-NYSEMKT-2010-018).

options markets would not promote the best regulation and may, in fact, encourage regulatory arbitrage.¹⁰

Similar to other U.S. options exchanges, the Exchange grants its Priority Customers certain marketplace advantages over other market participants pursuant to the Exchange's Fee Schedule¹¹ and Rules.¹² In general, Priority Customers receive allocation and execution priority above equally priced competing interests of Market Makers, broker-dealers, and other market participants. In addition, Priority Customer Orders are generally exempt from transaction fees.

The Exchange currently defines a "Professional Interest" in relevant part as an order that is for the account of a person or entity that is not a Priority Customer.¹³ The Exchange's Priority

¹⁰ See, e.g., Securities and Exchange Act Release No. 62724 (August 16, 2010), 75 FR 51509 (August 20, 2010) (Notice of Filing of a Proposed Rule Change by the NASDAQ Stock Market LLC To Adopt a Definition of Professional and Require That All Professional Orders Be Appropriately Marked) (SR-NASDAQ-2010-099); Securities and Exchange Act Release No. 65500 (October 6, 2011), 76 FR 63686 (October 13, 2011) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a Definition of Professional and Require That All Professional Orders Be Appropriately Marked) (SR-BATS-2011-041); Securities Exchange Act Release No. 65036 (August 4, 2011), 76 FR 49517, 49518 (August 10, 2011) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a Definition of "Professional" and Require That Professional Orders Be Appropriately Marked by BOX Options Participants) (SR-BX-2011-049); Securities Exchange Act Release No. 60931 (November 4, 2009), 74 FR 58355, 58357 (November 12, 2009) (Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, Related to Professional Orders) (SR-CBOE 2009-078); see also Securities Exchange Act Release 73628 (November 18, 2014), 79 FR 69958, 69960 (November 24, 2014) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Professional Orders) (SR-CBOE-2014-085).

¹¹ See, e.g., MIAX Options Fee Schedule.

¹² Priority Customer Orders have priority over Professional Interest and all Market Maker interest at the same price. See Exchange Rule 514(d) (Priority of Quotes and Orders); see also 515A (MIAX Price Improvement Mechanism ("PRIME") and PRIME Solicitation Mechanism) (a)(2)(iii) (PRIME Auction Order Allocation) and (b)(2)(iii) (PRIME Solicitation Mechanism Order Allocation).

¹³ See supra note 4.

Customer and Professional Interest rules were adopted to distinguish non-broker dealer individuals and entities that have access to information and technology that enable them to professionally trade listed options in a manner similar to brokers or dealers in securities, from retail investors for order priority and/or transaction fees purposes. In general, Professional Interest orders are treated in the same manner as the orders of broker-dealers under the Exchange's Rules, including but not limited to, rules governing execution priority and fees.¹⁴ MIAX's average daily order threshold of 390 orders per day is substantially similar to the distinction made by professional order rules of other exchanges and was materially based upon the preexistent professional order rules of other exchanges.¹⁵

In September 2014, the Exchange clarified its Priority Customer Order and Professional Interest distinctions by issuing a Regulatory Circular to its Members¹⁶ summarizing the requirements for determining the designation of orders as Priority Customer or Professional Interest. For example, the Regulatory Circular codified the Exchange's interpretation that for order counting purposes, a "parent" order that is broken up into multiple "child" orders by an individual at a broker or dealer, or by an algorithm housed at a broker or dealer, at a single price, should count as one single order. This interpretation was a clarification of Exchange Rules based on the Exchange's past interpretations of the definitions of Priority Customer and Professional Interest under Rule 100.

The Exchange's Regulatory Circular, however, has not clarified the Exchange's Priority Customer and Professional Interest rules completely. The advent of new multi-leg spread products

¹⁴ See Exchange Rule 100 (Professional Interest). See also supra notes 11 and 12.

¹⁵ See supra notes 7 and 8.

¹⁶ See MIAX Regulatory Circular 2014-69 (Priority Customer and Professional Interest Order Summary).

and the proliferation of the use of complex orders and algorithmic execution strategies by both institutional and retail market participants continue to raise questions as to what constitutes an “order” for professional order counting purposes. For example, do multi-leg spread orders or strategy orders constitute a single order or multiple orders for professional order counting purposes? The Exchange’s Rules do not fully address these issues and there is no common interpretation across the U.S. options markets. The Exchange believes that additional clarity is needed regarding professional order counting. Accordingly, the Exchange is proposing to amend its definition of a Priority Customer and to add Interpretations and Policies .01 to such definition to address how various new execution and order strategies should be treated under the Exchange’s Rules.

Moreover, the Exchange believes that the proposed rule change would better serve to accomplish the Exchange’s goals for its Priority Customer and Professional Interest rules. Based upon current order counting methodology under these Rule 100 definitions, many market participants who are not broker-dealers but nevertheless use sophisticated execution strategies and trading algorithms such that they would typically be considered “industry professionals” or “professional traders” are not captured by the Exchange’s Professional Interest rule and are instead treated as Priority Customers. The Exchange believes that these types of market participants have access to technology and market information akin to broker-dealers, unlike typical retail market participants. The Exchange’s Priority Customer and Professional Interest rules were designed to differentiate between the foregoing market participants. The Exchange therefore believes that a new Interpretations and Policies to the definition of Priority Customer under Rule 100 is warranted to ensure that Priority Customers are afforded the marketplace advantages that they are intended to be afforded over other types of market participants on the Exchange.

The Exchange notes that despite the adoption of materially similar professional order rules across the markets, there is no consistent definition across the markets as to what constitutes an

“order” for professional order counting purposes. While several options exchanges, including MIAX, have attempted to clarify their interpretations of their professional order counting rules through regulatory and information notices and circulars,¹⁷ many of the options exchanges have not adopted rules regarding the application of their professional order counting methodologies. Furthermore, where exchanges have issued interpretive guidance, those interpretations have not necessarily been consistent.¹⁸ As a result, the Exchange believes that the lack of uniformity amongst the exchanges’ professional order counting methodologies may not promote the best regulation and in fact may encourage regulatory arbitrage.

Proposal

The Exchange proposes to add additional details to the definition of Priority Customer under Rule 100, including a new Interpretations and Policies setting forth a more detailed counting regime for calculating average daily orders for Priority Customer and Professional Interest order counting purposes. Specifically, the Exchange’s proposed Interpretations and Policies would make clear how to count complex orders, “parent/child” orders that are broken into multiple orders, and “cancel/replace” orders for Priority Customer and Professional Interest order counting purposes.

¹⁷ See CBOE Regulatory Circular RG09-148 (Professional Orders); ISE Regulatory Information Circular 2014-007/Gemini Regulatory Information Circular 2014-011 (Priority Customer Orders and Professional Orders (FAQ)); MIAX Regulatory Circular 2014-69 (Priority Customer and Professional Interest Order Summary); NYSE Joint Regulatory Bulletin, NYSE Acra RBO-15-03, NYSE Amex RBO-15-06 (Professional Customer Orders); BOX Regulatory Circular RC-2015-21 (Professional Orders).

¹⁸ Compare NYSE Joint Regulatory Bulletin, NYSE Acra RBO-15-03, NYSE Amex RBO-15-06 (Professional Customer Orders) with Interpretation and Policy .01 to Rule 1.1(ggg); Regulatory Circular RG09-148 (Professional Orders); ISE Regulatory Information Circular 2014-007/Gemini Regulatory Information Circular 2014-011 (Priority Customer Orders and Professional Orders (FAQ)); and ISE Regulatory Information Circular 2009-179 (Priority Customer Orders and Professional Orders (FAQ)).

Proposed Interpretations and Policies .01, paragraph (a) would provide that except as noted below, each order of any order type, regardless of the options exchange on which the order is entered or to which the order is routed, shall be counted as one (1) order toward the 390-order threshold, except that Flexible Exchange Option (FLEX) orders shall not be counted. This is because FLEX orders are non-electronic orders, and the proposed rule change relates only to orders that are submitted electronically.

Proposed Interpretations and Policies .01, paragraph (b) would state that a complex order¹⁹ comprised of eight (8) options legs or fewer will count as a single order toward the 390-order threshold. A complex order comprised of nine (9) options legs or more will count as multiple orders, with each options leg counting as its own separate order. Stock components of stock-option orders are explicitly excluded from the count because they do not constitute orders in listed options. The Exchange believes that complex orders with nine or more legs are more likely to be used by professional traders than traditional two, three and four leg complex orders strategies and combinations thereof with eight legs or fewer, which are generally not algorithmically generated and are frequently used by retail investors. Thus, the types of complex orders traditionally placed by retail investors would continue to count as a single order toward the 390-order threshold while the more complex strategy orders that are typically used by professional traders would count as multiple orders.

Proposed Interpretations and Policies .01, paragraph (c) would provide details relating to the counting of “parent/child” orders. Under the proposal, a “parent” order placed for the beneficial account(s) of a person or entity not a broker or dealer that is broken into multiple subordinate “child” orders on the same side (buy/sell) and series as the “parent” order, by a broker or dealer or

¹⁹ The Exchange notes that it does not currently accept complex orders, however as noted above, the proposed Priority Customer and Professional Interest order counting regime will count all orders regardless of the options exchange on which entered.

an algorithm housed at a broker or dealer or licensed from a broker dealer but housed with the customer, shall count as one (1) order, even if the “child” orders are routed away. Proposed paragraph (c) would permit larger “parent” orders (which may be simple orders or complex orders consisting of up to eight legs), to be broken into multiple smaller orders on the same side (buy/sell) and in the same series (or complex orders consisting of up to eight legs) in order to attempt to achieve best execution for the overall order. Proposed paragraph (c) would essentially separate orders that are part of an overall strategy from those orders that are being “worked” by a broker in order to achieve best execution or in an attempt to time the market.

For example, if a customer were to enter an order to buy 1,000 XYZ \$5 January calls at a limit price of \$1, which the customer’s broker then broke into four separate orders to buy 250 XYZ \$5 January calls at a limit price of \$1 in order to achieve a better execution, the four “child” orders would still only count as one order for Priority Customer and Professional Interest order counting purposes (whether or not the four separate orders were sent to the same or different exchanges for execution).²⁰ Similarly, in the case of a complex order, if a customer were to enter an order to buy 1,000 XYZ \$5 January(sell)/ March(buy) calendar spreads (with a 1:1 ratio on the legs), at a net debit limit price of \$0.20, which the customer’s broker then broke into four separate orders to buy 250 XYZ \$5 January/March calendar spreads (each with a 1:1 ratio on the legs), each at a net debit limit price of \$0.20, the four “child” orders would still only count as one order for Priority

²⁰ Notably, however, if the customer herself were to enter the same four identical orders to buy 250 XYZ \$5 January calls at a limit price of \$1 prior to sending the orders, those orders would count as four separate orders for Priority Customer and Professional Interest order counting purposes because the orders would not have been broken into multiple “child” orders on the same side(buy/sell) and series as the “parent” order by a broker or dealer, or by an algorithm housed at a broker or dealer or licensed from a broker or dealer but housed with the customer.

Customer and Professional Interest order counting purposes (whether or not the four separate orders were sent to the same or different exchanges for execution).

On the other hand, a “parent” order (including a strategy order)²¹ that is broken into multiple subordinate “child” orders on both sides (buy/sell) of a series and/or multiple series shall count as multiple orders, with each “child” order counted as a new and separate order per side and series. Accordingly under this provision, strategy orders, which are most often used by sophisticated traders best characterized as industry professionals, would count as multiple orders for each “child” order entered as part of the overall strategy. For example, if a customer were to enter an order with her broker by which multiple “child” orders were then sent to the Exchange on both sides (buy/sell) of a series in a particular option class, each order entered would count as a separate order for Priority Customer and Professional Interest order counting purposes. Further, if a customer were to enter an order with her broker by which multiple “child” orders were then sent to the Exchange across multiple series in a particular option class, each order entered would count as a separate order for Priority Customer and Professional Interest order counting purposes. Likewise, if the customer instructed her broker to buy a variety of calls across various option classes as part of a basket trade, each order entered by the broker in order to obtain the positions making up the basket would count as a separate order for Priority Customer and Professional Interest order counting purposes.²²

²¹ For purposes of the proposed Interpretation and Policy, the term “strategy order” is intended to mean an execution strategy, trading instruction, or algorithm whereby multiple “child” orders on both sides of a series and/or multiple series are generated prior to being sent to any or multiple U.S. options exchange(s).

²² Notably, with respect to the types of “parent” orders (including strategy orders) described in paragraph (c) to the definition of Priority Customer under proposed Interpretation and Policy .01 to Rule 100, such orders would be received only as multiple “child” orders on the U.S. options exchange receiving such orders. The “parent” order would be broken apart before being sent by the participant to the exchange(s) as multiple “child” orders.

The Exchange believes that the distinctions between “parent” and “child” orders in proposed paragraph (c) are appropriate. The purpose of proposed paragraph (c) is to distinguish “child” orders of “parent” orders generated by algorithms that are typically used by sophisticated traders to continuously update their orders in concert with market updates in order to keep their overall trading strategies in balance. The Exchange believes that these types of “parent/child” orders typically used by sophisticated traders should count toward the 390-order threshold as multiple orders.

Proposed Interpretations and Policies .01, paragraph (d) would discuss the counting of orders that are cancelled and replaced toward the 390-order threshold. Specifically, proposed paragraph (d)(1) would provide that an order that cancels and replaces a prior order shall count as a second order, or multiple new orders in the case of a complex order comprised of nine (9) options legs or more, including “single-strike algorithms.” A series of cancel and replace orders in an individual strike which track the Exchange’s best bid or offer (“MBBO”) or the national best bid or offer (“NBBO”) shall count as separate new orders. Paragraph (d)(1) makes clear that a cancel message in and of itself, is not an order. For example, if a trader were to enter a non-marketable limit order to buy an option contract at a certain net debit price, cancel the order in response to market movements, and then reenter the same order once it became marketable, those orders would count as two separate orders for Priority Customer and Professional Interest order counting purposes even though the terms of both orders were the same.

Proposed paragraph (d)(2) would provide that except as noted in proposed paragraph (d)(3), an order that cancels and replaces a subordinate “child” order on the same side and series as the “parent” order shall not count as a new order. For example, if a customer were to enter an order with her broker to buy 10,000 XYZ \$5 January calls at a limit price of \$1, which the customer’s broker then entered, but could not fill and then cancelled to avoid having to rest the order in the book as part of a strategy to obtain a better execution for the customer and then resubmitted the

remainder of the order, which would be considered a “child” of the “parent” order, once it became marketable, such orders would only count as one order for Priority Customer and Professional Interest order counting purposes.

Proposed paragraph (d)(3) would state that an order that cancels and replaces a subordinate “child” order and results in multiple new sides and/or in multiple series will count as a new order per side and series. Proposed paragraph (d)(3) is aimed at identifying “child” orders of “parent” orders generated by algorithms that are typically used by sophisticated traders to continuously update their orders in concert with market updates in order to keep their overall trading strategies in balance. The Exchange believes that proposed paragraph (d)(3) is consistent with these goals. For example, if an investor were to seek to make a trade (or series of trades) to take a long position at a certain percentage limit on a basket of options, the investor may need to cancel and replace several of the “child” orders entered to achieve the overall execution strategy several times to account for updates in the prices of the underlying securities. In such a case, each “child” order placed to keep the overall execution strategy in place would count as a new and separate order even if the particular “child” order were being used to replace a slightly different “child” order that was previously being used to keep the same overall execution strategy in place. The Exchange believes that the distinctions between cancel/replace orders in proposed paragraphs (d)(2) and (d)(3) are appropriate as the orders described in proposed paragraph (d)(3) are typically generated by algorithms used by sophisticated traders to keep strategy orders continuously in line with updates in the markets. As such, the Exchange believes that in such cases, cancel/replace orders should count as multiple orders.

Finally, proposed paragraph (d)(3) would also codify the Exchange’s “pegged” order interpretation in the text of the Rules. Proposed paragraph (d)(3) would provide that an order that cancels and replaces a subordinate “child” order “pegged” to the MBBO or NBBO will count as a

new order each time a cancel/replace order is used to follow the MBBO or NBBO. This interpretation is similar to the Exchange's current interpretation of its Priority Customer and Professional Interest rules.²³ The Exchange believes that paragraph (d)(3) is appropriate to make clear that pegged strategy orders that are typically used by sophisticated traders should be counted as multiple orders even though such orders may cancel/replace orders on the same side (buy/sell) of the market in a single series in order to achieve an overall order strategy.

Under current definitions of Priority Customer and Professional Interest under Rule 100, in order to properly represent orders entered on the Exchange, MIAX Members are required to mark orders as "Priority Customer" or "Professional Interest".²⁴ This requirement will remain the same. To comply with this requirement, Members are required to review their customer activity on at least a quarterly basis to determine whether orders that are not for the account of a broker-dealer should be represented as Priority Customer or Professional Interest.²⁵ Orders for any account that had an average of more than 390 orders per day during any month of a given quarter must be represented as Professional Interest for the entire next calendar quarter. Members are required to conduct a quarterly review and make any appropriate changes to the way in which they are representing orders within five days after the end of each calendar quarter. While Members only will be required to review their customer accounts on a quarterly basis, if during a quarter the Exchange identifies a customer for which orders are being represented as Priority Customer but that has averaged more than 390 orders per day during a month, the Exchange will notify the Member and the Member will

²³ See supra note 16.

²⁴ See id.

²⁵ See id.

be required to change the manner in which it is representing the customer's orders within five days.

The Exchange's rules only require that Members conduct a look-back to determine whether their customers are averaging more than 390 orders per day at the end of each calendar quarter.²⁶ The Exchange therefore proposes that the proposed rule amendment become operative on July 1, 2016 in order to ensure that all orders during the quarterly review period commencing July 1, 2016 will be counted in the same manner and that the proposed order counting rules will not be applied retroactively. The Exchange will issue a Regulatory Circular 30 days prior to the operative date.

Additionally, the Exchange is making a technical change to correct a typographical error in the definition of Priority Customer under Rule 100 such that "accounts(s)" shall be corrected to read as "account(s)".

b. Statutory Basis

MIAX believes that this proposed rule change is consistent with Section 6(b) of the Act²⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act²⁸ 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

²⁶ See supra note 16.

²⁷ 15 U.S.C. 78f(b).

²⁸ 15 U.S.C. 78f(b)(5).

Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)²⁹ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposed amendment to the definition of Priority Customer under Rule 100 will promote consistent application of the rule by further defining the manner in which the Exchange will compute the average daily number of orders submitted by a MIAX participant during a calendar month for its beneficial account(s) for purposes of determining the appropriate Priority Customer or Professional Interest designation. Furthermore, the Exchange believes that specifying the manner in which the 390-order daily threshold will be calculated within its Rules will provide Members with certainty and provide them with insight as they conduct their quarterly reviews for purposes of designating orders.

The Exchange additionally believes that the proposed rule change provides a more conservative order counting regime that would identify more traders as industry professionals, which the Exchange's definition of Priority Customer was designed to exclude, and thus create a better competitive balance for all participants on the Exchange, consistent with the Act. As the options markets have evolved to become more electronic and more competitive, the Exchange believes that the distinction between registered broker-dealers on the one hand and professional traders who are nevertheless currently treated as Priority Customers on the other hand has become increasingly blurred. More and more, the Exchange's category of Priority Customer today includes sophisticated algorithmic traders including former market makers and hedge funds that trade with a frequency resembling that of broker-dealers. The Exchange believes that it is reasonable under the Act to treat those customers who meet the high level of trading activity established in the proposal differently than customers who do not meet that threshold and are

²⁹ See id.

more typical retail investors to ensure that professional traders do not take advantage of priority and fee benefits intended for Priority Customers.

The Exchange notes that it is not unfair to differentiate between different types of investors in order to achieve certain marketplace balances. The Rules currently differentiate between Priority Customers, broker-dealers, Market-Makers, and the like, and these differentiations have been recognized to be consistent with the Act.³⁰ The Exchange believes that the current rules of MIAX and other exchanges that accord priority to non-broker-dealer customers over broker-dealers are appropriate and consistent with the Act. The Exchange further believes that it is appropriate and consistent with the Act to accord priority to only those non-professional customers who on average do not place more than one order per minute (390 per day) under the counting regime that the Exchange proposes. The Exchange believes that such differentiations drive competition in the marketplace and are within the business judgment of the Exchange. Accordingly, the Exchange also believes that its proposal is consistent with the requirement of Section 6(b)(8) of the Act³¹ that the rules of an exchange not impose an unnecessary or inappropriate burden upon competition in that it treats persons who should be deemed industry professionals, but who may not be so deemed under current Exchange Rules, in a manner so that they do not receive special priority benefits.

Furthermore, the Exchange believes that the proposed rule change will protect investors and the public interest by helping to assure that true Priority Customers continue to receive the appropriate marketplace benefits in the MIAX marketplace as intended, while furthering

³⁰ See, e.g., Securities Exchange Act Release No. 59287 (January 23, 2009), 74 FR 5694, 5694 (January 30, 2009) (Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of the Proposed Rule Change, as Modified by Amendment Nos. 1 and 2 Thereto, Relating to Professional Account Holders) (SR-ISE-2006-026).

³¹ 15 U.S.C. 78(b)(8).

competition among marketplace professionals by treating them in the same manner as other similarly situated professional market participants. The Exchange believes that it is consistent with Section 6(b)(5) of the Act³² not to afford certain market participants that have access to information and technology similar to that of brokers and dealers of securities with marketplace advantages intended for Priority Customers. Finally, the Exchange believes that the proposed rule change sets forth a more detailed and clear regulatory regime with respect to calculating average daily order entry for Priority Customer and Professional Interest order counting purposes. The Exchange believes that this additional clarity and detail will eliminate confusion among market participants, which is in the interests of all investors and the general public.

The Exchange believes that a new set of standards and a more detailed counting regime than the Exchange's current Priority Customer and Professional Interest rules provide would allow the Exchange to better compete for order flow and help ensure deeper levels of liquidity on the Exchange. The Exchange also believes that the proposed rule change would help to remove impediments to and help perfect the mechanism of a free and open market and a national market system by increasing competition in the marketplace. Accordingly, the Exchange proposes to amend the definition of Priority Customer under Rule 100 and adopt a new Interpretations and Policies thereto.

4. 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 that is not necessary or appropriate in furtherance of the purposes of the Act. In this regard and as indicated above, the Exchange notes that this rule change is substantially similar to

³² 15 U.S.C. 78(b)(5).

recent CBOE and PHLX filings approved by the Commission.³³ As discussed above, the Exchange does not believe that the current rules of MIAX and other exchanges that accord priority to non-broker-dealer customers over broker-dealers are unfairly discriminatory. Nor does the Exchange believe that it is unfairly discriminatory to accord priority to only those non-professional customers who on average do not place more than one order per minute (390 per day) under the counting regime that the Exchange proposes.

The Exchange believes that its proposal does not impose an undue burden on competition. Rather, the Exchange believes that the proposed rule change would help to remove burdens on competition and promote a more competitive marketplace by affording certain marketplace advantages only to those for whom they are intended. The Exchange notes that one of the purposes of the rules regarding professional traders is to help ensure fairness in the marketplace and promote competition among all market participants. The Exchange believes that the proposed rule change should help establish more competition among market participants and promote the purposes underlying Exchange's Priority Customer and Professional Interest rules. The Exchange does not believe that the Act requires it to equally provide the same incentives and discounts to all market participants given as discussed above, the distinctions among such market participants as professional traders or retail investors.

Rather than burden competition, the Exchange believes that the proposed rule change promotes competition by ensuring that retail investors continue to receive the appropriate marketplace benefits in the MIAX marketplace as intended in the MIAX Rules, while furthering competition among marketplace professionals by treating them in the same manner under the Rules as other similarly situated market participants. The proposal will accomplish this by ensuring that market participants with similar access to information and technology (i.e.

³³ See supra notes 5 and 6.

professional traders and broker-dealers) receive similar treatment under the Rules, while retail investors receive the benefits of order priority and fee waivers that are intended to apply to Priority Customers.

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 Act³⁴ and Rule 19b-4(f)(6)³⁵ thereunder, 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.

Additionally, the Exchange has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

³⁴ 15 U.S.C. 78s(b)(3)(A).

³⁵ 17 CFR 240.19b-4(f)(6).

The proposed rule change is substantially similar to proposals submitted by CBOE and PHLX and approved by the Commission.³⁶ It does not raise any new, unique or substantive issues from those raised in the CBOE and PHLX filings. The Exchange believes this proposed rule change is essential for competitive purposes and to promote a free and open market for the benefit of investors.

For the foregoing reasons, this rule filing qualifies as a “non-controversial” rule change under Rule 19b-4(f)(6), which renders the proposed rule change effective upon filing with the Commission. At any time within 60 days of the filing of this 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 will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

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

This proposed rule change is based upon proposals submitted by CBOE and PHLX and approved by the Commission for substantially similar professional order counting regimes.³⁷ While these exchanges include methodology for counting professional orders within their definition of “Professional”, MIAX incorporates substantially similar counting methodology within its definition of “Priority Customer” under Exchange Rule 100 (Definitions). MIAX’s counting methodology incorporates language from both the CBOE and PHLX rules, including with respect to FLEX orders as per the PHLX rule, but is more appropriately included within the

³⁶ See supra notes 5 and 6.

³⁷ See id.

Exchange's definition of "Priority Customer" because that is the Rule wherein MIAX has set forth its 390-order threshold.

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

Not applicable.

11. Exhibits

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

5. Text of proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-MIAX-2016-11)

May __, 2016

Self-Regulatory Organizations: Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by Miami International Securities Exchange LLC to Amend Exchange Rule 100

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 May 6, 2016, 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 the definition of Priority Customer in Exchange Rule 100 (Definitions), and to make a technical change to correct a typographical error in the rule text.

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.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

1. Purpose

The Exchange proposes to amend the definition of “Priority Customer” in Rule 100 (Definitions) and to add Interpretations and Policies .01 thereto to specify the manner in which the Exchange will calculate the number of orders submitted by a MIAX participant to determine if such orders should be designated as Priority Customer³ or Professional Interest⁴ orders. The Exchange believes that the proposed rule change would provide additional clarity in the Exchange’s Rules and serve to promote the purposes for which the Exchange originally adopted its Priority Customer and Professional Interest rules. This filing is based upon proposals recently submitted by Chicago Board Options Exchange, Incorporated (“CBOE”)⁵ and NASDAQ OMX PHLX LLC (“PHLX”)⁶ and approved by the Commission.

³ 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 listed options orders per day on average during a calendar month for its own beneficial account(s). The term “Priority Customer Order” means an order for the account of a Priority Customer. See Exchange Rule 100 (Definitions).

⁴ The term “Professional Interest” means (i) an order that is for the account of a person or entity that is not a Priority Customer, or (ii) an order or non-priority quote for the account of a Market Maker. See Exchange Rule 100 (Definitions).

⁵ See Securities Exchange Act Release No. 77450 (March 25, 2016), 81 FR 18668 (March 31, 2016) (Order Approving SR-CBOE-2016-005).

⁶ See Securities Exchange Act Release No. 77449 (March 25, 2016), 81 FR 18665 (March 31, 2016) (Order Approving SR-PHLX-2016-10).

Background

In general, certain customers that are not “industry professionals”, Market Makers or brokers and dealers of securities are granted certain marketplace advantages on most U.S. options exchanges over other market participants, including over those customers that are industry professionals, Market Makers or broker-dealers. The U.S. options exchanges generally categorize persons or entities that are not brokers or dealers in securities that place more than 390 orders per day on average during a calendar month for their own beneficial account(s) to be “industry professionals”. Various exchanges refer to persons or entities that meet or exceed the 390 orders per day threshold as “professionals” or “professional customers”,⁷ while other exchanges refer to orders placed for such customers’ beneficial account(s) to be “professional orders” or “professional interests”.⁸ Various exchanges adopted similar rules relating to orders placed by or for these industry professionals for many of the same reasons, including, but not limited to the desire to create more competitive marketplaces and attract retail order flow.⁹ In addition, several

⁷ See BATS Exchange, Inc. (“BZX”) Rule 16.1(a)(45) (Professional); BOX Options Exchange LLC (“BOX”) Rule 100(a)(50) (Professional); CBOE Rule 1.1(ggg) (Professional); C2 Rule 1.1; BX Chapter I, Sec. 1(49) (Professional); PHLX Rule 1000(b)(14) (Professional); and Nasdaq Options Market (“NOM”) Chapter I, Sec. 1(a)(48) (Professional). See also NYSE MKT LLC (“NYSE MKT”) Rule 900.2NY(18A) (Professional Customer); and NYSE Arca, Inc. (“Arca”) Rule 6.1A(4A) (Professional Customer).

⁸ See ISE Rule 100(a)(37C) (Professional Order); ISE Gemini, LLC (“Gemini”) Rule 100(a)(37C) (Professional Order); and MIAX Rule 100 (Professional Interest).

⁹ See, e.g., Securities Exchange Act Release No. 60931 (November 4, 2009), 74 FR 58355, 58356 (November 12, 2009) (Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, Related to Professional Orders) (SR-CBOE 2009-078); Securities Exchange Act Release No. 59287 (January 23, 2009), 74 FR 5694, 5694 (January 30, 2009) (Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of the Proposed Rule Change, as Modified by Amendment Nos. 1 and 2 Thereto, Relating to Professional Account Holders) (SR-ISE-2006-026); Securities Exchange Act Release No. 61802 (March 30, 2010), 75 FR 17193, 17194 (April 5, 2010) (Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of the Proposed Rule Change, as Modified by Amendment No. 2 Thereto, Relating to Professional

of the exchanges noted in their original professional order rule filings, their beliefs that disparate professional order rules and a lack of uniformity in the application of such rules across the options markets would not promote the best regulation and may, in fact, encourage regulatory arbitrage.¹⁰

Similar to other U.S. options exchanges, the Exchange grants its Priority Customers certain marketplace advantages over other market participants pursuant to the Exchange's Fee Schedule¹¹ and Rules.¹² In general, Priority Customers receive allocation and execution priority above equally priced competing interests of Market Makers, broker-dealers, and other market

Orders) (SR-PHLX-2010-005); Securities Exchange Act Release No. 61629 (March 2, 2010), 75 FR 10851, 10851 (March 9, 2010) (Notice of Filing of Proposed Rule Change Relating to the Designation of a "Professional Customer") (SR-NYSEMKT-2010-018).

¹⁰ See, e.g., Securities and Exchange Act Release No. 62724 (August 16, 2010), 75 FR 51509 (August 20, 2010) (Notice of Filing of a Proposed Rule Change by the NASDAQ Stock Market LLC To Adopt a Definition of Professional and Require That All Professional Orders Be Appropriately Marked) (SR-NASDAQ-2010-099); Securities and Exchange Act Release No. 65500 (October 6, 2011), 76 FR 63686 (October 13, 2011) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a Definition of Professional and Require That All Professional Orders Be Appropriately Marked) (SR-BATS-2011-041); Securities Exchange Act Release No. 65036 (August 4, 2011), 76 FR 49517, 49518 (August 10, 2011) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a Definition of "Professional" and Require That Professional Orders Be Appropriately Marked by BOX Options Participants) (SR-BX-2011-049); Securities Exchange Act Release No. 60931 (November 4, 2009), 74 FR 58355, 58357 (November 12, 2009) (Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, Related to Professional Orders) (SR-CBOE 2009-078); see also Securities Exchange Act Release 73628 (November 18, 2014), 79 FR 69958, 69960 (November 24, 2014) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Professional Orders) (SR-CBOE-2014-085).

¹¹ See, e.g., MIAX Options Fee Schedule.

¹² Priority Customer Orders have priority over Professional Interest and all Market Maker interest at the same price. See Exchange Rule 514(d) (Priority of Quotes and Orders); see also 515A (MIAX Price Improvement Mechanism ("PRIME") and PRIME Solicitation Mechanism) (a)(2)(iii) (PRIME Auction Order Allocation) and (b)(2)(iii) (PRIME Solicitation Mechanism Order Allocation).

participants. In addition, Priority Customer Orders are generally exempt from transaction fees.

The Exchange currently defines a “Professional Interest” in relevant part as an order that is for the account of a person or entity that is not a Priority Customer.¹³ The Exchange’s Priority Customer and Professional Interest rules were adopted to distinguish non-broker dealer individuals and entities that have access to information and technology that enable them to professionally trade listed options in a manner similar to brokers or dealers in securities, from retail investors for order priority and/or transaction fees purposes. In general, Professional Interest orders are treated in the same manner as the orders of broker-dealers under the Exchange’s Rules, including but not limited to, rules governing execution priority and fees.¹⁴ MIAX’s average daily order threshold of 390 orders per day is substantially similar to the distinction made by professional order rules of other exchanges and was materially based upon the preexistent professional order rules of other exchanges.¹⁵

In September 2014, the Exchange clarified its Priority Customer Order and Professional Interest distinctions by issuing a Regulatory Circular to its Members¹⁶ summarizing the requirements for determining the designation of orders as Priority Customer or Professional Interest. For example, the Regulatory Circular codified the Exchange’s interpretation that for order counting purposes, a “parent” order that is broken up into multiple “child” orders by an individual at a broker or dealer, or by an algorithm housed at a broker or dealer, at a single price, should count as one single order. This interpretation was a clarification of Exchange Rules based on the Exchange’s past interpretations of the definitions of Priority Customer and Professional Interest under Rule

¹³ See supra note 4.

¹⁴ See Exchange Rule 100 (Professional Interest). See also supra notes 11 and 12.

¹⁵ See supra notes 7 and 8.

¹⁶ See MIAX Regulatory Circular 2014-69 (Priority Customer and Professional Interest Order Summary).

100.

The Exchange's Regulatory Circular, however, has not clarified the Exchange's Priority Customer and Professional Interest rules completely. The advent of new multi-leg spread products and the proliferation of the use of complex orders and algorithmic execution strategies by both institutional and retail market participants continue to raise questions as to what constitutes an "order" for professional order counting purposes. For example, do multi-leg spread orders or strategy orders constitute a single order or multiple orders for professional order counting purposes? The Exchange's Rules do not fully address these issues and there is no common interpretation across the U.S. options markets. The Exchange believes that additional clarity is needed regarding professional order counting. Accordingly, the Exchange is proposing to amend its definition of a Priority Customer and to add Interpretations and Policies .01 to such definition to address how various new execution and order strategies should be treated under the Exchange's Rules.

Moreover, the Exchange believes that the proposed rule change would better serve to accomplish the Exchange's goals for its Priority Customer and Professional Interest rules. Based upon current order counting methodology under these Rule 100 definitions, many market participants who are not broker-dealers but nevertheless use sophisticated execution strategies and trading algorithms such that they would typically be considered "industry professionals" or "professional traders" are not captured by the Exchange's Professional Interest rule and are instead treated as Priority Customers. The Exchange believes that these types of market participants have access to technology and market information akin to broker-dealers, unlike typical retail market participants. The Exchange's Priority Customer and Professional Interest rules were designed to differentiate between the foregoing market participants. The Exchange therefore believes that a new Interpretations and Policies to the definition of Priority Customer under Rule 100 is warranted to ensure that Priority Customers are afforded the marketplace advantages that they

are intended to be afforded over other types of market participants on the Exchange.

The Exchange notes that despite the adoption of materially similar professional order rules across the markets, there is no consistent definition across the markets as to what constitutes an “order” for professional order counting purposes. While several options exchanges, including MIAX, have attempted to clarify their interpretations of their professional order counting rules through regulatory and information notices and circulars,¹⁷ many of the options exchanges have not adopted rules regarding the application of their professional order counting methodologies. Furthermore, where exchanges have issued interpretive guidance, those interpretations have not necessarily been consistent.¹⁸ As a result, the Exchange believes that the lack of uniformity amongst the exchanges’ professional order counting methodologies may not promote the best regulation and in fact may encourage regulatory arbitrage.

Proposal

The Exchange proposes to add additional details to the definition of Priority Customer under Rule 100, including a new Interpretations and Policies setting forth a more detailed counting regime for calculating average daily orders for Priority Customer and Professional Interest order counting purposes. Specifically, the Exchange’s proposed Interpretations and Policies would make clear how to count complex orders, “parent/child” orders that are broken

¹⁷ See CBOE Regulatory Circular RG09-148 (Professional Orders); ISE Regulatory Information Circular 2014-007/Gemini Regulatory Information Circular 2014-011 (Priority Customer Orders and Professional Orders (FAQ)); MIAX Regulatory Circular 2014-69 (Priority Customer and Professional Interest Order Summary); NYSE Joint Regulatory Bulletin, NYSE Acra RBO-15-03, NYSE Amex RBO-15-06 (Professional Customer Orders); BOX Regulatory Circular RC-2015-21 (Professional Orders).

¹⁸ Compare NYSE Joint Regulatory Bulletin, NYSE Acra RBO-15-03, NYSE Amex RBO-15-06 (Professional Customer Orders) with Interpretation and Policy .01 to Rule 1.1(ggg); Regulatory Circular RG09-148 (Professional Orders); ISE Regulatory Information Circular 2014-007/Gemini Regulatory Information Circular 2014-011 (Priority Customer Orders and Professional Orders (FAQ)); and ISE Regulatory Information Circular 2009-179 (Priority Customer Orders and Professional Orders (FAQ)).

into multiple orders, and “cancel/replace” orders for Priority Customer and Professional Interest order counting purposes.

Proposed Interpretations and Policies .01, paragraph (a) would provide that except as noted below, each order of any order type, regardless of the options exchange on which the order is entered or to which the order is routed, shall be counted as one (1) order toward the 390-order threshold, except that Flexible Exchange Option (FLEX) orders shall not be counted. This is because FLEX orders are non-electronic orders, and the proposed rule change relates only to orders that are submitted electronically.

Proposed Interpretations and Policies .01, paragraph (b) would state that a complex order¹⁹ comprised of eight (8) options legs or fewer will count as a single order toward the 390-order threshold. A complex order comprised of nine (9) options legs or more will count as multiple orders, with each options leg counting as its own separate order. Stock components of stock-option orders are explicitly excluded from the count because they do not constitute orders in listed options. The Exchange believes that complex orders with nine or more legs are more likely to be used by professional traders than traditional two, three and four leg complex orders strategies and combinations thereof with eight legs or fewer, which are generally not algorithmically generated and are frequently used by retail investors. Thus, the types of complex orders traditionally placed by retail investors would continue to count as a single order toward the 390-order threshold while the more complex strategy orders that are typically used by professional traders would count as multiple orders.

Proposed Interpretations and Policies .01, paragraph (c) would provide details relating to the counting of “parent/child” orders. Under the proposal, a “parent” order placed for the beneficial

¹⁹ The Exchange notes that it does not currently accept complex orders, however as noted above, the proposed Priority Customer and Professional Interest order counting regime will count all orders regardless of the options exchange on which entered.

account(s) of a person or entity not a broker or dealer that is broken into multiple subordinate “child” orders on the same side (buy/sell) and series as the “parent” order, by a broker or dealer or an algorithm housed at a broker or dealer or licensed from a broker dealer but housed with the customer, shall count as one (1) order, even if the “child” orders are routed away. Proposed paragraph (c) would permit larger “parent” orders (which may be simple orders or complex orders consisting of up to eight legs), to be broken into multiple smaller orders on the same side (buy/sell) and in the same series (or complex orders consisting of up to eight legs) in order to attempt to achieve best execution for the overall order. Proposed paragraph (c) would essentially separate orders that are part of an overall strategy from those orders that are being “worked” by a broker in order to achieve best execution or in an attempt to time the market.

For example, if a customer were to enter an order to buy 1,000 XYZ \$5 January calls at a limit price of \$1, which the customer’s broker then broke into four separate orders to buy 250 XYZ \$5 January calls at a limit price of \$1 in order to achieve a better execution, the four “child” orders would still only count as one order for Priority Customer and Professional Interest order counting purposes (whether or not the four separate orders were sent to the same or different exchanges for execution).²⁰ Similarly, in the case of a complex order, if a customer were to enter an order to buy 1,000 XYZ \$5 January(sell)/ March(buy) calendar spreads (with a 1:1 ratio on the legs), at a net debit limit price of \$0.20, which the customer’s broker then broke into four separate orders to buy 250 XYZ \$5 January/March calendar spreads (each with a 1:1 ratio on the legs), each at a net debit limit price of \$0.20, the four “child” orders would still only count as one order for Priority

²⁰ Notably, however, if the customer herself were to enter the same four identical orders to buy 250 XYZ \$5 January calls at a limit price of \$1 prior to sending the orders, those orders would count as four separate orders for Priority Customer and Professional Interest order counting purposes because the orders would not have been broken into multiple “child” orders on the same side (buy/sell) and series as the “parent” order by a broker or dealer, or by an algorithm housed at a broker or dealer or licensed from a broker or dealer but housed with the customer.

Customer and Professional Interest order counting purposes (whether or not the four separate orders were sent to the same or different exchanges for execution).

On the other hand, a “parent” order (including a strategy order)²¹ that is broken into multiple subordinate “child” orders on both sides (buy/sell) of a series and/or multiple series shall count as multiple orders, with each “child” order counted as a new and separate order per side and series. Accordingly under this provision, strategy orders, which are most often used by sophisticated traders best characterized as industry professionals, would count as multiple orders for each “child” order entered as part of the overall strategy. For example, if a customer were to enter an order with her broker by which multiple “child” orders were then sent to the Exchange on both sides (buy/sell) of a series in a particular option class, each order entered would count as a separate order for Priority Customer and Professional Interest order counting purposes. Further, if a customer were to enter an order with her broker by which multiple “child” orders were then sent to the Exchange across multiple series in a particular option class, each order entered would count as a separate order for Priority Customer and Professional Interest order counting purposes. Likewise, if the customer instructed her broker to buy a variety of calls across various option classes as part of a basket trade, each order entered by the broker in order to obtain the positions making up the basket would count as a separate order for Priority Customer and Professional Interest order counting purposes.²²

The Exchange believes that the distinctions between “parent” and “child” orders in proposed paragraph (c) are appropriate. The purpose of proposed paragraph (c) is to distinguish “child” orders

²¹ For purposes of the proposed Interpretation and Policy, the term “strategy order” is intended to mean an execution strategy, trading instruction, or algorithm whereby multiple “child” orders on both sides of a series and/or multiple series are generated prior to being sent to any or multiple U.S. options exchange(s).

²² Notably, with respect to the types of “parent” orders (including strategy orders) described in paragraph (c) to the definition of Priority Customer under proposed Interpretation and Policy .01 to Rule 100, such orders would be received only as multiple “child” orders on the U.S. options exchange receiving such orders. The “parent” order would be broken apart before being sent by the participant to the exchange(s) as multiple “child” orders.

of “parent” orders generated by algorithms that are typically used by sophisticated traders to continuously update their orders in concert with market updates in order to keep their overall trading strategies in balance. The Exchange believes that these types of “parent/child” orders typically used by sophisticated traders should count toward the 390-order threshold as multiple orders.

Proposed Interpretations and Policies .01, paragraph (d) would discuss the counting of orders that are cancelled and replaced toward the 390-order threshold. Specifically, proposed paragraph (d)(1) would provide that an order that cancels and replaces a prior order shall count as a second order, or multiple new orders in the case of a complex order comprised of nine (9) options legs or more, including “single-strike algorithms.” A series of cancel and replace orders in an individual strike which track the Exchange’s best bid or offer (“MBBO”) or the national best bid or offer (“NBBO”) shall count as separate new orders. Paragraph (d)(1) makes clear that a cancel message in and of itself, is not an order. For example, if a trader were to enter a non-marketable limit order to buy an option contract at a certain net debit price, cancel the order in response to market movements, and then reenter the same order once it became marketable, those orders would count as two separate orders for Priority Customer and Professional Interest order counting purposes even though the terms of both orders were the same.

Proposed paragraph (d)(2) would provide that except as noted in proposed paragraph (d)(3), an order that cancels and replaces a subordinate “child” order on the same side and series as the “parent” order shall not count as a new order. For example, if a customer were to enter an order with her broker to buy 10,000 XYZ \$5 January calls at a limit price of \$1, which the customer’s broker then entered, but could not fill and then cancelled to avoid having to rest the order in the book as part of a strategy to obtain a better execution for the customer and then resubmitted the remainder of the order, which would be considered a “child” of the “parent” order, once it became

marketable, such orders would only count as one order for Priority Customer and Professional Interest order counting purposes.

Proposed paragraph (d)(3) would state that an order that cancels and replaces a subordinate “child” order and results in multiple new sides and/or in multiple series will count as a new order per side and series. Proposed paragraph (d)(3) is aimed at identifying “child” orders of “parent” orders generated by algorithms that are typically used by sophisticated traders to continuously update their orders in concert with market updates in order to keep their overall trading strategies in balance. The Exchange believes that proposed paragraph (d)(3) is consistent with these goals. For example, if an investor were to seek to make a trade (or series of trades) to take a long position at a certain percentage limit on a basket of options, the investor may need to cancel and replace several of the “child” orders entered to achieve the overall execution strategy several times to account for updates in the prices of the underlying securities. In such a case, each “child” order placed to keep the overall execution strategy in place would count as a new and separate order even if the particular “child” order were being used to replace a slightly different “child” order that was previously being used to keep the same overall execution strategy in place. The Exchange believes that the distinctions between cancel/replace orders in proposed paragraphs (d)(2) and (d)(3) are appropriate as the orders described in proposed paragraph (d)(3) are typically generated by algorithms used by sophisticated traders to keep strategy orders continuously in line with updates in the markets. As such, the Exchange believes that in such cases, cancel/replace orders should count as multiple orders.

Finally, proposed paragraph (d)(3) would also codify the Exchange’s “pegged” order interpretation in the text of the Rules. Proposed paragraph (d)(3) would provide that an order that cancels and replaces a subordinate “child” order “pegged” to the MBBO or NBBO will count as a new order each time a cancel/replace order is used to follow the MBBO or NBBO. This

interpretation is similar to the Exchange's current interpretation of its Priority Customer and Professional Interest rules.²³ The Exchange believes that paragraph (d)(3) is appropriate to make clear that pegged strategy orders that are typically used by sophisticated traders should be counted as multiple orders even though such orders may cancel/replace orders on the same side (buy/sell) of the market in a single series in order to achieve an overall order strategy.

Under current definitions of Priority Customer and Professional Interest under Rule 100, in order to properly represent orders entered on the Exchange, MIAX Members are required to mark orders as "Priority Customer" or "Professional Interest".²⁴ This requirement will remain the same. To comply with this requirement, Members are required to review their customer activity on at least a quarterly basis to determine whether orders that are not for the account of a broker-dealer should be represented as Priority Customer or Professional Interest.²⁵ Orders for any account that had an average of more than 390 orders per day during any month of a given quarter must be represented as Professional Interest for the entire next calendar quarter. Members are required to conduct a quarterly review and make any appropriate changes to the way in which they are representing orders within five days after the end of each calendar quarter. While Members only will be required to review their customer accounts on a quarterly basis, if during a quarter the Exchange identifies a customer for which orders are being represented as Priority Customer but that has averaged more than 390 orders per day during a month, the Exchange will notify the Member and the Member will be required to change the manner in which it is representing the customer's orders within five days.

²³ See supra note 16.

²⁴ See id.

²⁵ See id.

The Exchange's rules only require that Members conduct a look-back to determine whether their customers are averaging more than 390 orders per day at the end of each calendar quarter.²⁶ The Exchange therefore proposes that the proposed rule amendment become operative on July 1, 2016 in order to ensure that all orders during the quarterly review period commencing July 1, 2016 will be counted in the same manner and that the proposed order counting rules will not be applied retroactively. The Exchange will issue a Regulatory Circular 30 days prior to the operative date.

Additionally, the Exchange is making a technical change to correct a typographical error in the definition of Priority Customer under Rule 100 such that "accounts(s)" shall be corrected to read as "account(s)".

2. Statutory Basis

MIAX believes that its proposed rule change is consistent with Section 6(b) of the Act²⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act²⁸ 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.

²⁶ See supra note 16.

²⁷ 15 U.S.C. 78f(b).

²⁸ 15 U.S.C. 78f(b)(5).

Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)²⁹ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposed amendment to the definition of Priority Customer under Rule 100 will promote consistent application of the rule by further defining the manner in which the Exchange will compute the average daily number of orders submitted by a MIAX participant during a calendar month for its beneficial account(s) for purposes of determining the appropriate Priority Customer or Professional Interest designation. Furthermore, the Exchange believes that specifying the manner in which the 390-order daily threshold will be calculated within its Rules will provide Members with certainty and provide them with insight as they conduct their quarterly reviews for purposes of designating orders.

The Exchange additionally believes that the proposed rule change provides a more conservative order counting regime that would identify more traders as industry professionals, which the Exchange's definition of Priority Customer was designed to exclude, and thus create a better competitive balance for all participants on the Exchange, consistent with the Act. As the options markets have evolved to become more electronic and more competitive, the Exchange believes that the distinction between registered broker-dealers on the one hand and professional traders who are nevertheless currently treated as Priority Customers on the other hand has become increasingly blurred. More and more, the Exchange's category of Priority Customer today includes sophisticated algorithmic traders including former market makers and hedge funds that trade with a frequency resembling that of broker-dealers. The Exchange believes that it is reasonable under the Act to treat those customers who meet the high level of trading activity established in the proposal differently than customers who do not meet that threshold and are

²⁹See id.

more typical retail investors to ensure that professional traders do not take advantage of priority and fee benefits intended for Priority Customers.

The Exchange notes that it is not unfair to differentiate between different types of investors in order to achieve certain marketplace balances. The Rules currently differentiate between Priority Customers, broker-dealers, Market-Makers, and the like, and these differentiations have been recognized to be consistent with the Act.³⁰ The Exchange believes that the current rules of MIAX and other exchanges that accord priority to non-broker-dealer customers over broker-dealers are appropriate and consistent with the Act. The Exchange further believes that it is appropriate and consistent with the Act to accord priority to only those non-professional customers who on average do not place more than one order per minute (390 per day) under the counting regime that the Exchange proposes. The Exchange believes that such differentiations drive competition in the marketplace and are within the business judgment of the Exchange. Accordingly, the Exchange also believes that its proposal is consistent with the requirement of Section 6(b)(8) of the Act³¹ that the rules of an exchange not impose an unnecessary or inappropriate burden upon competition in that it treats persons who should be deemed industry professionals, but who may not be so deemed under current Exchange Rules, in a manner so that they do not receive special priority benefits.

Furthermore, the Exchange believes that the proposed rule change will protect investors and the public interest by helping to assure that true Priority Customers continue to receive the appropriate marketplace benefits in the MIAX marketplace as intended, while furthering

³⁰ See, e.g., Securities Exchange Act Release No. 59287 (January 23, 2009), 74 FR 5694, 5694 (January 30, 2009) (Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of the Proposed Rule Change, as Modified by Amendment Nos. 1 and 2 Thereto, Relating to Professional Account Holders) (SR-ISE-2006-026).

³¹ 15 U.S.C. 78(b)(8).

competition among marketplace professionals by treating them in the same manner as other similarly situated professional market participants. The Exchange believes that it is consistent with Section 6(b)(5) of the Act³² not to afford certain market participants that have access to information and technology similar to that of brokers and dealers of securities with marketplace advantages intended for Priority Customers. Finally, the Exchange believes that the proposed rule change sets forth a more detailed and clear regulatory regime with respect to calculating average daily order entry for Priority Customer and Professional Interest order counting purposes. The Exchange believes that this additional clarity and detail will eliminate confusion among market participants, which is in the interests of all investors and the general public.

The Exchange believes that a new set of standards and a more detailed counting regime than the Exchange's current Priority Customer and Professional Interest rules provide would allow the Exchange to better compete for order flow and help ensure deeper levels of liquidity on the Exchange. The Exchange also believes that the proposed rule change would help to remove impediments to and help perfect the mechanism of a free and open market and a national market system by increasing competition in the marketplace. Accordingly, the Exchange proposes to amend the definition of Priority Customer under Rule 100 and adopt a new Interpretations and Policies thereto.

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 that is not necessary or appropriate in furtherance of the purposes of the Act. In this regard and as indicated above, the Exchange notes that this rule change is substantially similar to

³² 15 U.S.C. 78(b)(5).

recent CBOE and PHLX filings approved by the Commission.³³ As discussed above, the Exchange does not believe that the current rules of MIAX and other exchanges that accord priority to non-broker-dealer customers over broker-dealers are unfairly discriminatory. Nor does the Exchange believe that it is unfairly discriminatory to accord priority to only those non-professional customers who on average do not place more than one order per minute (390 per day) under the counting regime that the Exchange proposes.

The Exchange believes that its proposal does not impose an undue burden on competition. Rather, the Exchange believes that the proposed rule change would help to remove burdens on competition and promote a more competitive marketplace by affording certain marketplace advantages only to those for whom they are intended. The Exchange notes that one of the purposes of the rules regarding professional traders is to help ensure fairness in the marketplace and promote competition among all market participants. The Exchange believes that the proposed rule change should help establish more competition among market participants and promote the purposes underlying Exchange's Priority Customer and Professional Interest rules. The Exchange does not believe that the Act requires it to equally provide the same incentives and discounts to all market participants given as discussed above, the distinctions among such market participants as professional traders or retail investors.

Rather than burden competition, the Exchange believes that the proposed rule change promotes competition by ensuring that retail investors continue to receive the appropriate marketplace benefits in the MIAX marketplace as intended in the MIAX Rules, while furthering competition among marketplace professionals by treating them in the same manner under the Rules as other similarly situated market participants. The proposal will accomplish this by ensuring that market participants with similar access to information and technology (i.e.

³³ See supra notes 5 and 6.

professional traders and broker-dealers) receive similar treatment under the Rules, while retail investors receive the benefits of order priority and fee waivers that are intended to apply to Priority Customers.

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 Act³⁴ and Rule 19b-4(f)(6)³⁵ 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.

³⁴ 15 U.S.C. 78s(b)(3)(A).

³⁵ 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.

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:to-rule-comments@sec.gov). Please include File Number SR-MIAX-2016-11 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-MIAX-2016-11. 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-2016-11 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.³⁶

Brent J. Fields
Secretary

³⁶ 17 CFR 200.30-3(a)(12).

Exhibit 5

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

Miami International Securities Exchange, LLC**Rules**

CHAPTER I. DEFINITIONS**Rule 100. Definitions**

Priority Customer

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. The number of orders shall be counted in accordance with the following Interpretation and Policy .01 hereto.

Interpretations and Policies:

.01 For purposes of counting the number of orders in listed options per day on average during a calendar month for its own beneficial account(s) for designation as Priority Customer, or Professional Interest, under Rule 100:

(a) Except as noted below, each order of any type, regardless of the options exchange on which the order is entered or to which the order is routed, shall be counted as one (1) order toward the number of orders, except that Flexible Exchange Option (FLEX) orders shall not be counted.

(b) Complex orders comprised of eight (8) options legs or fewer shall be counted as a single order. For complex orders comprised of nine (9) options legs or more, each leg shall count as its own separate order. Stock orders shall not be counted toward the number of legs.

(c) A “parent” order placed for the beneficial account(s) of a person or entity not a broker or dealer that is broken into multiple subordinate “child” orders on the same side (buy/sell) and series as the parent order, by a broker or dealer or an algorithm housed at a broker or dealer or licensed from a broker dealer but housed with the customer, shall be counted as one (1) order, even if the orders are routed away. A “parent” order (including a strategy order) that is broken into multiple subordinate “child” orders on both sides (buy/sell) of a series and/or multiple series shall be counted as multiple orders, with each child order counted as a new and separate order per side and series.

(d)(1) An order that cancels and replaces a prior order shall be counted as a second order, or multiple new orders in the case of a complex order comprised of nine (9) options legs or more, including "single-strike algorithms." A series of cancel and replace orders in an individual strike, which track the MBBO or NBBO, shall be counted as separate new orders. A cancel message is not an order.

(2) Except as noted in paragraph (d)(3) below, an order that cancels and replaces a subordinate "child" order on the same side and series as the "parent" order shall not be counted as a new order.

(3) An order that cancels and replaces a subordinate "child" order and results in multiple sides/series shall be counted as a new order per side and series. An order that cancels and replaces a subordinate "child" order pegged to the MBBO or NBBO, shall be counted as a new order each time a cancel/replace is used to follow the MBBO or NBBO.
