*Required fields are shown with yellow backgrounds and asterisks.*



SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. * SR 2025 - * 25
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) * ☐

Pilot ☐

Extension of Time Period for Commission Action * ☐

Date Expires *

Rule

☐ 19b-4(f)(1) ☐ 19b-4(f)(4)
☐ 19b-4(f)(2) ☐ 19b-4(f)(5)
☐ 19b-4(f)(3) ☑ 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) * ☐ Section 806(e)(2) * ☐

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 3C(b)(2) * ☐

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

## Description

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

Proposal to adopt Rule 1327, In-Kind Exchange of Options Positions and ETF Shares and UIT Units.

## 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 * Tanya Last Name * Kitaigorovski

Title * AVP, Associate Counsel

E-mail * tkitaigorovski@miaxglobal.com

Telephone * (609) 413-5787 Fax


## Signature

Pursuant to the requirements of the Securities Exchange of 1934, Miami International Securities Exchange, L
has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 05/29/2025

By Tanya Kitaigorovski
(Name *)

(Title *)
AVP, Associate Counsel

NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Tanya Kitaigorovski Date: 2025.05.29 17:09:03 -04'00'

*Required fields are shown with yellow backgrounds and astericks.*

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

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| **Form 19b-4 Information** * <br> Add Remove View <br> SR-MIAX-2025-25 - 19b4.docx | 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** * <br> Add Remove View <br> SR-MIAX-2025-25 - Exhibit 1.docx | 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 Advanced Notice by Clearing Agencies** * <br> Add Remove View | 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 2- Notices, Written Comments, Transcripts, Other Communications** <br> Add Remove View | 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. <br> ☐ Exhibit Sent As Paper Document |
| **Exhibit 3 - Form, Report, or Questionnaire** <br> Add Remove View | 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. <br> ☐ Exhibit Sent As Paper Document |
| **Exhibit 4 - Marked Copies** <br> Add Remove View | The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working. |
| **Exhibit 5 - Proposed Rule Text** <br> Add Remove View <br> SR-MIAX-2025-25 - Exhibit 5.docx | 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** <br> Add Remove View | 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 adopt Rule 1327, In-Kind Exchange of Options Positions and ETF Shares and UIT Units. Specifically, the Exchange is proposing to adopt Rule 1327, which would permit positions in options listed on the Exchange to be transferred off the Exchange by a Member[3] in connection with transactions (a) to purchase or redeem creation units of ETF shares between an authorized member and the issuer of such ETF shares, or (b) to create or redeem units of a UIT between a broker-dealer and the issuer of such UIT units, which transfers would occur at the price used to calculate the net asset value ("NAV") of such ETF shares or UIT units, respectively.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1, and a copy of the applicable section 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 or his designee pursuant to authority delegated by the MIAX Board of Directors on February 27, 2025. Exchange staff will advise the Board of Directors of any action taken pursuant to

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 The term "Member" means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed "members" under the Act. See Exchange Rule 100.

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 Tanya Kitaigorovski, AVP and Associate Counsel, at (609) 413-5787.

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

a. Purpose

The purpose of the proposed rule change is to adopt Rule 1327 regarding in-kind exchanges of options positions and exchange-traded fund ("ETF") shares and unit investment trust ("UIT") interests. The Exchange notes that this filing is based on a proposal submitted by Cboe C2 Exchange, Inc. ("C2") to the Securities and Exchange Commission (the "SEC" or the "Commission").[4]

Background

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4 See Cboe C2 Exchange, Inc. ("C2") Rule 6.9; see also Securities Exchange Act Release No. 89056 (June 12, 2020), 85 FR 36888 (June 18, 2020) (SR-C2-2020-006) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Chapter 6, Section G Regarding Off-Floor Transactions and Transfers). In this instance the Exchange is specifically proposing to add the 'In-Kind Exchange of Options Positions and ETF Shares and UIT Interests' rule. See also Cboe Exchange, Inc ("CBOE") Rule 6.9; see also Securities Exchange Act Release No. 87340 (October 17, 2019), 84 FR 56877 (October 23, 2019) (SRCBOE-2019-048) (Order Approving on an Accelerated Basis a Proposed Rule Change, as Modified by Amendment Nos. 2 and 3, to Adopt Rule 6.9 (In-Kind Exchange of Options Positions and ETF Shares)). See also Nasdaq PHLX LLC ("Phlx") Options 6, Section 7; see also Securities Exchange Act Release No. 87768 (December 17, 2019), 84 FR 70605 (December 23, 2019) (SR-Phlx-2019-53) ( Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt a New Rule 1059). In 2020, PHLX filed SR-Phlx-2020-03 to relocate the Phlx Rulebook into their new Rulebook Shell, Phlx Rule 1059 was relocated to Options 6, Section 7. See Securities Exchange Act Release No. 88213 (March 12, 2020), 85 FR 9859 (February 20, 2020) (SR-Phlx-2020-03) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate Rules From Its Current Rulebook Into Its New Rulebook Shell). See also NYSE Arca, Inc. Rule 6.78C-O; see also Securities Exchange Act Release No. 95644 (August 31, 2022), 87 FR 54727 (August 31, 2022) (SR-NYSEARCA-2022-55) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Rule 6.78-O and Adopt New Rules Related Thereto and Delete Paragraph (d) to Rule 6.69-O). See also NYSE American, LLC Rule 997.3NY; see also Securities Exchange Act Release 95646 (August 31,2022), 87 FR 54720 (August 31, 2022) (SR-NYSEAMER-2022-36) ( Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt New Rules 997NY, 997.1NY, 997.2NY and 997.3NY and Delete Paragraph (d) to Rule 957NY).

As discussed further below, the ability to effect "in kind" transfers is a key component of the operational structure of an ETF and a UIT. Currently, in general, ETFs and UITs can effect in kind transfers with respect to equity securities and fixed-income securities. The in-kind process is a major benefit to ETF shareholders and UIT unit holders, enabling tax efficient addition and removal of assets from these investment vehicles. In-kind transfers protect ETF shareholders and UIT unit holders from the undesirable tax effects of frequent "creations and redemptions" (described below) and improve the overall tax efficiency of the products. However, currently, Exchange Rules do not provide for ETFs and UITs to effect in-kind transfers of options off of the Exchange, resulting in tax inefficiencies for the ETFs and UITs that hold them. As a result, the use of options by ETFs and UITs is substantially limited.

Currently, Exchange Rule 1326(a) permits existing positions in options listed on the Exchange of a Member or person associated with the Member or non- Member or person associated with a non-Member that are to be transferred on, from, or to the books of a Clearing Member[5] to be transferred off the Exchange if the transfer involves one or more of the following events: (1) pursuant to Rule 301, an adjustment or transfer in connection with the correction of a bona fide error in the recording of a transaction or the transferring of a position to another account, provided that the original trade documentation confirms the error; (2) the transfer of positions from one account to another account where no change in ownership is involved (i.e., accounts of the same Person (as defined in Rule 100)[6]), provided the accounts are not in separate

5 The term "Clearing Member" means a Member that has been admitted to membership in the Clearing Corporation pursuant to the provisions of the rules of the Clearing Corporation. See Exchange Rule 100. The term "Clearing Corporation" means The Options Clearing Corporation. See Exchange Rule 100.

6 The term "Person" shall refer to a natural person, corporation, partnership (general or limited), limited liability company, association, joint stock company, trust, trustee of a trust fund, or any organized group of persons whether incorporated or not and a government or agency or political subdivision thereof. See Exchange Rule 100.

aggregation units or otherwise subject to information barrier or account segregation requirements; (3) the consolidation of accounts where no change in ownership is involved; (4) a merger, acquisition, consolidation, or similar non-recurring transaction for a Person; (5) the dissolution of a joint account in which the remaining Member assumes the positions of the joint account; (6) the dissolution of a corporation or partnership in which a former nominee of the corporation or partnership assumes the positions; (7) positions transferred as part of a Member's capital contribution to a new joint account, partnership, or corporation; (8) the donation of positions to a not-for-profit corporation; (9) the transfer of positions to a minor under the Uniform Gifts to Minors Act; or (10) the transfer of positions through operation of law from death, bankruptcy, or otherwise. At present, the list of limited circumstances in Rule 1326 that allows Members to transfer their options positions off the Exchange does not include an exception for in-kind transfers.

The Exchange proposes to add a new circumstance under which off-Exchange transfers of options positions would be permitted to occur. Specifically, under proposed Rule 1327, positions in options listed on the Exchange would be permitted to be transferred off the Exchange by a Member or Member organization in connection with transactions (a) to purchase or redeem "creation units" of ETF shares between an "authorized member"[7] and the issuer[8] of

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7 The Exchange is proposing that, for purposes of proposed Rule 1327, the term "authorized member" would be defined as an entity that has a written agreement with the issuer of ETF shares or one of its service providers, which allows the authorized member to place orders for the purchase and redemption of creation units (i.e., specified numbers of ETF shares). While an authorized member may be a Member and directly effect transactions in options on the Exchange, an authorized member that is not a Member may effect transactions in options on the Exchange through a Member on its behalf.

8 The Exchange proposes that, for purposes of proposed Rule 1327, any issuer of ETF shares would be registered with the Commission as an open-end management investment company under the Investment Company Act of 1940 (the "1940 Act").

such ETF shares[9] or (b) to create or redeem units of a UIT between a broker-dealer and the issuer[10] of such UIT units, which transfers would occur at the price used to calculate the net asset value ("NAV") of such ETF shares or UIT units, respectively. This proposed new exception, although limited in scope, would have a significant impact in that it would help protect ETF shareholders and UIT holders from undesirable tax consequences and facilitate tax efficient operations. The frequency with which ETFs and authorized members, and UITs and sponsors, would rely on the proposed exception would depend upon such factors as the number of ETFs and UITs, respectively, holding options positions traded on the Exchange, the market demand for the shares of such ETFs and units of such UITs, the redemption activity of authorized members and sponsors, respectively, and the investment strategies employed by such ETFs and UITs.

While the Exchange recognizes that, in general, the execution of options transactions on exchanges provides certain benefits, such as price discovery and transparency, based on the circumstances under which proposed Rule 1327 would apply, the Exchange does not believe that such benefits would be compromised. In this regard, as discussed more fully below, the Exchange notes that in conjunction with the creation and redemption process, positions would be transferred at a price(s) used to calculate the NAV of such ETF shares and UIT units. In addition, although options positions would be transferred off of the Exchange, they would not be closed or "traded." Rather, they would reside in a different clearing account until closed in a trade on the Exchange or until they expire. Further, as discussed below, proposed Rule 1327 would be clearly

9 An ETF share is a share or other security traded on a national securities exchange and defined as an NMS stock, which includes interest in open-end management investment companies. See Exchange Rule 402.

10 The Exchange proposes that, for purposes of proposed Rule 1327, any issuer of UIT units would be a trust registered with the Commission as a unit investment trust under the 1940 Act.

delineated and limited in scope, given that the proposed exception would only apply to transfers of options effected in connection with the creation and redemption process.

ETFs

As described in further detail below, while ETFs do not sell and redeem individual shares to and from investors, they do sell large blocks of their shares to, and redeem them from, authorized members in conjunction with what is known as the ETF creation and redemption process. Under the proposed exception, ETFs that hold options listed on the Exchange would be permitted to effect creation and redemption transactions with authorized members on an "in kind" basis, which is the process that may generally be utilized by ETFs for other asset types. This ability would allow such ETFs to function as more tax efficient investment vehicles to the benefit of investors that hold ETF shares. In addition, it may also result in transaction cost savings for the ETFs, which may be passed along to investors.

Due to their ability to effect in-kind transfers with authorized members in conjunction with the creation and redemption process described below, ETFs have the potential to be significantly more tax-efficient than other pooled investment products, such as mutual funds.[11] ETFs issue shares that may be purchased or sold during the day in the secondary market at market-determined prices. Similar to other types of investment companies, ETFs invest their assets in accordance with their investment objectives and investment strategies, and ETF shares represent interests in an ETF's underlying assets. ETFs are, in certain respects, similar to mutual funds in that they continuously offer their shares for sale. In contrast to mutual funds, however,

[11] This summary of the ETF creation and redemption process is based largely on portions of the discussion set forth in Investment Company Act Release No. 33140 (June 28, 2018), 83 FR 37332 (July 31, 2018) (the "Proposed ETF Rule Release") in which the Commission proposed a new rule under the 1940 Act that would permit ETFs registered as open-end management investment companies that satisfy certain conditions to operate without the need to obtain an exemptive order. The proposed rule was adopted on September 25, 2019. See Investment Company Act Release No. 33646 (September 25, 2019).

ETFs do not sell or redeem individual shares. Rather, through the creation and redemption process referenced above, authorized members have contractual arrangements with an ETF and/or its service provider (e.g., its distributor) purchase and redeem shares directly from that ETF in large aggregations known as "creation units." In general terms, to purchase a creation unit of ETF shares from an ETF, in return for depositing a "basket" of securities and/or other assets identified by the ETF on a particular day, the authorized member will receive a creation unit of ETF shares. The basket deposited by the authorized member is generally expected to be representative of the ETF's portfolio[12] and, when combined with a cash balancing amount (i.e., generally an amount of cash intended to account for any difference between the value of the basket and the NAV of a creation unit), if any, will be equal in value to the aggregate NAV of the shares of the ETF comprising the creation unit. The NAV for ETF shares is represented by the traded price for ETFs holding options positions on days of creation or redemption, and an options pricing model on days in which creations and redemptions do not occur. After purchasing a creation unit, an authorized member may then hold individual shares of the ETF and/or sell them in the secondary market. In connection with effecting redemptions, the creation process described above is reversed. More specifically, the authorized member will redeem a creation unit of ETF shares to the ETF in return for a basket of securities and/or other assets (along with any cash balancing account). The ETF creation and redemption process, coupled with the secondary market trading of ETF shares, facilitates arbitrage opportunities that are intended to help keep the market price of ETF shares at or close to the NAV per share of the

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12 Under certain circumstances, however, and subject to the provisions of its exemptive relief from various provisions of the 1940 Act obtained from the Commission, an ETF may substitute cash and/or other instruments in lieu of some or all of the ETF's portfolio holdings. For example, today, positions in options traded on the Exchange would be generally substituted with cash.

ETF. Authorized members play an important role because of their ability, in general terms, to add ETF shares to, or remove them from, the market. In this regard, if shares of an ETF are trading at a discount (i.e., below NAV per share), an authorized member may purchase ETF shares in the secondary market, accumulate enough shares for a creation unit and then redeem them from the ETF in exchange for the ETF's more valuable redemption basket. Accordingly, the authorized member will profit because it paid less for the ETF shares than it received for the underlying assets. The reduction in the supply of ETF shares available on the secondary market, together with the sale of the ETF's basket assets, may cause the price of ETF shares to increase, the price of the basket assets to decrease, or both, thereby causing the market price of the ETF shares and the value of the ETF's holdings to move closer together. In contrast, if the ETF shares are trading at a premium (i.e., above NAV per share), the transactions are reversed (and the authorized member would deliver the creation basket in exchange for ETF shares), resulting in an increase in the supply of ETF shares which may also help to keep the price of the shares of an ETF close to the value of its holdings.

In comparison to other pooled investment vehicles, one of the significant benefits associated with an ETF's in-kind redemption feature is tax efficiency. In this regard, by effecting redemptions on an in-kind basis (i.e., delivering certain assets from the ETF's portfolio instead of cash), there is no need for the ETF to sell assets and potentially realize capital gains that would be distributed to shareholders. As indicated above, however, because Exchange Rules currently do not allow ETFs to effect in-kind transfers of options off of the Exchange, ETFs that invest in options traded on the Exchange are generally required to substitute cash in lieu of such options when effecting redemption transactions with authorized members. Because they must sell the options to obtain the requisite cash, such ETFs (and therefore, investors that hold shares of those ETFs) are not able to benefit from the tax efficiencies afforded by in-kind transactions.

An additional benefit associated with the in-kind feature is the potential for transaction cost savings. In this regard, by transacting on an in-kind basis, ETFs may avoid certain transaction costs they would otherwise incur in connection with purchases and sales of securities and other assets. Again, however, this benefit is not available today to ETFs with respect to their options holdings.

UITs

Although UITs operate differently than ETFs in certain respects, as described below, the anticipated potential benefits to UIT investors (i.e., greater tax efficiencies and transaction cost savings) from the proposed exemption would be similar as discussed below. Specifically, under the 1940 Act,[13] a UIT is an investment company organized under a trust indenture or similar instrument that issues redeemable securities, each of which represents an undivided interest in a unit of specified securities.[14] A UIT's investment portfolio is relatively fixed, and, unlike an ETF, a UIT has a fixed life (a termination date for the trust is established when the trust is created). Similar to other types of investment companies (including ETFs), UITs invest their assets in accordance with their investment objectives and investment strategies, and UIT units represent interests in a UIT's underlying assets. Like ETFs, UITs do not sell or redeem individual shares, but instead, through the creation and redemption process, a UIT's sponsor (a broker-dealer) may purchase and redeem shares directly from the UIT's trustee in aggregations

13 15 U.S.C. 80a-4(2).

14 The Exchange also notes that, though a majority of ETFs are structured as open-ended funds, some ETFs are structured as UITs, and currently represent a significant amount of assets within the ETF industry. These include, for example, SPDR S&P 500 ETF Trust ("SPY") and PowerShares QQQ Trust, Series 1 ("QQQ").

known as "units." A broker-dealer purchases a unit of UIT shares from the UIT's trustee by depositing a basket of securities and/or other assets identified by the UIT. These transactions are largely effected by "in-kind" transfers, or the exchange of securities, non-cash assets, and/or other non-cash positions. The basket deposited by the broker-dealer is generally expected to be representative of the UIT's units and will be equal in value to the aggregate NAV of the shares of the UIT comprising a unit.[15] The UIT then issues units that are publicly offered and sold. Unlike ETFs, UITs typically do not continuously offer their shares for sale, but rather, make a one-time or limited public offering of only a specific, fixed number of units like a closed-end fund (i.e., the primary period, which may range from a single day to a few months). Similar to the process for ETFs, UITs allow investor-owners of units to redeem their units back to the UIT's trustee on a daily basis and, upon redemption, such investor-owners are entitled to receive the redemption price at the UIT's NAV. While UITs provide for daily redemptions directly with the UIT's trustee, UIT sponsors frequently maintain a secondary market for units, also like that of ETFs, and will buy back units at the applicable redemption price per unit. To satisfy redemptions, a UIT typically sells securities and/or other assets, which results in negative tax implications and an incurrence of trading costs borne by remaining unit holders.

Proposed Rule

The Exchange believes that it is appropriate to permit off-Exchange transfers of options positions in connection with the creation and redemption process and recognizes that the

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15 The NAV is an investment company's total assets minus its total liabilities. UITs must calculate their NAV at least once every business day, typically after market close. See §270.2a-4(c), which provides that any interim determination of current net asset value between calculations made as of the close of the New York Stock Exchange on the preceding business day and the current business day may be estimated so as to reflect any change in current net asset value since the closing calculation on the preceding business day. This, however, is notwithstanding the requirements of §270.2a-4(a), which provides for other events that would trigger computation of a UIT's NAV.

prevalence and popularity of ETFs have increased greatly. Currently, ETFs serve both as popular investment vehicles and trading tools and, as discussed above, the creation and redemption process, along with the arbitrage opportunities that accompany it, are key ETF features. Although ETFs and UITs operate differently in certain respects, the ability to effect in-kind transfers is also significant for UITs. As described above, UITs and ETFs are situated in substantially the same manner; the key differences being a UIT's fixed duration, and that a UIT generally makes a one-time public offering of only a specific, fixed number of units. Negative tax implication and trading costs for remaining unit holders would be mitigated by allowing a UIT sponsor or another broker-dealer to receive an in-kind distribution of options upon redemption. Accordingly, the Exchange believes that providing for an additional, narrow circumstance to make it possible for ETFs and UITs that invest in options to effect creations and redemptions on an in-kind basis is justified.

The Exchange submits that its proposal is clearly delineated and limited in scope and not intended to facilitate "trading" options off of the Exchange. In this regard, the proposed circumstance would be available solely in the context of transfers of options positions effected in connection with transactions to purchase or redeem creation units of ETF shares between ETFs and authorized members,[16] and units of UITs between UITs and sponsors. As a result of this process, such transfers would occur at the price(s) used to calculate the NAV of such ETF shares and UIT units (as discussed above), which removes the need for price discovery on an Exchange for pricing these transfers.

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[16] See supra note 6. The term "authorized member" is specific and narrowly defined. As noted in the Proposed ETF Rule Release, the requirement that only authorized members of an ETF may purchase creation units from (or sell creation units to) an ETF "is designed to preserve an orderly creation unit issuance and redemption process between ETFs and authorized members." Furthermore, an "orderly creation unit issuance and redemption process is of central importance to the arbitrage mechanism." See Proposed ETF Rule Release at 83 FR 37348.

Moreover, as described above, ETFs and authorized members, and UITs and sponsors, are not seeking to effect the opening or closing of new options positions in connection with the creation and redemption process. Rather, the options positions would reside in a different clearing account until closed in a trade on the Exchange or until they expire. The proposed transfers, while occurring between two different parties, will occur off the Exchange and will not be considered transactions. While the prices of options transactions effected on the Exchange are disseminated to Options Price Reporting Authority ("OPRA"), back-office transfers of options positions in clearing accounts held at OCC (in accordance with OCC Rules)[17] are not disseminated to OPRA or otherwise publicly available, as they are considered position transfers, rather than executions. The Exchange believes that price transparency is important in the options markets. However, the Exchange expects any transfers pursuant to the proposed rule will constitute a minimal percentage of the total average daily volume of options. Today, the trading of ETFs and UITs that invest in options is substantially limited on the Exchange, primarily because the current rules do not permit ETFs or UITs to effect in-kind transfers of options off the Exchange. The Exchange continues to expect that any impact this proposal could have on price transparency in the options market is minimal because proposed Rule 1327 is limited in scope and is intended to provide market members with an efficient and effective means to transfer options positions under clearly delineated, specified circumstances. Additionally, as noted above, the NAV for ETF and UIT transfers will generally be based on the disseminated closing price for an options series on the day of a creation or redemption, and thus the price (although not the time or quantity of the transfer) at which these transfers will generally be effected will be publicly

[17] OCC has informed the Exchange that it has the operational capabilities to effect the proposed position transfers. All transfers pursuant to proposed Rule 1327 would be required to comply with OCC rules.

available.[18] Further, the Exchange generally expects creations or redemptions to include corresponding transactions by the authorized member that will occur on an exchange and be reported to OPRA.[19]

Therefore, the Exchange expects that any impact the proposed rule change could have on price transparency in the options market would be de minimis.

Other than the transfers covered by the proposed rule, transactions involving options, whether held by an ETF or an authorized member, or a UIT or a sponsor would be fully subject to all applicable trading Rules.[20] Accordingly, the Exchange does not believe that the proposed new exception would compromise price discovery or transparency.

Further, the Exchange believes that providing an additional exception to make it possible for ETFs and UITs that invest in options to effect creations and redemptions on an in-kind basis is justified because, while the proposed exception would be limited in scope, the benefits that may flow to ETFs that hold options and their investors may be significant. Specifically, the Exchange expects such ETFs and UITs and their investors would benefit from increased tax efficiencies and potential transaction cost savings. By making such ETFs and UITs more attractive to both current and prospective investors, the proposed rule change would enable them

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18 If there is no disseminated closing price, the ETF or UIT would price according to a pricing model or procedure as described in the fund's prospectus.

19 The Exchange notes that for in-kind creations, an authorized member will acquire the necessary options positions in an on-exchange transaction that will be reported to OPRA. For in-kind redemptions, the Exchange generally expects that an authorized member will acquire both the shares necessary to effect the redemption and an options position to offset the position that it will receive as proceeds for the redemption. Such an options position would likely be acquired in an on-exchange transaction that would be reported to OPRA. Such transactions are generally identical to the way that creations and redemptions work for equities and fixed income transactions – while the transfer between the authorized member and the fund is not necessarily reported, there are generally corresponding transactions that would be reported, providing transparency into the transactions.

20 As indicated above, the operation of the arbitrage mechanism accompanying the creation and redemption process generally contemplates ongoing interactions between authorized members and the market in transactions involving both ETF shares and the assets comprising an ETF's creation/redemption basket.

to compete more effectively with other ETFs and UITs that, due to their particular portfolio holdings, may effect in-kind creations and redemptions without restriction.

The Exchange notes that Exchange Rule 1327 as proposed to be adopted by this filing, is incorporated by reference into the rulebooks of the Exchange's affiliates, MIAX PEARL, LLC ("MIAX Pearl"), MIAX Emerald, LLC ("MIAX Emerald"), and MIAX Sapphire, LLC ("MIAX Sapphire"). As such, the addition of Exchange Rule 1327 as proposed herein will also apply to MIAX Pearl, MIAX Emerald, and MIAX Sapphire members.

b. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[21] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[22] requirements that the rules of an exchange be 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.

The Exchange believes that proposed Rule 1327 to permit off-Exchange transfers in connection with the in-kind ETF and UIT creation and redemption process will promote just and equitable principles of trade and help remove impediments to and perfect the mechanism of a

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21 15 U.S.C. 78f(b).

22 15 U.S.C. 78f(b)(5).

free and open market and a national market system, as it would permit ETFs and UITs that invest in options traded on the Exchange to utilize the in-kind creation and redemption process that is available for ETFs and UITs that invest in equities and fixed-income securities. This process represents a significant feature of the ETF and UIT structure generally, with advantages that distinguish ETFs and UITs from other types of pooled investment vehicles. In light of the associated tax efficiencies and potential transaction cost savings, the Exchange believes the ability to utilize an in-kind process would make such ETFs and UITs more attractive to both current and prospective investors and enable them to compete more effectively with other ETFs and UITs that, based on their portfolio holdings, may effect in-kind creations and redemptions without restriction. In addition, the Exchange believes that because it would permit ETFs and UITs that invest in options traded on the Exchange to benefit from tax efficiencies and potential transaction cost savings afforded by the in-kind creation and redemption process, which benefits the Exchange expects would generally be passed along to investors that hold ETF shares and UIT units, the proposed rule change would protect investors and the public interest.

Moreover, the Exchange submits that the proposed exception is clearly delineated and limited in scope and not intended to facilitate "trading" options off the Exchange. Other than the transfers covered by the proposed exception, transactions involving options, whether held by an ETF or an authorized member, or a UIT or a sponsor, would be fully subject to the applicable trading Rules. Additionally, the transfers covered by the proposed exception would occur at a price(s) used to calculate the NAV of the applicable ETF shares or UIT units, which removes the need for price discovery on the Exchange. Accordingly, the Exchange does not believe that the proposed rule change would compromise price discovery or transparency.

Currently, the Exchange Rules do not allow ETFs or UITs to effect in-kind transfers of options off of the Exchange, resulting in tax inefficiencies for ETFs and UITs that hold them. As a result, the use of options by ETFs and UITs is substantially limited. While the proposed exception would be limited in scope, the Exchange believes the benefits that may flow to ETFs and UITs that hold options and their investors may be significant. Specifically, the Exchange expects that such ETFs and UITs and their investors could benefit from increased tax efficiencies and potential transaction cost savings. By making such ETFs and UITs more attractive to both current and prospective investors, the proposed rule change would enable them to compete more effectively with other ETFs and UITs, and other investment vehicles, that, due to their particular portfolio holdings, may effect in-kind creations and redemptions without restriction. This may lead to further development of ETFs and UITs that invest in options, thereby fostering competition and resulting in additional choices for investors, which ultimately benefits the marketplace and the public.

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

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

Intra-Market Competition

The Exchange does not believe the proposed rule change regarding off-floor in-kind transfers will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Utilizing the proposed exception would be voluntary. Proposed Rule 1327 would provide market participants with an efficient and effective means to transfer positions as part of the creation and redemption process for ETFs and UITs under specified circumstances. The proposed exception would enable all ETFs and UITs that hold options to enjoy the benefits of in-kind creations and redemptions already available to other ETFs and UITs (and to pass these benefits along to investors). The proposed rule change would apply in the same manner to all authorized members and sponsor broker-dealers that choose to use the proposed process.

Inter-Market Competition

The Exchange does not believe the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As indicated above, it is intended to provide an additional clearly delineated and limited circumstance in which options positions can be transferred off an exchange. Further, the Exchange believes the proposed rule change will eliminate a significant competitive disadvantage for ETFs and UITs that invest in options. Furthermore, as indicated above, in light of the significant benefits provided (e.g., tax efficiencies and potential transaction cost savings), the proposed exception may lead to further development of ETFs and UITs that invest in options, thereby fostering competition and resulting in additional choices for investors, which ultimately benefits the marketplace and the public. Lastly, the Exchange notes that the proposed rule change is based on C2 Rule 6.9.[23] As such, the Exchange believes that its proposal enhances fair competition between markets by providing for additional listing venues for ETFs and UITs that hold options to utilize the in-kind transfers proposed herein.

**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**

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23 See supra note 4.

Not applicable.

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

Pursuant to Section 19(b)(3)(A) of the Act[24] and Rule 19b-4(f)(6)[25] thereunder, the Exchange 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.

As discussed above, the Exchange believes that the proposed change is consistent with the protection of investors and the public interest because proposed Rule 1327 is substantially the same as C2 Rule 6.9 in all material respects. Proposed Rule 1327 will provide an additional clearly delineated and limited circumstance in which options positions can be transferred off the Exchange, which the Exchange believes will eliminate a significant competitive disadvantage for ETFs and UITs that invest in options.

The Exchange believes its proposal does not impose any significant burden on competition because proposed Rule 1327 is voluntary and may be utilized by any Member, and the rule will apply uniformly to all Members. All Members may effect in-kind transfers pursuant to proposed Rule 1327 in the same manner. Furthermore, in light of the significant benefits provided (e.g., tax efficiencies and potential transaction cost savings), the proposed exception may lead to further development of ETFs and UITs that invest in options, thereby fostering

24 15 U.S.C. 78s(b)(3)(A).

25 17 CFR 240.19b-4(f)(6).

competition and resulting in additional choices for investors, which ultimately benefits the marketplace and the public.

Accordingly, because the proposed changes do not introduce any new regulatory issues, the Exchange has filed this rule filing as non-controversial under Section 19(b)(3)(A) of the Act[26] and paragraph (f)(6) of Rule 19b-4 thereunder.[27]

Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement. Furthermore, a proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act[28] normally does not become operative for 30 days after the date of its filing.

The Exchange requests that the Commission waive the 30-day operative delay period for "non-controversial" proposals and make the proposed rule change effective and operative upon filing so that it may adopt position transfer rules substantially similar in all material respects to C2 Rule 6.9 as soon as possible. The Exchange believes this will provide for fair competition among options exchanges. Because the proposed rule change is substantially the same as C2 Rule 6.9 in all material respects, which was previously filed with the Commission, it does not raise any novel regulatory issues. The Exchange believes proposed Rule 1327 will benefit investors and the general public because of the significant benefits provided (e.g., tax efficiencies and potential transaction cost savings) as discussed above, which may lead to further

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26 17 CFR 240.19b-4.

27 17 CFR 240.19b-4(f)(6).

development of ETFs and UITs that invest in options, thereby fostering competition and resulting in additional choices for investors.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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

As discussed above, the Exchange believes that the proposed rule change to adopt Rule 1327 regarding In Kind Exchange of Options Positions and ETF Shares and UIT Units is substantially similar in all material respects to a proposal submitted by C2 that was submitted to the Commission.[29]

**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. Completed notice of proposed rule change for publication in the Federal Register.

5. Copy of the proposed rule change.

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[29] See supra note 4. The Exchange notes that its Rules governing transactions off of the exchange differ structurally from C2's in that C2's Rulebook includes specific prohibitions on certain transactions off the exchange. See C2 Rule 5.12 (Prohibition on Transactions Off the Exchange). The Exchange's Rulebook does not contain a specific rule that memorializes the prohibition of transactions off of the exchange but rather the Exchange's Rules specify the types of permissible transfers of positions as stated in Rule 1326, with the general understanding that unless one of the exemptions outlined in 1326(a) applies, transactions must occur on an exchange. Proposed Rule 1327 would address a new type of permissible transaction off of the Exchange specific to in-kind exchange of option positions and ETF shares and UIT interests. This distinction is structural in nature and there is no substantive difference in application or practice.

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-MIAX-2025-25)

___, 2025

Self-Regulatory Organizations: Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by Miami International Securities Exchange, LLC to Adopt Rule 1327, In-Kind Exchange of Options Positions and ETF Shares and UIT Units

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 _____, 2025, 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 proposes to adopt Rule 1327, In-Kind Exchange of Options Positions and ETF Shares and UIT Units. Specifically, the Exchange is proposing to adopt Rule 1327, which would permit positions in options listed on the Exchange to be transferred off the Exchange by a Member[3] in connection with transactions (a) to purchase or redeem creation units of ETF shares between an authorized member and the issuer of such ETF shares, or (b) to create or redeem units of a UIT between a broker-dealer and the issuer of such UIT units, which transfers would occur at the price used to calculate the net asset value ("NAV") of such ETF shares or UIT units, respectively.

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 The term "Member" means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed "members" under the Act. See Exchange Rule 100.

The text of the proposed rule change is available on the Exchange's website at https://www.miaxglobal.com/markets/us-options/all-options-exchanges/rule-filings, at MIAX's principal office, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The purpose of the proposed rule change is to adopt Rule 1327 regarding in-kind exchanges of options positions and exchange-traded fund ("ETF") shares and unit investment trust ("UIT") interests. The Exchange notes that this filing is based on a proposal submitted by Cboe C2 Exchange, Inc. ("C2") to the Securities and Exchange Commission (the "SEC" or the "Commission").[4]

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4 See Cboe C2 Exchange, Inc. ("C2") Rule 6.9; see also Securities Exchange Act Release No. 89056 (June 12, 2020), 85 FR 36888 (June 18, 2020) (SR-C2-2020-006) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Chapter 6, Section G Regarding Off-Floor Transactions and Transfers). In this instance the Exchange is specifically proposing to add the 'In-Kind Exchange of Options Positions and ETF Shares and UIT Interests' rule. See also Cboe Exchange, Inc ("CBOE") Rule 6.9; see also Securities Exchange Act Release No. 87340 (October 17, 2019), 84 FR 56877 (October 23, 2019) (SRCBOE-2019-048) (Order Approving on an Accelerated Basis a Proposed Rule Change, as Modified by Amendment Nos. 2 and 3, to Adopt Rule 6.9 (In-Kind Exchange of Options Positions and ETF Shares)). See also Nasdaq PHLX LLC ("Phlx") Options 6, Section 7; see also Securities Exchange Act Release No. 87768 (December 17, 2019), 84 FR 70605 (December 23, 2019) (SR-Phlx-2019-53) ( Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt a New Rule 1059). In 2020, PHLX filed SR-Phlx-2020-03 to relocate the Phlx Rulebook into their new Rulebook Shell, Phlx Rule 1059 was relocated to Options 6, Section 7. See Securities Exchange Act Release No. 88213 (March 12, 2020), 85 FR 9859 (February 20, 2020) (SR-Phlx-2020-03) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate Rules From Its Current Rulebook Into Its New Rulebook Shell). See also NYSE Arca,

Background

As discussed further below, the ability to effect "in kind" transfers is a key component of the operational structure of an ETF and a UIT. Currently, in general, ETFs and UITs can effect in kind transfers with respect to equity securities and fixed-income securities. The in-kind process is a major benefit to ETF shareholders and UIT unit holders, enabling tax efficient addition and removal of assets from these investment vehicles. In-kind transfers protect ETF shareholders and UIT unit holders from the undesirable tax effects of frequent "creations and redemptions" (described below) and improve the overall tax efficiency of the products. However, currently, Exchange Rules do not provide for ETFs and UITs to effect in-kind transfers of options off of the Exchange, resulting in tax inefficiencies for the ETFs and UITs that hold them. As a result, the use of options by ETFs and UITs is substantially limited.

Currently, Exchange Rule 1326(a) permits existing positions in options listed on the Exchange of a Member or person associated with the Member or non- Member or person associated with a non-Member that are to be transferred on, from, or to the books of a Clearing Member[5] to be transferred off the Exchange if the transfer involves one or more of the following events: (1) pursuant to Rule 301, an adjustment or transfer in connection with the correction of a bona fide error in the recording of a transaction or the transferring of a position to another account, provided that the original trade documentation confirms the error; (2) the transfer of

Inc. Rule 6.78C-O; see also Securities Exchange Act Release No. 95644 (August 31, 2022), 87 FR 54727 (August 31, 2022) (SR-NYSEARCA-2022-55) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Rule 6.78-O and Adopt New Rules Related Thereto and Delete Paragraph (d) to Rule 6.69-O). See also NYSE American, LLC Rule 997.3NY; see also Securities Exchange Act Release 95646 (August 31,2022), 87 FR 54720 (August 31, 2022) (SR-NYSEAMER-2022-36) ( Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt New Rules 997NY, 997.1NY, 997.2NY and 997.3NY and Delete Paragraph (d) to Rule 957NY).

5 The term "Clearing Member" means a Member that has been admitted to membership in the Clearing Corporation pursuant to the provisions of the rules of the Clearing Corporation. See Exchange Rule 100. The term "Clearing Corporation" means The Options Clearing Corporation. See Exchange Rule 100.

positions from one account to another account where no change in ownership is involved (i.e., accounts of the same Person (as defined in Rule 100)[6]), provided the accounts are not in separate aggregation units or otherwise subject to information barrier or account segregation requirements; (3) the consolidation of accounts where no change in ownership is involved; (4) a merger, acquisition, consolidation, or similar non-recurring transaction for a Person; (5) the dissolution of a joint account in which the remaining Member assumes the positions of the joint account; (6) the dissolution of a corporation or partnership in which a former nominee of the corporation or partnership assumes the positions; (7) positions transferred as part of a Member's capital contribution to a new joint account, partnership, or corporation; (8) the donation of positions to a not-for-profit corporation; (9) the transfer of positions to a minor under the Uniform Gifts to Minors Act; or (10) the transfer of positions through operation of law from death, bankruptcy, or otherwise. At present, the list of limited circumstances in Rule 1326 that allows Members to transfer their options positions off the Exchange does not include an exception for in-kind transfers.

The Exchange proposes to add a new circumstance under which off-Exchange transfers of options positions would be permitted to occur. Specifically, under proposed Rule 1327, positions in options listed on the Exchange would be permitted to be transferred off the Exchange by a Member or Member organization in connection with transactions (a) to purchase

6 The term "Person" shall refer to a natural person, corporation, partnership (general or limited), limited liability company, association, joint stock company, trust, trustee of a trust fund, or any organized group of persons whether incorporated or not and a government or agency or political subdivision thereof. <u>See</u> Exchange Rule 100.

or redeem "creation units" of ETF shares between an "authorized member"[7] and the issuer[8] of such ETF shares[9] or (b) to create or redeem units of a UIT between a broker-dealer and the issuer[10] of such UIT units, which transfers would occur at the price used to calculate the net asset value ("NAV") of such ETF shares or UIT units, respectively. This proposed new exception, although limited in scope, would have a significant impact in that it would help protect ETF shareholders and UIT holders from undesirable tax consequences and facilitate tax efficient operations. The frequency with which ETFs and authorized members, and UITs and sponsors, would rely on the proposed exception would depend upon such factors as the number of ETFs and UITs, respectively, holding options positions traded on the Exchange, the market demand for the shares of such ETFs and units of such UITs, the redemption activity of authorized members and sponsors, respectively, and the investment strategies employed by such ETFs and UITs.

While the Exchange recognizes that, in general, the execution of options transactions on exchanges provides certain benefits, such as price discovery and transparency, based on the circumstances under which proposed Rule 1327 would apply, the Exchange does not believe that such benefits would be compromised. In this regard, as discussed more fully below, the Exchange notes that in conjunction with the creation and redemption process, positions would be

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7 The Exchange is proposing that, for purposes of proposed Rule 1327, the term "authorized member" would be defined as an entity that has a written agreement with the issuer of ETF shares or one of its service providers, which allows the authorized member to place orders for the purchase and redemption of creation units (i.e., specified numbers of ETF shares). While an authorized member may be a Member and directly effect transactions in options on the Exchange, an authorized member that is not a Member may effect transactions in options on the Exchange through a Member on its behalf.

8 The Exchange proposes that, for purposes of proposed Rule 1327, any issuer of ETF shares would be registered with the Commission as an open-end management investment company under the Investment Company Act of 1940 (the "1940 Act").

9 An ETF share is a share or other security traded on a national securities exchange and defined as an NMS stock, which includes interest in open-end management investment companies. See Exchange Rule 402.

10 The Exchange proposes that, for purposes of proposed Rule 1327, any issuer of UIT units would be a trust registered with the Commission as a unit investment trust under the 1940 Act.

transferred at a price(s) used to calculate the NAV of such ETF shares and UIT units. In addition, although options positions would be transferred off of the Exchange, they would not be closed or “traded.” Rather, they would reside in a different clearing account until closed in a trade on the Exchange or until they expire. Further, as discussed below, proposed Rule 1327 would be clearly delineated and limited in scope, given that the proposed exception would only apply to transfers of options effected in connection with the creation and redemption process.

ETFs

As described in further detail below, while ETFs do not sell and redeem individual shares to and from investors, they do sell large blocks of their shares to, and redeem them from, authorized members in conjunction with what is known as the ETF creation and redemption process. Under the proposed exception, ETFs that hold options listed on the Exchange would be permitted to effect creation and redemption transactions with authorized members on an “in kind” basis, which is the process that may generally be utilized by ETFs for other asset types. This ability would allow such ETFs to function as more tax efficient investment vehicles to the benefit of investors that hold ETF shares. In addition, it may also result in transaction cost savings for the ETFs, which may be passed along to investors.

Due to their ability to effect in-kind transfers with authorized members in conjunction with the creation and redemption process described below, ETFs have the potential to be significantly more tax-efficient than other pooled investment products, such as mutual funds.[11] ETFs issue shares that may be purchased or sold during the day in the secondary market at

[11] This summary of the ETF creation and redemption process is based largely on portions of the discussion set forth in Investment Company Act Release No. 33140 (June 28, 2018), 83 FR 37332 (July 31, 2018) (the “Proposed ETF Rule Release”) in which the Commission proposed a new rule under the 1940 Act that would permit ETFs registered as open-end management investment companies that satisfy certain conditions to operate without the need to obtain an exemptive order. The proposed rule was adopted on September 25, 2019. See Investment Company Act Release No. 33646 (September 25, 2019).

market-determined prices. Similar to other types of investment companies, ETFs invest their assets in accordance with their investment objectives and investment strategies, and ETF shares represent interests in an ETF's underlying assets. ETFs are, in certain respects, similar to mutual funds in that they continuously offer their shares for sale. In contrast to mutual funds, however, ETFs do not sell or redeem individual shares. Rather, through the creation and redemption process referenced above, authorized members have contractual arrangements with an ETF and/or its service provider (e.g., its distributor) purchase and redeem shares directly from that ETF in large aggregations known as "creation units." In general terms, to purchase a creation unit of ETF shares from an ETF, in return for depositing a "basket" of securities and/or other assets identified by the ETF on a particular day, the authorized member will receive a creation unit of ETF shares. The basket deposited by the authorized member is generally expected to be representative of the ETF's portfolio[12] and, when combined with a cash balancing amount (i.e., generally an amount of cash intended to account for any difference between the value of the basket and the NAV of a creation unit), if any, will be equal in value to the aggregate NAV of the shares of the ETF comprising the creation unit. The NAV for ETF shares is represented by the traded price for ETFs holding options positions on days of creation or redemption, and an options pricing model on days in which creations and redemptions do not occur. After purchasing a creation unit, an authorized member may then hold individual shares of the ETF and/or sell them in the secondary market. In connection with effecting redemptions, the creation process described above is reversed. More specifically, the authorized member will redeem a creation unit of ETF shares to the ETF in return for a basket of securities and/or other assets

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12 Under certain circumstances, however, and subject to the provisions of its exemptive relief from various provisions of the 1940 Act obtained from the Commission, an ETF may substitute cash and/or other instruments in lieu of some or all of the ETF's portfolio holdings. For example, today, positions in options traded on the Exchange would be generally substituted with cash.

(along with any cash balancing account). The ETF creation and redemption process, coupled with the secondary market trading of ETF shares, facilitates arbitrage opportunities that are intended to help keep the market price of ETF shares at or close to the NAV per share of the ETF. Authorized members play an important role because of their ability, in general terms, to add ETF shares to, or remove them from, the market. In this regard, if shares of an ETF are trading at a discount (i.e., below NAV per share), an authorized member may purchase ETF shares in the secondary market, accumulate enough shares for a creation unit and then redeem them from the ETF in exchange for the ETF's more valuable redemption basket. Accordingly, the authorized member will profit because it paid less for the ETF shares than it received for the underlying assets. The reduction in the supply of ETF shares available on the secondary market, together with the sale of the ETF's basket assets, may cause the price of ETF shares to increase, the price of the basket assets to decrease, or both, thereby causing the market price of the ETF shares and the value of the ETF's holdings to move closer together. In contrast, if the ETF shares are trading at a premium (i.e., above NAV per share), the transactions are reversed (and the authorized member would deliver the creation basket in exchange for ETF shares), resulting in an increase in the supply of ETF shares which may also help to keep the price of the shares of an ETF close to the value of its holdings.

In comparison to other pooled investment vehicles, one of the significant benefits associated with an ETF's in-kind redemption feature is tax efficiency. In this regard, by effecting redemptions on an in-kind basis (i.e., delivering certain assets from the ETF's portfolio instead of cash), there is no need for the ETF to sell assets and potentially realize capital gains that would be distributed to shareholders. As indicated above, however, because Exchange Rules currently do not allow ETFs to effect in-kind transfers of options off of the Exchange, ETFs that invest in options traded on the Exchange are generally required to substitute cash in lieu of such options when effecting redemption transactions with authorized members. Because they must sell the options to obtain the requisite cash, such ETFs (and therefore, investors that hold shares of those ETFs) are not able to benefit from the tax efficiencies afforded by in-kind transactions.

An additional benefit associated with the in-kind feature is the potential for transaction cost savings. In this regard, by transacting on an in-kind basis, ETFs may avoid certain transaction costs they would otherwise incur in connection with purchases and sales of securities and other assets. Again, however, this benefit is not available today to ETFs with respect to their options holdings.

UITs

Although UITs operate differently than ETFs in certain respects, as described below, the anticipated potential benefits to UIT investors (i.e., greater tax efficiencies and transaction cost savings) from the proposed exemption would be similar as discussed below. Specifically, under the 1940 Act,[13] a UIT is an investment company organized under a trust indenture or similar instrument that issues redeemable securities, each of which represents an undivided interest in a unit of specified securities.[14] A UIT's investment portfolio is relatively fixed, and, unlike an ETF, a UIT has a fixed life (a termination date for the trust is established when the trust is created). Similar to other types of investment companies (including ETFs), UITs invest their assets in accordance with their investment objectives and investment strategies, and UIT units represent interests in a UIT's underlying assets. Like ETFs, UITs do not sell or redeem individual shares, but instead, through the creation and redemption process, a UIT's sponsor (a broker-dealer) may purchase and redeem shares directly from the UIT's trustee in aggregations

[13] 15 U.S.C. 80a-4(2).

[14] The Exchange also notes that, though a majority of ETFs are structured as open-ended funds, some ETFs are structured as UITs, and currently represent a significant amount of assets within the ETF industry. These include, for example, SPDR S&P 500 ETF Trust ("SPY") and PowerShares QQQ Trust, Series 1 ("QQQ").

known as "units." A broker-dealer purchases a unit of UIT shares from the UIT's trustee by depositing a basket of securities and/or other assets identified by the UIT. These transactions are largely effected by "in-kind" transfers, or the exchange of securities, non-cash assets, and/or other non-cash positions. The basket deposited by the broker-dealer is generally expected to be representative of the UIT's units and will be equal in value to the aggregate NAV of the shares of the UIT comprising a unit.[15] The UIT then issues units that are publicly offered and sold. Unlike ETFs, UITs typically do not continuously offer their shares for sale, but rather, make a one-time or limited public offering of only a specific, fixed number of units like a closed-end fund (i.e., the primary period, which may range from a single day to a few months). Similar to the process for ETFs, UITs allow investor-owners of units to redeem their units back to the UIT's trustee on a daily basis and, upon redemption, such investor-owners are entitled to receive the redemption price at the UIT's NAV. While UITs provide for daily redemptions directly with the UIT's trustee, UIT sponsors frequently maintain a secondary market for units, also like that of ETFs, and will buy back units at the applicable redemption price per unit. To satisfy redemptions, a UIT typically sells securities and/or other assets, which results in negative tax implications and an incurrence of trading costs borne by remaining unit holders.

Proposed Rule

The Exchange believes that it is appropriate to permit off-Exchange transfers of options positions in connection with the creation and redemption process and recognizes that the prevalence and popularity of ETFs have increased greatly. Currently, ETFs serve both as popular

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15 The NAV is an investment company's total assets minus its total liabilities. UITs must calculate their NAV at least once every business day, typically after market close. See §270.2a-4(c), which provides that any interim determination of current net asset value between calculations made as of the close of the New York Stock Exchange on the preceding business day and the current business day may be estimated so as to reflect any change in current net asset value since the closing calculation on the preceding business day. This, however, is notwithstanding the requirements of §270.2a-4(a), which provides for other events that would trigger computation of a UIT's NAV.

investment vehicles and trading tools and, as discussed above, the creation and redemption process, along with the arbitrage opportunities that accompany it, are key ETF features. Although ETFs and UITs operate differently in certain respects, the ability to effect in-kind transfers is also significant for UITs. As described above, UITs and ETFs are situated in substantially the same manner; the key differences being a UIT's fixed duration, and that a UIT generally makes a one-time public offering of only a specific, fixed number of units. Negative tax implication and trading costs for remaining unit holders would be mitigated by allowing a UIT sponsor or another broker-dealer to receive an in-kind distribution of options upon redemption. Accordingly, the Exchange believes that providing for an additional, narrow circumstance to make it possible for ETFs and UITs that invest in options to effect creations and redemptions on an in-kind basis is justified.

The Exchange submits that its proposal is clearly delineated and limited in scope and not intended to facilitate "trading" options off of the Exchange. In this regard, the proposed circumstance would be available solely in the context of transfers of options positions effected in connection with transactions to purchase or redeem creation units of ETF shares between ETFs and authorized members,[16] and units of UITs between UITs and sponsors. As a result of this process, such transfers would occur at the price(s) used to calculate the NAV of such ETF shares and UIT units (as discussed above), which removes the need for price discovery on an Exchange for pricing these transfers.

Moreover, as described above, ETFs and authorized members, and UITs and sponsors, are not seeking to effect the opening or closing of new options positions in connection with the

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16 See supra note 6. The term "authorized member" is specific and narrowly defined. As noted in the Proposed ETF Rule Release, the requirement that only authorized members of an ETF may purchase creation units from (or sell creation units to) an ETF "is designed to preserve an orderly creation unit issuance and redemption process between ETFs and authorized members." Furthermore, an "orderly creation unit issuance and redemption process is of central importance to the arbitrage mechanism." See Proposed ETF Rule Release at 83 FR 37348.

creation and redemption process. Rather, the options positions would reside in a different clearing account until closed in a trade on the Exchange or until they expire. The proposed transfers, while occurring between two different parties, will occur off the Exchange and will not be considered transactions. While the prices of options transactions effected on the Exchange are disseminated to Options Price Reporting Authority ("OPRA"), back-office transfers of options positions in clearing accounts held at OCC (in accordance with OCC Rules)[17] are not disseminated to OPRA or otherwise publicly available, as they are considered position transfers, rather than executions. The Exchange believes that price transparency is important in the options markets. However, the Exchange expects any transfers pursuant to the proposed rule will constitute a minimal percentage of the total average daily volume of options. Today, the trading of ETFs and UITs that invest in options is substantially limited on the Exchange, primarily because the current rules do not permit ETFs or UITs to effect in-kind transfers of options off the Exchange. The Exchange continues to expect that any impact this proposal could have on price transparency in the options market is minimal because proposed Rule 1327 is limited in scope and is intended to provide market members with an efficient and effective means to transfer options positions under clearly delineated, specified circumstances. Additionally, as noted above, the NAV for ETF and UIT transfers will generally be based on the disseminated closing price for an options series on the day of a creation or redemption, and thus the price (although not the time or quantity of the transfer) at which these transfers will generally be effected will be publicly available.[18] Further, the Exchange generally expects creations or redemptions to include

17 OCC has informed the Exchange that it has the operational capabilities to effect the proposed position transfers. All transfers pursuant to proposed Rule 1327 would be required to comply with OCC rules.

18 If there is no disseminated closing price, the ETF or UIT would price according to a pricing model or procedure as described in the fund's prospectus.

corresponding transactions by the authorized member that will occur on an exchange and be reported to OPRA.[19]

Therefore, the Exchange expects that any impact the proposed rule change could have on price transparency in the options market would be de minimis.

Other than the transfers covered by the proposed rule, transactions involving options, whether held by an ETF or an authorized member, or a UIT or a sponsor would be fully subject to all applicable trading Rules.[20] Accordingly, the Exchange does not believe that the proposed new exception would compromise price discovery or transparency.

Further, the Exchange believes that providing an additional exception to make it possible for ETFs and UITs that invest in options to effect creations and redemptions on an in-kind basis is justified because, while the proposed exception would be limited in scope, the benefits that may flow to ETFs that hold options and their investors may be significant. Specifically, the Exchange expects such ETFs and UITs and their investors would benefit from increased tax efficiencies and potential transaction cost savings. By making such ETFs and UITs more attractive to both current and prospective investors, the proposed rule change would enable them to compete more effectively with other ETFs and UITs that, due to their particular portfolio holdings, may effect in-kind creations and redemptions without restriction.

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19 The Exchange notes that for in-kind creations, an authorized member will acquire the necessary options positions in an on-exchange transaction that will be reported to OPRA. For in-kind redemptions, the Exchange generally expects that an authorized member will acquire both the shares necessary to effect the redemption and an options position to offset the position that it will receive as proceeds for the redemption. Such an options position would likely be acquired in an on-exchange transaction that would be reported to OPRA. Such transactions are generally identical to the way that creations and redemptions work for equities and fixed income transactions – while the transfer between the authorized member and the fund is not necessarily reported, there are generally corresponding transactions that would be reported, providing transparency into the transactions.

20 As indicated above, the operation of the arbitrage mechanism accompanying the creation and redemption process generally contemplates ongoing interactions between authorized members and the market in transactions involving both ETF shares and the assets comprising an ETF's creation/redemption basket.

The Exchange notes that Exchange Rule 1327 as proposed to be adopted by this filing, is incorporated by reference into the rulebooks of the Exchange's affiliates, MIAX PEARL, LLC ("MIAX Pearl"), MIAX Emerald, LLC ("MIAX Emerald"), and MIAX Sapphire, LLC ("MIAX Sapphire"). As such, the addition of Exchange Rule 1327 as proposed herein will also apply to MIAX Pearl, MIAX Emerald, and MIAX Sapphire members.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[21] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[22] requirements that the rules of an exchange be 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.

The Exchange believes that proposed Rule 1327 to permit off-Exchange transfers in connection with the in-kind ETF and UIT creation and redemption process will promote just and equitable principles of trade and help remove impediments to and perfect the mechanism of a free and open market and a national market system, as it would permit ETFs and UITs that invest in options traded on the Exchange to utilize the in-kind creation and redemption process that is available for ETFs and UITs that invest in equities and fixed-income securities. This process

21 15 U.S.C. 78f(b).

22 15 U.S.C. 78f(b)(5).

represents a significant feature of the ETF and UIT structure generally, with advantages that distinguish ETFs and UITs from other types of pooled investment vehicles. In light of the associated tax efficiencies and potential transaction cost savings, the Exchange believes the ability to utilize an in-kind process would make such ETFs and UITs more attractive to both current and prospective investors and enable them to compete more effectively with other ETFs and UITs that, based on their portfolio holdings, may effect in-kind creations and redemptions without restriction. In addition, the Exchange believes that because it would permit ETFs and UITs that invest in options traded on the Exchange to benefit from tax efficiencies and potential transaction cost savings afforded by the in-kind creation and redemption process, which benefits the Exchange expects would generally be passed along to investors that hold ETF shares and UIT units, the proposed rule change would protect investors and the public interest.

Moreover, the Exchange submits that the proposed exception is clearly delineated and limited in scope and not intended to facilitate "trading" options off the Exchange. Other than the transfers covered by the proposed exception, transactions involving options, whether held by an ETF or an authorized member, or a UIT or a sponsor, would be fully subject to the applicable trading Rules. Additionally, the transfers covered by the proposed exception would occur at a price(s) used to calculate the NAV of the applicable ETF shares or UIT units, which removes the need for price discovery on the Exchange. Accordingly, the Exchange does not believe that the proposed rule change would compromise price discovery or transparency.

Currently, the Exchange Rules do not allow ETFs or UITs to effect in-kind transfers of options off of the Exchange, resulting in tax inefficiencies for ETFs and UITs that hold them. As a result, the use of options by ETFs and UITs is substantially limited. While the proposed exception would be limited in scope, the Exchange believes the benefits that may flow to ETFs and UITs that hold options and their investors may be significant. Specifically, the Exchange expects that such ETFs and UITs and their investors could benefit from increased tax efficiencies and potential transaction cost savings. By making such ETFs and UITs more attractive to both current and prospective investors, the proposed rule change would enable them to compete more effectively with other ETFs and UITs, and other investment vehicles, that, due to their particular portfolio holdings, may effect in-kind creations and redemptions without restriction. This may lead to further development of ETFs and UITs that invest in options, thereby fostering competition and resulting in additional choices for investors, which ultimately benefits the marketplace and the public.

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.

Intra-Market Competition

The Exchange does not believe the proposed rule change regarding off-floor in-kind transfers will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Utilizing the proposed exception would be voluntary. Proposed Rule 1327 would provide market participants with an efficient and effective means to transfer positions as part of the creation and redemption process for ETFs and UITs under specified circumstances. The proposed exception would enable all ETFs and UITs that hold options to enjoy the benefits of in-kind creations and redemptions already available to other ETFs and UITs (and to pass these benefits along to investors). The proposed rule change would apply in the same manner to all authorized members and sponsor broker-dealers that choose to use the proposed process.

Inter-Market Competition

The Exchange does not believe the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As indicated above, it is intended to provide an additional clearly delineated and limited circumstance in which options positions can be transferred off an exchange. Further, the Exchange believes the proposed rule change will eliminate a significant competitive disadvantage for ETFs and UITs that invest in options. Furthermore, as indicated above, in light of the significant benefits provided (e.g., tax efficiencies and potential transaction cost savings), the proposed exception may lead to further development of ETFs and UITs that invest in options, thereby fostering competition and resulting in additional choices for investors, which ultimately benefits the marketplace and the public. Lastly, the Exchange notes that the proposed rule change is based on C2 Rule 6.9.[23] As such, the Exchange believes that its proposal enhances fair competition between markets by providing for additional listing venues for ETFs and UITs that hold options to utilize the in-kind transfers proposed herein.

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

Pursuant to Section 19(b)(3)(A) of the Act[24] and Rule 19b-4(f)(6)[25] thereunder, the Exchange 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

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23 See supra note 4.

24 15 U.S.C. 78s(b)(3)(A).

25 17 CFR 240.19b-4(f)(6).

date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

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.

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. Please include File Number SR-MIAX-2025-25 on the subject line.

Paper comments:

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

All submissions should refer to file number SR-MIAX-2025-25. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-MIAX-2025-25 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

**Sherry R. Haywood,**
*Assistant Secretary*

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[26] 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

New text is <u>underlined</u>;
Deleted text is in [brackets]

**MIAX Options Exchange Rules**

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<u>**Rule 1327. In-Kind Exchange of Options Positions and ETF Shares and UIT Units**</u>

<u>Positions in options listed on the Exchange may be transferred off the Exchange by a Member or Member organization in connection with transactions (1) to purchase or redeem creation units of ETF shares between an authorized member and the issuer of such ETF shares or (2) to create or redeem units of a unit investment trust ("UIT") between a broker-dealer and the issuer of such UIT units, which transfer would occur at the price(s) used to calculate the net asset value of such ETF shares or UIT units respectively. For purposes of this Rule:</u>

<u>(a) an "authorized member" is an entity that has a written agreement with the issuer of ETF shares or one of its service providers, which allows the authorized member to place orders for the purchase and redemption of creation units (i.e., specified numbers of ETF shares);</u>

<u>(b) an "issuer of ETF shares" is an entity registered with the Commission as an open-ended management investment company under the Investment Company Act of 1940; and</u>

<u>(c) an "issuer of UIT units" is a trust registered with the Commission as a unit investment trust under the Investment Company Act of 1940.</u>

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