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SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-76405; File No. SR-MIAX-2015-63)

November 10, 2015

Self-Regulatory Organizations: Miami International Securities Exchange LLC ; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Delete Exchange Rule 610, Limitations on Dealings

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 4, 2015, Miami International Securities Exchange LLC (“MIAX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to adopt a principles-based approach to prohibit the misuse of material, non-public information by Exchange Market Makers<sup>3</sup> by deleting Exchange Rule 610, Limitations on Dealings.

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

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

<sup>3</sup> The term “Market Makers” refers to “Lead Market Makers,” “Primary Lead Market Makers” and “Registered Market Makers” collectively. A Lead Market Maker (“LMM”) is a Member registered with the Exchange for the purpose of making markets in securities traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VI of the Exchange Rules with respect to Lead Market Makers. A Primary Lead Market Maker (“PLMM”) is a Lead Market Maker appointed by the Exchange to act as the Primary Lead Market Maker for the purpose of making markets in securities traded on the Exchange. A Registered Market Maker (“RMM”) is a Member registered with the Exchange for the purpose of making markets in securities traded on the Exchange, who is not a Lead Market Maker. See Exchange Rule 100.

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

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

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

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

1. Purpose

The Exchange proposes to adopt a principles-based approach to prohibit the misuse of material, non-public information by Market Makers by deleting Rule 610 (Limitations on Dealings). In so doing, the Exchange would harmonize its rules amongst its Members<sup>4</sup> relating to protecting against the misuse of material, non-public information. The Exchange believes that Rule 610 is no longer necessary because all Members, including Market Makers, are subject to the Exchange's general principles-based requirements governing the protection against the misuse of material, non-public information, pursuant to Exchange Rule 303 (Prevention of the Misuse of Material Nonpublic Information), which obviates the need for separately-prescribed requirements for a subset of market participants on the Exchange.

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<sup>4</sup> The term "Member" means an individual or organization approved to exercise trading rights associated with a Trading Permit. Members are deemed "members" under the Exchange Act. See Exchange Rule 100.

## Background

The Exchange has three classes of registered Market Makers. Pursuant to Rule 600, a Market Maker is a Member with Registered Options Traders that is registered with the Exchange for the purpose of making transactions as a dealer-specialist. As the rule further provides, a Market Maker can be either a RMM, a LMM or a PLMM. All Market Makers are subject to the requirements of Rules 603 and 604, which set forth the obligations of Market Makers, particularly relating to quoting.

Rule 603 specifies the obligations of Market Makers, which include making markets “that, absent changed market conditions, will be honored for the number of contracts entered into the Exchange’s System in all series of options classes to which the Market Maker is appointed.” The quoting obligations of Market Makers are set forth in Rule 604. Rules 603 and 604 describe the heightened obligations of a PLMM as distinguished from other Market Makers. Importantly, all Market Makers have access to the same information in the order book that is available to all other market participants. Moreover, none of the Exchange’s Market Makers have agency obligations to the Exchange’s order book.

Notwithstanding that Market Makers have access to the same Exchange trading information as all other market participants on the Exchange, the Exchange has specific rules governing how Market Makers may operate. Rule 610(a) provides that “[n]o Member, other than a Market Maker acting pursuant to Rule 603, limited partner, officer, employee, approved person(s), who is affiliated with a Market Maker or Member, shall, during the period of such affiliation, purchase or sell any option in which such Market Maker is appointed for any account in which such person(s) has a direct or indirect interest.” Rule 610(b) further provides that an approved person or Member affiliated with a Member is not subject to the restrictions in Rule

610(a) if the affiliated Market Maker implements detailed Exchange-approved procedures to restrict the flow of material, non-public information to such affiliated party. The Exemption Guidelines set forth in Rule 610(e) through (j) outline the organizational structure of the so-called “Chinese Wall” procedures which are also referred to as an “Information Barrier”, which a Market Maker must implement to be exempt from the requirements of Rule 610(a). The Information Barrier is meant to ensure that an affiliate of a Market Maker will not have access to material, non-public information and that a Market Maker will not misuse material, non-public information obtained from an affiliated Member.

#### Proposed Rule Change

The Exchange believes that the Exemption Guidelines in Rule 610 for Market Makers are no longer necessary and proposes to delete the Rule. Rather, the Exchange believes that Rule 303 governing the misuse of material, non-public information provides for an appropriate, principles-based approach to prevent the market abuses Rule 610 is designed to address. Specifically Rule 303 requires every Member to establish, maintain and enforce written procedures reasonably designed, taking into consideration the nature of such Member’s business, to prevent the misuse of material, non-public information by such Member or persons associated with such Member. For purposes of this requirement, the misuse of material, non-public information includes, but is not limited to, the following:

- (a) Trading in any securities issued by a corporation, or in any related securities or related options or other derivative securities, while in possession of material, non-public information concerning that issuer; or
- (b) Trading in a security or related options or other derivative securities, while in possession of material non-public information concerning imminent transactions in

- the security or related securities; or
- (c) Disclosing to another person or entity any material, non-public information involving a corporation whose shares are publicly traded or an imminent transaction in an underlying security or related securities for the purpose of facilitating the possible misuse of such material, non-public information.<sup>5</sup>

Because Market Makers are already subject to the requirements of Rule 303 and because Market Makers do not have any trading or information advantage over other Members, the Exchange does not believe that it is necessary to separately require specific limitations on dealings between Market Makers and their affiliates. Deleting Rule 610 would provide Market Makers and Members with the flexibility to adapt their policies and procedures as reasonably designed to reflect changes to their business model, business activities, or the securities market in a manner similar to how Members on the Exchange currently operate and consistent with Rule 303.

As noted above, PLMMs are distinguished under Exchange rules from other Market Makers only to the extent that PLMMs have heightened obligations. However, none of these heightened obligations provides different or greater access to non-public information than any other market participant on the Exchange.<sup>6</sup> Specifically, Market Makers on the Exchange do not have access to trading information provided by the Exchange, either at, or prior to, the point of execution, that is not made available to all other market participants on the Exchange in a similar manner. Further, as noted above, Market Makers on the Exchange do not have any agency responsibilities for orders on the order book. Accordingly, because Market Makers do not have any trading advantages at the Exchange due to their market role, the Exchange believes that they

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<sup>5</sup> See Exchange Rule 303, Interpretations and Policies .01.

<sup>6</sup> See Exchange Rules 603 and 604.

should be subject to the same rules as Members regarding the protection against the misuse of material, non-public information, which in this case, is existing Rule 303.

The Exchange notes that even with this proposed rule change, pursuant to Rule 303, a Market Maker would still be obligated to ensure that its policies and procedures reflect the current state of its business and continue to be reasonably designed to achieve compliance with applicable federal securities law and regulations, and with applicable Exchange rules, including being reasonably designed to protect against the misuse of material, non-public information. While an Information Barrier would not specifically be required under the proposal, Rule 303 already requires that a Member consider its business model or business activities in structuring its policies and procedures, which may dictate that an information barrier or other type of functional separation be part of the set of policies and procedures that would be reasonably designed to achieve compliance with applicable securities law and regulations, and with applicable Exchange rules.

The Exchange is not proposing to change what is considered to be material, non-public information, and thus does not expect there to be any changes to the types of information that an affiliated person of a Market Maker could share with such Market Maker. In that regard, the proposed rule change will not permit an Electronic Exchange Member to have access to any non-public order or quote information of the affiliated Market Maker, including hidden or undisplayed size or price information of such orders and quotes. Market Makers are not allowed to post hidden or undisplayed orders and quotes on the Exchange. Members do not expect to receive any additional order or quote information as a result of this proposed rule change.

Further, the Exchange does not believe that there will be any material change to existing Member Information Barriers as a result of removal of the Exchange's pre-approval

requirements. In fact, the Exchange anticipates that eliminating the pre-approval requirement should facilitate implementation of changes to Member Information Barriers as necessary to protect against the misuse of material, non-public information. The Exchange also suggests that the pre-approval requirement is unnecessary because Market Makers now do not have agency responsibilities to the book, or time and place information advantages because of their market role.<sup>7</sup> Moreover, the policies and procedures of Market Makers, including those relating to Information Barriers, would be subject to review by FINRA, on behalf of the Exchange, pursuant to a Regulatory Services Agreement.

The Exchange further notes that under Rule 303, a Member would be able to structure its firm to provide for its options Market Makers, as applicable, to be structured with its equities and customer-facing businesses, provided that any such structuring would be done in a manner reasonably designed to protect against the misuse of material, non-public information. For example, pursuant to Rule 303 a Market Maker on the Exchange could be in the same independent trading unit, as defined in Rule 200(f) of Regulation SHO,<sup>8</sup> as an equities market maker and other trading desks within the firm, including options trading desks, so that the firm could share post-trade information to better manage its risk across related securities. The Exchange believes it is appropriate, and consistent with Rule 303 and Section 15(g) of the Act<sup>9</sup> for a firm to share options position and related hedging position information (e.g., equities, futures, and foreign currency) within a firm to better manage risk on a firm-wide basis. The Exchange notes, however, that if so structured, a firm would need to have policies and

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<sup>7</sup> Member applicants are required to have information barrier policies and procedures in place and must represent that they comply with this requirement in their application for membership to MIAX.

<sup>8</sup> 17 CFR Part 242.200(f).

<sup>9</sup> 15 U.S.C. 78o(g).

procedures, including Information Barriers as applicable, reasonably designed to protect against the misuse of material, non-public information, and specifically customer information, consistent with Rule 303.

The Exchange believes that the proposed reliance on the principles-based Rule 303 would ensure that a Member that operates a Market Maker would be required to protect against the misuse of any material, non-public information. As noted above, Rule 303 already requires that firms refrain from trading while in possession of material, non-public information concerning imminent transactions in the security or related product. The Exchange believes that moving to a principles-based approach rather than prescribing how and when to wall off a Market Maker from the rest of the firm would provide Members operating as Market Makers with appropriate tools to better manage risk across a firm, including integrating options positions with other positions of the firm or, as applicable, by the respective independent trading unit. Specifically, the Exchange believes that it is appropriate for risk management purposes for a Member operating a Market Maker to be able to consider both options Market Maker traded positions for purposes of calculating net positions consistent with Rule 200 of Regulation SHO, calculating intra-day net capital positions, and managing risk generally, and in compliance with Rule 15c3-5 under the Act (the “Market Access Rule”).<sup>10</sup> The Exchange notes that any risk management operations would need to operate consistent with the requirement to protect against the misuse of material, non-public information.

The Exchange further notes that if Market Makers are integrated with other market making operations, they would be subject to existing rules that prohibit Members from disadvantaging their customers or other market participants by improperly capitalizing on a

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<sup>10</sup> 17 CFR Part 240.15c3-5.

member organization's access to the receipt of material, non-public information. As such, a member organization that integrates its market maker operations together with equity market making would need to protect customer information consistent with existing obligations to protect such information. The Exchange has rules prohibiting Members from disadvantaging their customers or other market participants by improperly capitalizing on the Members' access to or receipt of material, nonpublic information. For example, Exchange Rule 1308 (Supervision of Accounts) requires Members to develop and maintain adequate controls over each of its business activities and to be responsible for internal supervision and control of the organization and compliance with securities laws and regulations.<sup>11</sup> Additionally, Rule 301 (Just and Equitable Principles of Trade) prevents a person associated with a Member, who has knowledge of all material terms and conditions of (i) an order and a solicited order, (ii) an order being facilitated, or (iii) orders being crossed; the execution of which are imminent, to enter, based on such knowledge, an order to buy or sell an option for the same underlying security as any option that is the subject of the order, or an order to buy or sell the security underlying such class, or an order to buy or sell any related instrument unless certain circumstances are met.<sup>12</sup>

## 2. Statutory Basis

MIAX believes that its proposed rule change is consistent with Section 6(b) of the Act<sup>13</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>14</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating

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<sup>11</sup> See Exchange Rule 1308.

<sup>12</sup> See Exchange Rule 301, Interpretations and Policies .02.

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

<sup>14</sup> 15 U.S.C. 78f(b)(5).

transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market by adopting a principles-based approach to permit a Member operating a Market Maker to maintain and enforce policies and procedures to, among other things, prohibit the misuse of material, non-public information and eliminate restrictions on how a Member structures its market making operations. The Exchange notes that the proposed rule change is based on an approved rule of the Exchange to which Market Makers are already subject, Rule 303, thus Market Makers would continue to be subject to current Exchange rules and to the requirements under the Act<sup>15</sup> for protecting material, non-public order information. The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market because it would harmonize the Exchange's approach to protecting against the misuse of material, non-public information and no longer subject Market Makers to additional requirements. The Exchange does not believe that the existing requirements applicable to Market Makers are narrowly tailored to their respective roles because neither market participant has access to Exchange trading information in a manner different from any other market participant on the Exchange and they do not have agency responsibilities to the order book.

The Exchange further believes the proposal is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade because existing rules make clear to Market Makers and Members the type of conduct that is prohibited

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<sup>15</sup> See, e.g., 15 U.S.C. 78o(g).

by the Exchange. While the proposal eliminates specific requirements relating to the misuse of material, non-public information requiring pre-approval by the Exchange, Market Makers and Members would remain subject to existing Exchange rules requiring them to establish and maintain systems to supervise their activities, and to create, implement, and maintain written procedures that are reasonably designed to comply with applicable securities laws and Exchange rules, including the prohibition on the misuse of material, non-public information.

The Exchange notes that the proposed rule change would still require that Members operating Market Makers maintain and enforce policies and procedures reasonably designed to ensure compliance with applicable federal securities laws and regulations and with Exchange rules. Even though there would no longer be pre-approval of Market Maker Information Barriers, any Market Maker's written policies and procedures would continue to be subject to oversight by the Exchange and therefore the elimination of prescribed restrictions should not reduce the effectiveness of the Exchange rules to protect against the misuse of material, non-public information. Rather, Members will be able to utilize a flexible, principles-based approach to modify their policies and procedures as appropriate to reflect changes to their business model, business activities, or to the securities market itself. Moreover, while specified Information Barriers may no longer be required, a Member's business model or business activities may dictate that an Information Barrier or functional separation be part of the set of policies and procedures that would be reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable Exchange rules. The Exchange therefore believes that the proposed rule change will maintain the existing protection of investors and the public interest that is currently applicable to Market Makers, while at the same time removing impediments to and perfecting a free and open market by moving to a principles-based approach to protect

against the misuse of material non-public information.

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. On the contrary, the Exchange believes that the proposal will enhance competition by allowing Market Makers to comply with applicable Exchange rules in a manner best suited to their business models, business activities, and the securities markets, thus reducing regulatory burdens while still ensuring compliance with applicable securities laws and regulations and Exchange rules. The Exchange believes that the proposal will foster a fair and orderly marketplace without being overly burdensome upon Market Makers.

Moreover, the Exchange believes that the proposed rule change would eliminate a burden on competition for Members which currently exists as a result of disparate rule treatment between the options and equities markets regarding how to protect against the misuse of material, non-public information. For those Members that are also members of equity exchanges, their respective equity market maker operations are now subject to a principles-based approach to protecting against the misuse of material non-public information.<sup>16</sup> The Exchange believes it would remove a burden on competition to enable Members to similarly apply a principles-based

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<sup>16</sup> See Securities Exchange Act Release Nos. 60604 (Sept. 2, 2009), 76 FR 46272 (Sept. 8, 2009) (SR-NYSEArca-2009-78) (Order approving elimination of NYSE Arca rule that required market makers to establish and maintain specifically prescribed information barriers, including discussion of NYSE Arca and Nasdaq rules) (“Arca Approval Order”); 61574 (Feb. 23, 2010), 75 FR 9455 (Mar. 2, 2010) (SR-BATS-2010-003) (Order approving amendments to BATS Rule 5.5 to move to a principles-based approach to protecting against the misuse of material, non-public information, and noting that the proposed change is consistent with the approaches of NYSE Arca and Nasdaq) (“BATS Approval Order”); and 72534 (July 3, 2014), 79 FR 39440 (July 10, 2014), SR-NYSE-2014-12) (Order approving amendments to NYSE Rule 98 governing designated market makers to move to a principles-based approach to prohibit the misuse of material non-public information) (“NYSE Approval Order”).

approach to protecting against the misuse of material, non-public information in the options space. To this end, the Exchange notes that Rule 303 still requires a Member that operates as a Market Maker on the Exchange to evaluate its business to assure that its policies and procedures are reasonably designed to protect against the misuse of material, non-public information. However, with this proposed rule change, a Member that trades equities and options could look at its firm more holistically to structure its operations in a manner that provides it with better tools to manage its risks across multiple security classes, while at the same time protecting against the misuse of material non-public information.

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

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act<sup>17</sup> and Rule 19b-4(f)(6)<sup>18</sup> thereunder.

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

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<sup>17</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>18</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Comments may be submitted by any of the following methods:

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail [to rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MIAX-2015-63 on the subject line.

##### Paper comments:

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

All submissions should refer to File Number SR-MIAX-2015-63. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be

available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549-1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-MIAX-2015-63 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

Robert W. Errett  
Deputy Secretary

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<sup>19</sup> 17 CFR 200.30-3(a)(12).

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