

OMB APPROVAL

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Required fields are shown with yellow backgrounds and asterisks.

Page 1 of \* 24

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

File No.\* SR - 2013 - \* 04

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

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934

Section 806(e)(1)

Section 806(e)(2)

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 \*).

Amend MIAX Rules 503, 603, and 604 to revise Market Maker obligations regarding the Opening Process

**Contact Information**

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

First Name \* James Last Name \* Morgan

Title \* Associate Counsel and Assistant Vice President

E-mail \* jmorgan@miami-holdings.com

Telephone \* (609) 897-1484 Fax

**Signature**

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title \*)

Date 02/11/2013

Associate Counsel and Assistant Vice President

By James C. Morgan

(Name \*)

James Morgan, jmorgan@miami

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

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

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

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies**

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

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

(a) Miami International Securities Exchange, LLC (“MIAX” or “Exchange”), pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> proposes to amend Rules 503, 603 and 604 to revise Market Maker obligations regarding the opening process on the Exchange.

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

(b) Not applicable.

(c) Not applicable.

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

The proposed rule change was approved by the Chief Executive Officer of the Exchange pursuant to authority delegated by the MIAX Board of Directors on December 5, 2012. Exchange staff will advise the Board of Directors of any action taken pursuant to delegated authority. No other action by the Exchange is necessary for the filing of the proposed rule change.

Questions and comments on the proposed rule change may be directed to James C. Morgan, Associate Counsel and Assistant Vice President at 609-897-1484.

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

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

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 revise the quoting obligations of Market Makers prior to and during the opening process. Specifically, (i) Lead Market Makers (“LMMs”), including those appointed Primary Lead Market Maker (“PLMM”), will not be required to enter quotes before or during the opening process in their assigned option classes; and (ii) PLMMs will, however, be required to submit valid width quotes not later than one minute following the dissemination of a quote or trade by the market for the underlying security. These changes, which are described in detail below, will make MIAX’s Market Maker obligations more consistent with market maker obligations at other options exchanges.

Currently, Rules 503(e)(5), 603(c), 604(e)(1)(i) and 604(e)(2)(i) require PLMMs and LMMs to participate in the opening process by submitting valid width quotes and entering into any transactions resulting from their participation. MIAX proposes to amend each of these rules to revise the PLMM obligations and eliminate the LMM obligations. Rule 503(e) specifies that the opening process can begin following the dissemination of a quote or trade by the market for the underlying security and a pause of no longer than one half second. The pause allows the market place to absorb the dissemination of the underlying security’s quote or trade. Thereafter, the option’s opening process can be initiated by the occurrence of one of three triggers. These triggers are (i) a valid width quote being submitted by the PLMM in the option class; (ii) the valid width quotes of at least two Market Makers (one of whom must be a LMM) being submitted in the option; or (iii) the valid width quote of one LMM being submitted in the option with at least one other options exchange disseminating a quote in the option and a valid width NBBO being available for that option. Trigger (iii) can only occur in multiply listed option

classes; for singly listed option classes either trigger (i) or (ii) must occur to initiate the option's opening process.

While the PLMM can submit a valid width quote to start the option's opening process, there are, as described above, other ways in which the option opening process can begin. Pursuant to the revisions being proposed herein, MIAAX will require the PLMM to submit valid width quotes in each of the PLMM's appointed classes within one minute of a trade or quote in the underlying security being disseminated, thus assuring a timely start of the opening process if none of the other triggers for starting the opening process have occurred.<sup>3</sup> As described above, an LMM's valid width quotes can also be used to trigger the start of the opening process, however, MIAAX now proposes to eliminate the requirement that PLMMs and LMMs submit such quotes as part of the opening process.

By eliminating the specific obligations for PLMMs and LMMs to submit valid width quotes prior to regular options trading and only require continuous quoting during regular options trading, the opening obligations for MIAAX Market Makers would be consistent with opening obligations for market makers at other options exchanges. For example, in addition to the PHLX rules for their non-specialist market makers referred to in footnote three above, NYSE Amex Options does not require either its specialist or its market makers to submit quotes or participate in the opening process.<sup>4</sup> In addition, NASDAQ Options Market, LLC ("NOM")<sup>5</sup>,

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<sup>3</sup> See NASDAQ OMX PHLX ("PHLX") Rule 1017(k), which requires "the specialist assigned in a particular equity option must enter opening quotes not later than one minute following the dissemination of a quote or trade by the market for the underlying security." PHLX does not require any of its other market makers to enter opening quotes, *see also*, PHLX Rule 1014.

<sup>4</sup> See NYSE Amex Options Rules 925NY (Obligations of Market Makers), 925.1NY (Market Maker Quotes), 927NY (Specialists), 927.5NY (e-Specialists Obligations) and 952NY (Opening Process). None of these rules require specialist or market maker participation in the opening process.

<sup>5</sup> See Securities Exchange Act Release No. 67722 (August 23, 2012) 77 FR 52375 (August 29, 2012) (SR-NASDAQ-2012-095).

NASDAQ OMX BX, Inc (“BX Options”)<sup>6</sup>, and BOX Options Exchange LLC (“BOX”)<sup>7</sup> eliminated market maker pre-opening quoting obligations in 2012. As a result of these filings, NOM, BX Options and BOX do not impose obligations on their respective options market makers to continuously quote prior to the regular options trading.

Market Makers have advised the Exchange that other option exchanges do not have opening quoting obligations for their market makers and have requested that MIAX eliminate its opening quoting obligations so that MIAX rules are similar to the other options exchanges. While MIAX agrees that eliminating its opening quoting obligations for Market Makers would be pro-competitive in that it will attract more market makers and additional liquidity to the Exchange, MIAX believes that the PLMM should still have the responsibility to assure a timely start to the opening process in each of its appointed classes and is therefore continuing to require the PLMM to submit valid width quotes not later than one minute after a trade or quote in the underlying security has been disseminated. As it builds its options marketplace, MIAX believes a consistently timely opening of its options classes is essential for attracting order flow.

Moreover, the Exchange believes that its proposal to put LMMs in the same position as market makers on other exchanges with respect to opening obligations will not have a negative effect on MIAX’s options market. In particular, the Exchange believes the removal of opening quoting obligations for LMMs will have no impact on the functioning of the MIAX opening process and will not negatively impact MIAX market participants. Exchange rules continue to provide that the PLMM will be required to assure a timely opening by submitting valid width

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<sup>6</sup> See Securities Exchange Act Release No. 68116 (October 26, 2012) 77 FR 66204 (November 2, 2012) (SR-BX-2012-069).

<sup>7</sup> See Securities Exchange Act Release No. 68412 (December 12, 2012) 77 FR 74902 (December 18, 2012) (SR-BOX-2012-022).

quotes in its appointed option classes if none of the other triggers for opening its appointed option classes have occurred. MIAX, therefore, believes its market participants will continue to experience a quality opening on the Exchange.

b. Statutory Basis

MIAX believes that its proposed rule change is consistent with Section 6(b) of the Act<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>9</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest, and it is not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange believes the proposal to conform Market Maker obligations to the requirements of competing markets will promote the application of consistent trading practices.

Additionally, the Exchange believes the proposal removes a market maker quoting requirement that is unnecessary, as evidenced by the fact that it does not exist on other competitive markets. The Exchange operates in a highly competitive market comprised of eleven U.S. options exchanges in which sophisticated and knowledgeable market participants can, and do, send order flow to competing exchanges if they deem trading practices at a particular exchange to be onerous or cumbersome. With this proposal, LMMs will be relieved of a market maker requirement that does not materially improve the quality of the markets. On the contrary,

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

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

the opening quoting obligation creates an additional obligation and burden on LMMs that does not exist on numerous other competitive markets. The Exchange believes that in this competitive marketplace, the impact of the opening quoting obligation that exists on the Exchange today compels this proposal. It will allow LMMs on the Exchange to follow rules that are similar to the rules of other options exchanges that do not impose opening obligations on their market makers, and will allow LMMs to focus on aspects of their operations that contribute to the market in a more efficient and meaningful way. However, as the newest entrant into this competitive marketplace, MIAX also believes it is important to provide consistently timely openings for its options, therefore, MIAX has a requirement that the PLMM in each of its appointed option classes be required to submit valid width quotes within one minute of the dissemination of a quote or trade in the underlying security. This requirement for the PLMM is also consistent with requirements at other options exchanges.

Finally, in determining to revise requirements for its Market Makers, MIAX is mindful of the balance between the obligations and the benefits bestowed on its Market Makers. The proposal will reduce obligations currently in place for PLMMs and LMMs without a corresponding reduction in the benefits currently bestowed upon them. MIAX nevertheless believes this shifting in the balance of obligations and benefits is appropriate given (i) the obligation is not necessary for LMMs; (ii) the obligation is being revised and not eliminated for the PLMM; and (iii) the changes being proposed herein are in place at other options exchanges. MIAX believes that its proposal is consistent with the Act in that the relieving of an unnecessary requirement for LMMs does not detract from the overall market making obligations of LMMs. The requirement that a market maker hold itself out as willing to buy and sell options for its own account on a regular or continuous basis is better supported by requirements to quote



continuously throughout the trading day rather than by a requirement to quote at the opening. The LMM's continuous quoting obligations are the equivalent of obligations in place for other similarly situated market makers at other options exchanges. Maintaining the PLMM requirement to submit valid width quotes within one minute of a trade or quote in the underlying security being disseminated is consistent with the heightened level of obligations imposed by MIAX rules on PLMMs.

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

MIAX does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. MIAX's proposal to eliminate the obligation for Market Makers to submit quotes and participate in the opening process for each of its appointed option classes is consistent with what is already occurring on other markets. By providing Market Maker obligations that are more consistent with market maker obligations in place at other option exchanges, competition for the liquidity providing services of market makers is enhanced. MIAX is better able to compete for the services of market makers when its requirements for market makers are consistent with the other options exchanges.

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

No written comments were either solicited or received.

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

Not applicable.

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

Pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6)<sup>11</sup> thereunder, the Exchange has designated this proposal as one that effects a change that: (i) does not significantly 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.

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<sup>12</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)<sup>13</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.

The Exchange requests a waiver of the 30 day operative delay in order to eliminate obligations for Market Makers that are unnecessary and inconsistent with obligations in place at other options exchanges. Waiver of the operative delay is consistent with the protection of investors and the public interest because it will ensure fair competition among the exchanges and encourage greater liquidity on the MIAX to the benefit of investors. The proposed rule change

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

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

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

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

will also immediately benefit Market Makers by assuring consistency and uniformity among the competing options exchanges that have eliminated their opening quoting requirements for market makers and reduce the current compliance burdens imposed by the application of different opening quoting standards. It is of significant importance to MIAX to put these revisions in place as soon as possible as it works to quickly build its options marketplace by attracting liquidity providers. Unlike established exchanges with a base of market makers in place, MIAX is seeking to attract market makers by offering a program that does not place undue obligations and compliance burdens on potential market making candidates. MIAX believes that a waiver of the operative delay will allow MIAX to attract market makers that can support its developing marketplace without further delay.

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

The proposed rule change is based on the rules of the NASDAQ OMX PHLX LLC, (“PHLX”) as referenced above at footnote three. PHLX Rule 1017, which describes the opening process in options, requires the PHLX specialist (i.e., a market maker, whose obligations and benefits are generally equivalent to the obligations and benefits in place for PLMMs at MIAX) to “enter opening quotes not later than one minute following the dissemination of a quote or trade by the market for the underlying security”. The Remote Streaming Quote Traders (“RSQTs”) on PHLX have obligations and benefits generally equivalent to the obligations and benefits in place for LMMs at MIAX. Neither Rule 1017 nor Rule 1014 (which sets forth obligations for RSQTs) require RSQTs to submit quotes before or during the opening process.

**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**

Not applicable.

**11. Exhibits**

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

5. Text of proposed rule changes.

**EXHIBIT 1**SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-MIAX-2013-04

February \_\_, 2013

## Self-Regulatory Organizations: Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by Miami International Securities Exchange LLC to Revise Market Maker Obligations Regarding the Opening Process on the Exchange

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 11, 2013, Miami International Securities Exchange LLC (“MIAX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange is filing a proposal to amend Rules 503, 603 and 604 to revise Market Maker obligations regarding the opening process on the Exchange.

The text of the proposed rule change is provided in Exhibit 5. The text of the proposed rule change is also 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.

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

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

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 revise the quoting obligations of Market Makers prior to and during the opening process. Specifically, (i) Lead Market Makers ("LMMs"), including those appointed Primary Lead Market Maker ("PLMM"), will not be required to enter quotes before or during the opening process in their assigned option classes; and (ii) PLMMs will, however, be required to submit valid width quotes not later than one minute following the dissemination of a quote or trade by the market for the underlying security. These changes, which are described in detail below, will make MIAX's Market Maker obligations more consistent with market maker obligations at other options exchanges.

Currently, Rules 503(e)(5), 603(c), 604(e)(1)(i) and 604(e)(2)(i) require PLMMs and LMMs to participate in the opening process by submitting valid width quotes and entering into any transactions resulting from their participation. MIAX proposes to amend each of these rules to revise the PLMM obligations and eliminate the LMM obligations. Rule 503(e) specifies that the opening process can begin following the dissemination of a quote or trade by the market for the underlying security and a pause of no longer than one half second. The pause allows the market place to absorb the dissemination of the underlying security's quote or trade. Thereafter,

the option's opening process can be initiated by the occurrence of one of three triggers. These triggers are (i) a valid width quote being submitted by the PLMM in the option class; (ii) the valid width quotes of at least two Market Makers (one of whom must be a LMM) being submitted in the option; or (iii) the valid width quote of one LMM being submitted in the option with at least one other options exchange disseminating a quote in the option and a valid width NBBO being available for that option. Trigger (iii) can only occur in multiply listed option classes; for singly listed option classes either trigger (i) or (ii) must occur to initiate the option's opening process.

While the PLMM can submit a valid width quote to start the option's opening process, there are, as described above, other ways in which the option opening process can begin. Pursuant to the revisions being proposed herein, MIAX will require the PLMM to submit valid width quotes in each of the PLMM's appointed classes within one minute of a trade or quote in the underlying security being disseminated, thus assuring a timely start of the opening process if none of the other triggers for starting the opening process have occurred.<sup>3</sup> As described above, an LMM's valid width quotes can also be used to trigger the start of the opening process, however, MIAX now proposes to eliminate the requirement that PLMMs and LMMs submit such quotes as part of the opening process.

By eliminating the specific obligations for PLMMs and LMMs to submit valid width quotes prior to regular options trading and only require continuous quoting during regular options trading, the opening obligations for MIAX Market Makers would be consistent with opening obligations for market makers at other options exchanges. For example, in addition to

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<sup>3</sup> See NASDAQ OMX PHLX ("PHLX") Rule 1017(k), which requires "the specialist assigned in a particular equity option must enter opening quotes not later than one minute following the dissemination of a quote or trade by the market for the underlying security." PHLX does not require any of its other market makers to enter opening quotes, *see also*, PHLX Rule 1014.

the PHLX rule for their non-specialist market makers referred to in footnote three above, NYSE Amex Options does not require either its specialist or its market makers to submit quotes or participate in the opening process.<sup>4</sup> In addition, NASDAQ Options Market, LLC (“NOM”)<sup>5</sup>, NASDAQ OMX BX, Inc (“BX Options”)<sup>6</sup>, and BOX Options Exchange LLC (“BOX”)<sup>7</sup> eliminated market maker pre-opening quoting obligations in 2012. As a result of these filings, NOM, BX Options and BOX do not impose obligations on their respective options market makers to continuously quote prior to the regular options trading.

Market Makers have advised the Exchange that other option exchanges do not have opening quoting obligations for their market makers and have requested that MIAX eliminate its opening quoting obligations so that MIAX rules are similar to the other options exchanges. While MIAX agrees that eliminating its opening quoting obligations for Market Makers would be pro-competitive in that it will attract more market makers and additional liquidity to the Exchange, MIAX believes that the PLMM should still have the responsibility to assure a timely start to the opening process in each of its appointed classes and is therefore continuing to require the PLMM to submit valid width quotes not later than one minute after a trade or quote in the underlying security has been disseminated. As it builds its options marketplace, MIAX believes a consistently timely opening of its options classes is essential for attracting order flow.

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<sup>4</sup> See NYSE Amex Options Rules 925NY (Obligations of Market Makers), 925.1NY (Market Maker Quotes), 927NY (Specialists), 927.5NY (e-Specialists Obligations) and 952NY (Opening Process). None of these rules require specialist or market maker participation in the opening process.

<sup>5</sup> See Securities Exchange Act Release No. 67722 (August 23, 2012) 77 FR 52375 (August 29, 2012) (SR-NASDAQ-2012-095).

<sup>6</sup> See Securities Exchange Act Release No. 68116 (October 26, 2012) 77 FR 66204 (November 2, 2012) (SR-BX-2012-069).

<sup>7</sup> See Securities Exchange Act Release No. 68412 (December 12, 2012) 77 FR 74902 (December 18, 2012) (SR-BOX-2012-022).



Moreover, the Exchange believes that its proposal to put LMMs in the same position as market makers on other exchanges with respect to opening obligations will not have a negative effect on MIAX's options market. In particular, the Exchange believes the removal of opening quoting obligations for LMMs will have no impact on the functioning of the MIAX opening process and will not negatively impact MIAX market participants. Exchange rules continue to provide that the PLMM will be required to assure a timely opening by submitting valid width quotes in its appointed option classes if none of the other triggers for opening its appointed option classes have occurred. MIAX, therefore, believes its market participants will continue to experience a quality opening on the Exchange.

## 2. Statutory Basis

MIAX believes that its proposed rule change is consistent with Section 6(b) of the Act<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>9</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest, and it is not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange believes the proposal to conform Market Maker obligations to the requirements of competing markets will promote the application of consistent trading practices.

Additionally, the Exchange believes the proposal removes a market maker quoting requirement that is unnecessary, as evidenced by the fact that it does not exist on other

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

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

competitive markets. The Exchange operates in a highly competitive market comprised of eleven U.S. options exchanges in which sophisticated and knowledgeable market participants can, and do, send order flow to competing exchanges if they deem trading practices at a particular exchange to be onerous or cumbersome. With this proposal, LMMs will be relieved of a market maker requirement that does not materially improve the quality of the markets. On the contrary, the opening quoting obligation creates an additional obligation and burden on LMMs that does not exist on numerous other competitive markets. The Exchange believes that in this competitive marketplace, the impact of the opening quoting obligation that exists on the Exchange today compels this proposal. It will allow LMMs on the Exchange to follow rules that are similar to the rules of other options exchanges that do not impose opening obligations on their market makers, and will allow LMMs to focus on aspects of their operations that contribute to the market in a more efficient and meaningful way. However, as the newest entrant into this competitive marketplace, MIAX also believes it is important to provide consistently timely openings for its options, therefore, MIAX has a requirement that the PLMM in each of its appointed option classes be required to submit valid width quotes within one minute of the dissemination of a quote or trade in the underlying security. This requirement for the PLMM is also consistent with requirements at other options exchanges.

Finally, in determining to revise requirements for its Market Makers, MIAX is mindful of the balance between the obligations and the benefits bestowed on its Market Makers. The proposal will reduce obligations currently in place for PLMMs and LMMs without a corresponding reduction in the benefits currently bestowed upon them. MIAX nevertheless believes this shifting in the balance of obligations and benefits is appropriate given (i) the obligation is not necessary for LMMs; (ii) the obligation is being revised and not eliminated for the PLMM; and (iii) the changes being proposed herein are in place at other options exchanges.

MIAX believes that its proposal is consistent with the Act in that the relieving of an unnecessary requirement for LMMs does not detract from the overall market making obligations of LMMs. The requirement that a market maker hold itself out as willing to buy and sell options for its own account on a regular or continuous basis is better supported by requirements to quote continuously throughout the trading day rather than by a requirement to quote at the opening. The LMM's continuous quoting obligations are the equivalent of obligations in place for other similarly situated market makers at other options exchanges. Maintaining the PLMM requirement to submit valid width quotes within one minute of a trade or quote in the underlying security being disseminated is consistent with the heightened level of obligations imposed by MIAX rules on PLMMs.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. . MIAX's proposal to eliminate the obligation for Market Makers to submit quotes and participate in the opening process for each of its appointed option classes is consistent with what is already occurring on other markets. By providing Market Maker obligations that are more consistent with market maker obligations in place at other option exchanges, competition for the liquidity providing services of market makers is enhanced. MIAX is better able to compete for the services of market makers when its requirements for market makers are consistent with the other options exchanges.

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

Written comments were neither solicited or received.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6)<sup>11</sup> thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

### IV. Solicitation of Comments

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

Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>);

or

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

<sup>11</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

- Send an e-mail [to rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MIAX-2013-04 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-MIAX-2013-04. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-MIAX-2013-04 and should be submitted on or before [insert date 21 days from publication in the Federal Register]. For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

Kevin M. O'Neill  
Deputy Secretary

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

## EXHIBIT 5

## MIAMI INTERNATIONAL SECURITIES EXCHANGE, LLC

## Proposed Rule Change

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It is proposed that the following provisions of the Miami International Securities Exchange Rules be amended as set forth below. [Bracketed] text indicates material to be deleted and underlined text indicates material to be added.

**Rule 503 Openings on the Exchange**

(a) through (d) No change.

**(e) Starting the Opening Process**

(1) through (4) No change.

(5) [Lead Market Makers, including t]The Primary Lead Market Maker[,] assigned in a particular equity option class must enter valid width quotes [for the Opening ]not later than one minute following the dissemination of a quote or trade by the market for the underlying security[ and must participate in the opening as specified in Rule 604(e)(1)(i) and (e)(2)(i)].

(6) No change.

(f) through (g) No change.

\* \* \* \* \*

**Rule 603 Obligations of Market Makers**

(a) through (b) No change.

(c) **Primary Lead Market Makers.** In addition to the obligations contained in this Rule for Market Makers generally, for options classes to which a Market Maker is an appointed Primary Lead Market Maker, it shall have the responsibility to submit valid width quotes in each series [during the Opening Process ]not later than one minute following the dissemination of a quote or trade by the market for the underlying security pursuant to Rule 503(e).

(d) No change.

\* \* \* \* \*

**Rule 604. Market Maker Quotations**

(a) through (d) No change.

(e) **Continuous Quotes.** The following quoting requirements shall apply:

**(1) Primary Lead Market Makers**

(i) A [Primary Lead Market Maker must participate in the opening rotation and enter into any transactions resulting from its participation. Thereafter, a ]Primary Lead Market Maker must provide continuous two-sided Standard quotes and/or Day eQuotes, which for the purpose of this paragraph shall mean 99% of the time, for the options classes to which it is appointed.

(ii) through (iii) No change.

**(2) Lead Market Makers**

(i) A [Lead Market Maker must participate in the opening rotation and enter into any transactions resulting from its participation. Thereafter, a ]Lead Market Maker must provide continuous two-sided Standard quotes and/or Day eQuotes, which for the purpose of this paragraph shall mean 90% of the time, for the options classes to which it is appointed.

(ii) through (iii) No change.

**(3) Registered Market Makers.** No change.

(f) No change.