

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 DTC and on DTCC's website (<http://dtcc.com/legal/sec-rule-filings.aspx>). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-DTC-2018-013 and should be submitted on or before January 18, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³¹

Brent J. Fields,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84891; File No. 10-233]

In the Matter of the Application of MIAx EMERALD, LLC for Registration as a National Securities Exchange; Findings, Opinion, and Order of the Commission

December 20, 2018.

I. Introduction

On August 16, 2018, MIAx EMERALD, LLC ("MIAx EMERALD" or "Exchange") submitted to the Securities and Exchange Commission ("Commission") an application for Registration as a National Securities Exchange ("Form 1 Application") under Section 6 of the Securities Exchange Act of 1934 ("Act"), seeking registration as a national securities exchange under Section 6 of the Act.¹ Notice of the Form 1 Application was published for comment in the **Federal Register** on October 3, 2018.² The Commission received no comments.

II. Statutory Standards

Under Sections 6(b) and 19(a) of the Act,³ the Commission shall by order grant an application for registration as a national securities exchange if the Commission finds, among other things, that the proposed exchange is so organized and has the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange.

As discussed in greater detail below, the Commission finds that MIAx EMERALD's application for exchange registration meets the requirements of the Act and the rules and regulations thereunder. Further, the Commission finds that the proposed rules of MIAx EMERALD are consistent with Section 6 of the Act in that, among other things, they assure a fair representation of the Exchange's members in the selection of its directors and administration of its affairs and provide that one or more directors will be representative of issuers and investors and not be associated with a member of the exchange, or with a broker or dealer;⁴ and that they are designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest and are not designed to permit unfair discrimination between customers, issuers, or broker-dealers.⁵ Finally, the Commission finds that MIAx EMERALD's proposed rules do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.⁶

III. Discussion

A. Governance of MIAx EMERALD

1. MIAx EMERALD Board of Directors

The board of directors of MIAx EMERALD ("Exchange Board" or "MIAx EMERALD Board") will be its governing body and will possess all of the powers necessary for the

management of its business and affairs, including governance of MIAx EMERALD as a self-regulatory organization ("SRO").⁷

Under the By-Laws of MIAx EMERALD ("MIAx EMERALD By-Laws"):⁸

- The Exchange Board will be composed of not less than ten directors;⁹
- One director will be the Chief Executive Officer of MIAx EMERALD;¹⁰
- The number of Non-Industry Directors,¹¹ including at least one Independent Director,¹² will equal or exceed the sum of the number of Industry Directors¹³ and Member Representative Directors;¹⁴ and

⁷ See MIAx EMERALD By-Laws, Section 2.1. See also Limited Liability Company Agreement of MIAx EMERALD, Section 8(b).

⁸ The MIAx EMERALD By-Laws are included in the Amended and Restated Limited Liability Company Agreement of MIAx EMERALD ("MIAx EMERALD LLC Agreement").

⁹ See MIAx EMERALD By-Laws, Article II, Section 2.2(a).

¹⁰ See MIAx EMERALD By-Laws, Article II, Section 2.2(b).

¹¹ "Non-Industry Director" means a Director who is an Independent Director or any other individual who would not be an Industry Director. See MIAx EMERALD By-Laws, Article I(aa).

¹² "Independent Director" means a "Director who has no material relationship with [MIAx EMERALD] or any affiliate of [MIAx EMERALD], or any [MIAx EMERALD member] or any affiliate of any such [MIAx EMERALD member]; provided, however, that an individual who otherwise qualifies as an Independent Director shall not be disqualified from serving in such capacity solely because such Director is a Director of [MIAx EMERALD] or [Miami Holdings]." See MIAx EMERALD By-Laws, Article I(p).

¹³ An "Industry Director" is, among other things, a Director that is or has served within the prior three years as an officer, director, employee, or owner of a broker or dealer, as well as any Director who has, or has had, a consulting or employment relationship with MIAx EMERALD or any affiliate of MIAx EMERALD within the prior three years. See MIAx EMERALD By-Laws, Article I(r). This definition is consistent with what the Commission has approved for other exchanges. See Securities Exchange Act Release Nos. 79543 (December 13, 2016), 81 FR 92901 (December 20, 2016) (File No. 10-227) (order granting registration of MIAx PEARL, LLC) ("MIAx PEARL Order"); 68341 (December 3, 2012), 77 FR 73065 (December 7, 2012) (File No. 10-207) (order granting the registration of Miami International Securities Exchange, LLC ("MIAx Exchange")) ("MIAx Order"); 58375 (August 18, 2008), 73 FR 49498 (August 21, 2008) (File No. 10-182) (order granting the registration of BATS Exchange, Inc.) ("BATS Order"); and 66871 (April 27, 2012), 77 FR 26323 (May 3, 2012) (File No. 10-206) (order granting the registration of BOX Options Exchange LLC ("BOX")) ("BOX Order").

¹⁴ See MIAx EMERALD By-Laws, Article II, Section 2.2 (b)(i). "Member Representative Director" means a Director who has been appointed by Miami International Holdings, Inc. as an initial Director pursuant to Section 2.5 of the MIAx EMERALD By-Laws to serve until the first annual meeting or who "has been elected by the Miami International Holdings, Inc. after having been

Continued

³¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78f.

² See Securities Exchange Act Release No. 84313 (September 28, 2018), 83 FR 49965 ("Notice").

³ 15 U.S.C. 78f(b) and 15 U.S.C. 78s(a), respectively.

⁴ See 15 U.S.C. 78f(b)(3).

⁵ See 15 U.S.C. 78f(b)(5).

⁶ See 15 U.S.C. 78f(b)(8).

• At least 20% of the directors on the Exchange Board will be Member Representative Directors.¹⁵

For the interim board (discussed below), and subsequently at the first annual meeting and each annual meeting thereafter, Miami International Holdings, Inc. (“Miami Holdings”), as the sole LLC Member of MIAX EMERALD, will elect the MIAX EMERALD Board pursuant to the MIAX EMERALD By-Laws.¹⁶ In addition, Miami Holdings will appoint the initial Nominating Committee¹⁷ and Member Nominating Committee,¹⁸ consistent with each committee’s compositional requirements,¹⁹ to nominate candidates for election to the Exchange Board. Each of the Nominating Committee and Member Nominating Committee, after completion of its respective duties for nominating directors for election to the Board for that year, shall nominate candidates to serve on the succeeding year’s Nominating Committee or Member Nominating Committee, as applicable. Additional candidates for the Member Nominating Committee may be nominated and elected by MIAX EMERALD members pursuant to a petition process.²⁰

The Nominating Committee will nominate candidates for each director position, and Miami Holdings, as the sole LLC Member, will elect those

nominated by the Member Nominating Committee or by an Exchange Member pursuant to [the] By-Laws and confirmed as the nominee of Exchange Members after majority vote of Exchange Members, if applicable. A Member Representative Director may, but is not required to be, an officer, director, employee, or agent of an Exchange Member.” See MIAX EMERALD By-Laws, Article I(x). See also MIAX EMERALD By-Laws Article II, Section 2.5.

¹⁵ See MIAX EMERALD By-Laws, Article II, Section 2.2(b)(ii).

¹⁶ See MIAX EMERALD By-Laws, Article II, Section 2.4. See also MIAX EMERALD LLC Agreement, Section 9(a).

¹⁷ The Nominating Committee will be comprised of at least three directors, and the number of Non-Industry members on the Nominating Committee must equal or exceed the number of Industry members. See MIAX EMERALD By-Laws, Article V, Section 5.2. See also MIAX EMERALD By-Laws, Article IV, Section 4.2(a).

¹⁸ The Member Nominating Committee will be comprised of at least three directors, and each member of the Member Nominating Committee shall be a Member Representative member and shall not be required to be a Director of the Exchange. See MIAX EMERALD By-Laws, Article V, Section 5.3. See also MIAX EMERALD By-Laws, Article IV, Section 4.2(a). Pursuant to MIAX EMERALD By-Laws, Article I(y), a “Member Representative member” is a member of any committee or hearing panel appointed by the Exchange Board who has been elected or appointed after having been nominated by the Member Nominating Committee pursuant to the By-Laws and who is an officer, director, employee, or agent of an Exchange Member.

¹⁹ See MIAX EMERALD By-Laws, Article V, Section 5.1.

²⁰ See *id.*

directors. For Member Representative Director positions, the Nominating Committee will nominate those candidates submitted to it, and approved, by the Member Nominating Committee.²¹ Additional candidates, however, may be nominated for the Member Representative Director positions by MIAX EMERALD members pursuant to a petition process.²² If no candidates are nominated pursuant to a petition process, then the initial nominees submitted by the Member Nominating Committee will be nominated as Member Representative Directors by the Nominating Committee. If a petition process produces additional candidates, then the candidates nominated pursuant to the petition process, together with those nominated by the Member Nominating Committee, will be presented to MIAX EMERALD members for a run-off election to determine the final slate of candidates for the vacant Member Representative Director positions.²³ In the event of a contested run-off election, the candidates who receive the most votes will be nominated as the final slate of Member Representative Director candidates by the Nominating Committee.²⁴ Miami Holdings, as the sole LLC Member, is obligated to elect the final slate of the Member Representative Director candidates that are nominated by the Nominating Committee.²⁵

The Commission believes that the requirement in the MIAX EMERALD By-Laws that 20% of the directors be Member Representative Directors and the means by which they will be chosen by MIAX EMERALD members provide for the fair representation of members in the selection of directors and the administration of MIAX EMERALD and

²¹ The Member Nominating Committee will solicit comments from MIAX EMERALD members for the purpose of approving and submitting names of candidates for election to the position of Member Representative Director. See MIAX EMERALD By-Laws, Article II, Section 2.4(b).

²² See MIAX EMERALD By-Laws, Article II, Section 2.4(c). The petition must be signed by executive representatives of 10% or more of the MIAX EMERALD members. No MIAX EMERALD member, together with its affiliates, may account for more than 50% of the signatures endorsing a particular candidate. See *id.*

²³ See MIAX EMERALD By-Laws, Article II, Sections 2.4(e) and (f). Each MIAX EMERALD Member shall have the right to cast one vote for each available Member Representative Director nomination, provided that any such vote must be cast for a person on the List of Candidates and that no MIAX EMERALD member, together with its affiliates, may account for more than 20% of the votes cast for a candidate. See MIAX EMERALD By-Laws, Article II, Section 2.4(f).

²⁴ See MIAX EMERALD By-Laws, Article II, Section 2.4(f).

²⁵ See *id.*

therefore is consistent with Section 6(b)(3) of the Act.²⁶ The Commission notes that this requirement helps to ensure that members have a voice in the use of self-regulatory authority by MIAX EMERALD.²⁷

In addition, with respect to the requirement that the number of Non-Industry Directors, including at least one Independent Director, will equal or exceed the sum of the number of Industry Directors and Member Representative Directors, the Commission believes that the proposed composition of the Exchange Board satisfies the requirements in Section 6(b)(3) of the Act,²⁸ which requires in part that one or more directors be representative of issuers and investors and not be associated with a member of the exchange, or with a broker or dealer. The Commission notes that the inclusion of public, non-industry representatives on exchange oversight bodies is an important mechanism to support an exchange’s ability to protect the public interest.²⁹ Further, the presence of public, non-industry representatives can help to ensure that no single group of market participants has the ability to systematically disadvantage other market participants through the exchange governance process. The Commission believes that public, non-industry directors can provide unique, unbiased perspectives, which are designed to enhance the ability of the Exchange Board to address issues in a non-discriminatory fashion and foster the integrity of the Exchange.³⁰

2. Interim Exchange Board

Prior to commencing operations, Miami Holdings will appoint an interim Exchange board of directors (“Interim Exchange Board”), which will include

²⁶ 15 U.S.C. 78f(b)(3).

²⁷ See, e.g., MIAX PEARL Order, *supra* note 13, at 92903; MIAX Order, *supra* note 13, at 73067; Securities Exchange Act Release Nos. 76998 (January 29, 2016), 81 FR 6066, 6068 (February 4, 2016) (File No. 10–221) (order granting exchange registration of ISE Mercury, LLC) (“ISE Mercury Order”); 70050 (July 26, 2013), 78 FR 46622, 46624 (August 1, 2013) (File No. 10–209) (order granting the exchange registration of ISE Gemini, LLC) (“ISE Gemini Order”); 53128 (January 13, 2006), 71 FR 3550, 3553 (January 23, 2006) (File No. 10–131) (granting the exchange registration of Nasdaq Stock Market, Inc.) (“Nasdaq Order”); and BATS Order, *supra* note 13, at 49501.

²⁸ 15 U.S.C. 78f(b)(3).

²⁹ See, e.g., Regulation of Exchanges and Alternative Trading Systems, Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844, 70882 (December 22, 1998) (“Regulation ATS Release”).

³⁰ See MIAX PEARL Order, *supra* note 13, at 92903; MIAX Order, *supra* note 13, at 73067; BATS Order, *supra* note 13, at 49501; and Nasdaq Order, *supra* note 27, at 3553.

interim Member Representative Directors.³¹ With respect to the selection of the interim Member Representative Directors for the Interim Exchange Board, prior to the commencement of operations as an exchange, Miami Holdings will submit the names of its nominees for the interim Member Representative Directors positions to persons that have begun the process of becoming members in the new Exchange.³² Such persons and firms will be allowed 14 days to submit the names of alternative candidates.³³ Voting will occur no sooner than 5 days after the interim election notice is delivered to confirm the final slate of candidates to become an interim Member Representative Director.³⁴ All other interim directors, except for the interim Member Representative Directors, will be appointed and elected by Miami Holdings, and must meet the MIAX EMERALD board composition requirements as set forth in the MIAX EMERALD By-Laws.³⁵ Once these interim Member Representative Directors are seated on the Interim Exchange Board, then the Interim Exchange Board will meet the board composition requirements set forth in the governing documents of MIAX EMERALD.

The Interim Exchange Board will serve until the first initial Exchange Board is elected pursuant to the full nomination, petition, and voting process set forth in the MIAX EMERALD By-Laws.³⁶ MIAX EMERALD will complete such process within 90 days after its application for registration as a national securities exchange is granted by the Commission.³⁷

The Commission believes that the process for electing the Interim Exchange Board, as proposed, is consistent with the requirements of the Act, including that the rules of the exchange assure fair representation of the exchange's members in the selection of its directors and administration of its affairs.³⁸ As noted above, MIAX EMERALD represents that the initial members of MIAX EMERALD will consist substantially of the current group of persons and firms that have begun the membership application process with MIAX EMERALD.³⁹ MIAX EMERALD will engage these persons and firms in the interim board election process by, prior to the commencement of operations as an exchange, providing each of them with the opportunity to participate in the selection of interim Member Representative Directors consistent with the MIAX EMERALD By-Laws. Further, MIAX EMERALD represents that it will complete the full nomination, petition, and voting process as set forth in the MIAX EMERALD By-Laws, which will provide persons that are approved as members after the effective date of this Order with the opportunity to participate in the selection of the Member Representative Directors, within 90 days of when MIAX EMERALD's application for registration as a national securities exchange is granted.⁴⁰ Therefore, the Commission believes that MIAX EMERALD's initial interim board process is consistent with the Act, including Section 6(b)(3), in that it is designed to provide representation among the persons and firms likely to become members when MIAX EMERALD commences operations and is sufficient to allow MIAX EMERALD to commence operations for an interim period prior to going through the process to elect a new Exchange Board pursuant to the full nomination, petition, and voting process set forth in the MIAX EMERALD By-Laws.

3. Exchange Committees

In the MIAX EMERALD By-Laws, the Exchange proposed to establish several standing committees, which would be divided into two categories: Committees of the Board (composed of MIAX EMERALD directors) and Committees of the Exchange (composed of a mixture of MIAX EMERALD directors and persons that are not MIAX EMERALD

directors).⁴¹ The standing Committees of the Board would be the Audit, Compensation, Appeals, and Regulatory Oversight Committees.⁴² In addition, the Exchange Chairman, with approval of the Exchange Board, may appoint an Executive Committee and a Finance Committee, which also would be Committees of the Board.⁴³

The Audit Committee will consist of three or more directors, a majority of which will be Non-Industry Directors.⁴⁴ Each of the Compensation and Regulatory Oversight Committees will consist of three or more directors, all of which will be required to be Non-Industry Directors.⁴⁵ The Appeals Committee will consist of one Independent Director, one Industry Director, and one Member Representative Director.⁴⁶ If established, the Finance Committee will consist of at least three persons (who may, but are not required to, be directors) a majority of whom will be Non-Industry Directors.⁴⁷ The Executive Committee, if established, will consist of at least three directors. Because the Executive Committee will have the powers and authority of the Exchange Board in the management of the business and affairs of the Exchange between meetings of the Exchange Board, its composition must reflect that of the Exchange Board. Accordingly, the number of Non-Industry Directors on the Executive Committee must equal or exceed the number of Industry Directors and the percentages of Independent Directors and Member Representative Directors must be at least as great as the corresponding percentages on the Exchange Board as a whole.⁴⁸

With respect to Committees of MIAX EMERALD, the Exchange has proposed to establish a Nominating Committee⁴⁹ and a Member Nominating Committee.⁵⁰ As discussed above, these

³¹ See MIAX EMERALD By-Laws, Section 2.5.

³² See MIAX EMERALD By-Laws, Section 2.5(b). Specifically, Miami Holdings will submit the names of its nominees for the interim Member Representative Director positions to persons who have submitted the initial documents for membership in the Exchange who would meet the qualifications for membership. See MIAX EMERALD By-Laws, Section 2.5(b). MIAX EMERALD additionally represents that the initial members of MIAX EMERALD will consist substantially of the current group of persons and firms that have begun the membership application process with MIAX EMERALD. See MIAX EMERALD Form 1 Application, Exhibit J.

³³ See MIAX EMERALD By-Laws, Section 2.5(b).

³⁴ See MIAX EMERALD By-Laws, Section 2.5(d).

³⁵ See MIAX EMERALD By-Laws Section 2.5(a).

³⁶ See MIAX EMERALD By-Laws, Sections 2.2(e) and 2.5(a).

³⁷ See MIAX EMERALD By-Laws, Sections 2.5(a). The 90-day period is consistent with what the Commission approved for MIAX PEARL. See MIAX PEARL Order, *supra* note 13, at 92903 (allowing MIAX PEARL to appoint an initial interim board to enable it to commence operations as a registered exchange). See also ISE Mercury Order, *supra* note 27, at 6068; MIAX Order, *supra* note 13, at 73067; and BOX Order, *supra* note 13, at 26325.

³⁸ See 15 U.S.C. 78f(b)(3).

³⁹ See *supra* note 32.

⁴⁰ MIAX EMERALD's proposed timeline for the interim board process follows a process identical to what the Commission approved for ISE Mercury, LLC. See ISE Mercury Order, *supra* note 27, at 6068.

⁴¹ See MIAX EMERALD By-Laws, Section 4.1.

⁴² See MIAX EMERALD By-Laws, Section 4.1(a).

⁴³ See MIAX EMERALD By-Laws, Section 4.5(e) and (f), respectively.

⁴⁴ See MIAX EMERALD By-Laws, Section 4.5(b). A Non-Industry Director shall serve as Chairman of the Committee. See *id.* See also MIAX EMERALD By-Laws, Section 4.2(a) (requiring that each committee be comprised of at least three people).

⁴⁵ See MIAX EMERALD By-Laws, Section 4.5(a) and 4.5(c).

⁴⁶ See MIAX EMERALD By-Laws, Section 4.5(d).

⁴⁷ See MIAX EMERALD By-Laws, Section 4.5(f). See also MIAX EMERALD By-Laws, Section 4.2(a) (providing that except as otherwise provided in the MIAX EMERALD By-Laws, committees may include persons who are not members of the Board).

⁴⁸ See MIAX EMERALD By-Laws, Section 4.5(e).

⁴⁹ See MIAX EMERALD By-Laws, Article V, Section 5.2, and *supra* note 17.

⁵⁰ See MIAX EMERALD By-Laws, Article V, Section 5.3, and *supra* note 18.

committees will have responsibility for, among other things, nominating candidates for election to the Exchange Board. On an annual basis, the members of these committees will nominate candidates for the succeeding year's respective committees to be elected by Miami Holdings, as the sole LLC Member.⁵¹ In addition, MIAX EMERALD has proposed to establish a Quality of Markets Committee,⁵² which will provide advice and guidance to the Exchange Board on issues related to the fairness, integrity, efficiency and competitiveness of the information, order handling and execution mechanisms of the Exchange from the perspective of individual and institutional investors, retail and market making firms, and other market participants. The Quality of Markets Committee will include a broad representation of participants in the Exchange. Additionally, at least 20% of the members of the committee will be Member Representative members, and the number of Non-Industry members must equal or exceed the total number of Industry and Member Representative members. MIAX EMERALD also has proposed to establish a Business Conduct Committee, which shall be appointed by the Chairman of the Exchange Board.⁵³ Specifically, the Business Conduct Committee, which will not be a Board committee, will have a minimum of three members and will be composed of a number of individuals as determined by the Exchange Chairman, none of whom shall be Directors of MIAX EMERALD. In addition, at least one member of the Business Conduct Committee and any panel thereof must be an officer, director or employee of a MIAX EMERALD member.

The Commission believes that MIAX EMERALD's proposed committees, which are similar to the committees maintained by other exchanges,⁵⁴ are designed to help enable MIAX EMERALD to carry out its responsibilities under the Act and are consistent with the Act, including Section 6(b)(1), which requires, in part, an exchange to be so organized and have

the capacity to carry out the purposes of the Act.⁵⁵

B. Regulation of MIAX EMERALD

When MIAX EMERALD commences operations as a national securities exchange, the Exchange will have all the attendant regulatory obligations under the Act. In particular, MIAX EMERALD will be responsible for the operation and regulation of its trading system and the regulation of its members. Certain provisions in the MIAX EMERALD and Miami Holdings governance documents are designed to facilitate the ability of MIAX EMERALD and the Commission to fulfill their regulatory obligations. The discussion below summarizes some of these key provisions.

1. Ownership Structure: Ownership and Voting Limitations

MIAX EMERALD will be structured as a Delaware limited liability company, which will be wholly owned by the sole member of the LLC, Miami Holdings. The Miami Holdings' proposed Amended and Restated Certificate of Incorporation ("Miami Holdings Certificate") includes restrictions on the ability to own and vote shares of capital stock of Miami Holdings.⁵⁶ These limitations are designed to prevent any Miami Holdings shareholder from exercising undue control over the operation of MIAX EMERALD and to assure that MIAX EMERALD and the Commission are able to carry out their regulatory obligations under the Act.

In particular, for so long as Miami Holdings (directly or indirectly) controls MIAX EMERALD, no person, either alone or together with its related persons,⁵⁷ may beneficially own more than 40% of any class of capital stock of Miami Holdings.⁵⁸ There would be a more conservative restriction for MIAX EMERALD members, wherein MIAX EMERALD members, either alone or

together with their related persons, are prohibited from beneficially owning more than 20% of shares of any class of capital stock of Miami Holdings.⁵⁹ If any stockholder violates these ownership limits, Miami Holdings would redeem the shares in excess of the applicable ownership limit at their par value.⁶⁰ In addition, no person, alone or together with its related persons, may vote or cause the voting of more than 20% of the voting power of the then issued and outstanding capital stock of Miami Holdings.⁶¹ If any stockholder purports to vote, or cause the voting of, shares that would violate this voting limit, Miami Holdings would not honor such vote in excess of the voting limit.⁶²

Any person that proposes to own shares of capital stock in excess of the 40% ownership limitation, or vote or grant proxies or consents with respect to shares of capital stock in excess of the 20% voting limitation, must deliver written notice to the Miami Holdings board to notify the Board of its intention.⁶³ The notice must be delivered to the Board not less than 45 days before the proposed ownership of such shares or proposed exercise of such voting rights or the granting of such proxies or consents.⁶⁴ The Miami Holdings board may waive the 40% ownership limitation and the 20% voting limitation, pursuant to a resolution duly adopted by the Board of Directors, if it makes certain findings,⁶⁵

⁵⁹ See Miami Holdings Certificate, Article NINTH (b)(i)(B).

⁶⁰ See Miami Holdings Certificate, Article NINTH (e). Any shares which have been called for redemption shall not be deemed outstanding shares for the purpose of voting or determining the total number of shares entitled to vote. Once redeemed by Miami Holdings, such shares shall become treasury shares and shall no longer be deemed to be outstanding. See *id.* Furthermore, if any redemption results in another stockholder owning shares in violation of the ownership limits described above, Miami Holdings shall redeem such shares. See *id.*

⁶¹ See Miami Holdings Certificate, Article NINTH (b)(i)(C).

⁶² See Miami Holdings Certificate, Article NINTH (d). The Miami Holdings Certificate also prohibits the payment of any stock dividends and conversions that would violate the ownership and voting limitations. See Miami Holdings Certificate, Article FOURTH A.(b) and (e), and D.7.

⁶³ See Miami Holdings Certificate, Article NINTH (b)(iv).

⁶⁴ See *id.*

⁶⁵ See Miami Holdings Certificate, Article NINTH (b)(ii)(B). The required findings include determinations that (A) such waiver will not impair the ability of MIAX EMERALD to carry out its functions and responsibilities under the Act and the rules and regulations promulgated thereunder, (B) such waiver is otherwise in the best interests of MIAX EMERALD and Miami Holdings, (C) such waiver will not impair the ability of the Commission to enforce the Act and (D) the transferee in such transfer and its related persons are not subject to any applicable "statutory

⁵¹ See MIAX EMERALD By-Laws, Article V, Section 5.1, and *supra* note 20. Additional candidates for the Member Nominating Committee may be nominated and elected by MIAX EMERALD members pursuant to a petition process. See *supra* note 22 and accompanying text.

⁵² See MIAX EMERALD By-Laws, Article IV, Section 4.6.

⁵³ See MIAX EMERALD By-Laws, Article IV, Section 4.7.

⁵⁴ See, e.g., MIAX PEARL Order, MIAX Order, and BATS Order, *supra* note 13, and ISE Mercury Order, ISE Gemini Order, and Nasdaq Order, *supra* note 27.

⁵⁵ 15 U.S.C. 78f(b)(1).

⁵⁶ These provisions are consistent with ownership and voting limits approved by the Commission for other SROs. See, e.g., ISE Mercury Order and ISE Gemini Order, *supra* note 27; MIAX PEARL Order, MIAX Order, and BATS Order, *supra* note 13. See also Securities Exchange Act Release Nos. 78101 (June 17, 2016), 81 FR 41141 (June 23, 2016) (File No. 10-222) (order granting the registration of Investors' Exchange, LLC); 62158 (May 24, 2010), 75 FR 30082 (May 28, 2010) (CBOE-2008-88) ("CBOE Demutualization Approval Order"); 53963 (June 8, 2006), 71 FR 34660 (June 15, 2006) (SR-NSX-2006-03) ("NSX Demutualization Order"); 51149 (February 8, 2005), 70 FR 7531 (February 14, 2005) (SR-CHX-2004-26) ("CHX Demutualization Order"); and 49098 (January 16, 2004), 69 FR 3974 (January 27, 2004) (SR-Phlx-2003-73) ("Phlx Demutualization Order").

⁵⁷ See Miami Holdings Certificate, Article NINTH (a)(ii) (defining "related persons").

⁵⁸ See Miami Holdings Certificate, Article NINTH (b)(i)(A).

except that the Miami Holdings board cannot waive the voting and ownership limits above 20% for MIAX EMERALD members and their related persons.⁶⁶ Any such waiver would not be effective unless and until approved by the Commission pursuant to Section 19 of the Act.⁶⁷

The Miami Holdings Certificate also contains provisions that are designed to further safeguard the ownership and voting limitation described above, or are otherwise related to direct and indirect changes in control. Specifically, any person that, either alone or together with its related persons owns, directly or indirectly, of record or beneficially, 5% or more of the capital stock of Miami Holdings will be required to immediately notify Miami Holdings in writing upon acquiring knowledge of such ownership.⁶⁸ Thereafter, such persons will be required to update Miami Holdings of any increase or decrease of 1% or more in their previously reported ownership percentage.⁶⁹

disqualification” (within the meaning of Section 3(a)(39) of the Act). See Miami Holdings Certificate, Article NINTH (b)(ii)(B) and (b)(iii). The Commission has previously approved the rules of other exchanges that provide for the ability of the exchange to waive the ownership and voting limitations discussed above for non-members of the exchange. See, e.g., ISE Mercury Order and ISE Gemini Order, *supra* note 27; MIAX PEARL Order and MIAX Order, *supra* note 13; and Securities Exchange Act Release No. 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010) (File Nos. 10–194 and 10–196) (order approving DirectEdge exchanges) (“DirectEdge Exchanges Order”).

⁶⁶ See Miami Holdings Certificate, Article NINTH (b)(ii)(B). These provisions are generally consistent with waiver of ownership and voting limits approved by the Commission for other SROs. See, e.g., ISE Mercury Order, *supra* note 27; MIAX PEARL Order and MIAX Order, *supra* note 13; BATS Order, *supra* note 13; NSX Demutualization Order, *supra* note 56; CHX Demutualization Order, *supra* note 56; and Securities Exchange Act Release No. 49718 (May 17, 2004), 69 FR 29611 (May 24, 2004) (SR–PCX–2004–08).

⁶⁷ See Miami Holdings Certificate, Article NINTH (b)(ii)(B).

⁶⁸ See Miami Holdings Certificate, Article NINTH(c)(i). The notice will require the person’s full legal name; the person’s title or status; the person’s approximate ownership interest in Miami Holdings; and whether the person has power, directly or indirectly, to direct the management or policies of Miami Holdings. See *id.*

⁶⁹ See Miami Holdings Certificate, Article NINTH(c)(ii). Changes of less than 1% must also be reported to Miami Holdings if they result in such person crossing a 20% or 40% ownership threshold. See *id.* In addition, the MIAX EMERALD rules also impose limits on affiliation between MIAX EMERALD and a member of MIAX EMERALD. See MIAX EMERALD Rule 201(g) (“Without prior Commission approval, the Exchange or any entity with which it is affiliated shall not directly or indirectly through one or more intermediaries acquire or maintain an ownership interest in an Exchange Member. In addition, without prior Commission approval, no Member shall be or become affiliated with (1) the Exchange; or (2) any affiliate of the Exchange. Nothing herein

The MIAX EMERALD LLC Agreement does not include change of control provisions that are similar to those in the Miami Holdings Certificate; however the MIAX EMERALD LLC Agreement explicitly provides that Miami Holdings is the sole LLC Member of MIAX EMERALD.⁷⁰ Thus, if Miami Holdings ever proposes to no longer be the sole LLC Member of MIAX EMERALD (and therefore no longer its sole owner), MIAX EMERALD would be required to amend the MIAX EMERALD LLC Agreement and the MIAX EMERALD By-Laws. Any changes to the MIAX EMERALD LLC Agreement or the MIAX EMERALD By-Laws, including any change in the provisions that identify Miami Holdings as the sole owner of MIAX EMERALD, must be filed with, or filed with and approved by, the Commission pursuant to Section 19 of the Act, as the case may be.⁷¹ Further, pursuant to the MIAX EMERALD By-Laws, Miami Holdings may not transfer or assign, in whole or in part, its ownership interest in MIAX EMERALD, unless such transfer is filed with and approved by the Commission pursuant to Section 19 of the Act.⁷²

As described above, the provisions applicable to direct and indirect changes in control of Miami Holdings and MIAX EMERALD, as well as the voting limitation imposed on owners of Miami Holdings who also are MIAX EMERALD members, are designed to help prevent any owner of Miami Holdings from exercising undue influence or control over the operation of MIAX EMERALD. In addition, these limitations are designed to address the conflicts of interests that might result from a member of a national securities exchange owning interests in the exchange. A member’s interest in an exchange, including an entity that controls an exchange, could become so large as to cast doubts on whether the exchange may fairly and objectively exercise its self-regulatory responsibilities with respect to such member.⁷³ A member that is a

shall prohibit a Member from acquiring or holding an equity interest in (i) Miami International Holdings, Inc. that is permitted by the Certificate of Incorporation of Miami International Holdings, Inc. or (ii) MIAX Emerald that is permitted by the Amended and Restated Limited Liability Company Agreement of MIAX Emerald.”).

⁷⁰ See MIAX EMERALD LLC Agreement and MIAX EMERALD By-Laws, Article I(v) (both of which define “LLC Member” to mean Miami Holdings, as the sole member of MIAX EMERALD).

⁷¹ See 15 U.S.C. 78s. See also MIAX EMERALD LLC Agreement, Section 28(b).

⁷² See MIAX EMERALD By-Laws, Article III, Section 3.4.

⁷³ See, e.g., ISE Mercury Order, *supra* note 27; MIAX PEARL Order and MIAX Order, *supra* note

controlling shareholder of an exchange could seek to exercise that controlling influence by directing the exchange to refrain from, or the exchange may hesitate to, diligently monitor and conduct surveillance of the member’s conduct or diligently enforce the exchange’s rules and the federal securities laws with respect to conduct by the member that violates such provisions. As such, the Commission believes that these voting and ownership limitations are designed to minimize the potential that a person or entity can improperly interfere with or restrict the ability of MIAX EMERALD to effectively carry out its regulatory oversight responsibilities under the Act.

The Commission believes that MIAX EMERALD’s and Miami Holding’s proposed governance provisions are consistent with the Act, including Section 6(b)(1), which requires, in part, an exchange to be so organized and have the capacity to carry out the purposes of the Act.⁷⁴ In particular, these requirements are designed to minimize the potential that a person could improperly interfere with or restrict the ability of the Commission or MIAX EMERALD to effectively carry out their regulatory oversight responsibilities under the Act.

2. Regulatory Independence and Oversight

Although Miami Holdings will not itself carry out regulatory functions, its activities with respect to the operation of MIAX EMERALD must be consistent with, and must not interfere with, MIAX EMERALD’s self-regulatory obligations. In this regard, MIAX EMERALD and Miami Holdings propose to adopt certain provisions in their respective governing documents that are designed to help maintain the independence of the regulatory functions of MIAX EMERALD. These proposed provisions are substantially similar to those included in the governing documents of other exchanges that recently have been granted registration.⁷⁵ Specifically:

- The directors, officers, employees, and agents of Miami Holdings must give due regard to the preservation of the independence of the self-regulatory function of MIAX EMERALD and must

13; BATS Order, *supra* note 13; and DirectEdge Exchanges Order, *supra* note 65.

⁷⁴ 15 U.S.C. 78f(b)(1). See also ISE Mercury Order, *supra* note 27; MIAX PEARL Order and MIAX Order, *supra* note 13; and BOX Order, *supra* note 13.

⁷⁵ See, e.g., DirectEdge Exchanges Order, *supra* note 65, and BATS Order, *supra* note 13. See also Securities Exchange Act Release No. 61152 (December 10, 2009), 74 FR 66699 (December 16, 2009) (File No. 10–191) (order approving C2 Options Exchange, Incorporated) (“C2 Order”).

not take actions that would interfere with the effectuation of decisions by the MIAX EMERALD Board relating to its regulatory functions or that would interfere with MIAX EMERALD's ability to carry out its responsibilities under the Act.⁷⁶

- Miami Holdings must comply with federal securities laws and the rules and regulations promulgated thereunder, and agrees to cooperate with the Commission and MIAX EMERALD pursuant to, and to the extent of, their respective regulatory authority. In addition, Miami Holdings' officers, directors, employees, and agents must comply with federal securities laws and the rules and regulations promulgated thereunder and agree to cooperate with the Commission and MIAX EMERALD in respect of the Commission's oversight responsibilities regarding MIAX EMERALD and the self-regulatory functions and responsibilities of MIAX EMERALD.⁷⁷

- Miami Holdings, and its officers, directors, employees, and agents are deemed to irrevocably submit to the jurisdiction of the U.S. federal courts, the Commission, and MIAX EMERALD, for purposes of any action, suit, or proceeding pursuant to U.S. federal securities laws, and the rules and regulations thereunder, arising out of, or relating to, MIAX EMERALD activities.⁷⁸

- All books and records of MIAX EMERALD reflecting confidential information pertaining to the self-regulatory function of MIAX EMERALD (including but not limited to disciplinary matters, trading data, trading practices, and audit information) shall be retained in confidence by MIAX

EMERALD and its personnel and will not be used by MIAX EMERALD for any non-regulatory purpose and shall not be made available to persons (including, without limitation, any MIAX EMERALD member) other than to personnel of the Commission, and those personnel of MIAX EMERALD, members of committees of MIAX EMERALD, members of the MIAX EMERALD Board, or hearing officers and other agents of MIAX EMERALD, to the extent necessary or appropriate to properly discharge the self-regulatory function of MIAX EMERALD.⁷⁹

- The books and records of MIAX EMERALD and Miami Holdings must be maintained in the United States⁸⁰ and, to the extent they are related to the operation or administration of MIAX EMERALD, Miami Holdings books and records will be subject at all times to inspection and copying by the Commission.⁸¹

- Furthermore, to the extent they relate to the activities of MIAX EMERALD, the books, records, premises, officers, directors, employees, and agents of Miami Holdings will be deemed to be the books, records, premises, officers, directors, employees, and agents of MIAX EMERALD, for purposes of, and subject to oversight pursuant to, the Act.⁸²

- Miami Holdings will take necessary steps to cause its officers, directors, employees, and agents, prior to accepting a position as an officer, director, employee or agent (as applicable) to consent in writing to the applicability of provisions regarding books and records, confidentiality, jurisdiction, and regulatory obligations, with respect to their activities related to MIAX EMERALD.⁸³

- Miami Holdings Certificate and By-Laws require that, so long as Miami Holdings controls MIAX EMERALD, any changes to those documents be

submitted to the MIAX EMERALD Board, and, if such change is required to be filed with the Commission pursuant to Section 19(b) of the Act and the rules and regulations thereunder, such change shall not be effective until filed with, or filed with and approved by, the Commission.⁸⁴

The Commission believes that the provisions discussed in this section, which are designed to help maintain the independence of MIAX EMERALD's regulatory function and help facilitate the ability of MIAX EMERALD to carry out its regulatory responsibilities and operate in a manner consistent with the Act, are appropriate and consistent with the requirements of the Act, particularly with Section 6(b)(1), which requires, in part, an exchange to be so organized and have the capacity to carry out the purposes of the Act.⁸⁵ Whether MIAX EMERALD operates in compliance with the Act, however, depends on how it and Miami Holdings in practice implement the governance and other provisions that are the subject of this Order.

Further, Section 19(h)(1) of the Act⁸⁶ provides the Commission with the authority "to suspend for a period not exceeding twelve months or revoke the registration of [an SRO], or to censure or impose limitations upon the activities, functions, and operations of [an SRO], if [the Commission] finds, on the record after notice and opportunity for hearing, that [the SRO] has violated or is unable to comply with any provision of the Act, the rules or regulations thereunder, or its own rules or without reasonable justification or excuse has failed to enforce compliance" with any such provision by its members (including associated persons thereof).⁸⁷ If Commission staff were to find, or become aware of, through staff review and inspection or otherwise, facts indicating any violations of the Act, including without limitation Sections 6(b)(1) and 19(g)(1), these matters could provide the basis for a disciplinary proceeding under Section 19(h)(1) of the Act.

The Commission also notes that, even in the absence of the governance provisions described above, under Section 20(a) of the Act, any person with a controlling interest in MIAX EMERALD would be jointly and severally liable with and to the same extent that MIAX EMERALD is liable

⁷⁶ See Amended and Restated By-Laws of Miami Holdings ("Miami Holdings By-Laws"), Article VII, Section 1.

Similarly, Article II, Section 2.1(d) of the MIAX EMERALD By-Laws requires the MIAX EMERALD Board to, when managing the business and affairs of MIAX EMERALD and evaluating any proposal, consider the requirements of Section 6(b) of the Act. Section 2.1(e) also requires the MIAX EMERALD Board, when evaluating any proposal to take into account (among other things and to the extent relevant), the potential impact on the integrity, continuity and stability of the national securities exchange operated by MIAX EMERALD and the other operations of MIAX EMERALD, on the ability to prevent fraudulent and manipulative acts and practices and on investors and the public, and whether such would promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities or assist in the removal of impediments to or perfection of the mechanisms for a free and open market and a national market system.

⁷⁷ See Miami Holdings By-Laws, Article VII, Section 4.

⁷⁸ See Miami Holdings By-Laws, Article VII, Section 5.

⁷⁹ See MIAX EMERALD By-Laws Article X, Section 10.4. The Commission notes that the Miami Holdings By-Laws also provide that all books and records of MIAX EMERALD reflecting confidential information pertaining to the self-regulatory function of MIAX EMERALD will be subject to confidentiality restrictions. See Miami Holdings By-Laws Article VII, Section 2. The requirement to keep such information confidential shall not limit the Commission's ability to access and examine such information or limit the ability of officers, directors, employees, or agent of Miami Holdings to disclose such information to the Commission. See *id.*

⁸⁰ See MIAX EMERALD By-Laws, Article X, Section 10.4; and Miami Holdings By-Laws, Article VII, Section 3.

⁸¹ See Miami Holdings By-Laws, Article VII, Section 3.

⁸² See Miami Holdings By-Laws, Article VII, Section 3.

⁸³ See Miami Holdings By-Laws, Article VII, Section 6.

⁸⁴ See Miami Holdings Certificate, Article VIII; and Miami Holdings By-Laws, Article XII, Section 1.

⁸⁵ 15 U.S.C. 78f(b)(1).

⁸⁶ See 15 U.S.C. 78s(h)(1).

⁸⁷ See *id.*

under any provision of the Act, unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action.⁸⁸ In addition, Section 20(e) of the Act creates aiding and abetting liability for any person who knowingly provides substantial assistance to another person in violation of any provision of the Act or rule thereunder.⁸⁹ Further, Section 21C of the Act authorizes the Commission to enter a cease-and-desist order against any person who has been “a cause of” a violation of any provision of the Act through an act or omission that the person knew or should have known would contribute to the violation.⁹⁰ These provisions are applicable to all entities’ dealings with MIAX EMERALD, including Miami Holdings.

3. Regulation of MIAX EMERALD

As a prerequisite to the Commission’s granting of an exchange’s application for registration, an exchange must be so organized and have the capacity to carry out the purposes of the Act.⁹¹ Specifically, an exchange must be able to enforce compliance by its members, and persons associated with its members, with the Act and the rules and regulations thereunder and the rules of the exchange.⁹² The discussion below summarizes how MIAX EMERALD proposes to structure and conduct its regulatory operations.

a. Regulatory Oversight Committee

The regulatory operations of MIAX EMERALD will be monitored by the Regulatory Oversight Committee of the Exchange Board. The Regulatory Oversight Committee will consist of at least three directors, all of whom will be Non-Industry Directors. The Regulatory Oversight Committee will be responsible for overseeing the adequacy and effectiveness of MIAX EMERALD’s regulatory and SRO responsibilities, assessing MIAX EMERALD’s regulatory performance, and assisting the Exchange Board (and committees of the Exchange Board) in reviewing MIAX EMERALD’s regulatory plan and the overall effectiveness of MIAX EMERALD’s regulatory functions.⁹³

Further, a Chief Regulatory Officer (“CRO”) of MIAX EMERALD will have general supervision over MIAX EMERALD’s regulatory operations.⁹⁴ The Regulatory Oversight Committee also will be responsible for recommending compensation and personnel actions involving the CRO and senior regulatory personnel to the Compensation Committee of MIAX EMERALD for action.⁹⁵ The CRO will report to the Regulatory Oversight Committee.⁹⁶

b. Regulatory Funding

To help assure the Commission that it has and will continue to have adequate funding to be able to meet its responsibilities under the Act, MIAX EMERALD represents in its Form 1 Application that, prior to beginning operations as a national securities exchange, Miami Holdings will provide sufficient funding to MIAX EMERALD for the exchange to carry out its responsibilities under the Act.⁹⁷ Specifically, MIAX EMERALD represents that Miami Holdings has allocated sufficient operational assets to enable its operation and that prior to launching operations, Miami Holdings will make a capital contribution of not less than \$5,000,000 into MIAX EMERALD’s capital account, in addition to any previously-provided in-kind contributions, such as legal, regulatory, and infrastructure-related services.⁹⁸ MIAX EMERALD represents that such cash and in-kind contributions by Miami Holdings will be adequate to begin operation of the Exchange, including the regulation of the Exchange.

MIAX EMERALD also represents in its Form 1 application that there is a written agreement (“Funding Agreement”) between MIAX EMERALD and Miami Holdings that requires Miami Holdings to provide adequate funding for MIAX EMERALD’s ongoing operations, including the regulation of MIAX EMERALD. This Funding Agreement provides that MIAX EMERALD will receive all fees, including regulatory fees and trading fees, payable by MIAX EMERALD’s members, as well as any funds received from any applicable market data fees and Options Price Reporting Authority tape revenue. The Funding Agreement

further provides that Miami Holdings will reimburse MIAX EMERALD for its costs and expenses to the extent MIAX EMERALD’s assets are insufficient to meet its costs and expenses.⁹⁹ Based on the various financial statements for 2016 through 2018 that MIAX EMERALD has filed as part of its Form 1 for itself, its affiliates, and Miami Holdings, the Commission believes that the Funding Agreement appropriately will facilitate the ability of MIAX EMERALD to commence and continue operations.

Further, any revenues received by MIAX EMERALD from fees derived from its regulatory function or regulatory penalties will not be used for non-regulatory purposes.¹⁰⁰ Any excess funds, as determined by MIAX EMERALD, may be remitted to Miami Holdings, however “Regulatory Funds” will not be remitted to Miami Holdings.¹⁰¹

c. Rule 17d–2 Agreements; Regulatory Contract With FINRA

Unless the SRO is relieved of this responsibility pursuant to Section 17(d) or Section 19(g)(2) of the Act,¹⁰² Section 19(g)(1) of the Act, among other things, requires every SRO registered as a national securities exchange, absent reasonable justification or excuse, to enforce compliance by its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO’s own rules.¹⁰³ Section 17(d) of the Act and Rule 17d–2 thereunder permit SROs to propose joint plans to allocate regulatory responsibilities among themselves for their common rules with respect to their common members.¹⁰⁴ These

⁹⁹ See *id.*

¹⁰⁰ See MIAX EMERALD By-Laws, Article IX, Section 9.4.

¹⁰¹ See MIAX EMERALD Form 1 Application, Exhibit I. See also MIAX EMERALD LLC Agreement, Section 16; and MIAX EMERALD By-Laws, Article IX, Section 9.4. MIAX EMERALD By-Laws, Article 1(gg) defines “Regulatory Funds” as “fees, fines, or penalties derived from the regulatory operations of [MIAX EMERALD]”, but such term does not include “revenues derived from listing fees, market data revenues, transaction revenues, or any other aspect of the commercial operations of [MIAX EMERALD], even if such revenues are used to pay costs associated with the regulatory operations of [MIAX EMERALD].” This definition is consistent with the rules of other SROs. See, e.g., By-Laws of MIAX Exchange, Article I(ii); By-Laws of MIAX PEARL, Article 1(gg); By-Laws of Nasdaq PHLX LLC, Article I(ii); and By-Laws of Nasdaq BX, Inc., Article I(ii).

¹⁰² 15 U.S.C. 78q(d) and 15 U.S.C. 78s(g)(2), respectively.

¹⁰³ 15 U.S.C. 78s(g)(1).

¹⁰⁴ See Section 17(d)(1) of the Act and Rule 17d–2 thereunder, 15 U.S.C. 78q(d)(1) and 17 CFR 240.17d–2. Section 17(d)(1) of the Act allows the Commission to relieve an SRO of certain responsibilities with respect to members of the SRO

⁸⁸ 15 U.S.C. 78t(a).

⁸⁹ 15 U.S.C. 78t(e).

⁹⁰ 15 U.S.C. 78u–3.

⁹¹ See Section 6(b)(1) of the Act, 15 U.S.C. 78f(b)(1).

⁹² See *id.* See also Section 19(g) of the Act, 15 U.S.C. 78s(g).

⁹³ See MIAX EMERALD By-Laws, Article IV, Section 4.5(c). The Regulatory Oversight Committee is responsible for reviewing MIAX EMERALD’s regulatory budget, and also will meet regularly with the Chief Regulatory Officer. See *id.*

⁹⁴ See MIAX EMERALD By-Laws, Article VI, Section 6.10.

⁹⁵ See MIAX EMERALD By-Laws, Article IV, Section 4.5(c).

⁹⁶ See MIAX EMERALD By-Laws, Article VI, Section 6.10.

⁹⁷ See MIAX EMERALD Form 1 Application, Exhibit I.

⁹⁸ See *id.*

agreements, which must be filed with and declared effective by the Commission, generally cover areas where each SRO's rules substantively overlap, including such regulatory functions as personnel registration and sales practices. Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO.¹⁰⁵ Such regulatory duplication would add unnecessary expense for common members and their SROs. A 17d-2 plan that is declared effective by the Commission relieves the specified SRO of those regulatory responsibilities allocated by the plan to another SRO.¹⁰⁶ Many SROs have entered into Rule 17d-2 agreements.¹⁰⁷

A 17d-2 plan that is declared effective by the Commission relieves the specified SRO of those regulatory responsibilities allocated by the plan to another SRO.¹⁰⁸ MIAx EMERALD has represented to the Commission that it intends to become a party to the existing multiparty options Rule 17d-2 plans concerning sales practice regulation and market surveillance.¹⁰⁹ MIAx

who are also members of another SRO. Specifically, Section 17(d)(1) allows the Commission to relieve an SRO of its responsibilities to: (i) Receive regulatory reports from such members; (ii) examine such members for compliance with the Act and the rules and regulations thereunder, and the rules of the SRO; or (iii) carry out other specified regulatory responsibilities with respect to such members.

¹⁰⁵ Section 17(d) was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication with respect to Common Members. See Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976).

¹⁰⁶ See *id.*

¹⁰⁷ See, e.g., Securities Exchange Act Release Nos. 83696 (July 24, 2018), 83 FR 35682 (July 27, 2018) (Financial Industry Regulatory Authority, Inc. ("FINRA")/MIAx PEARL); 77321 (March 8, 2016), 81 FR 13434 (March 14, 2016) (File No. 4-697) (FINRA/ISE Mercury, LLC), 73641 (November 19, 2014), 79 FR 70230 (November 25, 2014) (File No. 4-678) (FINRA/MIAx Exchange); 70053 (July 26, 2013), 78 FR 46656 (August 1, 2013) (File No. 4-663) (FINRA/ISE Gemini, LLC); 59218 (January 8, 2009), 74 FR 2143 (January 14, 2009) (File No. 4-575) (FINRA/Boston Stock Exchange, Inc.); 58818 (October 20, 2008), 73 FR 63752 (October 27, 2008) (File No. 4-569) (FINRA/BATS Exchange, Inc.); 55755 (May 14, 2007), 72 FR 28087 (May 18, 2007) (File No. 4-536) (National Association of Securities Dealers, Inc. ("NASD") (n/k/a FINRA) and Chicago Board of Options Exchange, Inc. concerning the CBOE Stock Exchange, LLC); 55367 (February 27, 2007), 72 FR 9983 (March 6, 2007) (File No. 4-529) (NASD/International Securities Exchange, LLC); and 54136 (July 12, 2006), 71 FR 40759 (July 18, 2006) (File No. 4-517) (NASD/The Nasdaq Stock Market LLC).

¹⁰⁸ See *supra* notes 104–105.

¹⁰⁹ See MIAx EMERALD Form 1 Application, Exhibit L. See also Securities Exchange Act Release No. 68363 (December 5, 2012), 77 FR 73711 (December 11, 2012) (File No. S7-966) (notice of filing and order approving and declaring effective an amendment to the multiparty 17d-2 plan

EMERALD has also represented that it will enter into a bi-lateral 17d-2 agreement to allocate regulatory responsibility to FINRA for common rules of dual members between MIAx EMERALD and FINRA. Under these agreements, the examining SROs will examine firms that are common members of MIAx EMERALD and the particular examining SRO for compliance with certain provisions of the Act, certain rules and regulations adopted thereunder, and certain MIAx EMERALD Rules.

In addition, MIAx EMERALD has represented that it will enter into a Regulatory Services Agreement ("RSA") with FINRA, under which FINRA will perform certain regulatory functions on behalf of MIAx EMERALD.¹¹⁰ Pursuant to the RSA, FINRA, in its capacity as service provider to MIAx EMERALD, will perform various services on MIAx EMERALD's behalf, including assisting MIAx EMERALD with member registration and related administrative support services; certain cross-market surveillance services; certain options trading examinations; at MIAx EMERALD's request, investigating potential violations of enumerated MIAx EMERALD market rules, as well as federal securities laws, and rules and regulations thereunder, related to MIAx EMERALD market activity; performing examinations of options, including routine and for cause examinations of MIAx EMERALD members under certain MIAx EMERALD rules and federal securities laws; bringing formal disciplinary actions, including hearing officer services; and providing dispute resolution services to MIAx EMERALD member firms.¹¹¹ Notwithstanding the RSA, MIAx EMERALD, as an SRO, has the ultimate legal responsibility for the regulation of its members and market.

The Commission believes that it is consistent with the Act for MIAx EMERALD to contract with other SROs to perform certain examination, enforcement, and disciplinary functions.¹¹² This regulatory structure

concerning options-related sales practice matters); and 68362 (December 5, 2012), 77 FR 73719 (December 11, 2012) (File No. 4-551) (notice of filing and order approving and declaring effective an amendment to the multiparty 17d-2 plan concerning options-related market surveillance).

¹¹⁰ See MIAx EMERALD Form 1 Application, Exhibit L.

¹¹¹ See *id.*

¹¹² See, e.g., Regulation ATS Release, *supra* note 29. See also Securities Exchange Act Release Nos. 50122 (July 29, 2004), 69 FR 47962 (August 6, 2004) (SR-Amex-2004-32) (order approving rule that allowed Amex to contract with another SRO for regulatory services) ("Amex Regulatory Services

would be consistent with that of other SROs.¹¹³ These functions are fundamental elements of a regulatory program, and constitute core self-regulatory functions. The Commission believes that FINRA, as an SRO that provides contractual services to other SROs, should have the capacity to perform these functions for MIAx EMERALD.¹¹⁴ However, MIAx EMERALD, unless relieved by the Commission of its responsibility,¹¹⁵ bears the ultimate responsibility for self-regulatory responsibilities and primary liability for self-regulatory failures, not the SRO retained to perform regulatory functions on MIAx EMERALD's behalf. In performing these regulatory functions, however, the SRO retained to perform regulatory functions may nonetheless bear liability for causing or aiding and abetting the failure of MIAx EMERALD to perform its regulatory functions.¹¹⁶ Accordingly, although FINRA will not act on its own behalf in carrying out these regulatory services for MIAx EMERALD, as the SRO retained to perform certain regulatory functions, FINRA may have secondary liability if, for example, the Commission finds that the contracted functions are being performed so inadequately as to cause a violation of the federal securities laws by MIAx EMERALD.

C. Trading System

1. Access to MIAx EMERALD

Access to MIAx EMERALD will be granted to individuals or organizations who are approved to become Members.¹¹⁷ Approved Members will be

Approval Order"); 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR-NASDAQ-2007-004) ("NOM Approval Order"); Nasdaq Order, *supra* note 27; and BATS Order, *supra* note 13.

¹¹³ For example, MIAx Exchange, MIAx PEARL, Nasdaq MRX, LLC, Cboe EDGA Exchange, Inc., Cboe EDGX Exchange Inc., and Cboe BZX Exchange, Inc. have entered into 17d-2 Plans and RSAs with FINRA.

¹¹⁴ See, e.g., Amex Regulatory Services Approval Order, *supra* note 112; NOM Approval Order, *supra* note 112; and Nasdaq Order, *supra* note 27. The Commission notes that the RSA is not before the Commission and, therefore, the Commission is not acting on it.

¹¹⁵ See *supra* note 104.

¹¹⁶ For example, if failings by the SRO retained to perform regulatory functions have the effect of leaving an exchange in violation of any aspect of the exchange's self-regulatory obligations, the exchange will bear direct liability for the violation, while the SRO retained to perform regulatory functions may bear liability for causing or aiding and abetting the violation. See, e.g., Nasdaq Order, *supra* note 27; BATS Order, *supra* note 13; and Release No. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000) (File No. 10-127) (approval of registration of International Securities Exchange Act, LLC as a national securities exchange).

¹¹⁷ A "Member" is defined as an individual or organization approved to exercise the trading rights associated with a Trading Permit. MIAx EMERALD

issued Trading Permits that grant the Member the ability to transact on MIAX EMERALD through its electronic systems.¹¹⁸ Trading Permits will not convey upon Members any ownership interest in MIAX EMERALD, and they will not be transferable except in cases where a Member experiences a change in control or corporate reorganization.¹¹⁹ Membership will be open to any broker-dealer that: (1) Is registered under Section 15 of the Act;¹²⁰ and (2) has and maintains membership in another registered options exchange (other than MIAX Exchange or MIAX PEARL) or FINRA.¹²¹ As explained below, a holder of a MIAX Exchange or MIAX PEARL trading permit will not be required to submit a full application for membership on MIAX EMERALD.¹²² There will be no limit to the number of Trading Permits that MIAX EMERALD can issue, although MIAX could determine in the future a limit or decrease in the number of Trading Permits issued.¹²³ Members of MIAX

Members are “members” as defined under the Act. See MIAX EMERALD Rule 100. A “Trading Permit” means a permit issued by the Exchange that confers the ability to transact on the Exchange. *Id.*

¹¹⁸ See MIAX EMERALD Rule 200(a). MIAX EMERALD represents that it has designed its systems to allow its Members to individually determine the best method for accessing the Exchange, whether by using customized front-end software using protocols determined by the Exchange or through third-party vendors who route orders to MIAX EMERALD through a front-end or service bureau configuration. See MIAX EMERALD Form 1 Application, Exhibit E.

¹¹⁹ See MIAX EMERALD Rule 200(e).

¹²⁰ See MIAX EMERALD Rule 200(b).

¹²¹ See MIAX EMERALD Rule 200(d). If such other options exchange has not been designated by the Commission to examine Members for compliance with financial responsibility rules, then the broker-dealer must have and maintain a membership in FINRA. *Id.*

¹²² See MIAX EMERALD Rule 200(c) and *infra* notes 127–128 and accompanying text.

¹²³ See MIAX EMERALD Rule 200(a). MIAX EMERALD would announce in advance any limitation or decrease it plans to impose pursuant to Rule 200(a). See *id.* In the event that MIAX EMERALD imposes a limitation or decrease, MIAX EMERALD, in doing so, may not eliminate the ability of an existing member to trade on the Exchange unless MIAX EMERALD is permitted to do so pursuant to a rule filing submitted to the Commission under Section 19(b) of the Act. See *id.* In addition, MIAX EMERALD’s exercise of authority under proposed Rule 200 would be subject to the provisions of Section 6(c)(4) of the Act. See *id.* See also Cboe Exchange, Inc. (“Cboe”) Rule 3.1(a)(vi); MIAX Exchange Rule 200(a) (concerning limiting or reducing the number of trading permits); and MIAX PEARL Rule 200(a) (concerning limiting or reducing the number of trading permits). Further, MIAX EMERALD’s exercise of authority under proposed Rule 200 would be subject to the provisions of Section 6(b)(2) of the Act, which requires the rules of an exchange to provide that any registered broker or dealer or any natural person associated with a registered broker or dealer may become a member of such exchange and any person may become associated with a member thereof. See 15 U.S.C. 78f(b)(2).

EMERALD may be one of three classes of Market Maker,¹²⁴ or they may be Electronic Exchange Members.¹²⁵

A holder of a MIAX Exchange or MIAX PEARL trading permit in good standing will be eligible to receive one MIAX EMERALD Trading Permit.¹²⁶ MIAX Exchange and MIAX PEARL member applicants will not be required to submit a full application for membership on MIAX EMERALD, but rather will only need to complete selected MIAX EMERALD forms concerning their election to trade on MIAX EMERALD, consent to MIAX EMERALD’s jurisdiction, and other operational matters.¹²⁷ This waive-in application process is similar to arrangements in place at other exchanges.¹²⁸

Applicants that do not hold a MIAX Exchange or MIAX PEARL trading permit and seek to become members of MIAX EMERALD will need to submit a full application in accordance with procedures established by the Exchange.¹²⁹ Individuals and entities that become members, and their associated persons, will be required to meet and maintain certain qualification and registration criteria similar to what is required by other options exchanges.¹³⁰ In addition, MIAX EMERALD proposes further requirements on members that seek to do business with the public.¹³¹ Applicants who are denied membership may appeal MIAX EMERALD’s decision pursuant to MIAX EMERALD’s rules governing Hearings, Review, and

¹²⁴ See MIAX EMERALD Rule 600. Market Maker registration is discussed in greater detail below, *infra* Section III.C.3.

¹²⁵ An “Electronic Exchange Member” is the holder of a Trading Permit who is not a Market Maker. MIAX EMERALD Electronic Exchange Members are “members” as defined under the Act. See MIAX EMERALD Rule 100.

¹²⁶ See MIAX EMERALD Rule 200(c)(1).

¹²⁷ See *id.*

¹²⁸ See, e.g., Nasdaq MRX, LLC Rule 302(a) (containing similar expedited waive-in membership process for members of the Nasdaq ISE, LLC and Nasdaq GEMX, LLC); MIAX PEARL Rule 200(c)(1) (containing similar expedited waive-in membership process for members of MIAX Exchange); and Cboe C2 Exchange, Inc. Rule 3.1(c)(1) (containing similar expedited waive-in membership process for members of Cboe).

¹²⁹ See MIAX EMERALD Rule 200(c)(2).

¹³⁰ See MIAX EMERALD Rules Chapter II. Such criteria include, but are not limited to, capital maintenance requirements. See, e.g., MIAX Exchange Rule 200 Series; MIAX PEARL Rule 200 Series; and Cboe C2 Exchange, Inc. Rules 3.1 and 3.2 (containing similar criteria).

¹³¹ See MIAX EMERALD Rules Chapter XIII (incorporating by reference Chapter XIII of the MIAX Exchange Rules). Chapter XIII of the MIAX Exchange Rules also is similar to the rules of other exchanges. See, e.g., Nasdaq ISE, LLC Rules Chapter 6.

Arbitration.¹³² Every Member will be subject to MIAX EMERALD’s regulatory jurisdiction, including MIAX EMERALD’s disciplinary jurisdiction.¹³³

The Commission finds that MIAX EMERALD’s proposed membership rules are consistent with the Act, including Section 6(b)(2) of the Act, which requires the rules of an exchange to provide that any registered broker or dealer or natural person associated with a broker or dealer may become a member of such exchange or associated with a member thereof.¹³⁴ MIAX EMERALD’s proposed rules with respect to exchange membership are substantively similar to the rules of other exchanges.

The Commission notes that pursuant to Section 6(c) of the Act,¹³⁵ an exchange must deny membership to any person, other than a natural person, that is not a registered broker or dealer, any natural person that is not, or is not associated with, a registered broker or dealer, and registered broker-dealers that do not satisfy certain standards, such as financial responsibility or operational capacity. As a registered exchange, MIAX EMERALD must independently determine if an applicant satisfies the standards set forth in the Act, regardless of whether an applicant is a member of another SRO.¹³⁶

In addition, Members may enter into arrangements with other parties, including non-Members and other Members, to provide “Sponsored Access” to trading on MIAX EMERALD.¹³⁷ Members who provide such Sponsored Access will be responsible for all trading conducted pursuant to the access agreement, and to the same extent as if the Member were trading directly.¹³⁸ Accordingly, Members that provide Sponsored Access must maintain and implement policies and procedures to supervise and monitor sponsored trading activity.¹³⁹ Additionally, non-Members who seek to trade on MIAX EMERALD

¹³² See MIAX EMERALD Rules Chapter XI (incorporating by reference Chapter XI of the MIAX Exchange Rules).

¹³³ See MIAX EMERALD Rule 200(g). For MIAX EMERALD’s rules concerning discipline, see Chapter X of the MIAX EMERALD Rules.

¹³⁴ 15 U.S.C. 78f(b)(2).

¹³⁵ 15 U.S.C. 78f(c).

¹³⁶ See, e.g., MIAX PEARL Order, *supra* note 13, at 92910; ISE Mercury Order, *supra* note 27, at 6076; ISE Gemini Order, *supra* note 27, at 46633; MIAX Order, *supra* note 13, at 73074; BOX Order, *supra* note 13, at 26337; BATS Order, *supra* note 13, at 49502; and Nasdaq Order, *supra* note 27, at 3555.

¹³⁷ See MIAX EMERALD Rule 210.

¹³⁸ See MIAX EMERALD Rule 210(b).

¹³⁹ See MIAX EMERALD Rule 210(b)–(c).

through Sponsored Access agreements will need to agree to comply with all applicable federal securities laws and rules and Exchange rules.¹⁴⁰ MIAX EMERALD's rules governing Sponsored Access arrangements are similar to the rules of other exchanges.¹⁴¹

2. Linkage

MIAX EMERALD intends to become a participant in the Options Order Protection and Locked/Crossed Markets Plan or any successor plan ("Linkage Plan").¹⁴² If admitted as a participant to the Linkage Plan, other plan participants would be able to send orders to MIAX EMERALD in accordance with the terms of the plan as applied to the Exchange. The MIAX EMERALD Rules include relevant definitions, establish the conditions pursuant to which members may enter orders in accordance with the Linkage Plan, impose obligations on the Exchange regarding how it must process incoming orders, establish a general standard that members and MIAX EMERALD should avoid trade-throughs, establish potential regulatory liability for members that engage in a pattern or practice of trading through other exchanges, and establish obligations with respect to locked and crossed markets.

The Commission believes that MIAX EMERALD has proposed rules that are designed to comply with the requirements of the Linkage Plan.¹⁴³ Further, as provided below, before MIAX EMERALD can commence operations as a national securities exchange, it must become a participant in the Linkage Plan.

3. Market Makers

a. Registration and Appointment

Members of MIAX EMERALD may apply to become one of three types of market maker: Primary Lead Market Maker, Lead Market Maker, or Registered Market Maker (collectively, "Market Makers"). Market Makers are entitled to receive certain benefits and

privileges in exchange for fulfilling certain affirmative and negative market-making obligations.¹⁴⁴ Each class of Market Maker will receive a specific level of benefits and privileges in exchange for a specific level of obligation that such Market Maker assumes to the MIAX EMERALD market.

To begin the process of registering as a Registered Market Maker or Lead Market Maker, a member will be required to file a written application with MIAX EMERALD.¹⁴⁵ In reviewing a member's application for membership, MIAX EMERALD will consider, among other things, the applicant's market making ability.¹⁴⁶ Only approved Lead Market Makers may apply to be considered for appointment as a Primary Lead Market Maker in one or more option classes traded on MIAX EMERALD.¹⁴⁷ All members who are approved to become Market Makers will be designated as specialists on MIAX EMERALD for all purposes under the Act and rules thereunder.¹⁴⁸

In addition, all MIAX Exchange and MIAX PEARL market makers in good standing will be eligible to receive a MIAX EMERALD Trading Permit in the same membership category in which they operate on MIAX Exchange and MIAX PEARL, respectively, to trade on MIAX EMERALD.¹⁴⁹ For example, a Lead Market Maker in good standing in MIAX Exchange will be eligible to become a Lead Market Maker on MIAX EMERALD, through the submission and approval of a MIAX EMERALD waiver in membership application.¹⁵⁰

Once approved, a Market Maker would seek appointment to make markets in one or more options classes traded on MIAX EMERALD.¹⁵¹ Either the Exchange Board or a committee thereof¹⁵² will appoint classes of

options contract traded on MIAX EMERALD to Market Makers taking into consideration: (1) The financial resources available to the Market Maker; (2) the Market Maker's experience and expertise in market making or options trading; (3) the preferences of the Market Maker to receive appointment(s) in specific option class(es); and (4) the maintenance and enhancement of competition among Market Makers in each option class.¹⁵³ MIAX EMERALD will allow one Primary Lead Market Maker appointment per class,¹⁵⁴ and will have a maximum class quoting limit of fifty Market Makers per class.¹⁵⁵ Once appointed, MIAX EMERALD will surveil a Market Maker's activity for continued compliance with all applicable rules and requirements,¹⁵⁶ which are discussed in more detail below.

The Commission finds that MIAX EMERALD's rules for the registration and appointment of Market Makers are consistent with the Act. In particular, MIAX EMERALD's rules provide an objective process by which a member could become a Market Maker on MIAX EMERALD and provide for oversight by MIAX EMERALD to monitor for continued compliance by Market Makers with the terms of their application for such status. The Commission notes that MIAX EMERALD's proposed Market Maker registration and appointment requirements are similar to those of other options exchanges.¹⁵⁷

b. Market Maker Obligations

Pursuant to MIAX EMERALD rules, all Market Makers will be subject to a number of general obligations. In particular, the transactions of a Market Maker must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market.¹⁵⁸ Among other things, a Market Maker must: (1) Compete with other Market Makers to improve the market; (2) make markets

¹⁴⁰ See MIAX EMERALD Rule 210(b). See also, e.g., 17 CFR 240.15c3-5.

¹⁴¹ See, e.g., MIAX PEARL Rule 210; MIAX Exchange Rule 210; and Nasdaq Stock Market LLC Rule 4611(d).

¹⁴² See MIAX EMERALD Form 1 Application, Exhibit E. See also Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009) (File No. 4-546) (order approving the Options Order Protection and Locked/Crossed Markets Plan submitted by the Chicago Board Options Exchange, Incorporated, International Securities Exchange, LLC, The NASDAQ Stock Market LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX, Inc., NYSE Amex LLC, and NYSE Arca, Inc.).

¹⁴³ See Chapter XIV of the MIAX EMERALD Rules (incorporating by reference Chapter XIV of the MIAX Exchange Rules).

¹⁴⁴ Market Makers' benefits and obligations are discussed in greater detail in the following section.

¹⁴⁵ See MIAX EMERALD Rule 600(b).

¹⁴⁶ See *id.* See also MIAX Exchange Rule 600(b) and Nasdaq MRX, LLC Rule 800(b). The provision permitting MIAX EMERALD to consider "such other factors as [it] deems appropriate" must be applied in a manner that is consistent with the Act, including provisions that prohibit an exchange from acting in an unfairly discriminatory manner. See 15 U.S.C. 78f(b)(5); see also C2 Order, *supra* note 75, at 66704, n. 80.

¹⁴⁷ See *id.*

¹⁴⁸ See MIAX EMERALD Rule 600(a).

¹⁴⁹ See MIAX EMERALD Rule 200(c).

¹⁵⁰ See *id.*

¹⁵¹ See MIAX EMERALD Rule 602.

¹⁵² See MIAX EMERALD Rule 602(a). MIAX EMERALD Chapter XI provides the process for hearings, review, and arbitration of claims by persons economically aggrieved by MIAX EMERALD action, which would include denial of registration as a Market Maker. See MIAX EMERALD Chapter XI (incorporating by reference MIAX Exchange Chapter XI).

¹⁵³ See *id.*

¹⁵⁴ See MIAX EMERALD Rule 602(c)(1).

¹⁵⁵ See MIAX EMERALD Rule 602(c)(2).

¹⁵⁶ See, e.g., MIAX EMERALD Rule 602(f) (stating that MIAX EMERALD shall periodically conduct an evaluation of Market Makers to determine whether they have fulfilled performance standards relating to, among other things, quality of markets, competition among Market Makers, observance of ethical standards, and administrative factors).

¹⁵⁷ See, e.g., MIAX Exchange Rule 600; Nasdaq MRX, LLC Rule 800; Nasdaq ISE, LLC Rules 800 and 801; and Cboe C2 Exchange, Inc. Rule 8.1 (registration of market makers). See, e.g., MIAX Exchange Rule 602; Nasdaq ISE, LLC Rule 802; Nasdaq MRX, LLC Rule 802; and Cboe C2 Exchange, Inc. Rule 8.11 (appointment of market makers).

¹⁵⁸ See MIAX EMERALD Rule 603(a).

that, absent changed market conditions, will be honored for the number of contracts entered; (3) update quotations in response to changed market conditions; (4) price option contracts fairly by, among other things, bidding and offering so as to create differences of no more than \$5 between the bid and offer following the opening rotation.¹⁵⁹ In addition, Market Makers must maintain minimum net capital in accordance with MIAX EMERALD rules and the federal securities laws.¹⁶⁰

MIAX EMERALD's rules governing Market Maker quoting obligations are tailored to the specific class of Market Maker.¹⁶¹ Specifically, a Primary Lead Market Maker will be subject to the highest standard applicable on MIAX EMERALD, as they will be required to provide continuous two-sided Standard quotes¹⁶² throughout the trading day 90% of the time in the lesser of 99% of the series, or 100% of the series minus one put-call pair, in each appointed class.¹⁶³ Lead Market Makers must provide continuous two-sided quotes (consisting of Standard quotes) throughout the trading day 90% of the time in 90% of the series in each of their appointed classes.¹⁶⁴ Lastly, Registered Market Makers must provide continuous two-sided quotes (consisting of Standard quotes) 90% of the time in 60% of the series in each of its appointed classes.¹⁶⁵ Further, Registered Market Makers may be called upon by a MIAX EMERALD official to submit a single quote or maintain continuous quotes in one or more series of its appointed classes whenever, in the judgment of such official, it is necessary to do so in the interest of fair and orderly markets.¹⁶⁶ For purposes of meeting the continuous quoting obligations discussed herein, a Market Maker's quote must meet the bid/ask

differential requirements of MIAX EMERALD Rule 603(b)(4).¹⁶⁷

In options classes other than to which they are appointed, a Market Maker is prohibited from engaging in transactions in an account in which it has an interest that are disproportionate to, or in derogation of, the performance of its market making obligations as set forth in the MIAX EMERALD rules.¹⁶⁸ Further, the total number of contracts executed during a quarter by a Registered Market Maker in options classes to which it is not appointed may not exceed 25% of the total number of contracts traded by such Registered Market Maker in classes to which it is appointed.¹⁶⁹ Similarly, the total number of contracts executed during a quarter by a Lead Market Maker (including a Primary Lead Market Maker) in options classes to which it is not appointed may not exceed 10% of the total number of contracts traded by such Lead Market Maker in classes to which it is appointed.¹⁷⁰

If MIAX EMERALD finds any failure by a Market Maker to meet minimum performance standards or properly perform as a Market Maker, such Market Maker may be subject to suspension, termination, or restriction of registration in one or more of the securities in which the Market Maker is registered.¹⁷¹

Market Makers will receive certain benefits in return for satisfying their responsibilities.¹⁷² For example, a broker-dealer or other lender may extend "good faith" credit to a member of a national securities exchange or registered broker-dealer to finance its activities as a market maker or specialist.¹⁷³ In addition, market makers are excepted from the prohibition in Section 11(a) of the Act.¹⁷⁴ The Commission believes that a market maker must be subject to sufficient and commensurate affirmative obligations, including the obligation to hold itself

out as willing to buy and sell options for its own account on a regular or continuous basis, to justify favorable treatment.¹⁷⁵ The Commission further believes that the rules of all U.S. options markets need not provide the same standards for market maker participation, so long as they impose affirmative obligations that are consistent with the Act.¹⁷⁶

The Commission believes that MIAX EMERALD's Market Maker participation requirements impose appropriate affirmative obligations on MIAX EMERALD's Market Makers that are commensurate with the benefits afforded to such participants and, accordingly, are consistent with the Act.

Specifically, with regard to MIAX EMERALD's proposed continuous quoting obligations, only those quotes that are liquidity providing—Standard quotes, including Post-Only Quotes—will be counted towards a Market Maker's quoting obligations, rather than all types of eQuotes that a Market Maker will be permitted to utilize.¹⁷⁷ The Commission believes that this treatment is appropriate under the Act and consistent with a Market Maker's obligation to contribute to the maintenance of a fair and orderly market. Further, the Commission believes that the specific levels of benefits conferred on the different classes of Market Makers are appropriately balanced by the obligations imposed by MIAX EMERALD's rules. For example, as discussed below, Primary Lead Market Makers and Lead Market Makers are entitled to certain participation entitlements,¹⁷⁸ and at the same time, are subject to heightened continuous quoting obligations to justify these special benefits.¹⁷⁹

Finally, the Commission believes that the Act does not mandate a particular market model for exchanges, and while Market Makers may become an important source of liquidity on MIAX EMERALD, they will likely not be the only source, as MIAX EMERALD is designed to match buying and selling interest of all MIAX EMERALD participants.

¹⁶⁷ See MIAX EMERALD Rule 604(e)(1)–(3) (for Primary Lead Market Makers, Lead Market Makers, and Registered Market Makers, respectively).

¹⁶⁸ See MIAX EMERALD Rule 603(d). Among other things, a Market Maker should not effect purchases or sales except in an orderly manner. See *id.* See also MIAX Exchange Rule 603(d) and Nasdaq ISE, LLC Rule 803(d) (containing an identical provision).

¹⁶⁹ See MIAX EMERALD Rule 605(b)(2). See also MIAX Exchange Rule 605(b)(2) and Nasdaq ISE, LLC Rule 805(b)(2).

¹⁷⁰ See MIAX EMERALD Rule 605(b)(3). See also MIAX Exchange Rule 605(b)(3) and Nasdaq ISE, LLC Rule 805(b)(3).

¹⁷¹ See MIAX EMERALD Rules 600 and 602(f).

¹⁷² See, e.g., MIAX Order, *supra* note 13, at 73076 and NOM Approval Order, *supra* note 112, at 14526 (discussing the benefits and obligations of market makers).

¹⁷³ See 12 CFR 221.5 and 12 CFR 220.7; see also 17 CFR 240.15c3–1(a)(6) (capital requirements for market makers).

¹⁷⁴ 15 U.S.C. 78k(a).

¹⁷⁵ See NOM Approval Order, *supra* note 112, at 73 FR 14526.

¹⁷⁶ See *id.*

¹⁷⁷ See *infra* Section III.C.4 (discussing the various quote types that Market Makers can utilize).

¹⁷⁸ See *infra* notes 201–212 and accompanying text (describing the Primary Lead Market Maker and Directed Lead Market Maker participation entitlements). See also *infra* Section III.C.4 (discussing the benefit Market Makers receive from the MIAX EMERALD priority quote rule).

¹⁷⁹ See *supra* Section III.C.4 (describing Primary Lead Market Maker and Lead Market Maker quoting obligations).

¹⁵⁹ See MIAX EMERALD Rule 603(b).

¹⁶⁰ See MIAX EMERALD Rule 609.

¹⁶¹ See MIAX EMERALD Rule 604.

¹⁶² See *infra* Section III.C.4 (discussing the various types of quotes that may be submitted by Market Makers on MIAX EMERALD).

¹⁶³ See MIAX EMERALD Rule 604(e)(1). These obligations will apply to all appointed classes collectively for each Primary Lead Market Maker, rather than on a class-by-class basis. See MIAX EMERALD Rule 604(e)(1)(ii).

¹⁶⁴ See MIAX EMERALD Rule 604(e)(2). These obligations will apply to all appointed classes collectively for each Lead Market Maker, rather than on a class-by-class basis. See MIAX EMERALD Rule 604(e)(2)(ii).

¹⁶⁵ See MIAX EMERALD Rule 604(e)(3)(i). These obligations will apply to all appointed classes collectively for each Registered Market Maker, rather than on a class-by-class basis. *Id.*

¹⁶⁶ See MIAX EMERALD Rule 604(e)(3)(iii).

4. Order Display, Execution, and Priority

MIAX EMERALD will operate a fully automated electronic options marketplace. Liquidity will be derived from orders to buy and orders to sell, as well as Market Maker quotations,¹⁸⁰ submitted to MIAX EMERALD electronically by its members from remote locations. There will be no physical trading floor. Options traded on the Exchange will be subject to Minimum Price Variations (“MPV”) that will begin at \$0.05 for option contracts trading at less than \$3.00 per option, and \$0.10 for option contracts trading at \$3.00 per option or higher.¹⁸¹ In addition, MIAX EMERALD will participate in the penny pilot program pursuant to which it will permit certain options with premiums under \$3 (as well as heavily traded options on certain indices) to be quoted and traded in increments as low as \$0.1.¹⁸²

All orders and quotes submitted to MIAX EMERALD will be displayed unless the order or quote is immediately marketable, is a contingent order (such as an immediate-or-cancel (“IOC”) order), or is a certain type of eQuote (such as an Auction-or-Cancel (“AOC”) eQuote or IOC eQuote). Displayed orders and quotes will be displayed on an anonymous basis at a specified price (except for Attributable Orders,¹⁸³ which allow voluntary disclosure of firm identification information). Non-displayed orders and quotes will not be displayed to any participant. Additionally, orders and quotes may have a non-displayed price that is different than the displayed price, as further described below.¹⁸⁴

Members may submit the following types of orders: Market; Marketable Limit; Fill-or-Kill; Auction-or-Cancel; Immediate-or-Cancel; Attributable Order; Intermarket Sweep; Do Not

Route; Opening; Customer Cross; Qualified Contingent Cross; Day Limit; Good ‘Til Cancelled; and Post-Only.¹⁸⁵ All of these order types are based on similar order types available on other options exchanges.¹⁸⁶ The Commission believes that these order types are substantially similar to order types approved by the Commission on other exchanges.

MIAX EMERALD Market Makers will be permitted to submit Standard quotes, including Post-Only Quotes.¹⁸⁷ MIAX EMERALD Market Makers will also be allowed to submit eQuotes, which are quotes with a specific time in force that do not automatically cancel and replace a previous Standard quote or eQuote.¹⁸⁸ The types of eQuotes permitted on MIAX EMERALD will be AOC, Opening Only, IOC, Fill-or-Kill and Intermarket Sweep.¹⁸⁹ Only Standard quotes (including Post-Only Quotes) will be permitted to count towards a Market maker’s continuous quoting obligations.¹⁹⁰ MIAX EMERALD’s proposed quote types are based on similar quote types on other options exchanges.¹⁹¹ The Commission believes that the MIAX EMERALD quote types are substantially similar to those approved by the Commission on other exchanges.

After the opening, trades will execute on MIAX EMERALD when a buy order/

quote and a sell order/quote match one another on the MIAX EMERALD order book (“MIAX EMERALD Book” or “Book”).¹⁹² The highest bid and lowest offer shall have priority on the Exchange. The MIAX EMERALD system will continuously and automatically match orders/quotes pursuant to either price-time allocation or pro-rata allocation, as determined by MIAX EMERALD on a class-by-class basis.¹⁹³

On MIAX EMERALD all Market Maker quotes will be designated as either “priority quotes” or “non-priority quotes.”¹⁹⁴ In the event a Market Maker has a priority quote on MIAX EMERALD, all of that Market Maker’s quotes (including all Standard quotes and eQuotes) would be entitled to have precedence over all other “Professional Interest” (i.e., non-Priority Customer orders, Market Maker orders and non-priority quotes) at the same price.¹⁹⁵ The Commission notes that this is substantially similar to the MIAX Exchange which was previously approved by the Commission.¹⁹⁶

MIAX EMERALD also will offer additional priority overlays at its discretion on a class-by-class basis, which include “Priority Customer”¹⁹⁷ and “Market Turner”¹⁹⁸ overlays. Priority overlays would only be applicable for pro-rata allocation.¹⁹⁹ These priority overlays are the same as the priority overlays that were approved by the Commission for use on the MIAX Exchange.²⁰⁰

¹⁹² MIAX EMERALD will open for trading with an opening rotation similar to that of the MIAX Exchange. See MIAX EMERALD Rule 503 and MIAX Exchange Rule 503.

¹⁹³ See MIAX EMERALD Rule 514(c).

¹⁹⁴ See MIAX EMERALD Rule 517(b).

¹⁹⁵ See MIAX EMERALD Rules 517(b) and 514(e).

¹⁹⁶ See MIAX Exchange Rules 517(b) and 514(e). See also MIAX Order, *supra* note 13, at 73080–82.

¹⁹⁷ Under the “Priority Customer Overlay,” the highest bid and lowest offer will have priority except that Priority Customer Orders will have priority over Professional Interest and all Market Maker interest at the same price. If there were two or more Priority Customer orders for the same options series at the same price, priority would be afforded based on the sequence in which such orders were received. See MIAX EMERALD Rule 514(d)(1); see also MIAX EMERALD Rule 100 (providing definitions of “Priority Customer” and “Professional Interest”).

¹⁹⁸ Under the “Market Turner” priority overlay, the “Market Turner” refers to the participant that was the first to enter an order or quote at a better price than the previous best disseminated MIAX EMERALD price, where such order or quote is continuously in the market until the order or quote trades. When this priority overlay is in effect, the Market Turner would have priority at the highest bid or lowest offer that he or she established. The Market Turner overlay will never be in effect in conjunction with other priority overlays. See MIAX EMERALD Rule 514(d)(2).

¹⁹⁹ See MIAX EMERALD Rule 514(d).

²⁰⁰ See MIAX Exchange Rule 514(d).

¹⁸⁰ The definition of “quote” or “quotation” means a bid or offer entered by a Market Maker that is firm and may update the Market Maker’s previous quote, if any. The Rules of the Exchange provide for the use of different types of quotes, including Standard and eQuotes, as more fully described in MIAX EMERALD Rule 517. A Market Maker may, at times, choose to have multiple types of quotes active in an individual option. See MIAX EMERALD Rule 100.

¹⁸¹ See MIAX EMERALD Rule 510.

¹⁸² See MIAX EMERALD Rule 510, Interpretations and Policies .01. MIAX EMERALD has established a scheduled expiration date of December 31, 2018. However, MIAX EMERALD may not be operational before December 31, 2018, thus the Exchange may need to file a proposed rule change under Section 19(b) of the Act to update this proposed rule.

¹⁸³ See MIAX EMERALD Rule 516(e). An Attributable Order is a market or limit order which displays the user firm ID for purposes of trading on the Exchange. Use of Attributable Orders will be voluntary.

¹⁸⁴ See text accompanying notes 219–233 *infra*.

¹⁸⁵ See MIAX EMERALD Rule 516 for a description of each of the order types. MIAX EMERALD notes that some of these order types will be valid only during certain portions of the trading day (e.g., Opening Orders) or during certain events (e.g., Auction-or-Cancel Orders). If a Member submits an order type during a time period when the order type is not valid, the System will reject the order.

¹⁸⁶ See, e.g., Cboe BZX Exchange, Inc. Rule 21.1(c)(1) (Attributable Order), (d)(8) (Post Only Order) and (f)(5) (Fill-or-Kill Order); BOX Rule 7110(c)(5) (Customer Cross Order) and (c)(6) (Qualified Contingent Cross Order); MIAX Exchange Rule 516(b)(4) (Auction or Cancel Order); Nasdaq Options Market Rules, Chapter VI, Section 1(e)(7) (On the Open Order), 1(e)(8) (Intermarket Sweep Order) and 1(e)(1) (Cancel-replacement Order); Nasdaq PHLX LLC Rule 1080(m)(iv)(A) (Do Not Route Order and Immediate or Cancel Order); NYSE American, LLC Rule 900.3NY(m) (Day Order) and (n) (Good-Til-Cancelled Order).

¹⁸⁷ See MIAX EMERALD Rule 517(a)(1) (providing that Standard quote is a quote submitted by a Market Maker that cancels and replaces the Market Maker’s previous Standard quote, and a Post-Only Quote is a Standard quote that will not remove liquidity from the Book).

¹⁸⁸ See MIAX EMERALD Rule 517(a)(2).

¹⁸⁹ See *id.* These eQuote types are similar to the eQuote types available on the MIAX Exchange. See MIAX Exchange Rule 517(a)(2); see also MIAX Order, *supra* note 13, at 73080–81.

¹⁹⁰ See MIAX EMERALD Rule 604(e); see also *supra* Section III.C.3.b (discussing Market Maker obligations).

¹⁹¹ See, e.g., MIAX PEARL Rules 100 and 516(j) (defining Quotations and Post-Only Orders, respectively); Cboe C2 Exchange, Inc. Rule 1.1 (similarly); MIAX Exchange Rule 517(a)(2) (describing eQuotes).

In addition, proposed MIAX EMERALD rules provide that it may grant Primary Lead Market Makers and Lead Market Makers certain participation entitlements. For example, Primary Lead Market Makers²⁰¹ may be entitled to a participation entitlement with respect to each incoming order if they have a priority quote²⁰² at the National Best Bid and Offer (“NBBO”).²⁰³ The Primary Lead Market Maker participation entitlements will only be in effect if the Priority Customer Overlay also is in effect and will apply only to any remaining balance after any Priority Customer orders have first been satisfied.²⁰⁴ Another proposed Primary Lead Market Maker entitlement provides that small size orders (*i.e.*, five or fewer contracts) will be allocated in full to the Primary Lead Market Maker if it has a priority quote at the NBBO.²⁰⁵

MIAX EMERALD also permits Electronic Exchange Members²⁰⁶ to utilize Directed Orders.²⁰⁷ A “Directed Order” refers to an order that an Electronic Exchange Member enters into the Exchange system and directs to a particular Lead Market Maker, including a Primary Lead Market Maker²⁰⁸ (“Directed Lead Market Maker”). The Lead Market Maker must have an appointment in the relevant options class to receive a Directed Order in that class. A Directed Lead Market Maker may be granted a participation entitlement if he or she has a priority quote at the NBBO.²⁰⁹ The Directed

Lead Market Maker participation entitlement will only be in effect if the Priority Customer Overlay also is in effect and will apply only to any remaining balance after Priority Customer orders have first been satisfied.

These participation entitlements for Primary Lead Market Makers and Directed Lead Market Makers are identical to those that the Commission has approved for the MIAX Exchange.²¹⁰ Further, the Commission believes that these entitlements are appropriately balanced by the obligations imposed on these classes of market makers, as discussed in detail above.²¹¹ In particular, the Commission notes that Primary Lead Market Makers and Lead Market Makers are subject to higher quoting obligations than other Registered Market Makers who are not eligible to receive the aforementioned participation entitlements.²¹² Therefore, the Commission believes that the proposed rules regarding participation entitlements are consistent with the Act.

MIAX EMERALD proposes to make available order processing and matching features, which are based on those features available on MIAX Exchange and MIAX PEARL.²¹³ MIAX EMERALD’s system will automatically execute incoming orders/quotes that are executable against orders/quotes in its system, provided that such incoming orders/quotes will not be executed at prices inferior to the NBBO.²¹⁴ MIAX EMERALD Rule 515 sets forth how the MIAX EMERALD system will handle incoming orders that cannot be executed

in part or in full. In particular, MIAX EMERALD Rule 515 specifies a “price protection process,” a Managed Interest Process for non-Market Maker orders, a parallel process for handling Market Maker orders and quotes, and a Post Only Process, each discussed more fully below.

The MIAX EMERALD system offers a “price protection” process for non-Market Maker orders.²¹⁵ Price protection prevents an order from being executed beyond the price designated in the order’s price protection instructions (“the price protection limit”). The price protection limit is expressed in units of MPV away from the national best bid and offer (“NBBO”) at the time of the order’s receipt, or the MIAX EMERALD Best Bid and Offer (“EBBO”) if the best bid or offer on away markets (“ABBO”) is crossing the EBBO.²¹⁶ When triggered, price protection will cancel an order or the remaining contracts of an order. The MIAX EMERALD system will not execute such orders at prices inferior to the current NBBO.²¹⁷

The MIAX EMERALD price protection process is substantially similar to that adopted by MIAX Exchange.²¹⁸ The Commission believes that this price protection functionality can benefit all market participants.

The Exchange’s rules also provide for processes for managing non-routable orders²¹⁹ for non-Market Makers (“Managed Interest Process”), and for Market Maker orders or quotes (“Rule 515(d) Process”), that would either lock or cross the current opposite side ABBO where the EBBO is inferior to the ABBO (such non-Market Maker orders handled under the Managed Interest Process and Market Maker orders or quotes handled under the Rule 515(d) Process will, for purposes of this Order, be referred to collectively as “managed orders or quotes”).²²⁰ The MIAX EMERALD

²⁰¹ See *supra* Section III.C.3 (discussing the various categories of Market Makers, including Primary Lead Market Makers).

²⁰² See *supra* notes 194–196 and accompanying text (discussing priority quotes).

²⁰³ See MIAX EMERALD Rule 514(g). Specifically, the Primary Lead Market Maker’s participation entitlement will be equal to the greater of: (i) The proportion of the total size at the best price represented by the size of its quote, or (ii) 60% of the contracts to be allocated if there is only one other Market Maker quotation at the NBBO or 40% if there are two or more other Market Maker quotes at the NBBO. See MIAX EMERALD Rule 514(g)(1).

²⁰⁴ See MIAX EMERALD Rule 514(g). Further, neither a Primary Lead Market Maker nor a Lead Market Maker could be allocated a total quantity greater than the quantity they are quoting at the execution price, and they will not receive any further allocation of an order if they receive a participation entitlement. See *id.*

²⁰⁵ See MIAX EMERALD Rule 514(g)(2). The rule also provides that MIAX EMERALD will review the functioning of this provision quarterly to make sure that small size orders do not account for more than 40% of the volume executed on MIAX EMERALD.

²⁰⁶ An Electronic Exchange Member is the holder of a trading permit who is not a Market Maker. See MIAX EMERALD Rule 100.

²⁰⁷ See MIAX EMERALD Rule 514(h).

²⁰⁸ See *supra* Section III.C.3 (discussing the various categories of market makers, including Lead Market Makers).

²⁰⁹ See MIAX EMERALD Rule 514(h). Specifically, the Directed Lead Market Maker’s

participation entitlement will be equal to the greater of: (i) The proportion of the total size at the best price represented by the size of its quote; (ii) 60% of the contracts to be allocated if there is only one other Market Maker quotation at the NBBO or 40% if there are two or more other Market Maker quotes at the NBBO; or (iii) one contract.

²¹⁰ See MIAX Exchange Rules 514(g) (Primary Lead Market Maker Participation Entitlements) and 514(h) (Directed Lead Market Maker Participation Entitlements).

²¹¹ See *supra* Section III.C.3.b (discussing market maker obligations).

²¹² As discussed above, *supra* Section III.C.3.b, Primary Lead Market Makers must provide continuous two-sided quotes 90% of the time in the lesser of 99% of the series, or 100% of the series minus one put-call pair, in each class in which the Primary Lead Market Maker is assigned. See MIAX EMERALD Rule 604(e)(1). Lead Market Makers must provide continuous two-sided quotes 90% of the time in 90% of the series in each of its appointed classes. See MIAX EMERALD Rule 604(e)(2).

²¹³ See *infra* discussion of MIAX EMERALD’s proposed price protection process, managed interest process, process for handling Market Maker orders and quotes, and process for handling Post-Only Orders and Quotes, which are based on substantially similar order processing and matching features on MIAX Exchange and MIAX PEARL.

²¹⁴ See MIAX EMERALD Rule 515(a) and (b).

²¹⁵ See MIAX EMERALD Rule 515(c)(1).

²¹⁶ See MIAX EMERALD Rule 515(c)(1). The Exchange will publish a Regulatory Circular setting a minimum and maximum number of MPVs away from the NBBO (or EBBO if the ABBO is crossing the EBBO) that a market participant may designate for its price protection limit, provided that the minimum shall be no less than zero MPVs and the maximum shall be no more than 20 MPVs. The Exchange will also set, and announce by Regulatory Circular, a default price protection limit within 1 to 5 MPVs away from the NBBO (or EBBO if the ABBO is crossing the EBBO).

²¹⁷ See MIAX EMERALD Rule 515(c)(1).

²¹⁸ See MIAX Exchange Rule 515(c)(1).

²¹⁹ Non-routable orders would include, for example, orders marked “Do Not Route” or Post-Only orders being handled under the Managed Interest Process.

²²⁰ See MIAX EMERALD Rules 515(c)(1)(ii) (Managed Interest Process for Non-Routable Orders) and 515(d) (Handling of Market Maker Orders and Quotes).

system will not execute such managed orders or quotes at prices inferior to the current NBBO.²²¹ The managed order or quote would be displayed at one MPV away from the current opposite side ABBO and placed on the MIAX EMERALD Book at a price equal to the opposite side ABBO.²²² Should the ABBO price change to an inferior price level, the managed order or quote's displayed price will continue to re-price so that it is displayed one MPV away from the new ABBO, and the managed order or quote's Book price will continuously re-price to lock the new ABBO.²²³ Such re-pricing will continue until the managed order or quote is fully executed, reaches its limit price, reaches its price protection limit, or is cancelled.²²⁴ During these processes, if the Exchange receives a new order or quote on the opposite side of the market from the managed order or quote that could be executed, the MIAX EMERALD system will immediately execute the remaining contracts to the extent possible at the managed order or quote's current booked bid or offer price, provided that it does not trade through the current NBBO.²²⁵

The Commission believes that MIAX EMERALD's processes for handling managed orders or quotes are consistent with the processes that the Commission approved for handling such orders and quotes on MIAX Exchange and MIAX PEARL.²²⁶

MIAX EMERALD will also have a process for the handling of certain Post-Only Orders and Quotes (together, "Post-Only OQs") ("POP Process").²²⁷ The POP Process will apply to Post-Only OQs where the limit price of the Post-Only OQ locks or crosses the current opposite side EBBO where the

EBBO is the NBBO (*i.e.*, locks or crosses an order or quote on the MIAX EMERALD Book).²²⁸ The MIAX EMERALD system will display and book such Post-Only OQ one MPV away from the current opposite side EBBO.²²⁹ Should the EBBO price change to an inferior price level, the Post-Only OQ's Book price and displayed price would continuously re-price to one MPV away from new PBBO until the Post-Only OQ is fully executed, reaches its limit price, reaches its price protection limit, or is cancelled.²³⁰

Under the POP Process, if the Exchange receives a new order or quote on the opposite side of the market from the Post-Only OQ that could be executed, the MIAX EMERALD system would immediately execute the remaining contracts to the extent possible at the Post-Only OQ's current booked bid or offer price, provided that it does not trade through the current NBBO.²³¹ If the Exchange receives a new Post-Only OQ on the opposite side of the market from a Post-Only OQ being managed under the POP Process, and the new Post-Only OQ locks or crosses the Book price of the resting Post-Only OQ, the Exchange will book and display the new Post-Only OQ one MPV away from the current opposite side EBBO.²³²

The POP Process under MIAX EMERALD's rules is consistent with the POP Process that the Commission approved for MIAX PEARL.²³³

MIAX EMERALD also proposes to establish certain additional crossing and price improvement functionalities based on features available on MIAX Exchange. Mechanisms proposed by MIAX EMERALD that are substantially the same as those available on MIAX Exchange are: A Price Improvement Mechanism ("PRIME") (which affords the opportunity for price improvement above the NBBO after an auction for eligible orders);²³⁴ a PRIME Solicitation Mechanism (which allows members representing agency orders the opportunity to cross large size solicited orders after an auction);²³⁵ and a PRIME

for Complex Orders (which makes the MIAX EMERALD PRIME functionality available for complex orders).²³⁶ These mechanisms are consistent with substantially similar mechanisms currently existing on other options exchanges,²³⁷ as well as those offered by MIAX Exchange.²³⁸

MIAX EMERALD will permit the trading of complex orders and quotes on the Exchange.²³⁹ The proposed rule defines the types of complex orders and quotes,²⁴⁰ and also describes the priority, execution, and allocation of complex orders and quotes,²⁴¹ including a managed interest process for complex orders.²⁴² MIAX EMERALD also proposes price and order protection features.²⁴³ In addition, MIAX EMERALD will establish a Complex Auction Process.²⁴⁴ MIAX EMERALD's rules governing the trading of complex orders and quotes are consistent with the complex order rules that the Commission approved for MIAX Exchange.²⁴⁵

The Commission believes that MIAX EMERALD's proposed display, execution, and priority rules discussed above in this section are consistent with the Act. In particular, the Commission finds that the proposed rules are consistent with Section 6(b)(5) of the Act,²⁴⁶ which, among other things, requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating 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, and to not permit unfair discrimination between customers, issuers, or dealers. The Commission also finds that the proposed rules are consistent with Section 6(b)(8) of the Act,²⁴⁷ which requires that the rules of an exchange not impose any burden on

²²¹ See *id.*

²²² See MIAX EMERALD Rules 515(c)(1)(ii)(B) and 515(d)(ii). See also MIAX Exchange Rule 515(c)(1)(ii) and MIAX PEARL Rule 515(d)(2) (providing for the same Managed Interest Process) and MIAX Exchange Rule 515(d) (providing for the same handling of Market Maker orders and quotes).

²²³ See *id.*

²²⁴ See *id.*

²²⁵ See MIAX EMERALD Rules 515(c)(1)(ii)(C) and 515(d)(iii). See also MIAX Exchange Rules 515(c)(1)(ii) and 515(d) and MIAX PEARL Rule 515(d)(2)(iii)(A).

²²⁶ See MIAX Exchange Rules 515(c)(1)(ii) and 515(d) and MIAX PEARL Rule 515(d)(2). With regard to the treatment of Post-Only Orders and Post-Only Quotes under MIAX EMERALD's processes, the Commission believes that the rules are consistent with the treatment of Post-Only Orders under MIAX PEARL's managed interest rule and rules that have been adopted by other exchanges. See MIAX EMERALD Rules 515(c)(1)(ii)(C)(2)–(3) and 515(d)(iii)(2)–(3) and MIAX PEARL Rule 515(d)(2)(iii)(B)–(C). See also, e.g., Bats BZX Rule 21.1(h) and Securities Exchange Act Release No. 77818 (May 12, 2016), 81 FR 31283 (May 18, 2016) (SR–BatsBZX–2016–16).

²²⁷ See MIAX EMERALD Rule 515(i).

²²⁸ Non-Market Maker Post-Only Orders that lock or cross the current opposite side ABBO and the EBBO is inferior to the ABBO would be handled through the Managed Interest Process under Rule 515(c)(1)(ii) as described above. Market Maker Post-Only OQs that lock or cross the current opposite side ABBO and the EBBO is inferior to the ABBO would be handled through the process under Rule 515(d) as described above.

²²⁹ See MIAX EMERALD Rule 515(i)(3)(ii).

²³⁰ *Id.*

²³¹ See MIAX EMERALD Rule 515(i)(3)(iii)(A).

²³² See MIAX EMERALD Rule 515(i)(3)(iii)(B).

²³³ See MIAX PEARL Rule 515(g).

²³⁴ See MIAX EMERALD Rule 515A(a).

²³⁵ See MIAX EMERALD Rule 515A(b).

²³⁶ See MIAX EMERALD Rule 515A, Interpretations and Policies .12.

²³⁷ See, e.g., Cboe Rule 6.74A (Automated Improvement Mechanism) and Nasdaq PHLX, LLC Rule 1087 (Price Improvement XL).

²³⁸ See MIAX Exchange Rule 519A.

²³⁹ See MIAX EMERALD Rule 518.

²⁴⁰ See MIAX EMERALD Rule 518(a)–(b).

²⁴¹ See MIAX EMERALD Rule 518(c).

²⁴² See MIAX EMERALD Rule 518(c)(4).

²⁴³ See MIAX EMERALD Rule 518, Interpretations and Policies .05.

²⁴⁴ See MIAX EMERALD Rule 518(d).

²⁴⁵ See Securities Exchange Act Release No. 79072 (October 7, 2016), 81 FR 71131 (October 14, 2016) (SR–MIAX–2016–26) (approving MIAX Exchange's proposed new rules governing the trading of complex orders).

²⁴⁶ 15 U.S.C. 78f(b)(5).

²⁴⁷ 15 U.S.C. 78f(b)(8).

competition that is not necessary or appropriate in furtherance of the purposes of the Act. The trading rules of MIAX EMERALD are substantially similar to the current trading rules of MIAX Exchange, MIAX PEARL, and other exchanges, as noted above, which were filed with and approved by the Commission (or otherwise became effective) pursuant to Section 19(b) of the Act.²⁴⁸ Therefore, the Commission believes that these rules are consistent with the Act.

5. Section 11(a) of the Act

Section 11(a)(1) of the Act²⁴⁹ prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises discretion (collectively, “covered accounts”), unless an exception applies. The Exchange has represented that it has analyzed its rules proposed hereunder, and believes that they are consistent with Section 11(a) of the Act and rules thereunder.²⁵⁰

Rule 11a2-2(T) under the Act,²⁵¹ known as the “effect versus execute” rule, provides exchange members with an exemption from the Section 11(a)(1) prohibition. Rule 11a2-2(T) permits an exchange member, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member to execute the transactions on the exchange. To comply with Rule 11a2-2(T)’s conditions, a member: (1) Must transmit the order from off the exchange floor; (2) may not participate in the execution of the transaction once it has been transmitted to the member performing the execution;²⁵² (3) may not be affiliated with the executing member; and (4) with respect to an account over which the member has investment discretion, neither the member nor its

associated person may retain any compensation in connection with effecting the transaction except as provided in the Rule.

In a letter to the Commission,²⁵³ MIAX EMERALD requested that the Commission concur with its conclusion that MIAX EMERALD members that enter orders into the MIAX EMERALD trading system satisfy the requirements of Rule 11a2-2(T). For the reasons set forth below, the Commission believes that MIAX EMERALD members entering orders into the MIAX EMERALD trading system will satisfy the conditions of Rule 11a2-2(T).

First, Rule 11a2-2(T) requires that orders for covered accounts be transmitted from off the exchange floor. MIAX EMERALD will not have a physical trading floor, and the MIAX EMERALD trading system will receive orders from members electronically through remote terminals or computer-to-computer interfaces. In the context of other automated trading systems, the Commission has found that the off-floor transmission requirement is met if a covered account order is transmitted from a remote location directly to an exchange’s floor by electronic means.²⁵⁴ Since the MIAX EMERALD trading system receives all orders electronically through remote terminals or computer-to-computer interfaces, the Commission believes that the trading system satisfies the off-floor transmission requirement.

Second, Rule 11a2-2(T) requires that the member not participate in the execution of its order once it has been transmitted to the member performing the execution. MIAX EMERALD has represented that the MIAX EMERALD trading system will at no time following the submission of an order allow a member or an associated person of such member to acquire control or influence

over the result or timing of an order’s execution.²⁵⁵ According to MIAX EMERALD, the execution of a member’s order is determined solely by what orders, bids, or offers are present in the MIAX EMERALD trading system at the time the member submits the order and the order priority based on MIAX EMERALD rules.²⁵⁶ Accordingly, the Commission believes that a MIAX EMERALD member will not participate in the execution of its order submitted into the trading system.

Rule 11a2-2(T)’s third condition is that the order be executed by an exchange member who is unaffiliated with the member initiating the order. The Commission has stated that the requirement is satisfied when automated exchange facilities, such as the MIAX EMERALD trading system, are used, as long as the design of these systems ensures that members do not possess any special or unique trading advantages over non-members in handling their orders after transmitting them to MIAX EMERALD.²⁵⁷ MIAX EMERALD has represented that the design of its trading system ensures that no member has any special or unique trading advantage over non-members in the handling of its orders after transmitting its orders to MIAX EMERALD.²⁵⁸ Based on MIAX EMERALD’s representation, the Commission believes that the MIAX EMERALD trading system satisfies this requirement.”

Fourth, in the case of a transaction effected for an account with respect to

²⁵⁵ See MIAX EMERALD 11(a) Request Letter, *supra* note 253. Members may change or cancel an order or quote at any time before the order is executed on the Exchange. See MIAX EMERALD Form 1 Application, Exhibit E. The Commission has stated that the non-participation requirement is satisfied under such circumstances, so long as such modifications or cancellations are also transmitted from off the floor. See 1978 Release, *supra* note 252 (stating that the “non-participation requirement does not prevent initiating members from canceling or modifying orders (or the instructions pursuant to which the initiating member wishes orders to be executed) after the orders have been transmitted to the executing member, provided that any such instructions are also transmitted from off the floor”).

²⁵⁶ See MIAX EMERALD 11(a) Request Letter, *supra* note 253.

²⁵⁷ In considering the operation of automated execution systems operated by an exchange, the Commission noted that while there is no independent executing exchange member, the execution of an order is automatic once it has been transmitted into each system. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange, the Commission has stated that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2-2(T). See 1979 Release, *supra* note 254.

²⁵⁸ See MIAX EMERALD 11(a) Request Letter, *supra* note 253.

²⁴⁸ Many of MIAX PEARL’s and MIAX Exchange’s rules were approved at the time that MIAX PEARL’s and MIAX Exchange’s registration as a national securities exchanges, respectively, were granted. See MIAX PEARL Order and MIAX Order, *supra* note 13.

²⁴⁹ 15 U.S.C. 78k(a)(1).

²⁵⁰ See Letter from Barbara J. Comly, EVP, General Counsel and Corporate Secretary, Miami Holdings, to Brent J. Fields, Secretary, Commission, and John C. Roeser, Associate Director, Office of Market Supervision, Division of Trading and Markets, Commission, dated November 30, 2018 (“MIAX EMERALD 11(a) Request Letter”).

²⁵¹ 17 CFR 240.11a2-2(T).

²⁵² The member may, however, participate in clearing and settling the transaction. See Securities Exchange Act Release No. 14563 (March 14, 1978), 43 FR 11542 (March 17, 1978) (regarding the NYSE’s Designated Order Turnaround System (“1978 Release”)).

²⁵³ MIAX EMERALD 11(a) Request Letter, *supra* note 250.

²⁵⁴ See, e.g., Securities Exchange Act Release Nos. 59154 (December 23, 2008), 73 FR 80468 (December 31, 2008) (SR-BSE-2008-48) (order approving proposed rules of BX); 49068, (January 13, 2004), 69 FR 2775 (January 20, 2004) (establishing, among other things, BOX as an options trading facility of Boston Stock Exchange, Inc.); 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (approving the Pacific Exchange, Inc.’s (“PCX”) use of the Archipelago Exchange as its equity trading facility); 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) (regarding NYSE’s Off-Hours Trading Facility). See 1978 Release, *supra* note 252. See also Securities Exchange Act Release No. 15533 (January 29, 1979), 44 FR 6084 (January 31, 1979) (regarding the American Stock Exchange (“Amex”) Post Execution Reporting System, the Amex Switching System, the Intermarket Trading System, the Multiple Dealer Trading Facility of the Cincinnati Stock Exchange, the PCX Communications and Execution System, and the Philadelphia Stock Exchange Automated Communications and Execution System) (“1979 Release”).

which the initiating member or an associated person thereof exercises investment discretion, neither the initiating member nor any associated person thereof may retain any compensation in connection with effecting the transaction, unless the person authorized to transact business for the account has expressly provided otherwise by written contract referring to Section 11(a) of the Act and Rule 11a2-2(T).²⁵⁹ MIAX EMERALD members trading for covered accounts over which they exercise investment discretion must comply with this condition in order to rely on the rule's exemption.²⁶⁰

D. Discipline and Oversight of Members

As noted above, one prerequisite for the Commission's grant of an exchange's application for registration is that a proposed exchange must be so organized and have the capacity to be able to carry out the purposes of the Act.²⁶¹ Specifically, an exchange must be able to enforce compliance by its members and persons associated with its members with the Act and the rules and regulations thereunder and the rules of the exchange.²⁶²

MIAX EMERALD's rules codify MIAX EMERALD's disciplinary jurisdiction over its members, thereby facilitating its ability to enforce its members' compliance with its rules and the federal securities laws.²⁶³ MIAX EMERALD's rules permit it to sanction members for violations of its rules and violations of any provision of the Act or the rules and regulations promulgated thereunder, by, among other things, expelling or suspending members; limiting members' activities, functions, or operations; fining or censuring members; suspending or barring a person from being associated with a

member; or any other fitting sanction in accordance with MIAX EMERALD rules.²⁶⁴

MIAX EMERALD's disciplinary and oversight functions will be administered in accordance with Chapter X of the MIAX EMERALD rules which governs disciplinary actions and which incorporates by reference Chapter X of the MIAX Exchange rules. Unless delegated to another SRO pursuant to the terms of any effective 17d-2 plan,²⁶⁵ MIAX EMERALD regulatory staff (including regulatory staff of another SRO that may be acting on MIAX EMERALD's behalf pursuant to a regulatory services agreement) will, among other things, investigate potential securities laws violations and initiate charges pursuant to MIAX EMERALD rules.²⁶⁶

Upon a finding of probable cause of a violation within the disciplinary jurisdiction of MIAX EMERALD and where further proceedings are warranted,²⁶⁷ MIAX EMERALD will conduct a hearing on disciplinary matters before a professional hearing officer²⁶⁸ and two members of the Business Conduct Committee²⁶⁹ (the "Panel").²⁷⁰ The MIAX EMERALD member (or their associated person) or the MIAX EMERALD regulatory staff may petition for review of the decision of the Panel by the MIAX EMERALD Board.²⁷¹ Any review would be conducted by the MIAX EMERALD Board or a committee thereof composed of at least three Directors of the MIAX EMERALD Board²⁷² (whose decision

must be ratified by the MIAX EMERALD Board) and such decision will be final.²⁷³ In addition, the MIAX EMERALD Board on its own motion may order review of a disciplinary decision.²⁷⁴

Appeals from any determination that impacts access to MIAX EMERALD, such as termination or suspension of membership, will be instituted under, and governed by, the provisions in the Chapter XI of the MIAX EMERALD Rules which incorporates by reference Chapter XI of the MIAX Exchange Rules. MIAX EMERALD's Chapter XI applies to persons economically aggrieved by any of the following actions of MIAX EMERALD including, but not limited to: (a) Denial of an application to become a Member; (b) barring a person from becoming associated with a Member; (c) limiting or prohibiting services provided by MIAX EMERALD or services of any exchange member.²⁷⁵

Any person aggrieved by an action of MIAX EMERALD within the scope of Chapter XI may file a written application to be heard within thirty days²⁷⁶ after such action has been taken.²⁷⁷ Applications for hearing and

all appeals related to disciplinary and adverse action determinations. See note 46 and accompanying text (detailing the composition of the Appeals Committee). If the Independent Director serving on the Appeals Committee recuses himself or herself from an appeal, due to conflict of interest or otherwise, the Independent Director may be replaced by a Non-Industry Director for purposes of the applicable appeal if there is no other Independent Director able to serve as the replacement. See MIAX EMERALD By-Laws, Article IV, Section 4.5(d). See also MIAX Exchange Amended and Restated By-Laws, Article IV, Section 4.5(d).

²⁷³ See MIAX EMERALD Rule 1010 (which incorporates by reference MIAX Exchange Rule 1010).

²⁷⁴ See *id.*

²⁷⁵ See MIAX EMERALD Rule 1100 (which incorporates by reference MIAX Exchange Rule 1100). As noted above, MIAX EMERALD has entered into an RSA with FINRA under which FINRA will perform certain regulatory functions on behalf of MIAX EMERALD. MIAX EMERALD may perform some or all of the functions specified in the Chapter XI of the MIAX EMERALD Rules, which incorporates by reference Chapter XI of the MIAX Exchange Rules. See *supra* note 110. See also MIAX EMERALD Rule 1106 (which incorporates by reference MIAX Exchange Rule 1106).

²⁷⁶ An applicant may file for an extension of time as allowed by the Chairman of the Business Conduct Committee within thirty days of MIAX EMERALD's action. An application for an extension will be ruled upon by the Chairman of the Business Conduct Committee, and his ruling will be given in writing. Rulings on applications for extensions of time are not subject to appeal. See MIAX EMERALD Rule 1101 (which incorporates by reference MIAX Exchange Rule 1101).

²⁷⁷ The application must include: (1) The action for which review is sought; (2) the specific reasons for the applicant's exception to such action; (3) the relief sought; and (4) whether the applicant intends to submit any documents, statements, arguments or other material in support of the application, with

²⁵⁹ 17 CFR 240.11a2-2(T)(a)(2)(iv). In addition, Rule 11a2-2(T)(d) requires a member or associated person authorized by written contract to retain compensation, in connection with effecting transactions for covered accounts over which such member or associated person thereof exercises investment discretion, to furnish at least annually to the person authorized to transact business for the account a statement setting forth the total amount of compensation retained by the member in connection with effecting transactions for the account during the period covered by the statement. See 17 CFR 240.11a2-2(T)(d). See also 1978 Release, *supra* note 252 (stating "[t]he contractual and disclosure requirements are designed to assure that accounts electing to permit transaction-related compensation do so only after deciding that such arrangements are suitable to their interests").

²⁶⁰ See MIAX EMERALD 11(a) Request Letter, *supra* note 253.

²⁶¹ See 15 U.S.C. 78f(b)(1).

²⁶² See *id.*

²⁶³ See MIAX EMERALD Rule 1000 (which incorporates by reference MIAX Exchange Rule 1000).

²⁶⁴ See *id.* See also MIAX Exchange Rule 1000, Cboe Rule 17.1(a), and Nasdaq ISE, LLC Rule 1600(a) (containing similar provisions).

²⁶⁵ See *supra* Section II.B.3.c (concerning the 17d-2 plans to which MIAX EMERALD has committed to join).

²⁶⁶ See MIAX EMERALD Rules 1002 and 1004 (which incorporate by reference MIAX Exchange Rules 1002 and 1004, respectively). As noted above, MIAX EMERALD has entered into an RSA with FINRA under which FINRA will perform certain regulatory functions on behalf of MIAX EMERALD. See MIAX EMERALD Rule 1015 (which incorporates by reference MIAX Exchange Rule 1015).

²⁶⁷ See MIAX EMERALD Rule 1004 (which incorporates by reference MIAX Exchange Rule 1004).

²⁶⁸ See MIAX EMERALD Rule 1015, Interpretation and Policy .01 (which incorporates by reference MIAX Exchange Rule 1015, Interpretation and Policy .01).

²⁶⁹ See MIAX EMERALD By-Laws, Article IV, Section 4.7.

²⁷⁰ See MIAX EMERALD Rule 1006 (which incorporates by reference MIAX Exchange Rule 1006).

²⁷¹ See MIAX EMERALD Rule 1010 (which incorporates by reference MIAX Exchange Rule 1010).

²⁷² Specifically, the Chairman of the MIAX EMERALD Board, with the approval of the Board, shall appoint an Appeals Committee to preside over

review will be referred to the Business Conduct Committee, which will appoint a hearing panel of no less than three members of such Committee.²⁷⁸ The decision of the hearing panel made pursuant to Chapter XI of the MIAX EMERALD rules is subject to review by the MIAX EMERALD Board, either on its own motion within 30 days after issuance of the decision, or upon written request submitted by the applicant or the President of MIAX EMERALD within 15 days after issuance of the decision.²⁷⁹ The review would be conducted by the MIAX EMERALD Board or a committee of the MIAX EMERALD Board composed of at least three directors.²⁸⁰

The Commission finds that MIAX EMERALD's proposed disciplinary and oversight rules and structure, as well as its proposed process for persons economically aggrieved by certain MIAX EMERALD actions, are consistent with the requirements of Sections 6(b)(6) and 6(b)(7) of the Act²⁸¹ in that they provide fair procedures for the disciplining of members and persons associated with members. The Commission further finds that the proposed MIAX EMERALD rules are designed to provide MIAX EMERALD with the ability to comply, and with the authority to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of MIAX EMERALD.²⁸² The Commission notes that MIAX EMERALD's proposed disciplinary and oversight rules and

structures are similar to the rules of other exchanges.²⁸³

E. Listing Requirements

MIAX EMERALD does not intend to initially list or trade common stock or non-option securities of operating companies but rather initially intends only to trade option contracts that meet the options listing standards of the Exchange.²⁸⁴ MIAX EMERALD's listing rules, including the criteria for the underlying securities of the options to be traded, incorporate by reference all of the listing rules of the MIAX Exchange, and are substantially similar to the listing standards adopted by other options exchanges.²⁸⁵

The Commission finds that MIAX EMERALD's proposed initial and continued listing rules are consistent with the Act, including Section 6(b)(5),²⁸⁶ in that they are designed to protect investors and the public interest, prevent fraudulent and manipulative acts and practices, and promote just and equitable principles of trade. Before beginning operation, MIAX EMERALD will need to become a participant in the Plan for the Purpose of Developing and Implementing Procedures Designed to Facilitate the Listing and Trading of Standardized Options Submitted Pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934 ("OLPP").²⁸⁷ In addition, before beginning operation, MIAX EMERALD will need to become a participant in the Options Clearing Corporation.

IV. Exemption From Section 19(b) of the Act With Regard to MIAX Exchange, Cboe, New York Stock Exchange ("NYSE"), and FINRA Rules Incorporated by Reference

MIAX EMERALD proposes to incorporate by reference certain MIAX Exchange, Cboe, NYSE, and FINRA rules.²⁸⁸ Thus, for certain MIAX

EMERALD rules, MIAX EMERALD members will comply with a MIAX EMERALD rule by complying with the referenced MIAX Exchange, Cboe, NYSE, and FINRA rules.

In connection with the proposal to incorporate MIAX Exchange, Cboe, NYSE, and FINRA rules by reference, MIAX EMERALD requests, pursuant to Rule 240.0–12 under the Act,²⁸⁹ an exemption under Section 36 of the Act from the rule filing requirements of Section 19(b) of the Act for changes to the MIAX EMERALD rules that are effected solely by virtue of a change to a cross-referenced MIAX Exchange, Cboe, NYSE or FINRA rule.²⁹⁰ MIAX EMERALD proposes to incorporate by reference categories of rules, rather than individual rules within a category, that are not trading rules. In addition, MIAX EMERALD agrees to provide written notice to its members whenever MIAX Exchange, Cboe, NYSE or FINRA proposes a change to a cross-referenced rule²⁹¹ and whenever any such proposed changes are approved by the Commission or otherwise become effective.²⁹²

Using the authority under Section 36 of the Act, the Commission previously exempted certain SROs from the requirement to file proposed rule changes under Section 19(b) of the Act.²⁹³ The Commission is hereby granting MIAX EMERALD's request for exemption, pursuant to Section 36 of

Chapter XI (Hearings, Review and Arbitration), Chapter XIII (Doing Business With the Public), Chapter XIV (Order Protection, Locked and Crossed Markets), Chapter XV (Margins), Chapter XVI (Net Capital Requirements), Chapter XVII (Consolidated Audit Trail Compliance Rule), and Chapter XVIII (Index Options). The following rules are cross-referenced in the MIAX Exchange rules: MIAX Exchange Rule 1107 (Arbitration) incorporates by reference the Rule 12000 Series and Rule 13000 Series of the FINRA Manual and FINRA Rule 2268; MIAX Exchange Rule 1321 (Transfer of Accounts) cross-references FINRA Rule 11870; MIAX Exchange Rule 1502 (Margin Requirements) cross-references the Cboe and NYSE rules concerning initial and maintenance margin requirements that may be in effect from time to time.

²⁸⁹ 17 CFR 240.0–12.

²⁹⁰ See Letter from Barbara J. Comly, EVP, General Counsel and Corporate Secretary, Miami Holdings, to Brent J. Fields, Secretary, Commission, dated November 30, 2018.

²⁹¹ See *id.*

²⁹² MIAX EMERALD will provide such notice through a posting on the same website location where MIAX EMERALD posts its own rule filings pursuant to Rule 19b–4(l) under the Act, within the required time frame. The website posting will include a link to the location on the MIAX Exchange, Cboe, NYSE or FINRA website where MIAX Exchange, Cboe, NYSE or FINRA's proposed rule change is posted. See *id.*

²⁹³ See, e.g., MIAX PEARL Order and MIAX Order, *supra* note 13, ISE Mercury Order, *supra* note 27, BATS Order, *supra* note 13, C2 Order, *supra* note 75, Nasdaq Order, *supra* note 27, and NOM Approval Order, *supra* note 112.

a description of any such materials. See MIAX EMERALD Rule 1101(a) (which incorporates by reference MIAX Exchange Rule 1101(a)).

²⁷⁸ See MIAX EMERALD Rule 1102 (which incorporates by reference MIAX Exchange Rule 1102). The decision of the hearing panel will be made in writing and sent to the parties to the proceedings. See MIAX EMERALD Rule 1103(d) (which incorporates by reference MIAX Exchange Rule 1103(d)).

²⁷⁹ See MIAX EMERALD Rule 1104(a) (which incorporates by reference MIAX Exchange Rule 1104(a)). The MIAX EMERALD Board, or a committee of the MIAX EMERALD Board, will have sole discretion to grant or deny either request. See *id.*

²⁸⁰ See MIAX EMERALD Rule 1104(b) (which incorporates by reference MIAX Exchange Rule 1104(b)). The MIAX EMERALD Board or its designated committee may affirm, reverse, or modify in whole or in part, the decision of the hearing panel. The decision of the MIAX EMERALD Board or its designated committee would be final, and must be in writing and would be sent to the parties to the proceeding. See MIAX EMERALD Rule 1104(c) (which incorporates by reference MIAX Exchange Rule 1104(c)).

²⁸¹ 15 U.S.C. 78f(b)(6) and (b)(7), respectively.

²⁸² See Section 6(b)(1) of the Act, 15 U.S.C. 78f(b)(1).

²⁸³ See, e.g., ISE Mercury Order, *supra* note 27, ISE Gemini Order, *supra* note 27, MIAX PEARL Order, *supra* note 13, and MIAX Order, *supra* note 13.

²⁸⁴ See MIAX EMERALD Rules Chapter IV (Option Contracts Traded on the Exchange) (which incorporates by reference MIAX Exchange Chapter IV) and Chapter XVIII (Index Options) (which incorporates by reference MIAX Exchange Chapter XVIII).

²⁸⁵ See MIAX Exchange Rules Chapter IV and Chapter XVIII, and MIAX PEARL Rules Chapter IV and Chapter XVIII. See also Nasdaq GEMX, LLC Rule 500 Series and Rule 2000 Series.

²⁸⁶ 15 U.S.C. 78f(b)(5).

²⁸⁷ 15 U.S.C. 78k–1(a)(3)(B).

²⁸⁸ Specifically, MIAX EMERALD proposes to incorporate by reference the following MIAX Exchange Rules: Chapter III (Business Conduct), Chapter IV (Option Contracts Traded on the Exchange), Chapter VII (Exercises and Deliveries), Chapter VIII (Records, Reports and Audits), Chapter IX (Summary Suspension), Chapter X (Discipline),

the Act, from the rule filing requirements of Section 19(b) of the Act with respect to the rules that MIAX EMERALD proposes to incorporate by reference. The exemption is conditioned upon MIAX EMERALD providing written notice to MIAX EMERALD members whenever MIAX Exchange, Cboe, NYSE or FINRA proposes to change an incorporated by reference rule and when the Commission approves any such changes. The Commission believes that the exemption is appropriate in the public interest and consistent with the protection of investors because it will promote more efficient use of Commission's and SROs' resources by avoiding duplicative rule filings based on simultaneous changes to identical rule text sought to be implemented by more than one SRO.

V. Conclusion

It is ordered that the application of MIAX EMERALD for registration as a national securities exchange be, and it hereby is, granted.

It is further ordered that operation of MIAX EMERALD is conditioned on the satisfaction of the requirements below:

A. *Participation in National Market System Plans Relating to Options Trading.* MIAX EMERALD must join: (1) The Plan for the Reporting of Consolidated Options Last Sale Reports and Quotation Information (Options Price Reporting Authority); (2) the OLPP; (3) the Linkage Plan; (4) the Plan of the Options Regulatory Surveillance Authority; and (5) the Plan Governing the Consolidated Audit Trail;

B. *Participation in Multiparty Rule 17d-2 Plans.* MIAX EMERALD must become a party to the multiparty Rule 17d-2 agreements concerning options sales practice regulation and market surveillance, and covered Regulation NMS rules;

C. *Participation in the Options Clearing Corporation.* MIAX EMERALD must become an Options Clearing Corporation participant exchange; and

D. *Participation in the Intermarket Surveillance Group.* MIAX EMERALD must join the Intermarket Surveillance Group.

It is further ordered, pursuant to Section 36 of the Act,²⁹⁴ that MIAX EMERALD shall be exempted from the rule filing requirements of Section 19(b) of the Act with respect to the MIAX Exchange, Cboe, NYSE and FINRA rules that MIAX EMERALD proposes to incorporate by reference, subject to the conditions specified in this order that MIAX EMERALD provide written notice

to MIAX EMERALD members whenever MIAX Exchange,

Cboe, NYSE or FINRA proposes to change an incorporated by reference rule and when the Commission approves any such changes.

By the Commission.

Brent J. Fields,
Secretary.

[FR Doc. 2018-28179 Filed 12-27-18; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33343; 812-14812]

AQR Trust and AQR Capital Management, LLC; Notice of Application

December 21, 2018.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice.

Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c-1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act. The requested order would permit (a) index-based series of certain open-end management investment companies ("Funds") to issue shares redeemable in large aggregations ("Creation Units"); (b) secondary market transactions in Fund shares to occur at negotiated market prices rather than at net asset value ("NAV"); (c) certain Funds to pay redemption proceeds, under certain circumstances, more than seven days after the tender of shares for redemption; (d) certain affiliated persons of a Fund to deposit securities into, and receive securities from, the Fund in connection with the purchase and redemption of Creation Units; (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the Funds ("Funds of Funds") to acquire shares of the Funds; (f) certain Funds ("Feeder Funds") to create and redeem Creation Units in-kind in a master-feeder structure; and (g) certain Funds to issue Shares in less than Creation Unit size to investors participating in a distribution reinvestment program.

APPLICANTS: AQR Trust (the "Trust"), a Delaware statutory trust that will register under the Act as an open-end management investment company with multiple series and AQR Capital Management, LLC (the "Initial Adviser"), a Delaware corporation registered as an investment adviser under the Investment Advisers Act of 1940.

FILING DATES: The application was filed on August 17, 2017 and amended on April 9, 2018, August 8, 2018, and December 12, 2018.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 15, 2019, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090; Applicants: William J. Fenrich, Esq., AQR Capital Management, LLC, Two Greenwich Plaza, 4th Floor, Greenwich, Connecticut 06830.

FOR FURTHER INFORMATION CONTACT: Steven I. Amchan, Senior Counsel, at (202) 551-6826, Hae-Sung Lee, Senior Counsel, at (202) 551-7345, or Andrea Ottomanelli Magovern, Branch Chief, at (202) 551-6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

Summary of the Application

1. Applicants request an order that would allow Funds to operate as index exchange traded funds ("ETFs").¹ Fund

¹ Applicants request that the order apply to the initial fund and any additional series of the Trust, and any other existing or future open-end