

designates the proposed rule change to be operative on July 18, 2016.<sup>15</sup>

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

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2016-75 on the subject line.

##### *Paper Comments*

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

All submissions should refer to File Number SR-Phlx-2016-75. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of

10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2016-75 and should be submitted on or before August 8, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Robert W. Errett,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78299; File No. SR-MIAX-2016-20]

### Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

July 12, 2016.

Pursuant to the provisions of section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 30, 2016, Miami International Securities Exchange LLC ("MIAX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule (the "Fee Schedule").

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

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

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

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

###### 1. Purpose

The Exchange proposes to amend its Fee Schedule to assess certain existing transaction fees, provide certain existing credits, and to afford certain existing discounts, concerning executions stemming from unrelated MIAX Market Maker quotes and unrelated MIAX Market Maker orders that participate in the MIAX PRIME Auction, as described more fully below.

The Exchange proposes to amend section (1)(a)(i) of the Fee Schedule concerning Market Maker<sup>3</sup> Transaction Fees to exclude volume related to certain transaction fees and rebates for Members that participate in the price improvement auction ("PRIME Auction" or "PRIME") pursuant to Exchange Rule 515A,<sup>4</sup> and to state

<sup>3</sup> The term "Market Makers" refers to "Lead Market Makers", "Primary Lead Market Makers" and "Registered Market Makers" collectively. The term "Lead Market Maker" means a Member registered with the Exchange for the purpose of making markets in securities traded on the Exchange and that is vested with the rights and responsibilities specified in chapter VI of the Exchange's Rules with respect to Lead Market Makers. When a Lead Market Maker is appointed to act in the capacity of a Primary Lead Market Maker, the additional rights and responsibilities of a Primary Lead Market Maker specified in chapter VI of the Exchange's Rules will apply. The term "Primary Lead Market Maker" means a Lead Market Maker appointed by the Exchange to act as the Primary Lead Market Maker for the purpose of making markets in securities traded on the Exchange. The Primary Lead Market Maker is vested with the rights and responsibilities specified in chapter VI of the Exchange's Rules with respect to Primary Lead Market Makers. The term "Registered Market Maker" means a Member registered with the Exchange for the purpose of making markets in securities traded on the Exchange, who is not a Lead Market Maker and is vested with the rights and responsibilities specified in chapter VI of the Exchange's Rules with respect to Registered Market Makers. See Exchange Rule 100.

<sup>4</sup> See Exchange Rule 515A. See also Securities Exchange Act Release Nos. 71640 (March 4, 2014),

<sup>15</sup> For purposes only of waiving the operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>16</sup> 17 CFR 200.30-3(a)(12).

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

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

specifically in section (1)(i)(v) of the Fee Schedule that MIAX will assess the Responder to PRIME Auction Fee to: (i) A PRIME AOC Response that executes against a PRIME Order, and (ii) a PRIME Participating Quote or Order (defined below). The Exchange also proposes to amend section (1)(a)(v) to afford the same discounted fee to Prime Participating Quotes or Orders (defined below) that already applies to PRIME AOC Responses, as described more fully below. Under the proposal, MIAX will apply the PRIME Break-up credit (defined below) to the Electronic Exchange Member (“EEM”)<sup>5</sup> that submitted the initiating PRIME Order for agency contracts that are submitted to the PRIME Auction that trade with a PRIME AOC Response or with a PRIME Participating Quote or Order (defined below). The Exchange also proposes to amend section (1)(b) of the Fee Schedule to state that MIAX will not assess a Marketing Fee to Market Makers for contracts executed as a PRIME Participating Quote or Order (defined below).

PRIME is a process by which a Member may electronically submit for execution an order it represents as agent (“Agency Order”) against principal interest and/or an Agency Order against solicited interest. The Agency Order is referred to as a “PRIME Agency Order” for purposes of Section 1(b) of the Fee Schedule. The Member that submits the PRIME Agency Order (the “Initiating Member”) agrees to guarantee the execution of the PRIME Agency Order by submitting a contra-side order representing principal interest or solicited interest (“Contra-side Order”).<sup>6</sup> When the Exchange receives a properly designated Agency Order for Auction processing, a Request for Responses (“RFR”) detailing the option, side, size, and initiating price will be sent to all subscribers of the Exchange’s data feeds. Members may submit responses to the RFR (specifying prices and sizes). RFR responses can be either an Auction or Cancel (“AOC”) order or an AOC eQuote.<sup>7</sup>

The Exchange proposes to amend section (1) of the Fee Schedule to

exclude from the volume determinations in the Market Maker Sliding Scale<sup>8</sup> both PRIME AOC Responses and unrelated MIAX Market Maker quotes or unrelated MIAX Market Maker orders that are received during the Response Time Interval and executed against the PRIME Order. Such unrelated MIAX Market Maker quotes or unrelated MIAX Market Maker orders will be referred to as “PRIME Participating Quotes or Orders” in the Fee Schedule. The Exchange believes that PRIME AOC Responses should be excluded from the volume threshold determinations with regards to non-PRIME transaction fees because the PRIME Fees set forth in section (1)(a)(v) of the Fee Schedule and discussed below are distinct from the Market Maker Transaction Fees described in Section (1)(a)(i). The volume threshold tiers included in the Market Maker Sliding Scale in Section (1)(a) are intended to provide incentive for Market Makers to quote aggressively outside of the PRIME Auction and to reward volume generated from such quotes, whereas the PRIME Fees do not have a sliding scale and are not dependent on percentage volume tiers. Instead, transactions by PRIME Responders already are assessed fees based upon responses to an Auction notification and are distinguished from regular transaction fees that result from different quoting behavior. Thus, the Exchange believes that it is appropriate to exclude PRIME AOC Responses from the calculation of the volume tier thresholds in the Market Maker Sliding Scale.

Similarly, the Exchange believes that PRIME Participating Quotes or Orders should also be excluded from the section (1)(a)(i) volume determinations in the Market Maker Sliding Scale because a PRIME Participating Quote or Order has the same effect as a PRIME AOC Response (*i.e.*, it is received during the Response Time Interval and executed against the PRIME Order). As described more fully below, PRIME Participating Quotes or Orders will be assessed the same Responder to PRIME Auction Fees and credits that are assessed and credited to PRIME AOC Responses.

The Exchange proposes to amend section (1)(i)(v) of the Fee Schedule to

state clearly that MIAX will assess the Responder to PRIME Auction Fee to: (i) A PRIME AOC Response that executes against a PRIME Order, and (ii) a PRIME Participating Quote or Order.

Currently, the Exchange assesses PRIME AOC Responses a Responder to PRIME Auction Fee of \$0.50 per contract for standard options in Penny Pilot classes and \$0.99 per contract in non-Penny Pilot classes. The Exchange is not proposing to amend these fees; the Exchange is simply proposing to add clarifying language to section (1)(a)(v) to state that MIAX will assess the Responder to PRIME Auction Fee to a PRIME AOC Response that executes against a PRIME Order, and add that the Responder to PRIME Auction Fee will also apply to a PRIME Participating Quote or Order. The Exchange believes it is appropriate to assess the same fees to PRIME Participating Quotes or Orders that are assessed to Market Maker responders to the PRIME Auction because PRIME Participating Quotes or Orders receive the same benefit of trading against the PRIME Order. PRIME Participating Quotes or Orders interact in the same manner in the PRIME Auction and receive the same Market Maker trade allocation as MIAX Market Maker responders to the PRIME Auction<sup>9</sup> despite being submitted outside of the PRIME Auction. The Exchange believes that it is fair and reasonable to assess the same fees to MIAX Market Makers for all quotes or orders that benefit equally from interaction with the PRIME Order, regardless of whether they are submitted as PRIME Auction Responses or as PRIME Participating Quotes or Orders. The Exchange notes that, while Market Maker Transaction Fees described in section (1)(a)(i) may be subject to Marketing Fees (as set forth in section (1)(b) of the Fee Schedule and discussed below), PRIME AOC Responses and PRIME Participating Quotes or Orders will not be subject to Marketing Fees. This treatment of the Marketing Fees is consistent with the Exchange’s current Fee Schedule since the Responder to Prime Auction Fee of \$.50 is not subject to Marketing Fees.

The Exchange also proposes to include PRIME Participating Quotes or Orders in the determination of the Prime Break-up Credit. The PRIME Break-up Credit is currently credited on a per contract basis to the Initiating EEM for each PRIME Order contract that trades with a PRIME AOC Response. The Exchange currently applies a per contract PRIME Break-up Credit of \$0.25 for Penny Classes, and \$0.60 for non-

79 FR 13334 (March 10, 2014) (SR-MIAX-2014-09) (“Notice”); 72009 (April 23, 2014), 79 FR 24032 (April 29, 2014) (SR-MIAX-2014-09).

<sup>5</sup> The term “Electronic Exchange Member” means the holder of a Trading Permit who is not a Market Maker. Electronic Exchange Members are deemed “members” under the Exchange Act. See Exchange Rule 100.

<sup>6</sup> The paired order submitted to PRIME that includes both the PRIME Agency Order and the Contra-side Order is referred to as the PRIME Order for purposes of the Fee Schedule.

<sup>7</sup> See Exchange Rules 515A(a)(2)(i)(D), 516(b)(4), 517(a)(2)(ii).

<sup>8</sup> The MIAX Market Maker Sliding Scale for transaction fees reduces a MIAX Market Maker’s per contract transaction fee based on percentages of total national Market Maker volume of any options classes that trade on the exchange during the calendar month. The Market Maker Sliding Scale applies to all MIAX Market Makers for transactions in all products except mini-options. See Fee Schedule, section (1)(a)(i).

<sup>9</sup> See Exchange Rule 515A(a)(2)(iii).

Penny Classes, to MIAX Market Makers. The Exchange is not proposing to amend these credits; the Exchange is simply proposing that in addition to trades with PRIME AOC Responses, MIAX will apply the PRIME Break-up Credit to the EEM that submitted the PRIME Order for agency<sup>10</sup> contracts that are submitted to the PRIME Auction that trade with a PRIME Participating Quote or Order. The Exchange believes that, just as with respect to the PRIME Auction Responder Fees described above, the PRIME Break-up Credit should apply to PRIME Participating Quotes or Orders because a PRIME Participating Quote or Order serves the same function as a PRIME AOC Response (*i.e.*, it is received during the Response Time Interval and executed against the PRIME Order). The Exchange does not currently apply the PRIME Break-up Credit to the Initiating EEM for those PRIME Order contracts that trade with unrelated quotes and orders. Other than the proposed change with regard to PRIME Participating Quotes or Orders discussed above, the Exchange is not proposing any additional change to the application of PRIME Break-up Credits. The Exchange will continue its current practice of not applying the PRIME Break-up Credit to Initiating EEMs for those PRIME Order contracts that trade with unrelated (*i.e.*, non-MIAX Market Maker) orders.

The Exchange is also proposing to amend section (1)(a)(v) of the Fee Schedule to include PRIME Participating Quotes or Orders in certain discounted fees that apply to qualifying Members and affiliates, which will be known as the Discounted PRIME Response Fee. The Discounted PRIME Response Fee is \$0.46 per contract for standard options in Penny Pilot classes, and \$0.95 per contract for standard options in non-Penny Pilot classes.

The Discounted PRIME Response Fee, which already applies to PRIME AOC Responses (currently known as the PRIME AOC Response Fee), would apply to any Member or its affiliates of at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A, that qualifies for the Priority Customer Rebate Program<sup>11</sup> volume tiers 3 or 4 and submits a PRIME Participating

Quote or Order that is received during the Response Time Interval and executed against the PRIME Order. Members and their affiliates that meet the above criteria qualify for the Discounted PRIME Response Fee through activity that falls outside of the PRIME Auction (*i.e.*, submitting Priority Customer Orders for execution on the Exchange). The Exchange believes that a Member that submits a sufficient number Priority Customer Orders to qualify for Priority Customer Rebate Program volume tiers 3 or 4 should receive the benefit of the Discounted PRIME Response Fee, and the Exchange proposes to reward such Members and their qualified affiliates equally for PRIME AOC Responses and PRIME Participating Quotes or Orders.

The Exchange believes that assessing the Discounted PRIME Response Fee to PRIME Participating Quotes or Orders is a fair treatment of PRIME Participating Quotes or Orders because it puts them on equal footing with PRIME AOC Responses, which serve the same function (*i.e.*, execution against PRIME Orders) during the Response Time Interval, and qualifying Members and affiliates submitting [sic] The Exchange will continue its current practice of not applying the PRIME Break-up Credit to Initiating EEMs for those PRIME Order contracts that trade with unrelated (non-MIAX Market Maker) orders. should be entitled to the same discount [sic]. The Exchange is also proposing to exclude PRIME Participating Quotes or Orders from the Marketing Fees described in section (1)(b) of the Fee Schedule. Currently, MIAX assesses a Marketing Fee to all Market Makers for contracts, including mini options, they execute in their assigned classes when the contra-party to the execution is a Priority Customer. MIAX will not assess a Marketing Fee to Market Makers for contracts executed as a PRIME Agency Order, Contra-side Order, Qualified Contingent Cross Order, or a PRIME AOC Response in the PRIME Auction; unless it executes against an unrelated order. The Exchange proposes to amend section (1)(b) to exclude PRIME Participating Quotes or Orders from the Marketing Fees as well. The Exchange believes that this treatment of the PRIME Participating Quote, on an equal basis with a PRIME AOC Response, is consistent with the proposed fees and credits described above.

Finally, the Exchange is proposing to exclude PRIME Participating Quotes or Orders from the Posted Liquidity Marketing Fee described in section (1)(b). MIAX currently assesses an additional \$0.12 per contract Posted Liquidity Marketing Fee to all Market

Makers for any standard options overlying EEM, GLD, IWM, QQQ, and SPY that Market Makers execute in their assigned class when the contra-party to the execution is a Priority Customer and the Priority Customer order was posted on the MIAX Book at the time of the execution. MIAX does not assess the additional Posted Liquidity Marketing Fee to Market Makers for contracts executed as a PRIME Agency Order, Contra-side Order, Qualified Contingent Cross Order, or a PRIME AOC Response in the PRIME Auction. In order to ensure the same treatment afforded to PRIME AOC Responses, the Exchange is proposing to exclude contracts executed as PRIME Participating Quotes from the Posted Liquidity Marketing Fee.

The proposed changes to the Fee Schedule will become operative on July 1, 2016.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its fee schedule is consistent with section 6(b) of the Act<sup>12</sup> in general, and furthers the objectives of section 6(b)(4) of the Act<sup>13</sup> and section 6(b)(5) of the Act<sup>14</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest, and in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

The Exchange's proposal to exclude from the volume threshold determination volume related to PRIME AOC Responses and PRIME Participating Quotes or Orders is reasonable because the Exchange already assesses a separate fee for such transactions from the same Market Makers that receive the benefit of interaction with the PRIME Order in the PRIME Auction. The Exchange's proposal to exclude PRIME Auction-related volume from the non-PRIME Auction-related volume threshold determination for Market Maker Transaction Fees is equitable and not unfairly discriminatory because the exclusion will apply to all Market Makers.

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(4).

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

<sup>10</sup> The Exchange is proposing to add the word "agency" to this provision for clarity.

<sup>11</sup> MIAX credits each Member the per contract amount resulting from each Priority Customer order transmitted by that Member which is executed electronically on the Exchange in all multiply-listed option classes (with certain exclusions) provided the Member meets certain percentage thresholds in a month as described in the Priority Customer Rebate Program table. See Fee Schedule Section (1)(a)(iii).

The Exchange's determination not to apply the PRIME Auction-related volume to the section (1)(a)(i) tiers reflects the Exchange's belief that these volume tiers are related to quoting and trading activity that falls outside of the PRIME Auction, and that discounted per contract fees for non-PRIME Auction activity should be earned by achieving certain volume thresholds in the Market Maker Sliding Scale through non-PRIME Auction activity.

The Exchange believes that a Member that submits a sufficient number of Priority Customer Orders to qualify for the Priority Customer Rebate Program volume tiers 3 or 4 should receive the benefit of the Discounted PRIME Response Fee, and the Exchange proposes to reward such Members and their qualified affiliates equally for PRIME AOC Responses and PRIME Participating Quotes or Orders. Such a reward should provide incentive to Members to submit a greater number of Priority Customer Orders to the Exchange, thus removing impediments to and perfecting the mechanisms of a free and open market and a national market system by providing more opportunities for the execution of Priority Customer Orders on the Exchange. Additionally, the Discounted PRIME Response Fee is fair and reasonable because it will apply equally to PRIME AOC Responses, as it does today, and to PRIME Participating Quotes or Orders, both of which result in executions against the PRIME Order regardless of whether they are submitted as an Auction Response or as an unrelated quote or order.

Additionally, the proposed amendments to the Fee Schedule represent the equitable allocation of reasonable fees and other charges among Exchange members, because the proposed fees and credits applicable to Market Makers and EEMs relating to PRIME Participating Quotes or Orders are identical to the fees and credits applicable to PRIME AOC Responses, which function in the same manner as PRIME Participating Quotes or Orders. Moreover, the proposed amendments are equitable and reasonable because the same fees and credits apply equally to all participants in each category (Market Makers or EEMs) respectively.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that it operates in a highly competitive market in which

market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow. The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's Market Maker transaction fees in a manner that encourages market participants to provide liquidity and to send order flow to the Exchange both in the PRIME Auction and outside the PRIME Auction.

The Exchange believes that the proposal enhances competition by providing incentives such as the Discounted PRIME Response Fee to Members and their qualified affiliates that submit Priority Customer Orders to the Exchange, which deepens liquidity on the Exchange and thus provides more opportunities to execute transactions on MIAAX.

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

Written comments were neither solicited nor received.

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

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act,<sup>15</sup> and Rule 19b-4(f)(2)<sup>16</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

#### **IV. Solicitation of Comments**

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#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MIAAX-2016-20 on the subject line.

#### *Paper Comments*

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

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For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Robert W. Errett,**  
*Deputy Secretary.*

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

<sup>16</sup> 17 CFR 240.19b-4(f)(2).