

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68415; File No. SR-MIAX-2012-01]

### Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt the MIAX Options Fee Schedule

December 12, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 7, 2012, Miami International Securities Exchange LLC ("Exchange" or "MIAX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange is filing a proposal to adopt the MIAX Options Fee Schedule (the "Fee Schedule"). Specifically, the Fee Schedule would establish select transaction and regulatory fees applicable to Members trading options on and using services provided by MIAX.

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 purpose of the proposed rule change is to establish select transaction and regulatory fees applicable to Members trading options on and using services provided by the MIAX.

##### Marketing Fee

MIAX will assess a Marketing Fee to all MIAX Market Makers for contracts they execute in their assigned classes when the contra-party to the execution is a Priority Customer. The Marketing Fee is charged only in a Market Maker's assigned classes because it is in these classes that the Market Maker has the general obligation to attract order flow to the Exchange. MIAX will, on a monthly basis, disburse collected Marketing Fees to specific Electronic Exchange Members in accordance with instructions received from the applicable Primary Lead Market Maker "PLMM" or Lead Market Maker "LMM" in the option class. The PLMM will provide instructions regarding the disbursement of Marketing Fees collected in those option classes in which he is the appointed PLMM on transactions resulting from orders that have been directed to him and from non-directed orders in that option class. The LMM will provide instructions regarding the disbursement of Marketing Fees collected on transactions resulting from orders that have been directed to him.

Undispersed Marketing Fees will be reimbursed to Market Makers based upon their pro-rata portion of the entire amount of Marketing Fees collected on a three month rolling schedule. In order to provide PLMMs and LMMs flexibility in the timing of their disbursements to Electronic Exchange Members, PLMMs and LMMs may choose to disburse the Market Fees collected in one month over a three month period. Reimbursement of undispersed Marketing Fees will take this into consideration.

The amount of the Marketing Fee would depend upon whether the affected option class is included in the option Penny Pilot Program. A Marketing Fee of \$0.25 per contract will be assessed to Market Makers for transactions in option classes that are included in the Penny Pilot Program. A Marketing Fee of \$0.70 per contract will be assessed to Market Makers for transactions in option classes that are not in the Penny Pilot Program. A list of option classes included in the Penny

Pilot Program is available on the MIAX Web site. MIAX's Marketing Fees are the same as CBOE, ISE, NYSE Amex and PHLX for transactions in option classes in the Penny Pilot Program. For option classes not in the Penny Pilot Program, MIAX's Marketing Fees are the same as PHLX (\$0.70) and higher than CBOE, ISE and NYSE Amex (\$0.65 each respectively).

##### Routing Fees

MIAX will assess Routing Fees in order to recoup costs incurred by MIAX when routing to various away markets. MIAX will also pay to its Member any rebate it receives on transactions routed to an away market where there is such a rebate paid. To establish the appropriate Routing Fee for a particular order that is routed to, and executed on, an away market, MIAX will assess the transaction fee that is being assessed by the away market, plus a specified fixed fee, which represents the costs incurred by the Exchange for routing an order to an away market. The transaction fee portion of the routing fee will be the actual charge assessed by the away market at the time that the order was entered into the MIAX Trading System. This transaction fee will be calculated on an order-by-order basis since different away markets charge different amounts.<sup>3</sup> In the case where there is no transaction fee assessed by the away market, the Routing Fee assessed by MIAX will be only the fixed rate surcharge described below.

MIAX will assess a routing fee surcharge at a fixed rate of \$0.10 per contract for Public Customer orders that are routed to and executed on away markets.<sup>4</sup> The routing fee surcharge represents the cost to MIAX for routing the order to the away market. In analyzing its costs, the Exchange took into account clearing costs,<sup>5</sup> administrative, regulatory and technical costs associated with routing orders to an away market. The Exchange uses unaffiliated routing brokers to route orders to the away markets; the costs associated with the use of these services

<sup>3</sup> This is similar to the methodologies utilized by the NASDAQ OMX PHLX LLC ("PHLX") and the International Securities Exchange, LLC ("ISE") in assessing Routing Fees. See PHLX's Pricing Schedule and ISE's Fee Schedule.

<sup>4</sup> The Commission notes that, under the MIAX routing rules, orders other than Public Customer orders are not routed to away markets. See Securities Exchange Act Release No. 68341 (December 3, 2012), 77 FR 73065, at 73086 (December 7, 2012).

<sup>5</sup> The Options Clearing Corporation ("OCC") recently amended its clearing fee from \$0.03 per contract side to \$0.01 per contract side. See Securities Exchange Act Release No. 68025 (October 10, 2012), 77 FR 63398 (October 16, 2012) (SR-OCC-2012-18).

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

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

are included in the fixed fee surcharge. The Exchange analyzed its potential costs in determining to assess a fixed fee surcharge of \$0.10 per contract to represent the overall cost to the Exchange for technical, administrative, clearing, regulatory, compliance and other costs, which is in addition to the transaction fee assessed by the away market. The routing fee surcharge of \$0.10 is the same as the fixed fee charged by PHLX for orders routed to exchanges other than NASDAQ OMX BX, Inc. ("BX") and NASDAQ Options Market ("NOM").<sup>6</sup>

MIAX is also proposing to pay a market participant any rebate offered by an away market where there is such a rebate paid. Any rebate paid would be netted against the fixed fee surcharge assessed by MIAX. For example, if a Public Customer order is routed to BOX Options Exchange, LLC ("BOX"), and BOX offers a customer rebate of \$0.20 per contract, MIAX would deduct its fixed fee surcharge of \$0.10 per contract from the rebate and pay the \$0.10 per contract rebate to the market participant for the customer order that was routed.

#### Regulatory Fees

##### A. Sales Value Fee

The Sales Value Fee<sup>7</sup> is assessed by the Exchange to each Member for sales on the Exchange with respect to which the Exchange is obligated to pay a fee to the Commission pursuant to Section 31 of the Exchange Act. The Sales Value Fee is equal to the Section 31 fee rate multiplied by the Member's aggregate dollar amount of covered sales resulting from options transactions occurring on the Exchange during any computational period. To the extent there may be any excess monies collected under this rule, the Exchange may retain those monies to help fund general operating expenses. The sales transactions to which the fee applies are sales of options (other than options on a security index) and the sales of securities resulting from the exercise of physical-delivery options. The fee is collected indirectly from Members through their clearing firms by The Options Clearing Corporation on behalf of MIAX with respect to option sales and options exercises.

##### B. Web CRD<sup>8</sup> Fees

Financial Industry Regulatory Authority ("FINRA"), through the Web

CRD<sup>SM</sup> registration system for the registration of associated persons of Electronic Exchange Member and Market Maker organizations that are not also FINRA members, collects from those MIAX Members general registration fees and fingerprint processing fees. The MIAX Options Fee Schedule sets forth both the Web CRD Fees FINRA is currently charging and the new Web CRD Fees it will begin charging January 2, 2013.

##### 2. Statutory Basis

The Exchange believes that its proposal to adopt its Fee Schedule for select transaction and regulatory fees is consistent with Section 6(b) of the Act<sup>9</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>10</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange believes the fees proposed for transactions on MIAX are reasonable. MIAX will operate within a highly competitive market in which market participants can readily send order flow to any of ten other competing venues if they deem fees at a particular venue to be excessive. The proposed fee structure is intended to attract order flow to MIAX by offering market participants incentives to submit their orders to MIAX.

MIAX notes that the U.S. options markets are highly competitive, and the Marketing Fee is intended to provide an incentive for PLLMs and LMMs to enter into marketing agreements with Electronic Exchange Members so that they will provide order flow to MIAX. The Marketing Fee is charged only in a Market Maker's assigned classes because it is in these classes that the Market Maker has the general obligation to attract order flow to the Exchange. MIAX believes that its program of Marketing Fees, which is similar to marketing fee programs that have previously been implemented on other options exchanges,<sup>11</sup> will enhance the

and its regulators. It contains the registration records of more than 6,800 registered broker-dealers and the qualification, employment, and disclosure histories of more than 660,000 active registered individuals.

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

<sup>10</sup> 15 U.S.C. 78f(b)(4).

<sup>11</sup> See e.g., Securities Exchange Act Release Nos. 53969 (June 9, 2006), 71 FR 34973 (June 16, 2006) (SR-CBOE-2006-53); 55265 (February 9, 2007), 72 FR 7697 (February 16, 2007) (SR-CBOE-2007-11); 55271 (February 12, 2007), 72 FR 7699 (February 16, 2007) (SR-ISE-2007-08); and 54152 (July 14, 2006), 71 FR 41488 (July 21, 2006). See also, Securities Exchange Act Release Nos. 53841 (May 19, 2006), 71 FR 30461 (May 26, 2006) (SR-Phlx-2006-33); 54297 (August 9, 2006), 71 FR 47280 (August 16, 2006) (SR-Phlx-2006-47); 54485

MIAX's competitive position and will result in increased liquidity on the MIAX, thereby providing more of an opportunity for customers to receive best executions on MIAX. MIAX believes that its Marketing Fee is reasonable since the amount of MIAX's Marketing Fee is the same as other exchanges for options classes in the Penny Pilot Program and slightly higher than some of the other exchanges and the same as two of the exchanges for options classes not in the Penny Pilot Program.

The Exchange believes that the proposed Routing Fees are reasonable because they seek to recoup costs that are incurred by the Exchange when routing Public Customer orders to away markets on behalf of members. Each destination market's transaction charge varies and there is a cost incurred by the Exchange when routing orders to away markets. The costs to the Exchange include clearing costs, administrative, regulatory and technical costs associated with routing options. The Exchange believes that the proposed Routing Fees would enable the Exchange to recover the costs it incurs to route orders to away markets in addition to transaction fees assessed to market participants for the execution of Public Customer orders by the away market. The Exchange believes that it is reasonable for it to recoup its actual costs associated with routing orders to away markets. Also, market participants whose orders routed to away markets will be entitled to receive rebates offered by the away markets, which rebates will net against fees assessed by the Exchange for routing orders. The Exchange believes that the opportunity to collect a rebate will reduce Routing Fees.

MIAX also believes that it is equitable and not unfairly discriminatory for market participants to receive rebates on orders routed to away markets that pay rebates. MIAX would pay rebates offered by away markets uniformly to market participants when their orders are routed to a destination market that offers a rebate.

The proposed Sales Value Fee allows the Exchange to offset the cost it incurs in payment to the Commission of a transaction fee that is designed to recover the costs related to the government's supervision and regulation of the securities markets and securities professionals. The amount of the fee is the same amount assessed to

(September 22, 2006), 71 FR 57017 (September 28, 2006) (SR-Phlx-2006-56); 55290 (February 13, 2007), 72 FR 8051 (February 22, 2007) (SR-Phlx-2007-05); and 55473 (March 14, 2007), 72 FR 13338 (March 21, 2007) (SR-Phlx-2007-12).

<sup>6</sup> See Securities Exchange Act Release No. 68213 (November 13, 2012), 77 FR 69530 (November 19, 2012) (SR-PHLX-2012-129).

<sup>7</sup> See Exchange Rule 1207.

<sup>8</sup> FINRA operates the Web Central Registration Depository (CRD<sup>®</sup>), the central licensing and registration system for the U.S. securities industry

the Exchange pursuant to Section 31 of the Exchange Act. The Exchange believes it is reasonable to recover the actual costs associated with the payment of Section 31 fees.

Finally, the Exchange believes it is reasonable, equitable and not unfairly discriminatory for the FINRA fees to be included on the Fee Schedule because these fees are not being assessed or set by MIAX, but by FINRA, and will be assessed to broker-dealers that register associated persons through FINRA's WebCRD system.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must establish fees that are competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed MIAX Options Fee Schedule for select transaction and regulatory fees appropriately reflects this competitive environment.

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

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

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

Written comments were neither solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>12</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-MIAX-2012-01 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number SR-MIAX-2012-01. 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 such 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 publicly available. All submissions should refer to File Number SR-MIAX-2012-01 and should be submitted on or before January 8, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Kevin M. O'Neill,**  
*Deputy Secretary.*

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**BILLING CODE 8011-01-P**

### **SMALL BUSINESS ADMINISTRATION**

[Disaster Declaration #13365 and #13366]

#### **New York Disaster Number NY-00130**

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 4.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for the State of New York (FEMA-4085-DR), dated 10/30/2012.

*Incident:* Hurricane Sandy.

*Incident Period:* 10/27/2012 through 11/08/2012.

*Effective Date:* 12/10/2012.

*Physical Loan Application Deadline Date:* 01/28/2013.

*EIDL Loan Application Deadline Date:* 07/31/2013.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** The notice of the President's major disaster declaration for the State of New York, dated 10/30/2012 is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 01/28/2013.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**James E. Rivera,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 2012-30417 Filed 12-17-12; 8:45 am]

**BILLING CODE 8025-01-P**

### **SMALL BUSINESS ADMINISTRATION**

[Disaster Declaration #13415 and #13416]

#### **District of Columbia Disaster #DC-00006**

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the District of Columbia (FEMA-4096-DR), dated 12/05/2012.

*Incident:* Hurricane Sandy.

*Incident Period:* 10/26/2012 through 10/31/2012.

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>13</sup> 17 CFR 200.30-3(a)(12).