

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 49	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2013 - * 01	Amendment No. (req. for Amendments *)
----------------	--	----------------------------	---------------------------------------

Filing by Miami International Securities Exchange, LLC.  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
Pilot <input type="checkbox"/>			Rule		
Extension of Time Period for Commission Action * <input type="checkbox"/>		Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input checked="" type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) <input type="checkbox"/>	Section 3C(b)(2) <input type="checkbox"/>
Section 806(e)(2) <input type="checkbox"/>	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
---	---

**Description**

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

Relating to Transaction Fees and ORF

**Contact Information**

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

First Name * Richard	Last Name * Rudolph
Title * Senior Counsel	
E-mail * rrudolph@miami-holdings.com	
Telephone * (609) 897-1487	Fax <input type="text"/>

**Signature**

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

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

(Title \*)

Date 01/14/2013	Senior Vice President
By Claire P. McGrath	<input type="text"/>

(Name \*)

Claire McGrath, cmcgrath@miami

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

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

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

Add Remove View

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

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

Add Remove View

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

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

Add Remove View

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

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

Add Remove View

Exhibit Sent As Paper Document

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

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

Add Remove View

Exhibit Sent As Paper Document

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

**Exhibit 4 - Marked Copies**

Add Remove View

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

**Exhibit 5 - Proposed Rule Text**

Add Remove View

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

**Partial Amendment**

Add Remove View

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

1. Text of the Proposed Rule Change

(a) Miami International Securities Exchange, LLC (“MIAX” or “Exchange”), pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> proposes to amend the MIAX Options Fee Schedule (the “Fee Schedule”) by adopting additional Transaction Fees and establishing an Options Regulatory Fee applicable to participants trading options on and using services provided by MIAX.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative January 2, 2013.

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

(b) Inapplicable.

(c) Inapplicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Exchange’s Board of Directors on December 5, 2012. No other action by the Exchange is necessary for the filing of the proposed rule change.

Questions and comments on the proposed rule change may be directed to Richard S. Rudolph, Senior Counsel, at (609) 897-1487.

---

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

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

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

a. Purpose

The purpose of the proposed rule change is to establish select transaction and regulatory fees applicable to market participants trading options on and using services provided by the Exchange. These fees will apply to all options traded on MIAX. This proposed rule change replaces previously submitted filing SR-MIAX-2012-06, which was withdrawn, in its entirety.

i. Transaction Fees

The proposed Fee Schedule sets forth transaction fees for all options traded on the Exchange in amounts that vary depending upon whether the transaction is for the account of a Market Maker or other market participant, as described more fully below.

A. Market Maker Transaction Fees

Transaction fees applicable to Market Makers will be based upon the type of Market Maker and whether the transaction resulted from an order that was directed to the Market Maker. Market Makers are registered in one of three categories: Primary Lead Market Maker (“PLMM”),<sup>3</sup> Lead Market Maker (“LMM”),<sup>4</sup> or Registered Market Maker (“RMM”).<sup>5</sup> When the

---

<sup>3</sup> 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 Rules with respect to Primary Lead Market Makers. See Exchange Rule 100.

<sup>4</sup> 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 these 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 Rules will apply. See Exchange Rule 100.

<sup>5</sup> 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 Rules with respect to Registered Market Makers. See Exchange Rule 100.

term “Market Maker” is used herein, it shall refer collectively to all Market Makers registered in the categories of PLMM, LMM and RMM. As outlined in Chapter VI of the Exchange’s rules, these categories are important in the differentiation of appointments, obligations and requirements for each type of Market Maker. As described in Rule 602, each option class can have only one PLMM appointed, but multiple LMMs and RMMs can be appointed in each option class up to a limit of 50 Market Makers per option class. PLMMs have a higher continuous quoting obligation than both LMMs and RMMs, and LMMs have a higher continuous quoting obligation than RMMs as described in Rule 604(e). Additionally, Rule 609 sets forth financial requirements—the highest level for PLMMs, the next highest level to LMMs and the lowest level for RMMs. Thus, transaction fees charged to PLMMs, LMMs and RMMs reflect the distinctions between these types of Market Makers. RMMs will be charged \$0.23 per executed contract, LMMs will be charged \$0.20 per executed contract and PLMMs will be charged \$0.18 per executed contract.

In addition, a discount of \$0.02 is applied for Directed Orders. An Electronic Exchange Member (“EEM”)<sup>6</sup> may designate a Lead Market Maker (“Directed Lead Market Maker” or “Directed LMM”) on orders it enters into the System. The LMM must have an appointment in the option class in order to receive a Directed Order in that option class.<sup>7</sup> An LMM may also be the PLMM in an option class and receive a Directed Order (a “Directed PLMM”). If an order is directed to a Directed LMM, the transaction fee will be \$0.18 per executed contract for that Directed LMM and if an order is directed to the Directed PLMM in an option class, the

---

<sup>6</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 Act. See Exchange Rule 100.

<sup>7</sup> See Exchange Rule 514(h) for the requirements related to Directed Orders.

transaction fee will be \$0.16 per executed contract for the Directed PLMM. This discount is in recognition of the effort on the part of Directed LMMs and Directed PLMMs to attract directed order flow to the Exchange. RMMs are not eligible to receive Directed Orders and therefore will not be offered this discount.

MIAX's Transaction Fees for Market Makers are comparable to those of other options exchanges.

For example, NYSEAmex assesses a \$0.18 per contract transaction fee to directed market makers, whereas MIAX is proposing the same \$0.18 per contract Transaction Fee for Directed LMMs, and a \$0.16 per contract Transaction Fee for Directed PLMMs. Non-directed NYSEAmex options market makers are assessed a \$0.20 per contract transaction fee. MIAX proposes to assess non-Directed LMMs the same \$0.20 per contract Transaction Fee, and non-Directed PLMMs a Transaction Fee of \$0.18.

MIAX RMMs would be assessed a Transaction Fee of \$0.23 per contract, which is the same amount as the transaction fee in non "maker-taker" options for market makers trading in non-Penny Pilot options on NASDAQ OMX PHLX ("PHLX").<sup>8</sup>

#### B. Other Market Participant Transaction Fees

##### Orders for Priority Customer Accounts

There will be no transaction fees assessed to EEMs entering orders for the account(s) of Priority Customers.<sup>9</sup> Similarly, NYSEAmex and PHLX do not charge transaction fees for non-professional customer orders in non-"maker-taker" options.

---

<sup>8</sup> MIAX is not proposing a "maker-taker" fee model at this time.

<sup>9</sup> The term "Priority Customer" means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). See Exchange Rule 100.

### Public Customer that is Not a Priority Customer

An EEM that enters an order that is executed for the account of a Public Customer<sup>10</sup> that does not meet the criteria for designation as a Priority Customer will be assessed a fee of \$0.25 per contract. This fee will also be charged to an EEM that enters an order for the account of a Public Customer that has elected to be treated as a Voluntary Professional.<sup>11</sup> This transaction fee is identical to the transaction fee assessed for orders for the account(s) of PHLX “professional customers” in the non-maker-taker option classes.

### Non-MIAX Market Maker

An EEM that enters an order that is executed for the account of a non-MIAX market maker will be assessed a fee of \$0.45 per contract. A non-MIAX market maker is a market maker registered as such on another options exchange. At forty-five cents, MIAX’s transaction fee per executed contract for the account of a non-MIAX market maker is the same as CBOE (in Penny Pilot issues).

### Non-Member Broker-Dealer

An EEM that enters an order that is executed for the account of a non-Member Broker-Dealer will be assessed a fee of \$0.45 per contract. At forty-five cents, MIAX’s Transaction Fee per executed contract for the account of a non-Member Broker-Dealer will be the same as the CBOE per-contract fee for transactions for the account of a broker-dealer applicable to option classes included in the Penny Pilot.

---

<sup>10</sup> The term “Public Customer” means a person that is not a broker or dealer in securities. See Exchange Rule 100.

<sup>11</sup> The term “Voluntary Professional” means any Public Customer that elects, in writing, to be treated in the same manner as a broker or dealer in securities for purposes of Rule 514, as well as the Exchange’s schedule of fees. See Exchange Rule 100.

Moreover, other exchanges currently differentiate between Broker-Dealers (the equivalent of a MIAX non-Member Broker-Dealer), Firms and “Professional Customers” (the equivalent of a MIAX non-Priority Customer) respecting Transaction Fees. For example, the term “non-Member Broker-Dealer” is used by MIAX, and is analogous to the term “Broker-Dealer” as used on PHLX. MIAX uses the term “non-Priority Customer” synonymously with the PHLX “Professional Customer.”

MIAX’s proposed treatment of Transaction Fees for non-Member Broker-Dealers is similar to that of Broker-Dealers on the PHLX in that the Transaction Fees applicable to them would be differentiated, and higher, than those applicable to Firms (who clear as such through OCC) and MIAX non-Priority Customers, who are subject to the same restrictions as PHLX Professional Customers (*i.e.*, a person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s)).

MIAX uses the term “Firm” to apply to a transaction for an account identified by the EEM for clearing in the OCC “Firm” range. PHLX’s definition also uses the term “Firm” to apply to any transaction that is identified by a PHLX member or member organization for clearing in the “Firm” range at OCC.<sup>12</sup> An EEM that enters an order that is executed for an account identified by the EEM for clearing in the “Firm” range at OCC will be assessed a fee of \$0.25 per contract. At twenty-five cents, MIAX’s transaction fee per executed contract for the account of a Firm is lower than PHLX (\$0.40 respecting options in the Penny Pilot) and is higher than CBOE, ISE in non-select symbols, and NYSE Amex (\$0.20 each, respectively).

---

<sup>12</sup> See Preamble to PHLX Pricing Schedule.



Thus, there is precedent to treat non-Member Broker-Dealers (who are neither OCC members nor members of another options exchange) differently from Firms and non-Priority Customers respecting transaction fees.<sup>13</sup> Accordingly, MIAX believes that, because this differentiation is already made on PHLX and on NYSE Amex,<sup>14</sup> MIAX's proposal to differentiate among these participants raises no new regulatory issues. The instant MIAX proposal is therefore an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities, and is not unfairly discriminatory, consistent with Section (6)(b)(4) of the Act.<sup>15</sup>

The above Transaction Fees will be effective on and after January 2, 2013.

ii. Options Regulatory Fee

MIAX will assess an Options Regulatory Fee ("ORF") to Members in the amount of \$0.0040 per contract side. The per-contract ORF will be assessed by MIAX to each MIAX Member for all options transactions executed and cleared, or simply cleared, by the Member, that are cleared by OCC in the "customer" range, regardless of the exchange on which the transaction occurs. The ORF will be collected indirectly from Members through their clearing firms by OCC on behalf of MIAX.

The ORF also will be charged for transactions that are not executed by a Member but are ultimately cleared by a Member. In the case where a non-Member executes a transaction and a Member clears the transaction, the ORF will be assessed to the Member who clears the transaction. In the case where a Member executes a transaction and another Member clears the transaction, the ORF will be assessed to the Member who clears the transaction. As a practical

---

<sup>13</sup> See, e.g., PHLX Pricing Schedule, and NYSE Amex Fee Schedule.

<sup>14</sup> Id.

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

matter, it is not feasible or reasonable for the Exchange (or any SRO) to identify each executing member that submits an order on a trade-by-trade basis. There are countless executing market participants, and each day such participants can and often do drop their connection to one market center and establish themselves as participants on another. It is virtually impossible for any exchange to identify, and thus assess fees such as an ORF on, each executing participant on a given trading day.

Clearing members, however, are distinguished from executing participants because they remain identified to the Exchange regardless of the identity of the initiating executing participant, their location, and the market center on which they execute transactions. Therefore, the Exchange believes it is more efficient for the operation of the Exchange and for the marketplace as a whole to assess the ORF to clearing members.

The Exchange believes it is appropriate to charge the ORF only to transactions that clear as customer at the OCC.

The Exchange believes that its broad regulatory responsibilities with respect to a Member's activities supports applying the ORF to transactions cleared but not executed by a Member. The Exchange's regulatory responsibilities are the same regardless of whether a Member executes a transaction or clears a transaction executed on its behalf. The Exchange regularly reviews all such activities, including performing surveillance for position limit violations, manipulation, front-running, contrary exercise advice violations and insider trading. These activities span across multiple exchanges.

The ORF is designed to recover a material portion of the costs to the Exchange of the supervision and regulation of Members' customer options business, including performing routine surveillances and investigations, as well as policy, rulemaking, interpretive and enforcement

activities. The Exchange believes that revenue generated from the ORF, when combined with all of the Exchange's other regulatory fees and fines, will cover a material portion, but not all, of the Exchange's regulatory costs. The Exchange notes that its regulatory responsibilities with respect to Member compliance with options sales practice rules have been allocated to the Chicago Board Options Exchange, LLC ("CBOE") under a 17d-2 Agreement. The ORF is not designed to cover the cost of options sales practice regulation.

The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. The Exchange expects to monitor MIAX regulatory costs and revenues at a minimum on an annual basis. If the Exchange determines regulatory revenues exceed regulatory costs, the Exchange will adjust the ORF by submitting a fee change filing to the Commission. The Exchange will notify Members of adjustments to the ORF via regulatory circular.

The Exchange believes it is reasonable and appropriate for the Exchange to charge the ORF for options transactions regardless of the exchange on which the transactions occur. The Exchange has a statutory obligation to enforce compliance by Members and their associated persons under the Act and the rules of the Exchange and to surveil for other manipulative conduct by market participants (including non-Members) trading on the Exchange. The Exchange cannot effectively surveil for such conduct without looking at and evaluating activity across all options markets. Many of the Exchange's market surveillance programs require the Exchange to look at and evaluate activity across all options markets, such as surveillance for position limit violations, manipulation, front-running and contrary exercise advice violations/expiring exercise declarations. Also, the Exchange and the other options exchanges

are required to populate a consolidated options audit trail (“COATS”)<sup>16</sup> system in order to surveil a Member’s activities across markets.

In addition to its own surveillance programs, the Exchange works with other SROs and exchanges on intermarket surveillance related issues. Through its participation in the Intermarket Surveillance Group (“ISG”),<sup>17</sup> the Exchange shares information and coordinates inquiries and investigations with other exchanges designed to address potential intermarket manipulation and trading abuses. The Exchange’s participation in ISG helps it to satisfy the requirement that it has coordinated surveillance with markets on which security futures are traded and markets on which any security underlying security futures are traded to detect manipulation and insider trading.<sup>18</sup>

The Exchange believes that charging the ORF across markets will avoid having Members direct their trades to other markets in order to avoid the fee and to thereby avoid paying for their fair share for regulation. If the ORF did not apply to activity across markets then a Member would send their orders to the least cost, least regulated exchange. Other exchanges do impose a similar fee on their member's activity, including the activity of those members on MIAX.<sup>19</sup>

The Exchange notes that there is established precedent for an SRO charging a fee across markets, namely, FINRAs Trading Activity Fee<sup>20</sup> and the NYSE Amex, NYSE Arca, CBOE, PHLX, ISE and BOX ORF. While the Exchange does not have all the same regulatory

---

<sup>16</sup> COATS effectively enhances intermarket options surveillance by enabling the options exchanges to reconstruct the market promptly to effectively surveil certain rules.

<sup>17</sup> ISG is an industry organization formed in 1983 to coordinate intermarket surveillance among the SROs by co-operatively sharing regulatory information pursuant to a written agreement between the parties. The goal of the ISG's information sharing is to coordinate regulatory efforts to address potential intermarket trading abuses and manipulations.

<sup>18</sup> See Section 6(h)(3)(I) of the Act.

<sup>19</sup> Similar regulatory fees have been instituted by PHLX (See Securities Exchange Act Release No. 61133 (December 9, 2009), 74 FR 66715 (December 16, 2009) (SR-Phlx-2009-100)); and ISE (See Securities Exchange Act Release No. 61154 (December 11, 2009), 74 FR 67278 (December 18, 2009) (SR-ISE-2009-105)).

<sup>20</sup> See Securities Exchange Act Release No. 47946 (May 30, 2003), 68 FR 3402 (June 6, 2003).

responsibilities as FINRA, the Exchange believes that, like other exchanges that have adopted an ORF, its broad regulatory responsibilities with respect to a Member's activities, irrespective of where their transactions take place, supports a regulatory fee applicable to transactions on other markets. Unlike FINRA's Trading Activity Fee, the ORF would apply only to a Member's customer options transactions.

The ORF will be effective on and after January 2, 2013.

In addition to the above changes, the Exchange is proposing technical numbering amendments to account for the insertion of new footnotes in the Fee Schedule.

b. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act<sup>21</sup> in general, and furthers the objectives of Section 6(b)(4) and 6(b)(5) of the Act<sup>22</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges.

Transaction Fees

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

The Exchange believes it is equitable and not unfairly discriminatory for MIAX Market Makers to be assessed different Transaction Fees based on the category of Market Maker being

---

<sup>21</sup> 15 U.S.C. 78f(b).

<sup>22</sup> 15 U.S.C. 78f(b)(4) and (5).

assessed — that is, Primary Lead Market Maker (“PLMM”), Lead Market Maker (“LMM”) and Registered Market Maker (“RMM”). In accordance with MIAX rules, PLMMs have a higher level of obligations and greater capital requirements than LMMs and RMMs, and LMMs have a higher level of obligations and greater capital requirements than RMMs. The transaction fees assessed to each type of Market Maker reflect these differences in obligations and capital requirements—PLMMs pay lower fees than LMMs and RMMs, and LMMs pay lower fees than RMMs. MIAX believes that this tiered fee structure provides incentives for Market Makers to undertake a higher level of obligation, which should result in more Market Makers providing a higher level of continuous quoting and a greater volume of liquidity.

MIAX believes the proposed Transaction Fees assessed to Market Makers are reasonable because they are comparable to transaction fees charged by other options exchanges, and in most cases, fall within the range of transaction fees charged by other options exchanges.

The Exchange believes that its proposed Transaction Fees are equitable and not unfairly discriminatory because they are available to all Market Makers and are reasonably related to the value to the Exchange that comes with higher market quality and higher levels of liquidity in the price and volume discovery processes. Such increased liquidity at the Exchange should allow it to spread its administrative and infrastructure costs over a greater number of transactions leading to lower costs per transaction.

The Exchange believes it is equitable and not unfairly discriminatory for MIAX Market Makers to have generally lower fees than other professional market participants (referred to as non-Priority Customers, Non-Member Broker-Dealers, non-MIAX Market Makers, Voluntary Professionals, and Firms in the Fee Schedule). Market Makers have obligations that other professional market participants do not. In particular, they must maintain continuous two-sided

markets in the classes in which they are appointed, and must meet certain minimum quoting requirements. Therefore, the Exchange believes it is appropriate that Market Makers be assessed lower transaction fees since they provide greater volumes of liquidity to the market. In addition, MIAX believes the proposed fees charged to Market Makers and other professional market participants are reasonable because they are, as detailed in the Purpose section above, comparable to fees that such accounts are assessed at other competing exchanges.

The Exchange believes it is equitable and not unfairly discriminatory to assess discounted Transaction Fees to PLMMs and LMMs for orders that are directed to them. A Directed LMM or Directed PLMM that enters into a directed order arrangement with an order flow provider typically expends substantial time and financial resources in seeking out and entering into such an agreement. The \$0.02 discount, which is applied equally to the base per-contract rate of an LMM and a PLMM, is in recognition of the effort on the part of Directed LMMs and Directed PLMMs to attract directed order flow to the Exchange.

The Exchange believes that it is equitable and not unfairly discriminatory not to assess a per-contract Transaction Fee to an EEM that enters an order that is executed for the account of a Priority Customer, while assessing a Transaction Fee to an EEM that enters an order that is executed for the account of specified other participants. A Priority Customer is by definition not a broker or dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). This limitation does not apply to participants on MIAX whose behavior is substantially similar to that of professionals, including non-Priority Customers, Non-Member Broker-Dealers, non-MIAX Market Makers, Voluntary Professionals, and Firms, who will generally submit a higher number of orders (many of which do not result in executions) than Priority Customers.

The Exchange believes that it is equitable and not unfairly discriminatory to assess lower Transaction Fees to EEMs that submit orders for the account(s) of Firms and for Public Customers that are not Priority Customers than for orders for the account(s) of non-MIAX Market Makers. Market makers that are not MIAX Members do not have the same quoting or financial obligations as MIAX Market Makers; the Exchange believes that these obligations entitle MIAX Market Makers to lower transaction fees than non-MIAX market makers, who do not have the same obligations.

The Exchange further believes that, because there is precedent to treat non-Member Broker-Dealers (who are neither OCC members nor members of another options exchange) differently from Firms and non-Priority Customers respecting transaction fees, such differentiation is not unfairly discriminatory. This differentiation is already made on PHLX and on NYSE Amex, and the MIAX's proposal to differentiate among these participants in the same manner as those other options exchanges therefore raises no new regulatory issues. The instant MIAX proposal is therefore an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities, and is not unfairly discriminatory, consistent with Section (6)(b)(4) of the Act.

#### ORF

The Exchange believes the ORF is equitable and not unfairly discriminatory because it is objectively allocated to Members in that it is charged to all Members on all their transactions that clear as customer at the OCC. Moreover, the Exchange believes the ORF ensures fairness by assessing fees to those Members that are directly based on the amount of customer options business they conduct. Regulating customer trading activity is much more labor intensive and requires greater expenditure of human and technical resources than regulating non-customer



trading activity, which tends to be more automated and less labor-intensive. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (e.g., Member proprietary transactions) of its regulatory program.

The ORF is designed to recover a material portion of the costs of supervising and regulating Members' customer options business including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. The Exchange will monitor, on at least an annual basis the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. If the Exchange determines regulatory revenues exceed regulatory costs, the Exchange will adjust the ORF by submitting a fee change filing to the Commission. The Exchange will notify Members of adjustments to the ORF via regulatory circular.

The Exchange has designed the ORF to generate revenues that, when combined with all of the Exchange's other regulatory fees, will be less than or equal to the Exchange's regulatory costs, which is consistent with the Commission's view that regulatory fees be used for regulatory purposes and not to support the Exchange's business side. In this regard, the Exchange believes that the initial level of the fee is reasonable.

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

MIAX does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Unilateral action by MIAX in establishing fees for services provided to its Members and others using its facilities will not have an impact on competition. As a new entrant in the already highly

competitive environment for equity options trading, MIAX does not have the market power necessary to set prices for services that are unreasonable or unfairly discriminatory in violation of the Act. MIAX's proposed Transaction Fees and the ORF, as described herein, are comparable to fees charged by other options exchanges for the same or similar services.

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

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

Not applicable.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>23</sup> and Rule 19b-4(f)(2) thereunder<sup>24</sup> the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

---

<sup>23</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>24</sup> 17 CFR 240.19b-4.

11. Exhibits

1. Completed notice of proposed rule change for publication in the Federal Register.
5. Copy of the applicable section of the MIAX Options Fee Schedule.

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-MIAX-2013-01

January \_\_, 2013

Self-Regulatory Organizations: Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by Miami International Securities Exchange LLC to Amend the MIAX Options Fee Schedule

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 January 14, 2013, Miami International Securities Exchange LLC (“MIAX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule (the “Fee Schedule”) by adopting additional Transaction Fees and establishing an Options Regulatory Fee applicable to participants trading options on and using services provided by MIAX.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative January 2, 2013.

The text of the proposed rule change is provided in Exhibit 5. The text of the proposed rule change is also available on the Exchange’s website at

[http://www.miaxoptions.com/filter/wotitle/rule\\_filing](http://www.miaxoptions.com/filter/wotitle/rule_filing), at MIAX’s principal office, and at the Commission’s Public Reference Room.

---

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

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

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

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

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

#### 1. Purpose

The purpose of the proposed rule change is to establish select transaction and regulatory fees applicable to market participants trading options on and using services provided by the Exchange. These fees will apply to all options traded on MIAX. This proposed rule change replaces previously submitted filing SR-MIAX-2012-06, which was withdrawn, in its entirety.

#### i. Transaction Fees

The proposed Fee Schedule sets forth transaction fees for all options traded on the Exchange in amounts that vary depending upon whether the transaction is for the account of a Market Maker or other market participant, as described more fully below.

#### A. Market Maker Transaction Fees

Transaction fees applicable to Market Makers will be based upon the type of Market Maker and whether the transaction resulted from an order that was directed to the Market Maker. Market Makers are registered in one of three categories: Primary Lead Market Maker (“PLMM”),<sup>3</sup> Lead Market Maker (“LMM”),<sup>4</sup> or Registered Market Maker (“RMM”).<sup>5</sup> When the

---

<sup>3</sup> 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

term “Market Maker” is used herein, it shall refer collectively to all Market Makers registered in the categories of PLMM, LMM and RMM. As outlined in Chapter VI of the Exchange’s rules, these categories are important in the differentiation of appointments, obligations and requirements for each type of Market Maker. As described in Rule 602, each option class can have only one PLMM appointed, but multiple LMMs and RMMs can be appointed in each option class up to a limit of 50 Market Makers per option class. PLMMs have a higher continuous quoting obligation than both LMMs and RMMs, and LMMs have a higher continuous quoting obligation than RMMs as described in Rule 604(e). Additionally, Rule 609 sets forth financial requirements—the highest level for PLMMs, the next highest level to LMMs and the lowest level for RMMs. Thus, transaction fees charged to PLMMs, LMMs and RMMs reflect the distinctions between these types of Market Makers. RMMs will be charged \$0.23 per executed contract, LMMs will be charged \$0.20 per executed contract and PLMMs will be charged \$0.18 per executed contract.

In addition, a discount of \$0.02 is applied for Directed Orders. An Electronic Exchange Member (“EEM”)<sup>6</sup> may designate a Lead Market Maker (“Directed Lead Market Maker” or “Directed LMM”) on orders it enters into the System. The LMM must have an appointment in

---

Lead Market Maker is vested with the rights and responsibilities specified in Chapter VI of the Rules with respect to Primary Lead Market Makers. See Exchange Rule 100.

<sup>4</sup> 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 these 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 Rules will apply. See Exchange Rule 100.

<sup>5</sup> 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 Rules with respect to Registered Market Makers. See Exchange Rule 100.

<sup>6</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 Act. See Exchange Rule 100.

the option class in order to receive a Directed Order in that option class.<sup>7</sup> An LMM may also be the PLMM in an option class and receive a Directed Order (a “Directed PLMM”). If an order is directed to a Directed LMM, the transaction fee will be \$0.18 per executed contract for that Directed LMM and if an order is directed to the Directed PLMM in an option class, the transaction fee will be \$0.16 per executed contract for the Directed PLMM. This discount is in recognition of the effort on the part of Directed LMMs and Directed PLMMs to attract directed order flow to the Exchange. RMMs are not eligible to receive Directed Orders and therefore will not be offered this discount.

MIAX’s Transaction Fees for Market Makers are comparable to those of other options exchanges.

For example, NYSEAmex assesses a \$0.18 per contract transaction fee to directed market makers, whereas MIAX is proposing the same \$0.18 per contract Transaction Fee for Directed LMMs, and a \$0.16 per contract Transaction Fee for Directed PLMMs. Non-directed NYSEAmex options market makers are assessed a \$0.20 per contract transaction fee. MIAX proposes to assess non-Directed LMMs the same \$0.20 per contract Transaction Fee, and non-Directed PLMMs a Transaction Fee of \$0.18.

MIAX RMMs would be assessed a Transaction Fee of \$0.23 per contract, which is the same amount as the transaction fee in non “maker-taker” options for market makers trading in non-Penny Pilot options on NASDAQ OMX PHLX (“PHLX”).<sup>8</sup>

---

<sup>7</sup> See Exchange Rule 514(h) for the requirements related to Directed Orders.

<sup>8</sup> MIAX is not proposing a “maker-taker” fee model at this time.

## B. Other Market Participant Transaction Fees

### Orders for Priority Customer Accounts

There will be no transaction fees assessed to EEMs entering orders for the account(s) of Priority Customers.<sup>9</sup> Similarly, NYSEAmex and PHLX do not charge transaction fees for non-professional customer orders in non-“maker-taker” options.

### Public Customer that is Not a Priority Customer

An EEM that enters an order that is executed for the account of a Public Customer<sup>10</sup> that does not meet the criteria for designation as a Priority Customer will be assessed a fee of \$0.25 per contract. This fee will also be charged to an EEM that enters an order for the account of a Public Customer that has elected to be treated as a Voluntary Professional.<sup>11</sup> This transaction fee is identical to the transaction fee assessed for orders for the account(s) of PHLX “professional customers” in the non-maker-taker option classes.

### Non-MIAX Market Maker

An EEM that enters an order that is executed for the account of a non-MIAX market maker will be assessed a fee of \$0.45 per contract. A non-MIAX market maker is a market maker registered as such on another options exchange. At forty-five cents, MIAX’s transaction fee per executed contract for the account of a non-MIAX market maker is the same as CBOE (in Penny Pilot issues).

---

<sup>9</sup> The term “Priority Customer” means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). See Exchange Rule 100.

<sup>10</sup> The term “Public Customer” means a person that is not a broker or dealer in securities. See Exchange Rule 100.

<sup>11</sup> The term “Voluntary Professional” means any Public Customer that elects, in writing, to be treated in the same manner as a broker or dealer in securities for purposes of Rule 514, as well as the Exchange’s schedule of fees. See Exchange Rule 100.



### Non-Member Broker-Dealer

An EEM that enters an order that is executed for the account of a non-Member Broker-Dealer will be assessed a fee of \$0.45 per contract. At forty-five cents, MIAX's Transaction Fee per executed contract for the account of a non-Member Broker-Dealer will be the same as the CBOE per-contract fee for transactions for the account of a broker-dealer applicable to option classes included in the Penny Pilot.

Moreover, other exchanges currently differentiate between Broker-Dealers (the equivalent of a MIAX non-Member Broker-Dealer), Firms and "Professional Customers" (the equivalent of a MIAX non-Priority Customer) respecting Transaction Fees. For example, the term "non-Member Broker-Dealer" is used by MIAX, and is analogous to the term "Broker-Dealer" as used on PHLX. MIAX uses the term "non-Priority Customer" synonymously with the PHLX "Professional Customer."

MIAX's proposed treatment of Transaction Fees for non-Member Broker-Dealers is similar to that of Broker-Dealers on the PHLX in that the Transaction Fees applicable to them would be differentiated, and higher, than those applicable to Firms (who clear as such through OCC) and MIAX non-Priority Customers, who are subject to the same restrictions as PHLX Professional Customers (*i.e.*, a person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s)).

MIAX uses the term "Firm" to apply to a transaction for an account identified by the EEM for clearing in the OCC "Firm" range. PHLX's definition also uses the term "Firm" to apply to any transaction that is identified by a PHLX member or member organization for

clearing in the “Firm” range at OCC.<sup>12</sup> An EEM that enters an order that is executed for an account identified by the EEM for clearing in the “Firm” range at OCC will be assessed a fee of \$0.25 per contract. At twenty-five cents, MIAX’s transaction fee per executed contract for the account of a Firm is lower than PHLX (\$0.40 respecting options in the Penny Pilot) and is higher than CBOE, ISE in non-select symbols, and NYSE Amex (\$0.20 each, respectively).

Thus, there is precedent to treat non-Member Broker-Dealers (who are neither OCC members nor members of another options exchange) differently from Firms and non-Priority Customers respecting transaction fees.<sup>13</sup> Accordingly, MIAX believes that, because this differentiation is already made on PHLX and on NYSE Amex,<sup>14</sup> MIAX’s proposal to differentiate among these participants raises no new regulatory issues. The instant MIAX proposal is therefore an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities, and is not unfairly discriminatory, consistent with Section (6)(b)(4) of the Act.<sup>15</sup>

The above Transaction Fees will be effective on and after January 2, 2013.

ii. Options Regulatory Fee

MIAX will assess an Options Regulatory Fee (“ORF”) to Members in the amount of \$0.0040 per contract side. The per-contract ORF will be assessed by MIAX to each MIAX Member for all options transactions executed and cleared, or simply cleared, by the Member, that are cleared by OCC in the “customer” range, regardless of the exchange on which the transaction occurs. The ORF will be collected indirectly from Members through their clearing firms by OCC on behalf of MIAX.

---

<sup>12</sup> See Preamble to PHLX Pricing Schedule.

<sup>13</sup> See, e.g., PHLX Pricing Schedule, and NYSE Amex Fee Schedule.

<sup>14</sup> Id.

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

The ORF also will be charged for transactions that are not executed by a Member but are ultimately cleared by a Member. In the case where a non-Member executes a transaction and a Member clears the transaction, the ORF will be assessed to the Member who clears the transaction. In the case where a Member executes a transaction and another Member clears the transaction, the ORF will be assessed to the Member who clears the transaction. As a practical matter, it is not feasible or reasonable for the Exchange (or any SRO) to identify each executing member that submits an order on a trade-by-trade basis. There are countless executing market participants, and each day such participants can and often do drop their connection to one market center and establish themselves as participants on another. It is virtually impossible for any exchange to identify, and thus assess fees such as an ORF on, each executing participant on a given trading day.

Clearing members, however, are distinguished from executing participants because they remain identified to the Exchange regardless of the identity of the initiating executing participant, their location, and the market center on which they execute transactions. Therefore, the Exchange believes it is more efficient for the operation of the Exchange and for the marketplace as a whole to assess the ORF to clearing members.

The Exchange believes it is appropriate to charge the ORF only to transactions that clear as customer at the OCC.

The Exchange believes that its broad regulatory responsibilities with respect to a Member's activities supports applying the ORF to transactions cleared but not executed by a Member. The Exchange's regulatory responsibilities are the same regardless of whether a Member executes a transaction or clears a transaction executed on its behalf. The Exchange regularly reviews all such activities, including performing surveillance for position limit

violations, manipulation, front-running, contrary exercise advice violations and insider trading. These activities span across multiple exchanges.

The ORF is designed to recover a material portion of the costs to the Exchange of the supervision and regulation of Members' customer options business, including performing routine surveillances and investigations, as well as policy, rulemaking, interpretive and enforcement activities. The Exchange believes that revenue generated from the ORF, when combined with all of the Exchange's other regulatory fees and fines, will cover a material portion, but not all, of the Exchange's regulatory costs. The Exchange notes that its regulatory responsibilities with respect to Member compliance with options sales practice rules have been allocated to the Chicago Board Options Exchange, LLC ("CBOE") under a 17d-2 Agreement. The ORF is not designed to cover the cost of options sales practice regulation.

The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. The Exchange expects to monitor MIAX regulatory costs and revenues at a minimum on an annual basis. If the Exchange determines regulatory revenues exceed regulatory costs, the Exchange will adjust the ORF by submitting a fee change filing to the Commission. The Exchange will notify Members of adjustments to the ORF via regulatory circular.

The Exchange believes it is reasonable and appropriate for the Exchange to charge the ORF for options transactions regardless of the exchange on which the transactions occur. The Exchange has a statutory obligation to enforce compliance by Members and their associated persons under the Act and the rules of the Exchange and to surveil for other manipulative conduct by market participants (including non-Members) trading on the Exchange. The Exchange cannot effectively surveil for such conduct without looking at and evaluating activity

across all options markets. Many of the Exchange's market surveillance programs require the Exchange to look at and evaluate activity across all options markets, such as surveillance for position limit violations, manipulation, front-running and contrary exercise advice violations/expiring exercise declarations. Also, the Exchange and the other options exchanges are required to populate a consolidated options audit trail (“COATS”)<sup>16</sup> system in order to surveil a Member’s activities across markets.

In addition to its own surveillance programs, the Exchange works with other SROs and exchanges on intermarket surveillance related issues. Through its participation in the Intermarket Surveillance Group (“ISG”),<sup>17</sup> the Exchange shares information and coordinates inquiries and investigations with other exchanges designed to address potential intermarket manipulation and trading abuses. The Exchange’s participation in ISG helps it to satisfy the requirement that it has coordinated surveillance with markets on which security futures are traded and markets on which any security underlying security futures are traded to detect manipulation and insider trading.<sup>18</sup>

The Exchange believes that charging the ORF across markets will avoid having Members direct their trades to other markets in order to avoid the fee and to thereby avoid paying for their fair share for regulation. If the ORF did not apply to activity across markets then a Member would send their orders to the least cost, least regulated exchange. Other exchanges do impose a similar fee on their member's activity, including the activity of those members on MIAAX.<sup>19</sup>

---

<sup>16</sup> COATS effectively enhances intermarket options surveillance by enabling the options exchanges to reconstruct the market promptly to effectively surveil certain rules.

<sup>17</sup> ISG is an industry organization formed in 1983 to coordinate intermarket surveillance among the SROs by co-operatively sharing regulatory information pursuant to a written agreement between the parties. The goal of the ISG's information sharing is to coordinate regulatory efforts to address potential intermarket trading abuses and manipulations.

<sup>18</sup> See Section 6(h)(3)(I) of the Act.

<sup>19</sup> Similar regulatory fees have been instituted by PHLX (See Securities Exchange Act Release No. 61133 (December 9, 2009), 74 FR 66715 (December 16, 2009) (SR-Phlx-2009-100)); and ISE (See Securities Exchange Act Release No. 61154 (December 11, 2009), 74 FR 67278 (December 18, 2009) (SR-ISE-2009-105)).

The Exchange notes that there is established precedent for an SRO charging a fee across markets, namely, FINRA's Trading Activity Fee<sup>20</sup> and the NYSE Amex, NYSE Arca, CBOE, PHLX, ISE and BOX ORF. While the Exchange does not have all the same regulatory responsibilities as FINRA, the Exchange believes that, like other exchanges that have adopted an ORF, its broad regulatory responsibilities with respect to a Member's activities, irrespective of where their transactions take place, supports a regulatory fee applicable to transactions on other markets. Unlike FINRA's Trading Activity Fee, the ORF would apply only to a Member's customer options transactions.

The ORF will be effective on and after January 2, 2013.

In addition to the above changes, the Exchange is proposing technical numbering amendments to account for the insertion of new footnotes in the Fee Schedule.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act<sup>21</sup> in general, and furthers the objectives of Section 6(b)(4) and 6(b)(5) of the Act<sup>22</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges.

### Transaction Fees

The Exchange believes the fees proposed for transactions on MIAX are reasonable. MIAX operates within a highly competitive market in which market participants can readily send order flow to any of ten other competing venues if, among other things, they deem fees at a particular venue to be unreasonable or excessive. The proposed fee structure is intended to

---

<sup>20</sup> See Securities Exchange Act Release No. 47946 (May 30, 2003), 68 FR 3402 (June 6, 2003).

<sup>21</sup> 15 U.S.C. 78f(b).

<sup>22</sup> 15 U.S.C. 78f(b)(4) and (5).

attract order flow to MIAX by offering market participants incentives to submit their orders to MIAX.

The Exchange believes it is equitable and not unfairly discriminatory for MIAX Market Makers to be assessed different Transaction Fees based on the category of Market Maker being assessed — that is, Primary Lead Market Maker (“PLMM”), Lead Market Maker (“LMM”) and Registered Market Maker (“RMM”). In accordance with MIAX rules, PLMMs have a higher level of obligations and greater capital requirements than LMMs and RMMs, and LMMs have a higher level of obligations and greater capital requirements than RMMs. The transaction fees assessed to each type of Market Maker reflect these differences in obligations and capital requirements—PLMMs pay lower fees than LMMs and RMMs, and LMMs pay lower fees than RMMs. MIAX believes that this tiered fee structure provides incentives for Market Makers to undertake a higher level of obligation, which should result in more Market Makers providing a higher level of continuous quoting and a greater volume of liquidity.

MIAX believes the proposed Transaction Fees assessed to Market Makers are reasonable because they are comparable to transaction fees charged by other options exchanges, and in most cases, fall within the range of transaction fees charged by other options exchanges.

The Exchange believes that its proposed Transaction Fees are equitable and not unfairly discriminatory because they are available to all Market Makers and are reasonably related to the value to the Exchange that comes with higher market quality and higher levels of liquidity in the price and volume discovery processes. Such increased liquidity at the Exchange should allow it to spread its administrative and infrastructure costs over a greater number of transactions leading to lower costs per transaction.

The Exchange believes it is equitable and not unfairly discriminatory for MIAX Market Makers to have generally lower fees than other professional market participants (referred to as

non-Priority Customers, Non-Member Broker-Dealers, non-MIAX Market Makers, Voluntary Professionals, and Firms in the Fee Schedule). Market Makers have obligations that other professional market participants do not. In particular, they must maintain continuous two-sided markets in the classes in which they are appointed, and must meet certain minimum quoting requirements. Therefore, the Exchange believes it is appropriate that Market Makers be assessed lower transaction fees since they provide greater volumes of liquidity to the market. In addition, MIAX believes the proposed fees charged to Market Makers and other professional market participants are reasonable because they are, as detailed in the Purpose section above, comparable to fees that such accounts are assessed at other competing exchanges.

The Exchange believes it is equitable and not unfairly discriminatory to assess discounted Transaction Fees to PLMMs and LMMs for orders that are directed to them. A Directed LMM or Directed PLMM that enters into a directed order arrangement with an order flow provider typically expends substantial time and financial resources in seeking out and entering into such an agreement. The \$0.02 discount, which is applied equally to the base per-contract rate of an LMM and a PLMM, is in recognition of the effort on the part of Directed LMMs and Directed PLMMs to attract directed order flow to the Exchange.

The Exchange believes that it is equitable and not unfairly discriminatory not to assess a per-contract Transaction Fee to an EEM that enters an order that is executed for the account of a Priority Customer, while assessing a Transaction Fee to an EEM that enters an order that is executed for the account of specified other participants. A Priority Customer is by definition not a broker or dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). This limitation does not apply to participants on MIAX whose behavior is substantially similar to that of professionals, including non-Priority Customers, Non-Member Broker-Dealers, non-MIAX Market Makers,



Voluntary Professionals, and Firms, who will generally submit a higher number of orders (many of which do not result in executions) than Priority Customers.

The Exchange believes that it is equitable and not unfairly discriminatory to assess lower Transaction Fees to EEMs that submit orders for the account(s) of Firms and for Public Customers that are not Priority Customers than for orders for the account(s) of non-MIAX Market Makers. Market makers that are not MIAX Members do not have the same quoting or financial obligations as MIAX Market Makers; the Exchange believes that these obligations entitle MIAX Market Makers to lower transaction fees than non-MIAX market makers, who do not have the same obligations.

The Exchange further believes that, because there is precedent to treat non-Member Broker-Dealers (who are neither OCC members nor members of another options exchange) differently from Firms and non-Priority Customers respecting transaction fees, such differentiation is not unfairly discriminatory. This differentiation is already made on PHLX and on NYSE Amex, and the MIAX's proposal to differentiate among these participants in the same manner as those other options exchanges therefore raises no new regulatory issues. The instant MIAX proposal is therefore an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities, and is not unfairly discriminatory, consistent with Section (6)(b)(4) of the Act.

#### ORF

The Exchange believes the ORF is equitable and not unfairly discriminatory because it is objectively allocated to Members in that it is charged to all Members on all their transactions that clear as customer at the OCC. Moreover, the Exchange believes the ORF ensures fairness by assessing fees to those Members that are directly based on the amount of customer options business they conduct. Regulating customer trading activity is much more labor intensive and

requires greater expenditure of human and technical resources than regulating non-customer trading activity, which tends to be more automated and less labor-intensive. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (e.g., Member proprietary transactions) of its regulatory program.

The ORF is designed to recover a material portion of the costs of supervising and regulating Members' customer options business including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. The Exchange will monitor, on at least an annual basis the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. If the Exchange determines regulatory revenues exceed regulatory costs, the Exchange will adjust the ORF by submitting a fee change filing to the Commission. The Exchange will notify Members of adjustments to the ORF via regulatory circular.

The Exchange has designed the ORF to generate revenues that, when combined with all of the Exchange's other regulatory fees, will be less than or equal to the Exchange's regulatory costs, which is consistent with the Commission's view that regulatory fees be used for regulatory purposes and not to support the Exchange's business side. In this regard, the Exchange believes that the initial level of the fee is reasonable.

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

MIAX does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Unilateral action by MIAX in establishing fees for services provided to its Members and others using its facilities will not have an impact on competition. As a new entrant in the already highly

competitive environment for equity options trading, MIAX does not have the market power necessary to set prices for services that are unreasonable or unfairly discriminatory in violation of the Act. MIAX's proposed Transaction Fees and the ORF, as described herein, are comparable to fees charged by other options exchanges for the same or similar services.

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>23</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:

---

<sup>23</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>);
- or
- Send an e-mail [to rule-comments@sec.gov](mailto:to-rule-comments@sec.gov). Please include File Number SR-MIAX-2013-01 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-2013-01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>).

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

All submissions should refer to File Number SR-MIAX-2013-01 and should be submitted on or before [insert date 21 days from publication in the Federal Register]. For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>24</sup>

Kevin M. O'Neill  
Deputy Secretary

---

<sup>24</sup>17 CFR 200.30-3(a)(12).

---

**Exhibit 5**

New text is underlined; deleted text is bracketed

## **MIAX Options Fee Schedule**

**Table of Contents**

**1) Transaction Fees.....**

a) Exchange Fees.....

    i) Market Maker Transaction Fees

    ii) Other Market Participant Transaction Fees

\*\*\*\*\*

# MIAX Options Fee Schedule

## Transaction Fees (Effective January 2, 2013).

### a) Exchange Fees

[[Reserved]]

#### i) Market Maker Transaction Fees

<u>Type of MIAX Market Maker</u>	<u>Transaction Fee (per executed contract)</u>	<u>These fees will apply to all option classes traded on MIAX</u>
<u>Registered Market Maker</u>	<u>\$ 0.23</u>	<u>See MIAX Rule 100 for the definition of Registered Market Maker (“RMM”). This fee is assessed to an RMM when the RMM is a party to a transaction.</u>
<u>Lead Market Maker</u>	<u>\$ 0.20</u>	<u>See MIAX Rule 100 for the definition of Lead Market Maker (“LMM”). This fee is assessed to an LMM when the LMM is a party to a transaction.</u>
<u>Directed Order—Lead Market Maker</u>	<u>\$ 0.18</u>	<u>This fee is assessed to an LMM when the LMM is a party to a transaction in one of its assigned option classes and the transaction being allocated to the LMM is the result of an order that has been directed to the LMM.</u>
<u>Primary Lead Market Maker</u>	<u>\$ 0.18</u>	<u>See MIAX Rule 100 for the definition of Primary Lead Market Maker (“PLMM”). This fee is assessed to a PLMM when the PLMM is a party to a transaction.</u>
<u>Directed Order—Primary Lead Market Maker</u>	<u>\$ 0.16</u>	<u>This fee is assessed to a PLMM when the PLMM is a party to a transaction in one of its assigned option classes and the transaction being allocated to the PLMM is the result of an order that has been directed to the PLMM.</u>



ii) **Other Market Participant Transaction Fees**

<b>Types of Other Market Participants</b>	<b>Transaction Fee (per executed contract)</b>	<b>These fees will apply to all option classes traded on MIAX</b>
<i>Priority Customer</i> <sup>1</sup>	<b>\$ 0.00</b>	There is no fee assessed to an Electronic Exchange Member (an "EEM," as defined in MIAX Rule 100) that enters an order that is executed for the account of a Priority Customer.
<i>Public Customer that is Not a Priority Customer</i>	<b>\$ 0.25</b>	This fee is assessed to an EEM that enters an order that is executed for the account of a Public Customer <sup>2</sup> that does not meet the criteria for designation as a Priority Customer. This fee will also be charged to an EEM that enters an order for the account of a Public Customer that has elected to be treated as a Voluntary Professional. <sup>3</sup>
<i>Non-MIAX Market Maker</i>	<b>\$ 0.45</b>	This fee is assessed to an EEM that enters an order that is executed for the account of a non-MIAX market maker. A non-MIAX market maker is a market maker registered as such on another options exchange.
<i>Non-Member Broker-Dealer</i>	<b>\$ 0.45</b>	This fee is assessed to an EEM that enters an order that (i) is executed for the account of a non-Member Broker-Dealer, and (ii) is identified by the EEM for clearing in the Options Clearing Corporation ("OCC") "customer" range. A non-Member Broker-Dealer is a broker-dealer that is not a member of the OCC, and that is not registered as a Member at MIAX or another options exchange.
<i>Firm</i>	<b>\$ 0.25</b>	This fee is assessed to an EEM that enters an order that is executed for an account identified by the EEM for clearing in the OCC "Firm" range.

**b) – c) No change.**

<sup>1</sup> The term "Priority Customer" means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). See Exchange Rule 100.

<sup>2</sup> The term "Public Customer" means a person that is not a broker or dealer in securities. See Exchange Rule 100.

<sup>3</sup> The term "Voluntary Professional" means any Public Customer that elects, in writing, to be treated in the same manner as a broker or dealer in securities for purposes of Rule 514, as well as the Exchange's schedule of fees. See Exchange Rule 100.

## 2)Regulatory Fees

### a) Sales Value Fee

**Current Fee Rate: Defined amount per \$1,000,000 of the aggregate dollar amount of covered sales.**

The Sales Value Fee<sup>[14]</sup> is assessed by the Exchange to each Member for sales on the Exchange for which the Exchange is obligated to pay a fee to the SEC 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.

<b>Sales Value Fee</b>	<b>Per Executed Sell Contract side and Sales of Securities Resulting from the Exercise of Physical Delivery Options</b> (per million dollars in notional value)
<b>All Classes</b>	Rate set annually and sometimes adjusted semi-annually by the SEC. See <a href="http://www.sec.gov/divisions/marketreg/sec31info.htm">http://www.sec.gov/divisions/marketreg/sec31info.htm</a> for the current rate

### b) Options Regulatory Fee (Effective January 2, 2013.)

[[Reserved]]

The per-contract Options Regulatory Fee ("ORF") is assessed by MIAX to each MIAX Member for all options transactions executed and cleared, or simply cleared by the Member that are cleared by OCC in the "customer" range, regardless of the exchange on which the transaction occurs. The ORF is collected indirectly from Members through their clearing firms by OCC on behalf of MIAX.

<b><u>Options Regulatory Fee (ORF)</u></b>	<b><u>Per Executed Contract side</u></b>
<b><u>All Classes</u></b>	<b><u>\$0.0040</u></b>

<sup>[14]</sup> For a detailed description of the Sales Value Fee, see MIAX Rule 1207.

### C) Web CRD Fees

The following fees will be collected and retained by FINRA through the Web Central Registration Depository (CRD<sup>SM</sup>) registration system for the registration of associated persons of Electronic Exchange Members and Market Maker organizations that are not also FINRA members:

#### GENERAL REGISTRATION FEES: (These fees will be in effect through January 1, 2013)

\$85.00	FINRA CRD Processing Fee <sup>[2]5</sup>
\$95.00	FINRA Disclosure Processing Fee <sup>[3]6</sup> (Form U4, Form U5, & amendments)
\$30.00	FINRA Annual System Processing Fee assessed only during Renewals
\$27.50	FINRA Fingerprint Card Processing Fee for first card submission
\$13.00	FINRA Fingerprint Card Processing Fee for second card submission
\$27.50	FINRA Fingerprint Card Processing Fee for third card submission
\$13.00	FINRA Processing Fee for Fingerprint Results Submitted by Other SROs
\$00.00	MIAX Initial Registration Fee (Individual)
\$00.00	MIAX Annual Individual Renewal Fee
\$00.00	MIAX Transfer Fee
\$00.00	MIAX Termination Fee
\$00.00	MIAX Broker Dealer Registration Fee
\$00.00	MIAX Broker Dealer Renewal Fee

#### GENERAL REGISTRATION FEES: (These fees will be in effect on and after January 2, 2013.)

\$100.00	FINRA CRD Processing Fee <sup>[4]Z</sup>
\$110.00	FINRA Disclosure Processing Fee <sup>[5]8</sup> (Form U4, Form U5, Form BD & amendments)
\$45.00	FINRA Annual System Processing Fee assessed only during Renewals
	FINRA Fingerprint Card Processing Fees:
\$29.50	First card submission (electronic)
\$44.50	First card submission (hard copy)
\$15.00	Second card submission (electronic)
\$30.00	Second card submission (hard copy)

<sup>[2]5</sup> For all Initial, Transfer, Relicense, and Dual Registration Form U4 filings. This fee is assessed when a non-FINRA firm (i.e., a firm that is not a member of FINRA) submits its first Initial, Transfer, Relicense, or Dual Registration Form U4 filing on behalf of a registered person.

<sup>[3]6</sup> For all registration, transfer, or termination filings with new or amended disclosure information or that require certification, as well as any amendment to disclosure information.

<sup>[4]Z</sup> For all Initial, Transfer, Relicense, and Dual Registration Form U4 filings. This fee is assessed when a non-FINRA firm (i.e., a firm that is not a member of FINRA) submits its first Initial, Transfer, Relicense, or Dual Registration Form U4 filing on behalf of a registered person.

<sup>[5]8</sup> For all registration, transfer, or termination filings with new or amended disclosure information or that require certification, as well as any amendment to disclosure information.

\$29.50	Third card submission (electronic)
\$44.50	Third card submission (hard copy)
\$30.00	FINRA Processing Fee for Fingerprint Results Submitted by Other SROs
\$00.00	MIAX Initial Registration Fee (Individual)
\$00.00	MIAX Annual Individual Renewal Fee
\$00.00	MIAX Transfer Fee
\$00.00	MIAX Termination Fee
\$00.00	MIAX Broker Dealer Registration Fee
\$00.00	MIAX Broker Dealer Renewal Fee

### 3) Membership Fees

#### a) Application for MIAX Membership (One-Time Fee)<sup>[6]9</sup>

Type of Membership	Application Fee
Electronic Exchange Member	\$2,500.00
Market Maker	\$3,000.00

#### b) Monthly Trading Permit Fee

MIAX will issue Trading Permits<sup>[7]10</sup> to Members that confer the ability to transact on MIAX.

Type of Trading Permit	Monthly MIAX Trading Permit Fee
Electronic Exchange Member	\$1,000.00
Registered Market Maker	\$3,000.00 for RMM Assignment in up to 100 Classes \$4,500.00 for RMM Assignment in up to 250 Classes \$6,000.00 for RMM Assignment in all Classes listed on MIAX
Lead Market Maker (includes PLMM)	An additional \$1,000 per month is added to the fee rate set forth above for RMMs, thus: \$4,000.00 for LMM Assignment in up to 100 Classes \$5,500.00 for LMM Assignment in up to 250 Classes \$7,000.00 for LMM Assignment in all Classes listed on MIAX

<sup>[6]9</sup> Applicants for MIAX membership that apply for membership on or before January 31, 2013 will not be assessed a fee for such application. Applicants for MIAX membership that apply for membership on or after February 1, 2013 will be subject to the Membership Application Fees described herein.

<sup>[7]10</sup> For a complete description of MIAX Trading Permits, see MIAX Rule 200.

For the calculation of the monthly RMM and LMM Trading Permit Fees, the number of classes is defined as the greatest number of classes the RMM or LMM was assigned to quote in on any given day within the calendar month. Members receiving Trading Permits during a particular calendar month will be assessed Trading Permit Fees according to the above schedule, except that the calculation of the Trading Permit fee for the first month in which the Trading Permit is issued will be pro-rated based on the number of trading days on which the Trading Permit was in effect divided by the total number of trading days in that month multiplied by the monthly rate.

## 4) Testing and Certification Fees

### a) Member Application Programming Interface (API) Testing and Certification (One-Time Fee)

Type of Member	API Testing and Certification Fee
Electronic Exchange Member	\$1,000.00
Market Maker	\$2,500.00

The MIAX API Testing and Certification fees are based upon the category of Member being tested and certified. API Testing and Certification fees will be waived for all Electronic Exchange Members and Market Makers that apply for MIAX membership and complete API testing and certification on or before January 31, 2013. Electronic Exchange Members and Market Makers that apply for MIAX membership or that complete API testing and certification on or after February 1, 2013 are subject to the Member API Testing and Certification Fees as described above.

### b) Non-Member API Testing and Certification (One-Time Fee)

Non-Member	API Testing and Certification
Third Party Vendors <sup>[8]11</sup> and Service Bureaus <sup>[9]12</sup>	\$5,000.00

<sup>[8]11</sup> Third Party Vendors are subscribers of MIAX's market and other data feeds, which they in turn use for redistribution purposes.

<sup>[9]12</sup> A Service Bureau is a technology provider that offers and supplies technology and technology services to a trading firm that does not have its own proprietary system.

**c) Member Network Testing and Certification Fee (One-Time Fee)**

Member Network Connectivity Testing and Certification	1 Gigabit Per Firm	10 Gigabit Per Firm
Individual Firm	\$1,000.00	\$4,000.00

**d) Non- Member Network Testing and Certification Fee (One-Time Fee)**

Non-Member Network Connectivity Testing and Certification	1 Gigabit Per Connection	10 Gigabit Per Connection
Service Bureau/Extranet Provider <sup>[10]13</sup> – One Connection	\$2,000.00	\$6,000.00
Service Bureau/Extranet Provider– For each additional connection	\$1,000.00	\$4,000.00

**5) System Connectivity Fees****a) Monthly Member Network Connectivity Fee**

Member Network Connectivity Per Month	1 Gigabit Per Connection	10 Gigabit Per Connection
Individual Firm	\$1,000.00	\$5,000.00

MIAX's first monthly Member Network Connectivity fee for all Members will be assessed on a pro-rata basis, which is the number of trading days remaining in that month divided by the total number of trading days in the month. Thereafter, the Member Network Connectivity fee will be pro-rated for new Members based on the number of trading days on which the Member used the connectivity in its first month of trading on MIAX, divided by the total number of trading days in such month multiplied by the monthly rate.

<sup>[10]13</sup> An Extranet Provider is a technology provider that connects with MIAX systems and in turn provides such connectivity to MIAX participants that do not connect directly with MIAX.

**b) Monthly Non-Member Network Connectivity Fee**

<b>Non-Member Network Connectivity Per Month</b>	<b>1 Gigabit Per Connection</b>	<b>10 Gigabit Per Connection</b>
<b>Service Bureau/Extranet Provider</b>	<b>\$2,000.00</b>	<b>\$10,000.00</b>

MIAX's first monthly non-Member Network Connectivity fee for all non-members will be assessed on a pro-rata basis, which is the number of trading days remaining in that month divided by the total number of trading days in the month multiplied by the monthly rate. Thereafter, the non-Member Network Connectivity fee will be pro-rated for new non-Members connecting to the MIAX System based on the number of trading days on which the non-Member used the connectivity in its first month of trading on MIAX, divided by the total number of trading days in such month multiplied by the monthly rate.

**c) Pass-Through of External Connectivity Fees**

MIAX will assess External Connectivity fees to Members and non-Members that establish connections with MIAX through a third-party. Fees assessed to MIAX by third-party external vendors on behalf of a Member or non-Member connecting to MIAX (including cross-connects),<sup>[11]14</sup> will be passed through to the Member or non-Member. The External Connectivity fees passed through can include one-time set-up fees, monthly charges, and other fees charged to MIAX by a third-party for the benefit of a Member or non-Member.

<sup>[11]14</sup> A "cross-connect" occurs when the affected third-party system is sited at the same data center where MIAX systems are sited, and the third-party connects to MIAX through the data center, rather than connecting directly to MIAX outside of the data center.

**d) Port Fees****i) FIX Port Fees (These Fees will be in effect beginning January 1, 2013)**

MIAX will assess monthly Financial Information Exchange (“FIX”) Port<sup>[12]15</sup> Fees on Members based upon the number of FIX Ports used by the Member submitting orders to MIAX.

<b>FIX Port Fees</b>	<b>MIAX Monthly Port Fees</b> Includes Connectivity to the Primary, Secondary and Disaster Recovery Data Centers <sup>[13]16</sup>
<b>1st FIX Port</b>	<b>\$250 per month</b>
<b>FIX Ports 2 through 5</b>	<b>\$150 per month per port</b>
<b>Additional FIX Ports over 5</b>	<b>\$50 per month per port</b>

**ii) MEI Port Fees (These Fees will be in effect beginning January 1, 2013)**

MIAX will assess monthly MIAX Express Interface (“MEI”)<sup>[14]17</sup> Port fees, on Market Makers based upon the number of MIAX matching engines<sup>[15]18</sup> used by the Market Maker. MEI Port users will be allocated two (2) ports per matching engine to which they connect. An MEI Port provides a Market Maker with the connectivity necessary to submit electronic quotes to the MIAX System.

<b>MEI Fees</b>	<b>MIAX Monthly MEI fees</b> Includes MEI ports at the Primary, Secondary and Disaster Recovery Data Centers
<b>Market Maker’s 1st Engine</b>	<b>\$1,000 per month for 2 ports for first engine</b>
<b>Market Maker’s Engines 2 through 5</b>	<b>\$500 per month for 2 ports for each engine</b>
<b>Market Maker’s Engines over 5</b>	<b>\$250 per month for 2 ports for each engine</b>

<sup>[12]15</sup> A FIX Port is an interface with MIAX systems that enables the Port user (typically an Electronic Exchange Member or a Market Maker) to submit orders electronically to MIAX.

<sup>[13]16</sup> MIAX has primary and secondary data centers and a disaster recovery center. Each port provides access to all three data centers for a single fee.

<sup>[14]17</sup> MIAX Express Interface is a connection to MIAX systems that enables Market Makers to submit electronic quotes to MIAX.

<sup>[15]18</sup> A “matching engine” is a part of the MIAX electronic system that processes options quotes and trades on a symbol-by-symbol basis. Some matching engines will process option classes with multiple root symbols, and other matching engines will be dedicated to one single option root symbol (for example, options on SPY will be processed by one single matching engine that is dedicated only to SPY). A particular root symbol may only be assigned to a single designated matching engine. A particular root symbol may not be assigned to multiple matching engines.



MEI Port fees will be capped at \$1,000 per month per Market Maker until the first full calendar month during which MIAX lists and trades options overlying at least 100 underlying securities. Once MIAX begins listing and trading options overlying at least 100 underlying securities, MIAX will assess MEI Port fees as described above.

**e) Electronic Exchange Member MPID Fees (These Fees will be in effect beginning January 1, 2013)**

MIAX will assess monthly MIAX Member Participant Identifier ("MPID") fees to Electronic Exchange Members ("EEMs"), based upon the number of MPIDs assigned to the particular EEM in a given month.

EEM MPID Fees	EEM Monthly MPID Fees
1st MPID per EEM	\$200 per month
2 <sup>nd</sup> through 5 <sup>th</sup> EEM MPID	\$100 per month for each MPID
Each Additional EEM MPID over 5	\$50 per month for each MPID