

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-82673; File No. SR-MIAX-2018-02)

February 8, 2018

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

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 30, 2018, Miami International Securities Exchange, LLC (“MIAX Options” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

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

The text of the proposed rule change is available on the Exchange’s website at <http://www.miaxoptions.com/rule-filings>, 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to amend Section 1)a)iii) of the Fee Schedule to modify the volume threshold calculation methodology, in connection with the additional \$0.02 per contract rebate offered to Members³ for Priority Customer⁴ orders executed in the PRIME⁵ Auction as a PRIME Agency Order, pursuant to the Priority Customer Rebate Program.⁶

The Exchange currently offers Members the opportunity to qualify for an additional \$0.02 per contract rebate in connection with certain types of executions on the Exchange if the

³ The term “Member” means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed “members” under the Exchange Act. See Exchange Rule 100.

⁴ 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.

⁵ The MIAX Options Price Improvement Mechanism (“PRIME”) is a process by which a Member may electronically submit for execution (“Auction”) an order it represents as agent (“Agency Order”) against principal interest, and/or an Agency Order against solicited interest. For a complete description of PRIME and of PRIME order types and responses, see Exchange Rule 515A.

⁶ Under the Priority Customer Rebate Program, MIAX Options credits each Member the per contract amount resulting from each Priority Customer order transmitted by that Member which is executed electronically on the Exchange in all multiply-listed option classes (excluding certain orders specified in Section 1)a)iii) of the Fee Schedule), provided the Member meets certain percentage thresholds in a month as described in the Priority Customer Rebate Program table. See Section 1)a)iii) of the Fee Schedule.

Member or its Affiliates⁷ meets certain qualifications. Specifically, any Member or its Affiliate that qualifies for Priority Customer Rebate Program volume tiers 3 or higher is credited an additional \$0.02 per contract for each Priority Customer order executed in the PRIME Auction as a PRIME Agency Order, over a threshold of 1,500,000 contracts in a month. Volume is recorded for and credits are delivered to the Member that submits the order to the Exchange.

The Exchange proposes to modify the volume threshold calculation methodology in connection with that additional \$0.02 per contract rebate. The Exchange proposes to change the volume threshold calculation methodology from a fixed number of contracts per month (1,500,000 per month) to a percentage of national customer volume in multiply-listed options classes listed on MIAX Options per month. The proposed threshold is above 0.60% of national customer volume in multiply-listed options classes listed on MIAX Options during the relevant month. National customer volume is the total volume reported by the Options Clearing Corporation (“OCC”) in MIAX Options classes in the “customer” range. Specifically, the Exchange proposes that any Member or its Affiliate that qualifies for Priority Customer Rebate Program volume tiers 3 or higher will be credited an additional \$0.02 per contract for each Priority Customer order executed in the PRIME Auction as a PRIME Agency Order over a threshold of above 0.60% of national customer volume in multiply-listed options classes listed on MIAX Options during the relevant month.

⁷ “Affiliate” means (i) an affiliate of a Member of at least 75% common ownership between the firms as reflected on each firm’s Form BD, Schedule A, (“Affiliate”), or (ii) the Appointed Market Maker of an Appointed EEM (or, conversely, the Appointed EEM of an Appointed Market Maker). An “Appointed Market Maker” is a MIAX Market Maker (who does not otherwise have a corporate affiliation based upon common ownership with an EEM) that has been appointed by an EEM and an “Appointed EEM” is an EEM (who does not otherwise have a corporate affiliation based upon common ownership with a MIAX Market Maker) that has been appointed by a MIAX Market Maker, pursuant to the process described in the Fee Schedule. See Section 1)a)i) of the Fee Schedule.

There are no other changes to this rebate program. In particular, the Exchange currently excludes from the calculation certain types of orders, and those same types of orders will continue to be excluded using the new calculation methodology. Specifically, the Exchange excludes orders executed as QCC and cQCC Orders, mini-options, Priority Customer-to-Priority Customer Orders, C2C and cC2C Orders, cPRIME Agency Orders, PRIME and cPRIME AOC Responses, PRIME and cPRIME Contra-side Orders, PRIME and cPRIME Orders for which both the Agency and Contra-side Order are Priority Customers, and executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in MIAX Options Rule 1400. The Exchange will continue to exclude those same orders from this rebate program. The Exchange further notes that these exclusions are identical to the exclusions that apply to other aspects of the Priority Customer Rebate Program as well. There is also no change to the additional rebate amount of \$0.02 per contract.

The Exchange believes that changing the volume threshold calculation methodology from a fixed number of contracts per month (1,500,000 per month) to a percentage of national customer volume in multiply-listed options classes listed on MIAX Options per month (above 0.60% of national customer volume in multiply-listed options classes listed on MIAX Options during the relevant month) will result in a threshold that is more consistently proportional to national customer volume executed during the relevant month, as actual national customer volume often changes on a month-to-month basis. Since the Priority Customer Rebate Program is designed to encourage Members to execute greater Priority Customer volume on the Exchange, having a more consistent proportional measure in relation to the number of national customer volume executed in a given month will better align this particular rebate program to the

core purpose of the Priority Customer Rebate Program. In turn, the Exchange believes that this change will further incentivize Members to execute a greater number of Priority Customer orders in the Exchange's PRIME Auction mechanism.

The Exchange believes that increased PRIME and Priority Customer volume will attract more liquidity to the Exchange, which benefits all market participants. Increased PRIME and Priority Customer order flow should attract liquidity providers, which in turn should make the MIAX Options marketplace an attractive venue where Market Makers may submit narrow quotations with greater size, deepening and enhancing the quality of the MIAX Options marketplace. This should provide more trading opportunities and tighter spreads for other market participants and result in a corresponding increase in order flow from such other market participants.

The credits paid out as part of the Priority Customer Rebate Program are drawn from the general revenues of the Exchange.⁸ The Exchange calculates volume thresholds on a monthly basis. The proposed rule change is scheduled to become operative on February 1, 2018.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act in general, and furthers the objectives of Section 6(b)(4) of the Act in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free

⁸ Despite providing credits under the Priority Customer Rebate Program, the Exchange represents that it will continue to have adequate resources to fund its regulatory program and fulfill its responsibilities as a self-regulatory organization while the Priority Customer Rebate Program is in effect.

and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes that changing the volume threshold calculation methodology from a fixed number of contracts per month (1,500,000 per month) to a percentage of national customer volume in multiply-listed options classes listed on MIAX Options per month (above 0.60% of national customer volume in multiply-listed options classes listed on MIAX Options during the relevant month) in the Priority Customer Rebate Program for the additional \$0.02 rebate for Priority Customer orders submitted into PRIME as PRIME Agency is consistent with Section 6(b)(4) of the Act in that it is fair, equitable and not unreasonably discriminatory. The rebate program is reasonably designed because it incentivizes providers of Priority Customer order flow to send order flow to the Exchange and, upon meeting certain volume criteria, enables them to receive the credit in a manner that enables the Exchange to improve its overall competitiveness and strengthen its market quality for all market participants. The proposed change to the volume threshold calculation methodology is fair, equitable, and not unreasonably discriminatory because they will apply equally to all Priority Customer orders submitted as a PRIME Agency Order. All similarly situated Priority Customer orders are subject to the same rebate and volume calculations, and access to the Exchange is offered on terms that are not unfairly discriminatory. In addition, the proposed volume threshold calculation is equitable and not unfairly discriminatory because, while only Priority Customer order flow that is submitted as a PRIME Agency Order over the proposed threshold qualifies for the rebate, an increase in overall Priority Customer order flow will bring greater volume and liquidity, which benefits all market participants by providing more trading opportunities and tighter spreads. Market

participants want to trade with Priority Customer order flow. To the extent Priority Customer order flow is increased by the proposal, market participants will increasingly compete for the opportunity to trade on the Exchange including sending more orders and providing narrower and larger sized quotations in the effort to trade with such Priority Customer order flow.

The Exchange believes that the proposed rule change modifying the volume threshold calculation methodology for the \$0.02 rebate from a fixed number of contracts per month (1,500,000 per month) to a percentage of national customer volume in multiply-listed options classes listed on MIAX Options per month (above 0.60% of national customer volume in multiply-listed options classes listed on MIAX Options during the relevant month) is consistent with Section 6(b)(5) of the Act in that it promotes just and equitable principles of trade since the Exchange believes that it will result in a threshold that is more consistently proportional to national customer volume executed during the relevant month, as actual national customer volume often changes on a month-to-month basis. To the extent Member volume in Priority Customer orders and PRIME Agency Orders is increased by the proposal, market participants will increasingly compete for the opportunity to trade on the Exchange which could result in more liquidity on the Exchange. The Exchange believes that offering all such market participants the opportunity to lower transaction fees by incentivizing them to transact Priority Customer order flow in turn benefits all market participants.

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. The Exchange believes the proposal is consistent with robust competition by increasing the intermarket competition for order flow from market participants. To the extent that there is

additional competitive burden on market participants without Priority Customer order flow and those market participants that are not able to aggregate order flow with Affiliates, the Exchange believes that this should incent Members to direct volume to the Exchange in order to provide additional liquidity that enhances the quality of its markets and increases the volume of contracts traded here. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market liquidity. Enhanced market quality and increased transaction volume that results from the anticipated increase in order flow directed to the Exchange will benefit all market participants and improve competition on the Exchange. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow. The Exchange believes that the proposal reflects this competitive environment.

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

Written comments were neither solicited nor received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,⁹ and Rule 19b-4(f)(2)¹⁰ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission

⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁰ 17 CFR 240.19b-4(f)(2).

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 e-mail to rule-comments@sec.gov. Please include File Number SR-MIAX-2018-02 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-MIAX-2018-02. 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 website (<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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MIAX-2018-02 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.¹¹

Eduardo A. Aleman
Assistant Secretary

¹¹ 17 CFR 200.30-3(a)(12).