

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-85301; File No. SR-MIAX-2019-09)

March 13, 2019

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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 28, 2019, 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”).

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on March 1, 2019.

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.

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<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 Exchange proposes to amend its Fee Schedule to (i) decrease the amount of the per contract credit assessable to Agency Orders (defined below) in a cPRIME Auction (“cPRIME Agency Order Credit”) for Members<sup>3</sup> in Tier 4 of the Priority Customer Rebate Program (“PCRCP”)<sup>4</sup> and (ii) establish an alternative cPRIME Agency Order Credit amount for cPRIME Agency Orders in Tier 4 of the PCRCP, that will apply instead of the credit otherwise applicable to such orders, if a certain threshold is satisfied by the Member.

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<sup>3</sup> 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.

<sup>4</sup> Under the PCRCP, 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, in simple or complex as applicable, QCC and cQCC Orders, mini-options, Priority Customer-to-Priority Customer Orders, C2C and cC2C 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 Exchange Rule 1400), provided the Member meets certain percentage thresholds in a month as described in the Priority Customer Rebate Program table. See Fee Schedule, Section 1)a)iii.

Exchange Rule 518(b)(7) defines a cPRIME Order as a type of complex order<sup>5</sup> that is submitted for participation in a cPRIME Auction and trading of cPRIME Orders is governed by Rule 515A, Interpretations and Policies .12.<sup>6</sup> cPRIME Orders are processed and executed in the Exchange’s PRIME mechanism, the same mechanism that the Exchange uses to process and execute simple PRIME orders, pursuant to Exchange Rule 515A.<sup>7</sup> PRIME is a process by which a Member may electronically submit for execution an order it represents as agent (an “Agency Order”) against principal interest and/or solicited interest. The Member that submits the Agency Order (“Initiating Member”) agrees to guarantee the execution of the Agency Order by submitting a contra-side order representing principal interest or solicited interest (“Contra-Side Order”). When the Exchange receives a properly designated Agency Order for Auction processing, a request for response (“RFR”) detailing the option, side, size and initiating price is broadcasted to MIAX Options participants up to an optional designated limit price. Members may submit responses to the RFR, which can be either an Auction or Cancel (“AOC”) order or an AOC eQuote. A cPRIME Auction is the price-improvement mechanism of the Exchange’s

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<sup>5</sup> A “complex order” is any order involving the concurrent purchase and/or sale of two or more different options in the same underlying security (the “legs” or “components” of the complex order), for the same account, in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purposes of executing a particular investment strategy. A complex order can also be a “stock-option” order, which is an order to buy or sell a stated number of units of an underlying security coupled with the purchase or sale of options contract(s) on the opposite side of the market, subject to certain contingencies set forth in the proposed rules governing complex orders. For a complete definition of a “complex order,” see Exchange Rule 518(a)(5). See also Securities Exchange Act Release No. 78620 (August 18, 2016), 81 FR 58770 (August 25, 2016)(SR-MIAX-2016-26).

<sup>6</sup> See Securities Exchange Act Release No. 81131 (July 12, 2017), 82 FR 32900 (July 18, 2017)(SR-MIAX-2017-19). (Order Granting Approval of a Proposed Rule Change to Amend MIAX Options Rules 515, Execution of Orders and Quotes; 515A, MIAX Price Improvement Mechanism (“PRIME”) and PRIME Solicitation Mechanism; and 518, Complex Orders).

<sup>7</sup> Id.

System pursuant to which an Initiating Member electronically submits a complex Agency Order into a cPRIME Auction. The Initiating Member, in submitting an Agency Order, must be willing to either (i) cross the Agency Order at a single price against principal or solicited interest, or (ii) automatically match against principal or solicited interest, the price and size of a RFR that is broadcast to MIAX Options participants up to an optional designated limit price. Such responses are defined as cPRIME AOC Responses or cPRIME eQuotes.

#### cPRIME Agency Order Fees

In the PCRCP, the Exchange assesses an Agency Order Credit for cPRIME Agency Orders. The Exchange currently credits each Member \$0.10 per contract per leg for each Priority Customer<sup>8</sup> complex order submitted into the cPRIME Auction as a cPRIME Agency Order in Tiers 1, 2 and 3. The Exchange currently credits each Member \$0.22 per contract per leg for each Priority Customer complex order submitted into the cPRIME Auction as a cPRIME Agency Order in Tier 4. However, no credit is assessed if the cPRIME Agency Order executes against a Contra-Side Order which is also from another a Priority Customer. Further, the per contract credit for cPRIME Agency Orders will continue to be assessable to the first 1,000 contracts per leg for each cPRIME Agency Order, which applies to all Tiers of the PCRCP. The Exchange proposes to decrease the cPRIME Agency Order Credit for Members who are in Tier 4 of the PCRCP from \$0.22 to \$0.10. The purpose of such decrease in Tier 4 is to align the credit offered for cPRIME Agency Orders in all Tiers to now be \$0.10. The Exchange previously increased the cPRIME Agency Order Credit for Members who are in Tier 4 of the PCRCP from \$0.10 to \$0.22 in order to encourage market participants to submit more Priority Customer

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<sup>8</sup> “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 accounts(s). A “Priority Customer Order” means an order for the account of a Priority Customer. See Exchange Rule 100.

cPRIME Agency Orders and therefore increase Priority Customer order flow.<sup>9</sup> The Exchange now believes, that it is appropriate to adjust this credit to be consistent with the other PCRCP Tiers.

#### Alternative Credit for cPRIME Agency Orders

The Exchange additionally proposes to establish an alternative cPRIME Agency Order Credit amount for cPRIME Agency Orders in Tier 4 of the PCRCP that will apply instead of the credit otherwise applicable to such orders, if a certain threshold is satisfied by the Member. Specifically, the Exchange proposes the following additional threshold: if any Member or its Affiliate<sup>10</sup> that qualifies for PCRCP Tier 4 executes Priority Customer standard, non-paired complex volume at least equal to or greater than their Priority Customer cPRIME Agency Order

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<sup>9</sup> See Securities Exchange Act Release No. 81372 (August 10, 2017), 82 FR 157 (August 16, 2017)(SR-MIAX-2017-40).

<sup>10</sup> For purposes of the MIAX Options Fee Schedule, the term “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 following process. A MIAX Market Maker appoints an EEM and an EEM appoints a MIAX Market Maker, for the purposes of the Fee Schedule, by each completing and sending an executed Volume Aggregation Request Form by email to membership@miaxoptions.com no later than 2 business days prior to the first business day of the month in which the designation is to become effective. Transmittal of a validly completed and executed form to the Exchange along with the Exchange’s acknowledgement of the effective designation to each of the Market Maker and EEM will be viewed as acceptance of the appointment. The Exchange will only recognize one designation per Member. A Member may make a designation not more than once every 12 months (from the date of its most recent designation), which designation shall remain in effect unless or until the Exchange receives written notice submitted 2 business days prior to the first business day of the month from either Member indicating that the appointment has been terminated. Designations will become operative on the first business day of the effective month and may not be terminated prior to the end of the month. Execution data and reports will be provided to both parties.

volume, on a monthly basis, then the Member will receive a credit of \$0.22 per contract for cPRIME Agency Orders instead of the credit otherwise applicable to such orders in Tier 4. The Exchange believes that establishing this additional threshold will encourage market participants to submit more complex orders and therefore increase Priority Customer order flow. Specifically, the Exchange believes that by encouraging market participants to execute Priority Customer standard, non-paired complex volume at least equal to or greater than their Priority Customer cPRIME Agency Order volume in order to receive a credit of \$0.22 per contract for cPRIME Agency Orders instead of the credit otherwise applicable to such orders in Tier 4 of the PCRP will increase volume of Priority Customer standard, non-paired complex order and of Priority Customer complex orders, which will result in increased liquidity which benefits all Exchange participants by providing more trading opportunities and tighter spreads.

The proposed rule change is scheduled to become operative March 1, 2019.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act<sup>11</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>12</sup> in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members and issuers and other persons using its facilities, and 6(b)(5) of the Act,<sup>13</sup> in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and

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<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(4).

<sup>13</sup> 15 U.S.C. 78f(b)(1) and (b)(5).

open market and a national market system and, in general, to protect investors and the public interest.

The Exchange's proposal to decrease the cPRIME Agency Order Credit assessable to Priority Customer cPRIME Agency Orders by Members in Tier 4 of the PCRCP is consistent with Section 6(b)(4) of the Act<sup>14</sup> because it applies equally to all participants with similar order flow in that tier. The Exchange believes that the proposed PCRCP rebate decrease in Tier 4 for Priority Customer orders submitted into cPRIME Auctions is fair, equitable, and not unreasonably discriminatory. The PCRCP is reasonably designed because it will incentivize providers of Priority Customer order flow to send that Priority Customer order flow to the Exchange in order to obtain the highest volume threshold and receive credits in a manner that enables the Exchange to improve its overall competitiveness and strengthen its market quality for all market participants. Additionally, the Exchange believes that for competitive and business reasons, it is now appropriate to decrease the cPRIME Agency Order Credit in PCRCP Tier 4 to be aligned with existing cPRIME Agency Order Credits in PCRCP Tiers 1, 2 and 3.

In addition, the proposal is also consistent with Section 6(b)(5) of the Act<sup>15</sup> because it perfects the mechanisms of a free and open market and a national market system and protects investors and the public interest because, by aligning the credit offered to Members in Tier 4 to the credits offered for the same types of orders in Tiers 1,2 and 3, Priority Customer order flow will be increased and an increase in Priority Customer order flow will bring greater volume and liquidity, which benefit all market participants by providing more trading opportunities and tighter spreads. 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

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<sup>14</sup> 15 U.S.C. 78f(b)(4).

<sup>15</sup> 15 U.S.C. 78f(b)(1) and (b)(5).

sending more orders and providing narrower and larger-sized quotations in the effort to trade with such Priority Customer order flow.

The Exchange's proposal to establish an alternative cPRIME Agency Order Credit amount for cPRIME Agency Orders in Tier 4 of the PCRCP that will apply instead of the credit otherwise applicable to such orders, if a certain threshold is satisfied by the Member is consistent with Section 6(b)(4) of the Act<sup>16</sup> because it applies equally to all participants with similar order flow in that tier. The Exchange believes that the proposed alternative threshold by which any Member or its Affiliate that qualifies for PCRCP volume Tier 4 and executes Priority Customer standard, non-paired complex volume at least equal to or greater than their Priority Customer cPRIME Agency Order volume, on a monthly basis, receives a credit of \$0.22 per contract for cPRIME Agency Orders instead of the credit otherwise applicable to such orders in Tier 4 is fair, equitable, and not unreasonably discriminatory because it will encourage Members to submit both Priority Customer standard, non-paired complex orders and Priority Customer complex orders, which will increase liquidity, which benefit all market participants by providing more trading opportunities and tighter spreads. The PCRCP is reasonably designed because it will incentivize providers of Priority Customer order flow to send that Priority Customer order flow to the Exchange in order to obtain the highest volume threshold and receive a credit in a manner that enables the Exchange to improve its overall competitiveness and strengthen its market quality for all market participants.

In addition, the proposal is also consistent with Section 6(b)(5) of the Act<sup>17</sup> because it perfects the mechanisms of a free and open market and a national market system and protects investors and the public interest because, while only certain Priority Customer order flow

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<sup>16</sup> 15 U.S.C. 78f(b)(4).

<sup>17</sup> 15 U.S.C. 78f(b)(1) and (b)(5).

qualifies for the rebate program under the PCRCP and specifically only order flow by Members in Tier 4 of the PCRCP that meet the additional threshold will receive the greater rebate, an increase in Priority Customer order flow will bring greater volume and liquidity, which benefit all market participants by providing more trading opportunities and tighter spreads. 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.

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

MIAX Options 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 that the proposed decrease to the cPRIME Agency Order Credit assessable to cPRIME Agency Orders by Members in Tier 4 of the PCRCP is intended to promote consistency across all cPRIME Agency Order tiers of the PCRCP. The Exchange believes that aligning the cPRIME credits assessable to cPRIME Agency Orders in all tiers will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act because it will continue to encourage Priority Customer order flow and an increase in Priority Customer order flow will bring greater volume and liquidity, which benefit all market participants by providing more trading opportunities and tighter spreads. The Exchange further believes that its proposal to establish an alternative cPRIME Agency Order Credit amount for cPRIME Agency Orders in Tier 4 of the PCRCP that will apply instead of the credit otherwise applicable to such orders, if a certain threshold is satisfied by the Member will not have an impact on intra-market competition. Specifically, the Exchange believes that the proposal to establish an additional threshold by which any Member or its Affiliate that qualifies for PCRCP Tier 4 and executes Priority Customer

standard, non-paired complex volume at least equal to or greater than their Priority Customer cPRIME Agency Order volume, on a monthly basis, receives a credit of \$0.22 per contract for cPRIME Agency Orders instead of the credit otherwise applicable to such orders in Tier 4, will encourage Members to submit both Priority Customer standard, non-paired complex orders and Priority Customer complex orders, which will increase liquidity, which benefits all market participants by providing more trading opportunities and tighter spreads. Because the proposal offers an additional threshold by which a Member can receive a higher credit for cPRIME Agency Orders instead of the credit otherwise applicable to such orders in Tier 4, and aligns the credits otherwise offered for such orders in all tiers, the Exchange believes that the proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

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

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

Written comments were neither solicited nor received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>18</sup> and Rule 19b-4(f)(2)<sup>19</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

### IV. Solicitation of Comments

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](mailto:rule-comments@sec.gov). Please include File Number SR-MIAX-2019-09 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-2019-09. 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

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<sup>18</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>19</sup> 17 CFR 240.19b-4(f)(2).

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. 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-2019-09 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>20</sup>

Eduardo A. Aleman  
Deputy Secretary

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<sup>20</sup> 17 CFR 200.30-3(a)(12).