December 19, 2014

Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-0609

Re: File Nos. SR-MIAX-2014-59; SR-MIAX-2014-60; SR-MIAX-2014-62; SR-MIAX-2014-63

Dear Mr. Fields:

The International Securities Exchange, LLC ("ISE") appreciates the opportunity to comment on the above-referenced filings in which the MIAX Options Exchange ("MIAX") proposes to increase fees in five options classes – SPY, EEM, GLD, IWM, and QQQ – to as much as $0.54 per contract for market maker orders that execute against resting priority customer orders,[1] and $0.55 per contract for non-MIAX market maker orders. ISE believes that these proposed fees, which exceed half of a minimum trading increment in the affected options classes,[2] are anticompetitive and should be suspended pending disapproval proceedings.

In April 2010 the U.S. Securities and Exchange Commission ("Commission") proposed to adopt a $0.30 per contract cap on access fees for options that mirrored the cap adopted for equities under Regulation NMS.[3] The articulated reason for this proposed rule change, which was supported by ISE,[4] was the potential for uncapped fees to interfere with access to displayed quotes. In particular, the Commission stated that it was concerned:

> "[T]hat because of the requirements for intermarket price protection, competitive forces, by themselves, are not, and will not be, enough to prevent fees from being charged that interfere with fair and efficient access to an options exchange's displayed prices."[5]

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[1] This includes a new $0.12 per contract marketing fee that is in addition to the regular marketing fee of $0.25 per contract and a transaction fee of up to $0.17 per contract.

[2] These "Penny Classes" trade in one cent increments pursuant to the Penny Pilot Program.

[3] See Securities Exchange Act Release No. 61902 (April 14, 2010), 75 FR 20738 (April 20, 2010) (S7-09-10) ("access fee proposal").

[4] See letter from Michael J. Simon, Secretary, International Securities Exchange, LLC to Elizabeth Murphy, Secretary, Commission, dated June 21, 2010.

[5] See access fee proposal, supra note 3, at 20742-43.

While the Commission did not ultimately act on the access fee proposal, the concerns expressed therein are even more relevant today than they were four years ago. In the past, even though there was no formal rule capping fees in options markets, Commission staff raised significant objections to filings that introduced fees in penny classes that were more than half of one trading increment, or the equivalent of $0.50 per contract for a standard option contract that overlies 100 shares.[6] Recently, however, options exchanges have filed fees that break this $0.50 per contract ceiling. ISE believes that this development is detrimental to the protection of investors and the public interest, and imposes a significant burden on competition, as market participants cannot be guaranteed the best "all-in" prices available when access fees, and by extension rebates, exceed half of one minimum trading increment.

Intermarket linkage rules require that options contracts be executed at the best price available across all exchanges, i.e., the national best bid or offer ("NBBO"). With the majority of options volume now trading in penny increments, an order in a penny symbol must trade at the NBBO even if the NBBO is only better than the best bid or offer of another preferred exchange by one cent. This is the case regardless of the cost associated with accessing that NBBO price. For example, a market maker entitled to the highest tier rebate of $0.42 per contract on the NASDAQ Options Market ("NOM") could be forced to send that order to MIAX for a fee of up to $0.55 per contract. While MIAX's "best price" would result in a savings of $1.00 per contract over a standard 100 share deliverable, the difference in fees would result in a loss of $0.97 per contract, almost completely eroding the savings based on displayed prices.

This problem is not limited to MIAX either, as other options exchanges have slowly started to adopt fees and rebates that exceed a $0.50 per contract ceiling. C2 Options Exchange, Inc. ("C2"), for instance, provides a customer rebate for removing liquidity in penny classes of up to $0.60 per contract. A member may be impeded in accessing C2's quote, however, if another exchange, such as NOM, is displaying a price that is better by only one cent. This would be the case even though accessing NOM's quote would result in a net loss for the member of $0.08 per contract compared to C2 when accounting for customer taker fees of $0.48 per contract. For example, to access a $1.00 offer on NOM would cost $100.48 per contract inclusive of fees, while accessing a $1.01 offer on C2 would only cost $100.40, making the "worse" price on C2 a better execution opportunity than the protected offer on NOM.

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[6] Section 6(b)(4) of the Securities Exchange Act of 1934 gives the Commission authority to determine that proposed exchange fees are designed to "provide for the equitable allocation of reasonable dues, fees, and other charges." 15 U.S.C. 78f(b)(4).

ISE strongly believes that members should not be compelled to execute orders at all-in prices that do not reflect the best overall prices in the market. We thus respectfully ask the Commission to suspend the above-referenced proposed rule changes and initiate disapproval proceedings. In doing so, ISE believes that the Commission would provide much needed guidance to all options exchanges.

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We thank the Commission for the opportunity to comment on these proposed rule filings. If you have any additional questions, or if we can be of further assistance in this matter, please do not hesitate to contact us.

Sincerely,

Michael J. Simon,
Secretary and General Counsel