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Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F. Street N.E.
Washington, D.C. 205549-0609

RE: Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Its Fee Schedule to Adopt Fees and Credits for Transactions Involving Complex Orders (Release No. 34-79157; File No. SR-MIAX-2016-38) (the “Proposal”)¹

Dear Mr. Fields:

NYSE MKT LLC (“NYSE MKT”) and NYSE Arca, Inc. (“NYSE Arca”, together with NYSE MKT, the “Exchanges”), submits this comment letter in response to the Proposal that, among other things, modifies fees and credits relating to transactions involving complex orders on the Miami International Securities Exchange LLC (“MIAX”). The Exchanges endorse the comment letter submitted by Nasdaq,² which requests that the Securities and Exchange Commission (“Commission”) “provide transparency in the form of written rather than oral guidance to ensure equal knowledge and treatment among competitors operating options markets” regarding “any pricing limits applicable to all options exchanges.”³ In addition, the Exchanges believe that, absent any written guidance, the Commission should suspend the Proposal because it runs afoul of the policy concern raised by the Commission that options exchanges should not charge fees that exceed one half of the minimum trading increment in Penny classes.⁴

¹ See Securities and Exchange Release No. 79157 (October 26, 2016), 81 FR 75885 (November 1, 2016) (SR-MIAX-2016-38) (“the Proposal”).

² Nasdaq includes the following options markets: NASDAQ Stock Market LLC (“NOM”), Nasdaq PHLX LLC (“Phlx”), Nasdaq BX, Inc., International Securities Exchange, LLC (“ISE”), ISE Gemini, LLC (“ISE Gemini”), and ISE Mercury, LLC (“ISE Mercury”).

³ See Letter from Joan C. Conley, Senior Vice President & Corporate Secretary, Nasdaq, to Brent J. Fields, Secretary, U.S. Securities and Exchange Commission, dated November 21, 2016, available here, <https://www.sec.gov/comments/sr-miax-2016-38/miax201638-1.pdf>.

⁴ See Securities and Exchange Release No. 78029 (June 9, 2016), 81 FR 39089, 39092 (June 15, 2016) (SR-NYSEMKT-2016-45) (“Suspension Order”) (suspending a fee change implemented by NYSE MKT, in part, because the fee charged Non-Customer auction responders would exceed one-half the minimum trading increment). See Securities and Exchange Release No. 79135 (October 21, 2016), 81 FR 74844, 74846 (October 27, 2016) (SR-NYSEMKT-2016-45) (“Disapproval Order”) (noting that the two exchanges cited by NYSE

On October 26, 2016, MIAX filed the Proposal, which was effective upon filing. Under the Proposal, MIAX has amended its fees to allow MIAX to charge fees in excess of \$0.50 per contract to all non-Priority Customers trading in complex transactions when executing against resting customer interest. The fees charged range from \$0.53 per contract to \$0.58 per contract. For example, the fee changes proved that Market Makers that trade in complex orders against resting customer interest would incur fees totaling \$0.58 per contract (the total includes the \$0.25 “Complex Per Contract Fee for Penny Classes,” the \$0.25 “Marketing Fee,” and the \$0.08 “Per Contract Surcharge for Removing Liquidity Against a Resting Priority Customer Complex Order on the Strategy Book for Penny and Non-Penny Classes”). In addition, Public Customers (that are non-Priority Customers), Non-MIAX Market Makers and Non-Member Broker-Dealers would incur fees totaling \$0.55 per contract (the total includes the \$0.47 “Standard Options Transaction Fee for Simple and Complex Orders” and the \$0.08 “Per Contract Surcharge for Removing Liquidity Against a Resting Priority Customer Complex Order on the Strategy Book for Penny and Non-Penny Classes”). Finally, for trading complex orders against resting customer interest, Firms will incur fees totaling \$0.53 per contract (the total includes the \$0.45 “Standard Options Transaction Fee” and the \$0.08 “Per Contract Surcharge for Removing Liquidity Against a Resting Priority Customer Complex Order on the Strategy Book for Penny and Non-Penny Classes”).⁵

On October 21, 2016, five days before MIAX submitted the Proposal, the Commission issued the Disapproval Order related to certain fees implemented on NYSE MKT, which would have allowed the Exchange to charge fees that exceeded one half the minimum trading increment.⁶ In its Suspension Order, which preceded the Disapproval Order, the Commission sought – and received – comments regarding “[w]hether the Commission should view a specific... fee level for Penny classes, such as an amount exceeding half the minimum trading increment, as presumptively unreasonable, unfairly discriminatory, imposing an unnecessary or inappropriate burden on competition, or otherwise inconsistent with the Act.”⁷

MKT had reduced their auction response fees (inclusive of marketing fees) so that they no longer exceed one half the minimum trading increment in Penny classes).

⁵ The Exchange notes that approximately one month prior to the Proposal, the Commission acknowledged that MIAX had reduced its fees such that it no longer violated the Commission’s stated concern of charging fees in excess of one half the minimum trading increment, stating: “With this change, the Commission notes that net transaction fees for removing liquidity on MIAX that are assessed on market makers (i.e., the transaction fee together with the marketing fee and Posted Liquidity Marketing Fee) will no longer exceed \$0.50 per contract in classes in the Penny Pilot Program.” See Securities and Exchange Release No. 78781 (September 7, 2016), 81 FR 62942, 62942 at fn. 3. (November 1, 2016) (SR-MIAX-2016-30). One month later, with the changes to its fees described in the Proposal, MIAX exceeded this threshold.

⁶ See Disapproval Order, supra note 4, 81 FR at 74846 (“The Commission observed that in Penny classes, for example, the fee charged Non-Customer auction responders would exceed one-half the minimum trading increment, and the economic differential between such auction responders and the Initiating Participants with whom they are competing would be even more”).

⁷ See Suspension Order, supra note 4, 81 FR at 39092.

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The Exchanges believe that any determination by the Commission that a fee that exceeds half the minimum trading increment is not consistent with the Act should be applied equally to all exchanges so that no single exchange is placed at a (dis)advantage to its competitors. Further, as suggested by Nasdaq, the Commission should issue written guidance regarding any such determination. Thus, the Exchanges urge the Commission to suspend the Proposal while it undertakes a review of whether the Proposal violates the policy concern expressed by the Commission in both the Suspension Order and subsequent Disapproval Order and is inconsistent with the Act.

We thank the Commission again for the opportunity to comment on the Proposal.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Elizabeth K. King". The signature is fluid and cursive, with a prominent initial "E" and a long, sweeping tail on the "g".