

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-72988; File No. SR-MIAX-2014-46)

September 4, 2014

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 August 25, 2014, 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 its Fee Schedule.

The text of the proposed rule change is available on the Exchange’s website at http://www.miaxoptions.com/filter/wotitle/rule_filing, 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 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

1. Purpose

The Exchange proposes to amend its Fee Schedule to: (i) amend the MIAX Market Maker sliding scale to change the volume threshold calculations from aggregate numbers to percentages of total national Market Maker volume; (ii) increase the transaction fees for MIAX Market Makers, Public Customers that are not a Priority Customer, Non-MIAX Market Makers, Non-Member Broker-Dealers, and Firms by \$0.02 per contract; and (iii) provide for additional incentives for achieving certain Priority Customer Rebate Program volume tiers. The proposed changes are based on the similar fees of another competing options exchange.³

Volume Tiers

The Exchange proposes to amend the MIAX Market Maker sliding scale to change the volume threshold calculations from aggregate numbers to percentages of total national Market Maker volume of any options classes with traded volume on MIAX during the calendar month. The Exchange notes that the sliding fee scale for MIAX Market Makers structured on contract volume thresholds is based on the substantially similar fees of the CBOE.⁴ By amending the volume tier calculations, the sliding scale will more closely align with that of CBOE, which also currently uses a substantially similar volume threshold calculation based on percentages of total national Market Maker volume of any options classes that trade on the exchange during the calendar month. The Market Maker sliding scale will continue to apply to MIAX Market Maker

³ See NASDAQ OMX PHLX LLC Pricing Schedule, Section II. See also Securities Exchange Act Release Nos. 71716 (March 13, 2014), 79 FR 71716 (March 19, 2014) (SR-PHLX-2014-14); 72395 (June 16, 2014), 79 FR 35391 (SR-PHLX-2014-38).

⁴ See Securities Exchange Act Release Nos. 55193 (January 30, 2007), 72 FR 5476 (February 6, 2007) (SR-CBOE-2006-111); 58321 (August 6, 2008), 73 FR 46955 (SR-CBOE-2008-78); 71295 (January 14, 2014), 79 FR 3443 (January 21, 2014) (SR-CBOE-2013-129).

(RMM, LMM, DLMM, PLMM, DPLMM) transaction fees in all products except mini-options. MIAX Market Makers will continue to be assessed a \$0.02 per executed contract fee for transactions in mini-options.

The Exchange believes the proposed sliding scale is objective in that the fee reductions are based solely on reaching stated volume thresholds. The specific volume thresholds of the tiers were set based upon business determinations and an analysis of current volume levels. The specific volume thresholds and rates were set in order to encourage MIAX Market Makers to reach for higher tiers. The Exchange believes that the proposed changes to the tiered fee schedule may incent firms to display their orders on the Exchange and increase the volume of contracts traded here.

Options Transaction Fees

The Exchange proposes to increase the transaction fees for MIAX Market Makers, Public Customers that are not a Priority Customer, Non-MIAX Market Makers, Non-Member Broker-Dealers, and Firms by \$0.02 per contract. Specifically, the Exchange proposes to increase transaction fees for each of the volume tiers for MIAX Market Makers by \$0.02. The Exchange will also increase the transaction fees for Public Customers that are not a Priority Customer and Firms from \$0.25 to \$0.27 per contract. Further, the Exchange will increase the transaction fees for Non-MIAX Market Makers and Non-Member Broker-Dealers from \$0.45 to \$0.47. The Exchange believes that these fee increases will permit the Exchange to incentivize market participants by offering other incentives to lower prices as described herein.

Priority Customer Rebate Incentives

The Exchange proposes to offer MIAX Market Makers, Public Customers that are not a Priority Customer, Non-MIAX Market Makers, Non-Member Broker-Dealers, and Firms the

opportunity to reduce transaction fees by \$0.02 per contract in standard options if the Member or its affiliates of at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A, qualifies in a given month for Priority Customer Rebate Program volume tiers 3, 4, or 5 in the Fee Schedule.⁵ Specifically, any Member or its affiliates of at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A, that qualifies for Priority Customer Rebate Program volume tiers 3, 4, or 5 and is a MIAX Market Maker will be assessed \$0.15 per contract for tier 1, \$0.10 per contract for tier 2, \$0.05 per contract for tier 3, and \$0.03 per contract for tier 4 for transactions in standard options in lieu of the applicable transaction fees in the Market Maker sliding scale. In addition, any Member or its affiliates of at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A, that qualifies for Priority Customer Rebate Program volume tiers 3, 4, or 5 and is a Public Customers that are not a Priority Customer or Firm will be assessed \$0.25 per contract for standard options. Further, any Member or its affiliates of at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A, that qualifies for Priority Customer Rebate Program volume tiers 3, 4, or 5 and is a Non-MIAX Market Makers or Non-Member Broker-Dealers will be assessed \$0.45 per contract for standard options.

The Exchange believes that these incentives will encourage MIAX Market Makers, Public Customers that are not a Priority Customer, Non-MIAX Market Makers, Non-Member Broker-Dealers, and Firms to transact a greater number of orders on the Exchange.

The Exchange proposes to implement the new transaction fees beginning September 1, 2014.

⁵ See MIAX Options Fee Schedule, Section 1)a)iii).

2. Statutory Basis

The Exchange believes that its proposal to amend its fee schedule is consistent with Section 6(b) of the Act⁶ in general, and furthers the objectives of Section 6(b)(4) of the Act⁷ in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

The proposed changes to the volume calculations for the sliding scale are reasonable, equitable, and not unfairly discriminatory. The proposed volume discount fee structure is not discriminatory in that all MIAX Market Makers are eligible to submit (or not submit) liquidity, and may do so at their discretion in the daily volumes they choose during the course of the billing period. All similarly situated MIAX Market Makers are subject to the same fee structure, and access to the Exchange is offered on terms that are not unfairly discriminatory. Volume based discounts have been widely adopted by options and equities markets, and are equitable because they are open to all MIAX Market Makers on an equal basis and provide discounts that are reasonably related to the value of an exchange's market quality associated with higher volumes. The proposed fee levels and volume thresholds are reasonably designed to be comparable to those of other options exchanges employing similar fee programs, and also to attract additional liquidity and order flow to the Exchange.

The Exchange's proposal to increase the transaction fees for MIAX Market Makers, Public Customers that are not a Priority Customer, Non-MIAX Market Makers, Non-Member Broker-Dealers, and Firms is reasonable because the Exchange's fees will remain competitive

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4).

with fees at other options exchanges.⁸ The Exchange's proposal to increase the transaction fees for MIAX Market Makers, Public Customers that are not a Priority Customer, Non-MIAX Market Makers, Non-Member Broker-Dealers, and Firms is equitable and not unfairly discriminatory because the increase applies equally to all such market participants. The Exchange does not assess Priority Customers transactions fees because Priority Customer order flow enhances liquidity on the Exchange for the benefit of all market participants. Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers and other market participants. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Market Makers are assessed lower transaction fees as compared to Public Customers that are not a Priority Customer, Non-MIAX Market Makers, Non-Member Broker-Dealers, and Firms because they have obligations to the market and regulatory requirements, which normally do not apply to other market participants.⁹ They have obligations to make continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with a course of dealings. In addition, charging non-members higher transaction fees is a common practice amongst exchanges because Members are subject to other fees and dues associated with their membership to the Exchange that do not apply to non-members. The proposed differentiation as between Priority Customers, Market Makers, and other market participants recognizes the

⁸ See NASDAQ OMX PHLX LLC Pricing Schedule, Section II; NASDAQ Options Market LLC's Pricing Schedule, Chapter XV.

⁹ See Exchange Rules 603 and 604.

differing contributions made to the liquidity and trading environment on the Exchange by these market participants.

The Exchange's proposal to offer MIAX Market Makers, Public Customers that are not a Priority Customer, Non-MIAX Market Makers, Non-Member Broker-Dealers, and Firms the opportunity to reduce transaction fees by \$0.02 per contract in standard options, provided certain criteria are met, is reasonable because the Exchange desires to offer all such market participants an opportunity to lower their transaction fees. The Exchange's proposal to offer MIAX Market Makers, Public Customers that are not a Priority Customer, Non-MIAX Market Makers, Non-Member Broker-Dealers, and Firms the opportunity to reduce transaction fees by \$0.02 per contract in standard options, provided certain criteria are met, is equitable and not unfairly discriminatory because the Exchange will offer all market participants, excluding Priority Customers, a means to reduce transaction fees by qualifying for volume tiers in the Priority Customer Rebate Program. 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.

The Exchange believes that the proposal to allow the aggregation of trading activity of separate Members or its affiliates for purposes of the fee reduction is fair, equitable and not unreasonably discriminatory. The Exchange believes the proposed rule change is reasonable because it would allow aggregation of the trading activity of separate Members or its affiliates for purposes of the fee reduction only in very narrow circumstances, namely, where the firm is an affiliate, as defined herein. Furthermore, other exchanges, as well as MIAX, have rules that permit the aggregation of the trading activity of affiliated entities for the purposes of calculating and assessing certain fees. 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 proposal is similar to the transaction fees found on other options exchanges; therefore, 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, the Exchange believes that this is appropriate because the proposal should incent Members to direct additional order flow to the Exchange and thus 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.¹⁰ 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. Please include File Number SR-MIAX-2014-46 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-2014-46. 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

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

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; 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-2014-46 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

Kevin M. O'Neill
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).