

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-73848; File No. SR-MIAX-2014-62)

December 16, 2014

Self-Regulatory Organizations: Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by Miami International Securities Exchange LLC to Amend the MIAX Options 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 December 10, 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.<sup>3</sup> 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/filter/wotitle/rule\\_filing](http://www.miaxoptions.com/filter/wotitle/rule_filing), 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.

<sup>3</sup> MIAX initially filed a similar proposal for only SPY options on November 25, 2014, and indicated in its filing that it would implement the new fee on December 1, 2014. See File No. SR-MIAX-2014-59. On December 10, 2014, MIAX withdrew that filing and submitted this filing.

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 marketing fee. The marketing fee is assessed on certain transactions of all Market Makers.<sup>4</sup> The funds collected via this marketing fee are then put into pools controlled by Primary Lead Market Makers (“PLMMs”) and LMMs. The PLMM or LMM controlling a certain pool of funds can then determine the Electronic Exchange Member(s) (“EEM”) to which the funds should be directed in order to encourage such EEM(s) to send orders to the Exchange. In accordance with Exchange Rule 514, an EEM can designate an order (“Directed Order”) to a specific LMM.

Currently, Section 1(b) of the Fee Schedule, provides that the Exchange will assess a Marketing Fee to all Market Makers for contracts, including mini options, they execute in their assigned classes when the contra-party to the execution is a Priority Customer. MIAX will not assess a Marketing Fee to Market Makers for contracts executed as a PRIME Agency Order, Contra-side Order, or a PRIME AOC Response in the PRIME Auction; unless, it executes against an unrelated order.

The Exchange proposes to amend the Marketing Fee in order to add an additional incentive for order flow providers to post additional Priority Customer orders on the Exchange's Book. Specifically, the Exchange proposes to assess an additional \$0.12 per contract Posted Liquidity Marketing Fee to all Market Makers for any standard options overlying EEM, GLD, IWM, QQQ, and SPY that Market Makers execute in their assigned class (e.g., SPY) when the contra-party to the execution is a Priority Customer and the Priority Customer order was posted on the Book at the time of the execution. MIAX will not assess the additional Posted Liquidity Marketing Fee to Market Makers for contracts executed as a PRIME Agency Order, Contra-side Order, or a PRIME AOC Response in the PRIME Auction. MIAX will also not assess the additional Posted Liquidity Marketing Fee to Market Makers for contracts executed pursuant to a Liquidity Refresh Pause, route timer, or during the Opening Process. The Post [sic] Liquidity Marketing Fee will be in addition to the current Marketing Fee of \$0.25 per contract for standard options overlying SPY<sup>5</sup> that Market Makers execute in their assigned class (e.g., SPY) when the contra-party to the execution is a Priority Customer. The new proposed Post [sic] Liquidity Marketing Fee will otherwise operate in a similar manner as the standard Marketing Fee, with the additional \$0.12 per contract going into the broader Marketing Fee "pool" for the Directed LMM or the PLMM in EEM, GLD, IWM, QQQ or SPY, respectively.<sup>6</sup>

The purpose of the additional marketing fee is to further encourage Members to post additional Priority Customer orders on the Exchange's Book in these high volume symbols.

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<sup>4</sup> See MIAX Options Fee Schedule, Section (1)(b), entitled Marketing Fee for more detail regarding the marketing fee.

<sup>5</sup> The Commission notes that MIAX's proposal also covers standard options overlying EEM, GLD, IWM, and QQQ.

<sup>6</sup> The Commission notes that the symbols MIAX lists in this sentence refer to the respective overlying options class.

Increased Priority Customer orders on the Exchange's Book will provide for greater liquidity, which benefits all market participants on the Exchange. The practice of incentivizing increased retail customer order flow in order to attract professional liquidity providers (Market-Makers) is, and has been, commonly practiced in the options markets. As such, marketing fee programs,<sup>7</sup> and customer posting incentive programs,<sup>8</sup> are based on attracting public customer order flow. The practice of providing additional incentives to increase order flow in high volume symbols is, and has been, commonly practiced in the options markets.<sup>9</sup> The proposed marketing fee similarly intends to attract Priority Customer order flow, which will increase liquidity, thereby providing greater trading opportunities and tighter spreads for other market participants and causing a corresponding increase in order flow from such other market participants in EEM, GLD, IWM, QQQ, and SPY.<sup>10</sup> Increasing the number of orders sent to the Exchange will in turn provide tighter and more liquid markets, and therefore attract more business overall.

At this time, the Exchange does not propose a Post [sic] Liquidity Marketing Fee for mini options. Mini options in [sic] are not traded in significant volume across the industry and, as such, MIAX, in consultation with its market makers, does not seek to incentivize order routers to send such orders to MIAX by extending the new marketing fee to posted Priority Customer

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<sup>7</sup> See MIAX Fee Schedule, Section 1(b); CBOE, Fee Schedule, p. 4; NYSE Amex Options Fee Schedule, p. 6.

<sup>8</sup> See NYSE Arca, Inc. Fees Schedule, page 4 (section titled "Customer Monthly Posting Credit Tiers and Qualifications for Executions in Penny Pilot Issues").

<sup>9</sup> See International Securities Exchange, LLC, Schedule of Fees, p. 6 (providing reduced fee rates for order flow in Select Symbols); NASDAQ OMX PHLX, Pricing Schedule, Section I (providing a rebate for adding liquidity in SPY); NYSE Arca, Inc. Fees Schedule, page 4 (section titled "Customer Monthly Posting Credit Tiers and Qualifications for Executions in Penny Pilot Issues").

<sup>10</sup> The Commission notes that the symbols MIAX lists in this sentence refer to the respective overlying options class.

orders in mini options on SPY and GLD.<sup>11</sup> In addition, because of the lack of significant volume and limited demand in the industry to trade mini options, the Exchange believes that having a marketing fee for mini options that is in some cases lower than the fees for standard contracts, is appropriate, not unreasonable, not unfairly discriminatory and not burdensome on competition between participants, or between the Exchange and other exchanges in the listed options marketplace.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its fee schedule is consistent with Section 6(b) of the Act<sup>12</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>13</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

The proposed changes are designed to incentivize order flow providers to post additional Priority Customer orders in EEM, GLD, IWM, QQQ, and SPY options on the Exchange's Book. The proposed marketing fee rate is reasonable in that although it results in a marketing fee that is slightly higher than similar marketing fee programs, it is still in the range of marketing fee programs on other competing exchanges which charge lower marketing fees for Penny Pilot options classes versus non-Penny Pilot options classes.<sup>14</sup> The proposed rebate program is fair, equitable, and not unreasonably discriminatory because it will apply equally to all Market

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<sup>11</sup> The Exchange notes that mini options are currently listed on SPY, AAPL, GLD, GOOGL, and AMZN. If the Exchange were to extend the new Marketing Fee to mini options, since there are no mini options on EEM, IWM, and QQQ, the Exchange would not be able to assess an additional marketing fee for mini options in such symbols, but instead would be limited to assessing the additional fee on SPY and GLD.

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

<sup>13</sup> 15 U.S.C. 78f(b)(4).

<sup>14</sup> See CBOE, Fee Schedule, p. 4; NYSE Amex Options Fee Schedule, p. 6.

Makers that execute against Priority Customer orders in EEM, GLD, IWM, QQQ, and SPY options posted on the Exchange's Book. All similarly situated Market Makers that execute against Priority Customer orders in EEM, GLD, IWM, QQQ, and SPY options that are posted to the Exchange's Book are subject to the same marketing fee, and access to the Exchange is offered on terms that are not unfairly discriminatory. In addition, the proposal is equitable and not unfairly discriminatory because, while only posted Priority Customer order flow qualifies for the additional marketing fee, an increase in Priority Customer orders posted to the Exchange's Book will bring greater volume and liquidity as market participants compete to trade with the additional Priority Customer order flow, which benefit all market participants by providing more trading opportunities and tighter spreads. Market participants want to trade with Priority Customer order flow. To the extent the posting of Priority Customer orders on the Exchange's Book 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 resulting increased volume and liquidity will benefit non-Market Makers that do not pay the proposed fee and do not qualify for the marketing fee program at all, by providing more trading opportunities and tighter spreads as market participants increasingly compete by sending more orders and providing narrower and larger sized quotations in the effort to trade with such Priority Customer order flow. In addition, the proposed change is equitable and not unfairly discriminatory because it is designed to allow LMMs to encourage greater order flow to be sent to the Exchange. The Exchange believes it is equitable to assess marketing fees on Market Makers and not non-Market Makers because the benefits of the marketing fee program flow to PLMM and Directed LMMs that can use the marketing fee funds to attract additional flow to the

exchange, which benefits Market Makers. A LMM could be able to amass a greater pool of funds with which to use to incent order flow providers to send order flow to the Exchange. This increased order flow would benefit all market participants on the Exchange as well.

The Exchange believes that specifying that PRIME Order executions, Liquidity Reference Pause, route timer, and Opening Process executions are not subject to the proposed marketing fee is reasonable, equitable and not unfairly discriminatory. The Exchange is seeking to encourage the posting of additional Priority Customer orders to the Exchange's Book and these four excluded functionalities involve RFR messages that are related to encouraging additional trading interest from within the market participants on the Exchange. The Exchange believes that charging additional marketing fees from Market Makers in these situations may discourage participation in responding to RFR messages. The exclusion of PRIME Order executions, Liquidity Reference Pause, route timer, and Opening Process executions from the additional marketing fee will continue to encourage as many participants as possible to respond; which the Exchange believes will help the RFR message processes to continue to lead to greater opportunities for price improvement for all orders subject to PRIME, the Liquidity Refresh Pause, route timer, or Opening Process not just those entered on behalf of customers. In addition, the Exchange designed the new fee to encourage the posting of additional Priority Customer orders during regular trading hours; which is exclusive of the Opening Process. Thus, for these reasons, the Exchange believes that excluding PRIME Order executions, Liquidity Reference Pause, route timer, and Opening Process executions from the proposed marketing fees is reasonable, equitable and not unfairly discriminatory.

The Exchange believes that its proposal to assess the additional marketing fee for transaction fees in EEM, GLD, IWM, QQQ, and SPY options, and not other options classes, is

consistent with other options markets that provide additional incentives to increase order flow in high volume symbols including assessing different marketing fees for Penny Pilot options classes as compared to non-Penny Pilot options classes.<sup>15</sup> The Exchange believes that establishing different pricing for EEM, GLD, IWM, QQQ, and SPY options and Penny Pilot options is reasonable, equitable, and not unfairly discriminatory because EEM, GLD, IWM, QQQ, and SPY options are more liquid options as compared to other Penny Pilot options and the Exchange wants to incentivize order flow providers to send such orders to MIAX in order to increase trading opportunities and overall volume executed on the Exchange. Finally, the Exchange believes that the proposal to assess to an additional marketing fee for standard transactions and not mini options is reasonable because of the lack of significant volume and limited demand in the industry to trade mini options.

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 designed to encourage an increase in Priority Customer orders in EEM, GLD, IWM, QQQ, and SPY options posted to the Exchange's Book in order to bring greater volume and liquidity, which benefit all market participants by providing more trading opportunities and tighter spreads. To the extent the posting of Priority Customer orders in EEM, GLD, IWM, QQQ, and SPY options on the Exchange's Book 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

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<sup>15</sup> See CBOE, Fee Schedule, p. 4; NYSE Amex Options Fee Schedule, p. 6; International Securities Exchange, LLC, Schedule of Fees, p. 6 (providing reduced fee rates for order flow in Select Symbols); NASDAQ OMX PHLX, Pricing Schedule, Section I (providing a rebate for adding liquidity in SPY); NYSE Arca, Inc. Fees Schedule, page 4 (section



Customer order flow. The resulting increased volume and liquidity will benefit non-Market Makers that do not pay the proposed fee and do not qualify for the marketing fee program at all, by providing more trading opportunities and tighter spreads. To the extent that there is additional competitive burden on market participants that are not Priority Customers or Market Makers or trading in other symbols, 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 to the Exchange. The Exchange believes that the proposed rule change reflects this competitive environment because it establishes a fee structure in a manner that encourages market participants to direct their order flow, to provide liquidity, and to attract additional transaction volume 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.

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titled "Customer Monthly Posting Credit Tiers and Qualifications for Executions in Penny Pilot Issues").

### 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>16</sup> 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-2014-62 on the subject line.

#### Paper comments:

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

All submissions should refer to File Number SR-MIAX-2014-62. 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>16</sup> 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 such 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-2014-62 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>17</sup>

Kevin M. O'Neill  
Deputy Secretary

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