

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81372; File No. SR-MIAX-2017-40)

August 10, 2017

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Its Fee Schedule in Connection with the Adoption of Certain New Complex Order Types

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 7, 2017, 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”) to adopt transaction fees and rebates for certain new complex order types that have become available for trading on the Exchange, as described below. The Exchange also proposes to clarify an existing transaction fee that applies to an existing order type, as well as make a number of technical corrections to its Fee Schedule.

The Exchange initially filed the proposal on July 27, 2017 (SR-MIAX-2017-37). That filing was withdrawn and replaced with the current filing (SR-MIAX-2017-40).

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¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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.

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 adopt transaction fees and rebates for certain new complex order types that have become available for trading on the Exchange, as described below. The Exchange also proposes to clarify an existing transaction fee that applies to an existing order type, as well as make a number of technical corrections to the Fee Schedule.

The Exchange began trading complex orders³ in October, 2016.⁴ As part of its effort to continue to build out its complex order market segment, the Exchange recently adopted rules to establish the following three new types of complex orders as well as adopted new provisions that relate to the processing of such complex order types: (i) complex PRIME (“cPRIME”) Orders, (ii) Complex Qualified Contingent Cross (“cQCC”) Orders, and (iii) Complex Customer Cross (“cC2C”) Orders.⁵ A cPRIME Order is a complex order that is submitted for participation in a cPRIME Auction. A cQCC Order is comprised of an originating complex order to buy or sell where each leg is at least 1,000 contracts and that is identified as being part of a qualified contingent trade, as defined in Rule 516, Interpretations and Policies .01, coupled with a contra-side complex order or orders for the same strategy totaling an equal number of contracts. A cC2C Order is comprised of one Priority Customer complex order to buy and one Priority Customer complex order to sell the same complex strategy at the same initiating price (which

³ 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. Mini-options may only be part of a complex order that includes other mini-options. Only those complex orders in the classes designated by the Exchange and communicated to Members via Regulatory Circular with no more than the applicable number of legs, as determined by the Exchange on a class-by-class basis and communicated to Members via Regulatory Circular, are eligible for processing. See Exchange Rule 518(a)(5).

⁴ For a complete description of the trading of complex orders on the Exchange, see Exchange Rule 518. See also, Securities Exchange Act Release No. 79072 (October 7, 2016), 81 FR 71131 (October 14, 2016)(SR-MIAX-2016-26).

⁵ 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).

must be better than (inside) the icMBBO⁶ price or the best net price of a complex order for the strategy) and for the same quantity. 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. cQCC and cC2C Orders are processed and executed in the same mechanism that the Exchange uses to cross simple QCC orders and Customer Cross orders, pursuant to Exchange Rule 515.

cPRIME Orders

Rule 518(b)(7) defines a cPRIME Order as a type of complex order that is submitted for participation in a cPRIME Auction. Trading of cPRIME Orders is governed by Rule 515A, Interpretations and Policies .12. A cPRIME Auction is the price-improvement mechanism of the Exchange's System⁷ pursuant to which a Member ("Initiating Member") electronically submits a complex order that it represents as agent (an "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 (a "single-price submission") against principal or solicited interest, or (ii) automatically match ("auto-match"), against principal or solicited interest, the price and size of responses to a Request for Response ("RFR") that is broadcast to MIAX Options participants up to an optional designated limit price.

The Exchange utilizes the same mechanism for the processing and execution of both PRIME and cPRIME Orders. Accordingly, the Exchange has modified Rule 515A so that it also

⁶ The Implied Complex MIAX Best Bid or Offer ("icMBBO") is a calculation that uses the best price from the Simple Order Book for each component of a complex strategy including displayed and non-displayed trading interest. For stock-option orders, the icMBBO for a complex strategy will be calculated using the best price (whether displayed or non-displayed) on the Simple Order Book in the individual option component(s), and the NBBO in the stock component. See Exchange Rule 518(a)(11).

⁷ The term "System" means the automated trading system used by the Exchange for the trading of securities. See Exchange Rule 100.

permits the execution of cPRIME Orders, through changes to Rule 515A(a) and the adoption of Interpretations and Policies .12 (PRIME for Complex Orders).⁸ Interpretations and Policies .12 includes certain processing and execution requirements for cPRIME Orders that differ from the processing and execution requirements under Rule 515A(a) for simple PRIME Orders.⁹

The Exchange now proposes to adopt new Section 1(a)(vi), MIAX Complex Price Improvement Mechanism (“cPRIME”) Fees, on the Fee Schedule to establish transaction fees and credits for executions in a cPRIME Auction, which transaction fees and credits are similar to transaction fees and credits that the Exchange currently assesses for executions in a PRIME Auction:

Types of Market Participants	cPRIME Order Fee		Responder to cPRIME Auction Fee		cPRIME Break-up Credit	
	Per Contract Fee for Agency Order	Per Contract Fee for Contra-side Order	Per Contract Fee for Penny Classes	Per Contract Fee for Non-Penny Classes	Per Contract Credit for Penny Classes	Per Contract Credit for Non-Penny Classes
<i>Priority Customer</i>	\$0.00	\$0.00	\$0.50	\$0.99	\$0.25	\$0.60
<i>Public Customer that is Not a Priority Customer</i>	\$0.30	\$0.05	\$0.50	\$0.99	\$0.25	\$0.60
<i>MIAX Market Maker</i>	\$0.30	\$0.05	\$0.50	\$0.99	\$0.25	\$0.60
<i>Non-MIAX Market Maker</i>	\$0.30	\$0.05	\$0.50	\$0.99	\$0.25	\$0.60
<i>Non-Member Broker-Dealer</i>	\$0.30	\$0.05	\$0.50	\$0.99	\$0.25	\$0.60
<i>Firm</i>	\$0.30	\$0.05	\$0.50	\$0.99	\$0.25	\$0.60

⁸ See supra note 5.

⁹ Id.

This cPRIME Fee table (including the amounts therein) is identical to the PRIME Fee table (including the amounts therein), which is contained in Section 1)a)v) of the Fee Schedule.

The Exchange also proposes to adopt certain explanatory text relating to the cPRIME Fee table, just as the Exchange currently has relating to the PRIME Fee table. The text provides that all fees and credits are per contract per leg. Also, MIAX will assess the Responder to cPRIME Auction Fee to: (i) a cPRIME AOC Response that executes against a cPRIME Order, and (ii) a cPRIME Participating Quote or Order¹⁰ that executes against a cPRIME Order. MIAX will apply the cPRIME Break-up credit to the EEM that submitted the cPRIME Order for agency contracts that are submitted to the cPRIME Auction that trade with a cPRIME AOC Response or a cPRIME Participating Quote or Order that trades with the cPRIME Order. MIAX will assess the standard complex transaction fees to a cPRIME AOC Response if it executes against unrelated complex orders. Any Member¹¹ or its Affiliate¹² that qualifies for Priority Customer Rebate Program volume tiers 3 or higher and submits a cPRIME AOC Response that is received during the Response Time Interval and executed against the cPRIME Order, or a cPRIME Participating Quote or Order that is received during the Response Time Interval and executed against the cPRIME Order, will be assessed a Discounted cPRIME Response Fee of \$0.46 per

¹⁰ The term “cPRIME Participating Quote or Order” means an unrelated MIAX Market Maker complex quote or unrelated MIAX Market Maker complex order that is received during the Response Time Interval and executed against a cPRIME Order. See Section 1a)i) of the Fee Schedule, as described below.

¹¹ 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.

¹² 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). See Fee Schedule note 1.

contract for standard complex order options in Penny Pilot classes. Any Member or its Affiliate that qualifies for Priority Customer Rebate Program volume tiers 3 or higher and submits a cPRIME AOC Response that is received during the Response Time Interval and executed against the cPRIME Order, or a cPRIME Participating Quote or Order that is received during the Response Time Interval and executed against the cPRIME Order, will be assessed a Discounted cPRIME Response Fee of \$0.95 per contract for standard complex order options in non-Penny Pilot classes.

The Exchange also proposes to amend Section 1)a)iii), the Priority Customer Rebate Program (the “PCRCP”), of the Fee Schedule to establish a tiered per contract credit for cPRIME Agency Orders. The Exchange proposes to credit each Member \$0.10 per contract per leg for each Priority Customer cPRIME Agency Order in each tier. The Exchange also proposes to adopt certain explanatory text relating to cPRIME Agency Orders in PCRCP table, just as the Exchange currently has relating to other order types in the PCRCP table. The text provides that all fees and rebates are per contract per leg. Also for each Priority Customer complex order submitted into the cPRIME Auction as a cPRIME Agency Order, MIAX shall credit each member at the separate per contract per leg rate for cPRIME Agency Orders. However, no rebates will be paid if the cPRIME Agency Order executes against a Contra-side Order which is also a Priority Customer. Finally, unless otherwise explicitly set forth therein, the remainder of the explanatory text relating to the PCRCP set forth in that Section 1)a)iii) shall apply to cPRIME Agency Orders. The Exchange notes that a Member or its Affiliate that qualifies for PCRCP volume tiers 3 or higher receives an additional rebate of \$0.02 per contract for each Priority Customer order executed in the PRIME Auction as a PRIME Agency Order over a threshold of 1,500,000 contracts in a month.

Finally, for clarification, just as is the case today for other types of complex orders, if the cPRIME order legs into the simple order book, the contracts that were entered directly into the simple order book will be subject to all standard transaction fees, marketing fees, rebates, and credits, as set forth in the Exchange's Fee Schedule and as applicable to simple orders. Also, the Exchange will assess only the cPRIME fees contained in Section 1)a)vi) with respect to cPRIME Auctions – the Exchange will not also assess the complex order fees contained elsewhere in Section 1)a). For example, a MIAX Market Maker would only be charged \$0.50 per contract per leg executed for responding to a cPRIME Auction, pursuant to Section 1)a)vi); it would not also be charged the \$0.10 Per Contract Surcharge for Removing Liquidity Against a Resting Priority Customer Complex Order on the Strategy Book fee contained in Section 1)a)i). Also, if a cPRIME Agency Order legs into a simple Market Maker order on the simple order book, the Market Maker order would not be considered to be a Responder for fee purposes.

As Section 1)a)vi) will now contain the proposed cPRIME fees, the current simple QCC Fees table will be renumbered as Section 1)a)vii). There are no substantive changes for simple QCC fees.

cQCC Orders

The Exchange proposes to adopt new Section 1)a)viii), cQCC Fees, to the Fee Schedule to establish transaction fees and rebates for cQCC Orders, which are identical to transaction fees and rebates that the Exchange currently charges for simple QCC Orders:

Types of Market Participants	cQCC Order		
	Per Contract Fee for Initiator	Per Contract Fee for Contra-side	Per Contract Rebate for Initiator
<i>Priority Customer</i>	\$0.00	\$0.00	\$0.10
<i>Public Customer that is Not a Priority Customer</i>	\$0.15	\$0.15	\$0.10
<i>MIAX Market Maker</i>	\$0.15	\$0.15	\$0.10
<i>Non-MIAX Market Maker</i>	\$0.15	\$0.15	\$0.10
<i>Non-Member Broker-Dealer</i>	\$0.15	\$0.15	\$0.10
<i>Firm</i>	\$0.15	\$0.15	\$0.10

This cQCC Fees table (including the amounts therein) is identical to the QCC Fees table (including the amounts therein), which is contained in Section 1)a)vii) of the Fee Schedule.

The Exchange also proposes to adopt certain explanatory text relating to the cQCC Fees table, just as the Exchange currently has relating to the simple QCC Fees table. The text provides that all fees and rebates are per contract per leg. Also, rebates will be delivered to the Member firm that enters the order into the MIAX system, but will only be paid on the initiating side of the cQCC transaction. However, no rebates will be paid for cQCC transactions for which both the initiator and contra-side orders are Priority Customers. A cQCC transaction is comprised of an ‘initiating complex order’ to buy (sell) where each component is at least 1,000 contracts that is identified as being part of a qualified contingent trade, coupled with a contra-side complex order or orders to sell (buy) an equal number of contracts.

C2C and cC2C Orders

The Exchange proposes to adopt new Section 1)a)ix), C2C and cC2C Fees, to the Fee Schedule to clarify and establish transaction fees and rebates for C2C Orders and cC2C Orders.

<u>Types of Market Participants</u>	<u>C2C and cC2C Order Per Contract Fee/Rebate</u>
<i>Priority Customer</i>	<u>\$0.00</u>

The Exchange notes that it currently offers trading in C2C Orders.¹³ Because C2C Orders are comprised entirely of Priority Customer orders, the Exchange assesses a \$0.00 per contract transaction fee and a \$0.00 rebate to such orders, pursuant to section 1)a)ii) of the Fee Schedule. However, the Exchange desires to clarify and make explicit that C2C Orders are assessed a \$0.00 per contract transaction fee and paid a \$0.00 per contract rebate. The Exchange is also proposing to assess cC2C Orders a \$0.00 per contract transaction fee and to pay a \$0.00 per contract rebate.

The Exchange also proposes to adopt certain explanatory text relating to the C2C and cC2C Fees table. The text provides that all fees and rebates are per contract per leg. Also, a C2C Order is comprised of a Priority Customer Order to buy and a Priority Customer Order to sell at the same price and for the same quantity. A cC2C Order is comprised of one Priority Customer complex order to buy and one Priority Customer complex order to sell at the same price and for the same quantity.

Exclusion from Certain Percentage Thresholds and Programs and Technical Corrections:

The Exchange notes that it currently excludes certain simple PRIME, QCC, and C2C order types from counting towards certain percentage thresholds and from participating in certain programs under its Fee Schedule. Accordingly, with the introduction of these new complex order types on the Exchange, i.e. cPRIME, cQCC, and cC2C Orders, the Exchange is similarly proposing to exclude these new order types from counting towards those certain percentage thresholds and from participating in certain programs under its Fee Schedule. The Exchange

¹³ See Exchange Rule 516(i).

notes that C2C Orders are comprised entirely of Priority Customer orders, and thus, where applicable, are currently excluded contracts under Priority Customer-to-Priority Customer Orders. However, the Exchange desires to clarify that C2C Orders are, where applicable, excluded by explicitly identifying and adding such orders to the list of excluded contracts, as described below.

First, in Section 1)a)i) of the Fee Schedule, Market Maker Transaction Fees, Market Maker Sliding Scale, the Exchange currently excludes certain contracts executed from counting towards volume for purposes calculating the percentage threshold in each of the Market Maker tiers. The Fee Schedule currently provides that volume thresholds are based on the total national Market Maker volume of any options classes with traded volume on MIAX during the month in simple and complex orders (excluding QCC Orders, PRIME AOC Responses, and unrelated MIAX Market Maker quotes or unrelated MIAX Market Maker orders that are received during the Response Time Interval and executed against the PRIME Order (“PRIME Participating Quotes or Orders”)). With the introduction of these new complex order types, the Exchange now proposes to add the following order types to the list of excluded contracts: cQCC Orders, cPRIME AOC Responses, and unrelated MIAX Market Maker complex quotes or unrelated MIAX Market Maker complex orders that are received during the Response Time Interval and executed against a cPRIME Order (“cPRIME Participating Quote or Order”). Accordingly, as amended, the list of excluded contracts shall be QCC and cQCC Orders, PRIME and cPRIME AOC Responses, and unrelated MIAX Market Maker quotes or unrelated MIAX Market Maker orders that are received during the Response Time Interval and executed against the PRIME Order (“PRIME Participating Quotes or Orders”) and unrelated MIAX Market Maker complex

quotes or unrelated MIAX Market Maker complex orders that are received during the Response Time Interval and executed against a cPRIME Order (“cPRIME Participating Quote or Order”).

Second, in Section 1)a)iii) of the Fee Schedule, PCRCP, the Exchange currently excludes certain contracts executed from participation in the PCRCP. The Fee Schedule currently excludes, in simple or complex as applicable, QCC Orders, mini-options, Priority Customer-to-Priority Customer Orders, PRIME AOC Responses, PRIME Contra-side Orders, PRIME 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 MIAX Rule 1400. With the introduction of these new complex order types, the Exchange now proposes to add the following contract executions to the list of excluded contracts: cQCC Orders, C2C and cC2C Orders, cPRIME AOC Responses, cPRIME Contra-side Orders, and cPRIME Orders for which both the Agency and Contra-side Order are Priority Customers. Accordingly, as amended, the list of excluded contracts shall be, 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 MIAX Rule 1400. The Exchange notes that C2C Orders are comprised entirely of Priority Customer orders, and thus are currently excluded contracts. However, the Exchange desires to clarify that C2C Orders are excluded by explicitly identifying and adding such orders to the list of excluded contracts. The Exchange notes that Priority Customer-to-Priority Customer Orders are two opposite Priority

Customer Orders that are paired and entered into a PRIME Auction, with the Member designating one such Priority Customer Order as the PRIME Agency Order, which such order becomes eligible for price improvement in the PRIME Auction.

Further, the Exchange currently excludes certain contracts executed from counting towards volume for purposes of calculating the percentage threshold in each of the PCRPs tiers. The Fee Schedule currently provides that the percentage thresholds are calculated based on the percentage of national customer volume in multiply-listed options classes listed on MIAX entered and executed over the course of the month (excluding QCC Orders, Priority Customer-to-Priority Customer Orders, PRIME AOC Responses, PRIME Contra-side Orders, PRIME Orders for which both the Agency and Contra-side Order are Priority Customers). With the introduction of these new complex order types, the Exchange now proposes to add the following order types to the list of excluded contracts: cQCC Orders, C2C and cC2C Orders, cPRIME AOC Responses, cPRIME Contra-side Orders, and cPRIME Orders for which both the Agency and Contra-side Order are Priority Customers. Accordingly, as amended, the list of excluded contracts shall be QCC and cQCC Orders, Priority Customer-to-Priority Customer Orders, C2C and cC2C Orders, PRIME and cPRIME AOC Responses, PRIME and cPRIME Contra-side Orders, and PRIME and cPRIME Orders for which both the Agency and Contra-side Order are Priority Customers. The Exchange notes that C2C Orders are comprised entirely of Priority Customer orders, and thus are currently excluded contracts under Priority Customer-to-Priority Customer Orders. However, the Exchange desires to clarify that C2C Orders are excluded by explicitly identifying and adding such orders to the list of excluded contracts.

Further, pursuant to the PCRCP, the Exchange currently credits each “Qualifying Member”¹⁴ \$0.03 per contract resulting from each Priority Customer order in simple or complex order executions which falls within the PCRCP volume tier 1. However, the Exchange also currently excludes certain contracts executed from receiving the \$0.03 per contract credit. The Fee Schedule currently excludes QCC Orders, mini-options, Priority Customer-to-Priority Customer Orders, PRIME Agency Orders, PRIME AOC Responses, PRIME Contra-side Orders, PRIME 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 MIAX Rule 1400. With the introduction of these new complex order types, the Exchange now proposes to add the following contract executions to the list of excluded contracts: cQCC Orders, C2C and cC2C Orders, cPRIME Agency Orders, cPRIME AOC Responses, cPRIME Contra-side Orders, and cPRIME Orders for which both the Agency and Contra-side Order are Priority Customers. Accordingly, as amended, the list of excluded contracts shall be QCC and cQCC Orders, mini-options, Priority Customer-to-Priority Customer Orders, C2C and cC2C Orders, PRIME and cPRIME Agency 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

¹⁴ “Qualifying Member” shall mean a Member or its Affiliate that qualifies for the Professional Rebate Program as described below and achieves a volume increase in excess of 0.065% for Professional orders transmitted by that Member which are executed electronically on the Exchange in all multiply-listed option classes for the account(s) of a Professional and which qualify for the Professional Rebate Program during a particular month relative to the applicable Baseline Percentage (as defined under the Professional Rebate Program).

MIAX Rule 1400. The Exchange notes that C2C Orders are comprised entirely of Priority Customer orders, and thus are currently excluded contracts under Priority Customer-to-Priority Customer Orders. However, the Exchange desires to clarify that C2C Orders are excluded by explicitly identifying and adding such orders to the list of excluded contracts.

Further, pursuant to the PCRCP, the Exchange currently credits any Member or its Affiliate that qualifies for PCRCP volume tiers 3 or higher an additional \$0.02 per contract for each Priority Customer order executed in the PRIME Auction as a PRIME Agency Order over a threshold of 1,500,000 contracts in a month. The Exchange notes that the additional \$0.02 per contract credit will not be applicable for cPRIME Agency orders, and cPRIME Agency orders do not count toward the threshold as described below. The Exchange also currently excludes certain contracts executed from counting towards the threshold of 1,500,000 contracts in a month. The Fee Schedule currently excludes QCC Orders, mini-options, Priority Customer-to-Priority Customer Orders, PRIME AOC Responses, PRIME Contra-side Orders, PRIME 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 MIAX Rule 1400. With the introduction of these new complex order types, the Exchange now proposes to add the following contract executions to the list of excluded contracts: cQCC Orders, C2C and cC2C Orders, cPRIME Agency Orders, cPRIME AOC Responses, cPRIME Contra-side Orders, and cPRIME Orders for which both the Agency and Contra-side Order are Priority Customers. Accordingly, as amended, the list of excluded contracts shall be QCC and cQCC Orders, mini-options, Priority Customer-to-Priority Customer Orders, C2C and cC2C Orders, cPRIME Agency 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 MIAX Rule 1400. The Exchange notes that C2C Orders are comprised entirely of Priority Customer orders, and thus are currently excluded contracts under Priority Customer-to-Priority Customer Orders. However, the Exchange desires to clarify that C2C Orders are excluded by explicitly identifying and adding such orders to the list of excluded contracts.

Third, in Section 1)a)iv) of the Fee Schedule, Professional Rebate Program (“PRP”), the Exchange currently excludes certain contracts executed from participation in the PRP. The Fee Schedule currently excludes, in simple or complex as applicable, mini-options, Non-Priority Customer-to-Non-Priority Customer Orders, QCC Orders, PRIME Orders, PRIME AOC Responses, PRIME Contra-side Orders, 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 MIAX Rule 1400 (collectively, for purposes of the Professional Rebate Program, “Excluded Contracts”). With the introduction of these new complex order types, the Exchange now proposes to add the following contract executions to the list of Excluded Contracts: cQCC Orders, cPRIME Orders, cPRIME AOC Responses, and cPRIME Contra-side Orders. Accordingly, as amended, the list of Excluded Contracts shall be, in simple or complex as applicable, mini-options, Non-Priority Customer-to-Non-Priority Customer Orders, QCC and cQCC Orders, PRIME and cPRIME Orders, PRIME and cPRIME AOC Responses, PRIME and cPRIME Contra-side Orders, 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 MIAX Rule 1400.

Fourth, in Section 1)b) of the Fee Schedule, Marketing Fee, the Exchange currently does not assess the Marketing Fee to Market Makers¹⁵ for contracts executed as a PRIME Agency Order, Contra-side Order, Qualified Contingent Cross Order, PRIME Participating Quote or Order or a PRIME AOC Response in the PRIME Auction, unless it executes against an unrelated order. With the introduction of these new complex order types, the Exchange now proposes to add the following executions to that list: (i) cPRIME Agency Orders, (ii) cQCC Orders, and (iii) cPRIME Participating Quotes or Orders or cPRIME AOC Responses that trade against a cPRIME Agency Order. The Exchange also proposes to make a number of non-substantive technical corrections to the list, as follows: the Exchange proposes to abbreviate “Qualified Contingent Cross Order” to “QCC Order”; the Exchange proposes to add clarifying language and to combine the PRIME Participating Quote or Order and PRIME AOC Response so that it reads “PRIME Participating Quote or Order or a PRIME AOC Response trades against a PRIME Agency Order”; and the Exchange proposes to delete the text “Contra side Order” and “in the PRIME Auction; unless, it executes against an unrelated order”, as such text is now redundant because it is more explicitly covered in the clarified text. Accordingly, as amended, the text will provide that MIAX will not assess a Marketing Fee to Market Makers for contracts executed: (i) as a PRIME or cPRIME Agency Order, or as a QCC or cQCC Order; (ii) when a PRIME Participating Quote or Order or a PRIME AOC Response trades against a PRIME Agency Order; or (iii) when a cPRIME Participating Quote or Order or a cPRIME AOC Response trades against a cPRIME Agency Order.

¹⁵ The term “Market Makers” refers to Lead Market Makers (“LMMs”), Primary Lead Market Makers (“PLMMs”), and Registered Market Makers (“RMMs”) collectively. See Exchange Rule 100. A Directed Order Lead Market Maker (“DLMM”) and Directed Primary Lead Market Maker (“DPLMM”) is a party to a transaction being allocated to the LMM or PLMM and is the result of an order that has been directed to the LMM or PLMM. See Fee Schedule note 2.

Fifth, the Exchange proposes to make a number of non-substantive, technical corrections to Section 1)a)v) of the Fee Schedule, MIAX Price Improvement Mechanism (“PRIME”) Fees. The Exchange proposes to clarify certain explanatory text relating to the PRIME Fees table. The first sentence of the text currently states that “MIAX will assess the Responder to PRIME Auction Fee to: (i) a PRIME AOC Response that executes against a PRIME Order, and (ii) a PRIME Participating Quote or Order.” The Exchange proposes to revise the text so that, as amended, it states “MIAX will assess the Responder to PRIME Auction Fee to: (i) a PRIME AOC Response that executes against a PRIME Order, and (ii) a PRIME Participating Quote or Order that executes against a PRIME Order.” The second sentence of the text states “MIAX will apply the PRIME Break-up credit to the EEM that submitted the PRIME Order for agency contracts that are submitted to the PRIME Auction that trade with a PRIME AOC Response or a PRIME Participating Quote or Order.” The Exchange proposes to revise the text so that, as amended, it states “MIAX will apply the PRIME Break-up credit to the EEM that submitted the PRIME Order for agency contracts that are submitted to the PRIME Auction that trade with a PRIME AOC Response or a PRIME Participating Quote or Order that trades with the PRIME Order. The third sentence of the text states “The applicable fee for PRIME Orders will be applied to any contracts for which a credit is provided.” The Exchange proposes to delete this sentence in its entirety, as it is redundant and potentially ambiguous. The Exchange believes that deleting this sentence (which reiterates that Exchange charges the Responder to PRIME Auction Fee [sic] for all contracts on which the Exchange pays the PRIME Break-up Credit) will eliminate any potential confusion among Members and investors. The fifth sentence of the text states “MIAX will assess the standard transaction fees to a PRIME AOC Response if they execute against unrelated orders.” The Exchange proposes to revise the text so that, as amended,

it states “MIAX will assess the standard transaction fees to a PRIME AOC Response if it executes against unrelated orders.”

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act in general, and furthers the objectives of Section 6(b)(4) of the Act in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes that the proposed fee structure for cPRIME Auction transaction fees and rebates is reasonable, equitable, and not unfairly discriminatory. The proposed fee structure is reasonably designed because it is intended to incentivize market participants to send complex order flow to the Exchange in order to participate in the price improvement mechanism in a manner that enables the Exchange to improve its overall competitiveness and strengthen its market quality for all market participants. cPRIME Auctions and the corresponding fees are also reasonably designed because the proposed fees and rebates are very similar to ones the Exchange assesses for simple PRIME transactions, and are within the range of fees and rebates assessed by other exchanges employing similar fee structures for complex orders submitted and executed in a

price improvement mechanism.¹⁶ Other competing exchanges offer different fees and rebates for complex agency orders, contra-side orders, and responders to an auction in a manner similar to the proposal.¹⁷ Other competing exchanges also charge different rates for transactions in their complex price improvement mechanisms for customers versus their non-customers in a manner similar to the proposal.¹⁸

The fee and rebate structure is reasonable, equitable, and not unfairly discriminatory because it will apply equally amongst all Priority Customer orders in each category of cPRIME Auction participation and it will also apply equally amongst all non-Priority Customer orders in each category of cPRIME Auction participation. All similarly situated orders for Priority Customers are subject to the same transaction fee and rebate schedule. All similarly situated orders for market participants that are not Priority Customers are subject to the same transaction fee and rebate schedule, and access to the Exchange is offered on terms that are not unfairly discriminatory.

The Exchange believes that is equitable and not unfairly discriminatory that Priority Customers be charged lower fees in cPRIME Auctions than other market participants. The exchanges in general have historically aimed to improve markets for investors and develop various features within market structure for customer benefit. The Exchange assesses Priority Customers lower or no 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.

¹⁶ See Nasdaq ISE, LLC Schedule of Fees, p. 9; BOX Options Exchange Fee Schedule, p. 8.

¹⁷ Id.

¹⁸ Id.

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.

Moreover, the Exchange believes that assessing all other market participants that are not Priority Customers a higher transaction fee than Priority Customers for cPRIME Order transactions is reasonable, equitable, and not unfairly discriminatory because these types of market participants are more sophisticated and have higher levels of order flow activity and system usage. This level of trading activity draws on a greater amount of system resources than that of Priority Customers, and thus, generates greater ongoing operational costs. Further, the Exchange believes that charging all market participants that are not Priority Customers the same fee for all cPRIME transactions is not unfairly discriminatory as the fees will apply to all these market participants equally.

The Exchange believes that it is reasonable for cPRIME Agency and Contra-side Orders to be assessed lower fees than those providing responses. Contra-side Orders guarantee the cPRIME Agency Order, and are subject to market risk during the time period that the cPRIME Agency Order is exposed to other market participants. The Exchange believes that the market participants entering the Contra-side Order acts as a critical role in the cPRIME Auction as their willingness to guarantee the cPRIME Agency Order is the keystone to the cPRIME Agency Order gaining the opportunity for price improvement.

The Exchange believes that it is equitable and not unfairly discriminatory to assess fees to responders to the cPRIME Auction and credit another participant to provide incentive for participants to submit order flow to cPRIME Auctions. The Exchange believes that it is appropriate to provide incentives to market participants to direct orders to participate in cPRIME Auctions. Further, the Exchange believes that the transaction fees for responding to the cPRIME

Auction will not deter market participants from providing price improvement.

The Exchange believes that it is reasonable to assess lower transaction and credit rates to penny option classes than non-penny option classes. The Exchange believes that options which trade at these wider spreads merit offering greater inducement for market participants. In particular, within the cPRIME Auction, option classes that typically trade in minimum increments of \$0.05 or \$0.10 provide greater opportunity for market participants to offer price improvement. As such, the Exchange believes that the opportunity for additional price improvement provided by these wider spreads again merits offering greater incentive for market participants to increase the potential price improvement for customer orders in these transactions.

The Exchange believes that the proposed PCRCP rebates for Priority Customer orders submitted into cPRIME Auctions are fair, equitable, and not unreasonably discriminatory. The rebate program 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 receive a credit in a manner that enables the Exchange to improve its overall competitiveness and strengthen its market quality for all market participants. The proposed tiered rebate is fair, equitable, and not unreasonably discriminatory because it will apply equally to all Priority Customer orders submitted as a cPRIME Agency Order. All similarly situated Priority Customer orders are subject to the same rebate schedule, and access to the Exchange is offered on terms that are not unfairly discriminatory. In addition, the PCRCP is equitable and not unfairly discriminatory because, while only Priority Customer order flow qualifies for the rebate program, 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. Market participants want to trade with Priority Customer order flow. 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.

The Exchange believes that excluding cQCC Orders, C2C and cC2C Orders, cPRIME AOC Responses, cPRIME Contra-side Orders, and cPRIME Orders for which both the Agency and Contra-side Order are Priority Customers from the number of options contracts executed on the Exchange by any Member for purposes of the volume thresholds and the PCRCP is reasonable, equitable, and not unfairly discriminatory because participating Members could otherwise collect the rebates offered and volume thresholds by executing excess volume in these types of transactions in which no transaction fees are charged on the Exchange. The Exchange believes that the rebate for Priority Customer agency orders in the cPRIME Auction is reasonably designed to incentivize additional customer order flow to the cPRIME Auction.

The Exchange believes the proposed transaction fees for cQCC Orders are reasonable because the proposed amounts are identical to the fees assessed for QCC transactions and are in line with the amounts assessed at other Exchanges for similar transactions.¹⁹ Additionally, the proposed fees would be assessed to all non-Priority Customers alike.

The Exchange believes the proposed rebate for the initiating order side of a cQCC transaction is reasonable because other competing exchanges also provide a rebate on the

¹⁹ See BOX Options Exchange LLC (“BOX”) Fee Schedule, Section I(D) (BOX does not charge Public Customers but charges Professional Customers, Broker Dealers and Market Makers \$0.20 per contract on both Agency and Contra Orders); see also Chicago Board Options Exchange (“CBOE”) Fee Schedule, “QCC Rate Table,” Page 5 (CBOE charges non-Public Customers \$0.17 per contract and does not charge Public Customers); see also NYSE Amex Options Fee Schedule, Section I.F (NYSE Amex charges Non-Customers \$0.20 per contract, Specialists and e-Specialists \$0.13 per contract, and does not charge Customer and Professional Customers).

initiating order side.²⁰ Additionally, the proposed rebate amount is within the range of the rebate amounts at the other competing exchanges.²¹ The Exchange believes the proposed rebate is equitable and not unfairly discriminatory because it applies to all Members that enter the initiating order (except for when both the initiator and contra-side orders are Priority Customers) and because it is intended to incentivize the sending of more cQCC Orders to the Exchange. The Exchange believes it is reasonable, equitable, and not unfairly discriminatory to not provide a rebate for the initiating order for cQCC transactions for which both the initiator and the contra-side orders are Priority Customers since Priority Customers are already incentivized by a reduced fee for submitting cQCC Orders. The Exchange believes that the proposed exclusion of cQCC Orders from the Market Maker Sliding Scale, the PCRFP, and the PRP is reasonable because it enables cQCC Orders from all market participants to be subject to only the specific transaction fees as described above that are tailored specifically for encouraging market participants to transact cQCC Orders on the Exchange. The Exchange believes that the exclusion is equitable and not unfairly discriminatory because it ensures all market participants, other than Priority Customers, to be subject to the same transaction fee for cQCC Orders. While Priority Customers will benefit from a reduced transaction fee rate for cQCC Orders, excluding cQCC Orders from the PCRFP enables a more equitable and not unfairly discriminatory outcome.

²⁰ See BOX Fee Schedule, Section I(D)(1); see also CBOE Fee Schedule, “QCC Rate Table,” Page 5; see also NYSE Amex Options Fee Schedule, Section I.F; see also Nasdaq ISE Fee Schedule, Section IV(A).

²¹ See BOX Fee Schedule, Section I(D)(1) (a \$0.15 per contract rebate will be applied to the Agency Order where at least one party to the QCC transaction is a Non-Public Customer); see also CBOE Fee Schedule, “QCC Rate Table,” Page 5 (a \$0.10 per contract credit will be delivered to the TPH Firm that enters the order into CBOE Command but will only be paid on the initiating side of the QCC transaction); see also NYSE Amex Options Fee Schedule, Section I.F (a \$0.07 credit is applied to Floor Brokers executing 300,000 or fewer contracts in a month and a \$0.10 credit is applied to Floor Brokers executing more than 300,000 contracts in a month); see also Nasdaq ISE Fee Schedule, Section IV(A) (rebates range from \$0.01 to \$0.11 per contract).

The Exchange believes that adding the C2C fee to the Fee Schedule is reasonable since it is clarifying the Exchange's existing practice and by adding such C2C Order fee to the Fee Schedule the Exchange believes that it will make it more transparent as to how the Exchange assesses such fee and avoid any confusion as to how such fee is assessed for simple (C2C) and complex (cC2C) orders. The Exchange believes that the proposed transaction fee for cC2C Orders is reasonable because the proposed amount is identical to the fee assessed for C2C transactions, which is currently \$0.00. The proposed fees would be charged to all Priority Customers alike and the Exchange believes that assessing a \$0.00 fee to Priority Customers is equitable and not unfairly discriminatory. By assessing a \$0.00 fee to Priority Customer orders, the C2C and cC2C transaction fees will not discourage the sending of Priority Customer orders.

The Exchange believes that specifying that cPRIME Order and cQCC Order executions are not subject to marketing fees is reasonable, equitable and not unfairly discriminatory. The Exchange is seeking to encourage all participants, including Market Makers, to send cPRIME Orders and to respond to cPRIME Auction RFR messages and the Exchange believes that collecting marketing fees from Market Makers may discourage such participation. By encouraging as many participants as possible to respond, the Exchange believes that it will lead to greater opportunities for price improvement for all cPRIME Agency Orders, not just those entered on behalf of customers. For these reasons, the Exchange believes that excluding cPRIME Orders and responses from the marketing fees are reasonable, equitable, and not unfairly discriminatory. The Exchange believes that it is equitable and not unfairly discriminatory to continue to charge a marketing fee if an unrelated order executes in the cPRIME Auction, because that unrelated order is not subject to the specialized fee structure for cPRIME Auctions that is designed to incentivize participation. The market participant receives

the benefit of a cPRIME Auction execution and would already expect to be charged a marketing fee that is no different than the fee the market participant was expecting to pay trading against unrelated orders outside the cPRIME Auction. The Exchange further believes that not assessing a Marketing Fee for contracts executed as a cQCC Order is equitable and not unfairly discriminatory because such order type originated from the same Member, thus obviating the purpose of the Marketing Fee.

The Exchange believes that the proposed technical changes are consistent with Section 6(b)(5) of the Act because they are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes it is appropriate to make the proposed technical corrections to its Fee Schedule so that Exchange Members have a clear and accurate understanding of the meaning of the Exchange's Fee Schedule.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed change will enhance the competitiveness of the Exchange relative to other exchanges that offer their own electronic crossing mechanisms and offer their own complex crossing order types. The Exchange believes that the proposed fees and rebates for participation in the cPRIME Auction, the cQCC fees, and the C2C and cC2C fees are not going to have an impact on intra-market competition based on the total cost for participants to transact in such order types versus the cost for participants to transact in the other order types available for trading on the Exchange. As noted above, the Exchange believes that the proposed pricing

for the cPRIME Auction is comparable to that of other exchanges offering similar electronic price improvement mechanisms for complex orders,²² and the Exchange believes that, based on experience with electronic price improvement crossing mechanisms on other markets, market participants understand that the price-improving benefits offered by the cPRIME Auction justify the transaction costs associated with the cPRIME Auction. To the extent that there is a difference between non-cPRIME Auction transactions and cPRIME Auction transactions, the Exchange does not believe this difference will cause participants to refrain from responding to cPRIME Auctions. In addition, the Exchange does not believe that the proposed transaction fees and credits for these new complex crossing order types burden competition by creating a disparity of transaction fees between these order types and other order types. The Exchange expects to see robust competition within the cPRIME Auction to trade against the cPRIME Agency Order. The Exchange also expects to see robust competition in the trading of cQCC Orders and cC2C Orders, as the Exchange's pricing for those order types is competitive with the pricing of other competing Exchanges.

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.

²² See supra note 16.

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,²³ and Rule 19b-4(f)(2)²⁴ 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. Please include File Number SR-MIAX-2017-40 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 20549-1090.

²³ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁴ 17 CFR 240.19b-4(f)(2).

All submissions should refer to File Number SR-MIAX-2017-40. 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 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-2017-40, 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.²⁵

Robert W. Errett
Deputy Secretary

²⁵ 17 CFR 200.30-3(a)(12).