

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-92186; File No. SR-MIAX-2021-26)

June 15, 2021

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Its Fee Schedule for the Complex PRIME (“cPRIME”) Agency Order Credit

Pursuant to 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 June 9, 2021, 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 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/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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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 the Fee Schedule to modify one of the conditions for Members<sup>3</sup> to receive the alternative complex PRIME (“cPRIME”)<sup>4</sup> Agency Order Credit amount for cPRIME Agency Orders in Tier 4 of the Priority Customer Rebate Program (“PCRP”)<sup>5</sup> that applies instead of the credit otherwise applicable to such orders, if a certain threshold is satisfied. The Exchange initially filed this proposal on May 28, 2021 (SR-MIAX-2021-24) and withdrew such filing on June 9, 2021. The Exchange proposes to implement the fee change effective June 9, 2021.

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<sup>3</sup> 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.

<sup>4</sup> “cPRIME” is the process by which a Member may electronically submit a “cPRIME Order” (as defined in Rule 518(b)(7)) it represents as agent (a “cPRIME Agency Order”) against principal or solicited interest for execution (a “cPRIME Auction”), subject to the restrictions set forth in Exchange Rule 515A, Interpretation and Policy .12. See Exchange Rule 515A.

<sup>5</sup> Under the PCRP, MIAX Options credits each Member the per contract amount resulting from each Priority Customer order transmitted by that Member which is executed electronically on the Exchange in all multiply-listed option classes (excluding, 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 Exchange Rule 1400), provided the Member meets certain percentage thresholds in a month as described in the Priority Customer Rebate Program table. See Fee Schedule, Section 1)a)iii.

## Background

Exchange Rule 518(b)(7) defines a cPRIME Order as a type of complex order<sup>6</sup> that is submitted for participation in a cPRIME Auction and trading of cPRIME Orders is governed by Rule 515A, Interpretation and Policies .12.<sup>7</sup> 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.<sup>8</sup> PRIME is a process by which a Member may electronically submit for execution an order it represents as agent (an "Agency Order") against principal interest and/or solicited interest. The Member that submits the Agency Order ("Initiating Member") agrees to guarantee the execution of the Agency Order by submitting a contra-side order representing principal interest or solicited interest ("Contra-Side Order"). When the Exchange receives a properly designated Agency Order for Auction processing, a request for response ("RFR") detailing the option, side, size and initiating price is broadcasted to MIAX participants up to an optional designated limit price. Members may

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<sup>6</sup> 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. A complex order can also be a "stock-option" order, which is an order to buy or sell a stated number of units of an underlying security coupled with the purchase or sale of options contract(s) on the opposite side of the market, subject to certain contingencies set forth in the proposed rules governing complex orders. For a complete definition of a "complex order," see Exchange Rule 518(a)(5). See also Securities Exchange Act Release No. 78620 (August 18, 2016), 81 FR 58770 (August 25, 2016) (SR-MIAX-2016-26).

<sup>7</sup> 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).

<sup>8</sup> Id.

submit responses to the RFR, which can be either an Auction or Cancel (“AOC”) order or an AOC eQuote. A cPRIME Auction is the price-improvement mechanism of the Exchange’s System pursuant to which an Initiating Member electronically submits a complex 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 against principal or solicited interest, or (ii) automatically match against principal or solicited interest, the price and size of a RFR that is broadcast to MIAx participants up to an optional designated limit price. Such responses are defined as cPRIME AOC Responses or cPRIME eQuotes. The PRIME mechanism is used for orders on the Exchange’s Simple Order Book.<sup>9</sup> The cPRIME mechanism is used for Complex Orders<sup>10</sup> on the Exchange’s Strategy Book,<sup>11</sup> with the cPRIME mechanism operating in the same manner for processing and execution of cPRIME Orders that is used for PRIME Orders on the Simple Order Book.

On February 28, 2019, the Exchange filed its proposal to, among other things, establish the alternative cPRIME Agency Order Credit amount for cPRIME Agency Orders in Tier 4 of the PCRp that would apply instead of the credit otherwise applicable to such orders, if a certain threshold was satisfied by the Member.<sup>12</sup> With that filing, the Exchange adopted footnote “\*\*”

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<sup>9</sup> The “Simple Order Book” is the Exchange’s regular electronic book of orders and quotes. See Exchange Rule 518(a)(15).

<sup>10</sup> See supra note 6. 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).

<sup>11</sup> The “Strategy Book” is the Exchange’s electronic book of complex orders and complex quotes. See Exchange Rule 518(a)(17).

<sup>12</sup> See Securities Exchange Act Release No. 85301 (March 13, 2019), 84 FR 10166 (March 19, 2019) (SR-MIAx-2019-09).

below the PCRCP table in Section 1)a)iii) of the Fee Schedule, which described the alternative cPRIME Agency Order Credit amount for cPRIME Agency Orders in Tier 4 of the PCRCP. On February 28, 2020, the Exchange filed its proposal to, among other things, lower the alternative cPRIME Agency Order rebate for PCRCP Members in Tier 4 that execute Priority Customer standard non-paired complex volume at least equal to or greater than their Priority Customer cPRIME agency volume from \$0.22 per contract to \$0.12 per contract.<sup>13</sup>

Currently, under the PCRCP, the Exchange provides a higher credit of \$0.12 per contract for cPRIME Agency Orders if any Member or its Affiliate<sup>14</sup> qualifies for PCRCP Tier 4 and executes Priority Customer standard, non-paired complex volume at least equal to or greater than

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<sup>13</sup> See Securities Exchange Act Release No. 88349 (March 10, 2020), 85 FR 14995 (March 16, 2020) (SR-MIAX-2020-05).

<sup>14</sup> 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). An “Appointed Market Maker” is a MIAX Market Maker (who does not otherwise have a corporate affiliation based upon common ownership with an EEM) that has been appointed by an EEM and an “Appointed EEM” is an EEM (who does not otherwise have a corporate affiliation based upon common ownership with a MIAX Market Maker) that has been appointed by a MIAX Market Maker, pursuant to the following process. A MIAX Market Maker appoints an EEM and an EEM appoints a MIAX Market Maker, for the purposes of the Fee Schedule, by each completing and sending an executed Volume Aggregation Request Form by email to membership@miaxoptions.com no later than 2 business days prior to the first business day of the month in which the designation is to become effective. Transmittal of a validly completed and executed form to the Exchange along with the Exchange’s acknowledgement of the effective designation to each of the Market Maker and EEM will be viewed as acceptance of the appointment. The Exchange will only recognize one designation per Member. A Member may make a designation not more than once every 12 months (from the date of its most recent designation), which designation shall remain in effect unless or until the Exchange receives written notice submitted 2 business days prior to the first business day of the month from either Member indicating that the appointment has been terminated. Designations will become operative on the first business day of the effective month and may not be terminated prior to the end of the month. Execution data and reports will be provided to both parties.

their Priority Customer cPRIME Agency Order volume on a monthly basis, instead of the \$0.10 credit otherwise applicable for Tier 4.<sup>15</sup>

The Exchange now proposes to modify one of the conditions in order for a Member to receive the alternative cPRIME Agency Order Credit amount for cPRIME Agency Orders in Tier 4 of the PCRCP that applies instead of the credit otherwise applicable to such orders. With the proposed change, any Member or its Affiliate that qualifies for PCRCP Tier 4 and executes Priority Customer standard, non-paired complex volume at least equal to or greater than three (3) times their Priority Customer cPRIME Agency Order volume on a monthly basis, will receive a credit of \$0.12 per contract for cPRIME Agency Orders instead of the credit otherwise applicable to such orders in Tier 4. The Exchange proposes to make the corresponding change to footnote “\*\*” below the PCRCP table in Section 1)a)iii) of the Fee Schedule. The purpose of the proposed change is for business and competitive reasons. As the amount and type of volume that is executed on the Exchange has shifted since it first established the alternative cPRIME Agency Order Credit amount for cPRIME Agency Orders in Tier 4 of the PCRCP, provided that the Member meets certain Priority Customer standard, non-paired complex volume,<sup>16</sup> the Exchange has determined to level-set the threshold to achieve the alternative rebate by requiring Members to execute an increased amount of Priority Customer standard, non-paired complex volume. With the proposed change, the Exchange believes the higher credit of \$0.12 per contract for

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<sup>15</sup> The Exchange notes that other exchanges offer comparable rebates in their middle to highest tiers for similar transactions. See, generally, Nasdaq PHLX LLC, Options 7, Pricing Schedule (highest tier rebate of \$0.14 per contract for similar transactions); Cboe EDGX Exchange, Inc. Fee Schedule (mid-tier rebate of \$0.11 per contract, up to \$0.14 per contract in the highest tier for similar transactions); NYSE American LLC Fee Schedule (rebate of \$0.10 per contract for similar transactions).

<sup>16</sup> See supra notes 12 and 13.

cPRIME Agency Orders will continue to be attractive and reflective of the amount and type of volume executed on the Exchange.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act<sup>17</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>18</sup> in particular, in that it is an equitable allocation of reasonable 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 its proposal provides for the equitable allocation of reasonable dues and fees and is not unfairly discriminatory for the following reasons. The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and self-regulatory organization (“SRO”) revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to

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<sup>17</sup> 15 U.S.C. 78f(b).

<sup>18</sup> 15 U.S.C. 78f(b)(4) and (5).

investors and listed companies.”<sup>19</sup> There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than approximately 13-14% of the market share of executed volume of multiply-listed equity and exchange-traded fund (“ETF”) options trades as of June 9, 2021, for the month of June 2021.<sup>20</sup> Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, as of June 9, 2021, the Exchange has a total market share of 6.73% of all equity options volume, for the month of June 2021.<sup>21</sup>

The Exchange believes that the ever-shifting market shares among the exchanges from month to month demonstrates that market participants can shift order flow (as further described below), or discontinue or reduce use of certain categories of products, in response to transaction and non-transaction fee changes. For example, in February 2019, the Exchange filed with the Commission an immediately effective filing to decrease certain credits assessable to Members pursuant to the PCRCP, with the fee change effective for March 1, 2019.<sup>22</sup> The Exchange experienced a decrease in total market share between the months of February and March of 2019. Accordingly, the Exchange believes that the February 2019 fee change may have contributed to the decrease in the Exchange’s market share and, as such, the Exchange believes competitive forces constrain options exchange transaction fees.

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<sup>19</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

<sup>20</sup> See [https://www.cboe.com/us/options/market\\_statistics/](https://www.cboe.com/us/options/market_statistics/).

<sup>21</sup> See id.

<sup>22</sup> See supra note 12.



The Exchange believes its proposal to modify the amount of Priority Customer standard, non-paired complex volume in order for Members to achieve the higher alternative cPRIME Agency Order Credit amount for cPRIME Agency Orders in Tier 4 of the PCRCP is consistent with Section 6(b)(4) of the Act<sup>23</sup> because it applies equally to all participants. The proposal is based on the amount and type of complex and cPRIME business transacted on the Exchange and Members are not obligated to try to achieve the higher alternative cPRIME Agency Order Credit amount for cPRIME Agency Orders in Tier 4 of the PCRCP, nor are they obligated to execute any cPRIME transactions. Rather, the proposal is designed to level-set the volume threshold to Exchange volume in these segments to achieve the higher alternative rebate by requiring Members to execute an increased amount of Priority Customer standard, non-paired complex volume. The Exchange believes that by encouraging market participants to execute Priority Customer standard, non-paired complex volume at least equal to or greater than three times their Priority Customer cPRIME Agency Order volume in order to receive a higher alternative credit instead of the credit otherwise applicable to such orders in Tier 4 of the PCRCP is reasonable, equitably allocated and not unfairly discriminatory because it is more reflective of the amount and type of volume executed on the Exchange since the Exchange first established the alternative cPRIME Agency Order Credit.

The Exchange also believes that this proposal continues to encourage increased volume of Priority Customer standard, non-paired complex orders and Priority Customer cPRIME orders, which will continue to result in increased complex and cPRIME liquidity that benefits all Exchange participants by providing more trading opportunities and tighter spreads. The Exchange also believes the PCRCP is reasonably designed because it incentivizes providers of

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<sup>23</sup> 15 U.S.C. 78f(b)(4).

Priority Customer order flow to send that Priority Customer order flow to the Exchange in order to obtain the highest volume threshold and receive a credit in a manner that enables the Exchange to improve its overall competitiveness and strengthen its market quality for all market participants.

In addition, the proposal is also consistent with Section 6(b)(5) of the Act<sup>24</sup> because it perfects the mechanisms of a free and open market and a national market system and protects investors and the public interest because, while only certain Priority Customer order flow qualifies for the rebate program under the PCRCP and, specifically, only order flow by Members in Tier 4 of the PCRCP that meet the additional threshold will continue to receive the higher alternative cPRIME Agency Order rebate, an increase in Priority Customer order flow will bring greater volume and liquidity, which benefits all market participants by providing more trading opportunities and tighter spreads. To the extent Priority Customer order flow continues to increase 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.

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

In accordance with Section 6(b)(8) of the Act,<sup>25</sup> the Exchange believes that the proposed rule change would not impose any burden on competition that are not necessary or appropriate in furtherance of the purposes of the Act.

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<sup>24</sup> 15 U.S.C. 78f(b)(1) and (b)(5).

<sup>25</sup> 15 U.S.C. 78f(b)(8).

### Intra-Market Competition

The Exchange believes that its proposal to modify the condition for the alternative cPRIME Agency Order Credit will not impose any undue burden on intra-market competition. The Exchange believes that this proposal will continue to encourage Members to submit both Priority Customer standard, non-paired complex orders and Priority Customer cPRIME orders, which will increase liquidity and benefit all market participants by providing more trading opportunities and tighter spreads. Accordingly, the Exchange believes that the proposed changes will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because it will continue to encourage order flow, which provides greater volume and liquidity, benefiting all market participants by providing more trading opportunities and tighter spreads.

### Inter-Market Competition

The Exchange 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. There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than approximately 13-14% of the market share of executed volume of multiply-listed equity and ETF options trades as of June 9, 2021, for the month of June 2021.<sup>26</sup> Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, as of June 9, 2021, the Exchange has a total market share of 6.73% of all equity options volume, for the month of June 2021.<sup>27</sup> In such an environment, the

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<sup>26</sup> See supra note 20.

<sup>27</sup> See id.

Exchange must continually adjust its transaction and non-transaction fees to remain competitive with other exchanges and to attract order flow. The Exchange believes that the proposed rule change reflects this competitive environment because it will modify the Exchange's rebates in a manner that encourages market participants to continue to provide and send order flow to the Exchange. To the extent this is achieved, all the Exchange's market participants should benefit from the improved market quality.

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,<sup>28</sup> and Rule 19b-4(f)(2)<sup>29</sup> 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:

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<sup>28</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>29</sup> 17 CFR 240.19b-4(f)(2).

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-2021-26 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-2021-26. 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 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.

Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to

make available publicly. All submissions should refer to File Number SR-MIAX-2021-26 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>30</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>30</sup> 17 CFR 200.30-3(a)(12).