

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-96835; File No. SR-MIAX-2023-03)

February 8, 2023

Self-Regulatory Organizations: Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by Miami International Securities Exchange LLC to Amend Its 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 January 31, 2023, 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 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 Section 1)a)iii) of the Fee Schedule to modify the Priority Customer Rebate Program (“PCRP”)<sup>3</sup> to (i) reduce the per contract credit for Simple Orders<sup>4</sup> in MIAX Select Symbols in Tier 3 of the PCRP;<sup>5</sup> (ii) modify the PCRP table to reflect that the per contract credit for cPRIME Agency Orders will be based upon the per Contract Credit for cPRIME Agency Order table (to be renamed the “cPRIME Agency Order Break-up Table”); (iii) modify the Per Contract Credit for cPRIME Agency Order table to remove the

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<sup>3</sup> Under the PCRP, MIAX 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). 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> The “Simple Order Book” is the Exchange’s regular electronic book of orders and quotes. See Exchange Rule 518(a)(15).

<sup>5</sup> The term “MIAX Select Symbols” means options overlying AAL, AAPL, AMAT, AMD, AMZN, BA, BABA, BB, BIDU, BP, C, CAT, CLF, CVX, DAL, EBAY, EEM, FCX, GE, GILD, GLD, GM, GOOGL, GPRO, HAL, INTC, IWM, JNJ, JPM, KMI, KO, META, MO, MRK, NFLX, NOK, ORCL, PBR, PFE, PG, QCOM, QQQ, RIG, SPY, T, TSLA, USO, VALE, WBA, WFC, WMB, X, XHB, XLE, XLF, XLP, XOM and XOP. See Fee Schedule, Section 1)a)iii), note 14.

maximum leg size requirement; and (iv) rename the Per Contract Credit for cPRIME Agency Order table to the cPRIME Agency Order Break-up Table.

The proposed changes will be effective on February 1, 2023.

### Background

#### Priority Customer Rebate Program

The Exchange's Fee Schedule provides for a Priority Customer Rebate Program, under which a Priority Customer<sup>6</sup> rebate payment is calculated from the first executed contract at the applicable threshold per contract credit with rebate payments made at the highest achieved volume tier for each contract traded in that month. The percentage thresholds are calculated based on the percentage of national customer volume in multiply-listed option classes listed on MIAX entered and executed over the course of the month (excluding QCC<sup>7</sup> and cQCC Orders,<sup>8</sup> Priority Customer-to-Priority Customer Orders, C2C,<sup>9</sup> and cC2C Orders,<sup>10</sup> PRIME and cPRIME

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<sup>6</sup> The term "Priority Customer" means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). See Exchange Rule 100.

<sup>7</sup> A Qualified Contingent Cross Order is comprised of an originating order to buy or sell at least 1,000 contracts, or 10,000 mini-option contracts, that is identified as being part of a qualified contingent trade, as that term is defined in Interpretations and Policies .01 below, coupled with a contra-side order or orders totaling an equal number of contracts. See Exchange Rule 516(j).

<sup>8</sup> A Complex Qualified Contingent Cross or "cQCC" Order is comprised of an originating complex order to buy or sell where each component is at least 1,000 contracts 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 totaling an equal number of contracts. Trading of cQCC Orders is governed by Rule 515(h)(4). See Exchange Rule 518(b)(6).

<sup>9</sup> A Customer Cross 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. See Exchange Rule 516(i).

<sup>10</sup> A Complex Customer Cross or "cC2C" Order is comprised of one Priority Customer complex order to buy and one Priority Customer complex order to sell at the same price

AOC Responses, PRIME and cPRIME Contra-side Orders, and PRIME and cPRIME Orders<sup>11</sup> for which both the Agency and Contra-side Order are Priority Customers). Volume for transactions in both simple and complex orders are aggregated to determine the appropriate volume tier threshold applicable to each transaction. Volume is recorded for, and credits are delivered to, the Member that submits the order to MIAX. MIAX aggregates the contracts resulting from Priority Customer Orders<sup>12</sup> transmitted and executed electronically on MIAX from Members and Affiliates<sup>13</sup> for purposes of the thresholds described in the PCR table.

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and for the same quantity. Trading of cC2C Orders is governed by Rule 515(h)(3). See Exchange Rule 518(b)(5).

<sup>11</sup> PRIME and cPRIME Orders are described in more detail below.

<sup>12</sup> The term “Priority Customer Order” means an order for the account of a Priority Customer. See Exchange Rule 100.

<sup>13</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. See Fee Schedule, note 1.

Currently, Members and their Affiliates that qualify for the PCRCP and execute Priority Customer simple orders in MIAX Select Symbols receive the following rebates: (i) \$0.00 per contract in Tier 1; (ii) \$0.10 per contract in Tier 2; (iii) \$0.20 per contract in Tier 3; and (iv) \$0.24 in Tier 4. The Exchange now proposes to reduce the rebate provided in Tier 3 from \$0.20 to \$0.18. The purpose of adjusting the Tier 3 rebate is for business and competitive reasons.

Per Contract Credit for cPRIME Agency Orders

Exchange Rule 518(b)(7) defines a cPRIME Order as a type of complex order<sup>14</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>15</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>16</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

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<sup>14</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>15</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>16</sup> Id.

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 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. The cPRIME mechanism is used for complex orders<sup>17</sup> on the Exchange’s Strategy Book,<sup>18</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.

### Proposal

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<sup>17</sup> 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>18</sup> The “Strategy Book” is the Exchange’s electronic book of complex orders and complex quotes. See Exchange Rule 518(a)(17).

Currently, Members and their Affiliates that qualify for the PCRCP that execute cPRIME Agency Orders with a maximum leg size equal to or less than 1,000 contracts receive \$0.10 per contract in Tier 1 through Tier 4, or \$0.12 in Tier 4 provided certain criteria is satisfied as denoted by footnote “\*\*\*”.<sup>19</sup> The Exchange also provides a separate per contract credit for cPRIME Agency Orders with a max leg size of more than 1,000 contracts, which is based upon the order break-up percentage. Specifically, the Per Contract Credit for cPRIME Agency Order table provides for the following rebates: (i) \$0.05 when the order break-up percentage is 0 -10%; (ii) \$0.06 when the order break-up percentage is greater than 10% - 20%; (iii) \$0.07 when the order break-up percentage is greater than 20% - 30%; (iv) \$0.08 when the order break-up percentage is greater than 30% - 40%; (v) \$0.10 when the order break-up percentage is greater than 40% - 50% (or \$0.12 if the Member or their Affiliate qualifies for Tier 4 and satisfies the additional criteria denoted in footnote “\*\*\*”);<sup>20</sup> (vi) \$0.10 when the order break-up percentage is greater than 50% - 60% (or \$0.12 if the Member or their Affiliate qualifies for Tier 4 and satisfies the additional criteria denoted in footnote “\*\*\*”); (vii) \$0.10 when the order break-up percentage is greater than 60% - 70% (or \$0.12 if the Member or their Affiliate qualifies for Tier 4 and satisfies the additional criteria denoted in footnote “\*\*\*”); (viii) \$0.10 when the order break-up percentage is greater than 70% - 80% (or \$0.12 if the Member or their Affiliate qualifies for Tier 4 and satisfies the additional criteria denoted in footnote “\*\*\*”); (ix) \$0.10 when the order break-up percentage is greater than 80% - 90% (or \$0.12 if the Member or their

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<sup>19</sup> Footnote “\*\*\*” provides that, any Member or its Affiliate that qualifies for Priority Customer Rebate Program 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.

<sup>20</sup> Id.

Affiliate qualifies for Tier 4 and satisfies the additional criteria denoted in footnote “\*\*\*”); and (x) \$0.10 when the order break-up percentage is greater than 90% - 100% (or \$0.12 if the Member or their Affiliate qualifies for Tier 4 and satisfies the additional criteria denoted in footnote “\*\*\*”).

The Exchange now proposes to provide that all cPRIME Agency Orders will be eligible for the per contract credit described in the Per Contract Credit for cPRIME Agency Order table by removing the maximum leg size requirement from that table. The Exchange also proposes to rename this table as the cPRIME Agency Order Break-up Table for clarity. Therefore, the Exchange proposes to remove the credit amounts for the per contract credits listed in the Per Contract Credit for cPRIME Agency Order column of the standard PCRCP table in Section 1)a)iii) of the Fee Schedule. The Exchange then proposes to direct market participants to the proposed “cPRIME Agency Order Break-Up Table,” which can be found in the Fee schedule below the standard PCRCP table, by inserting the sentence, “See cPRIME Agency Order Break-up Table Below” in each row for the “Per Contract Credit for cPRIME Agency Order” in the standard PCRCP table. Accordingly, with the proposed changes, all cPRIME Agency Orders that qualify for the PCRCP that are submitted to the Exchange would be eligible for the per contract credit based upon the order break-up percentage as described in the above mentioned table. The Exchange conducted an internal analysis of fees and rebates associated with cPRIME Agency Orders and the proposed changes are being made for business and competitive reasons.

As a result of the aforementioned proposed change, the Exchange also proposes to remove the following footnote “\*” to the above mentioned table and to amend footnote “\*\*\*” to clarify the operation of the per contract credit described in the footnote and to also amend

footnote “\*\*\*” to remove the maximum leg size requirement to accurately reflect the operation of the table.

The Exchange currently provides a cPRIME break-up credit of \$0.25 per contract in Penny Classes<sup>21</sup> and \$0.60 per contract in Non-Penny Classes.<sup>22</sup> Additionally, the Exchange provides an enhanced PRIME break-up credit of \$0.28 per contract in Penny Classes and \$0.72 per contract in Non-Penny Classes to the Electronic Exchange Member (“EEM”)<sup>23</sup> that submitted a cPRIME Order that trades with cPRIME AOC Responses and/or cPRIME participating quotes or orders, if the cPRIME Order experiences a break-up of greater than 60%, which is not changing under this proposal.<sup>24</sup>

## 2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act<sup>25</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>26</sup> 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<sup>27</sup> in that it is designed to promote

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<sup>21</sup> See Exchange Rule 510(c).

<sup>22</sup> See Section 1)a)vi) MIAX Complex Price Improvement Mechanism (“cPRIME”) Fees, of the Exchange’s Fee Schedule.

<sup>23</sup> The term “Electronic Exchange Member” or “EEM” means the holder of a Trading Permit who is not a Market Maker. Electronic Exchange Members are deemed “members” under the Exchange Act. See Exchange Rule 100.

<sup>24</sup> See the Exchange’s Fee schedule, footnote “\*” of Section 1)a)vi), on its public website (available at <https://www.miaxoptions.com/fees>).

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

<sup>26</sup> 15 U.S.C. 78f(b)(4).

<sup>27</sup> 15 U.S.C. 78f(b)(5).

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 in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is one of 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 12-13% of the market share of executed volume of multiply-listed equity and exchange-traded fund (“ETF”) options trades as of January 26, 2023, for the month of January 2023.<sup>28</sup> Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, as of January 26, 2023, the Exchange has a total market share of 6.45% of all equity options volume, for the month of January 2023.<sup>29</sup>

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue use of certain categories of products, in response to fee changes. For example, on March 1, 2019, the Exchange filed with the Commission an immediately effective filing to decrease certain credits

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<sup>28</sup> See “The market at a glance/MTD AVERAGE”, available at <https://www.miaxoptions.com/> (data as of 1/1/2023 – 1/25/2023).

<sup>29</sup> See *id.*

assessable to Members pursuant to the PCRCP.<sup>30</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 March 1, 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 and non-transaction fees.

Accordingly, competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. In response to the competitive environment, the Exchange offers specific rates and credits in its fees schedule, like those of other options exchanges' fees schedules, which the Exchange believes provides incentives to Members to increase order flow of certain qualifying orders.

The Exchange believes that the PCRCP itself is reasonably designed because it incentivizes 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 PCRCP, which provides increased incentives in certain tiers in high volume select symbols, is also reasonably designed to increase the competitiveness of the Exchange with other options exchanges that also offer increased incentives (e.g., lower fees or higher rebates) to higher volume symbols.<sup>31</sup>

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<sup>30</sup> See Securities Exchange Act Release No. 85301 (March 13, 2019), 84 FR 10166 (March 19, 2019) (SR-MIAX-2019-09).

<sup>31</sup> See Nasdaq ISE Fee Schedule, Options 7, Section 3. Regular Order Fees and Rebates, Select Symbols.

The Exchange believes that its proposal to amend the rebate provided for Priority Customer Orders in MIAX Select Symbols in Tier 3 is consistent with Section 6(b)(4) of the Act<sup>32</sup> in that the proposal is reasonable, equitable and not unfairly discriminatory as it applies uniformly to all similarly situated participants. The Exchange believes the proposed change (a \$0.02 decrease from the current rebate) is reasonable in that it represents a modest decrease from the current rebate provide in Tier 3. The Exchange believes that the proposed rebate will continue to provide an incentive to participants to submit Priority Customer Orders in MIAX Select Symbols. The Exchange believes that even with the proposed reduced credit in Tier 3, the Exchange’s credits for the PCRCP remain in line with, or higher than, competing exchanges’ credits for similar programs.<sup>33</sup> The Exchange also believes that its proposal is consistent with Section 6(b)(5) of the Act because it will apply equally to all Priority Customer Orders in Tier 3. All similarly situated participants are subject to the same rebate schedule, and access to the Exchange is offered on terms that are not unfairly discriminatory.

The Exchange believes that its proposal to provide a per contract credit for all cPRIME Agency Orders based upon the order break-up percentage will continue to encourage Priority Customer order flow to auctions. Increased Priority Customer order flow benefits all market participants because it continues to attract liquidity to the Exchange by providing more trading opportunities. This attracts Market Makers and other liquidity providers, thus, facilitating price improvement in the auction process, signaling additional corresponding order flow from other market participants, and, as a result, increasing liquidity on the Exchange.

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<sup>32</sup> 15 U.S.C. 78f(b)(4).

<sup>33</sup> See NYSE American Options Fee Schedule, Section I.E., American Customer Engagement (“ACE”) Program (providing a simple credit of \$0.17 in Tier 3); see also Cboe Exchange, Inc. Options Fee Schedule, Page 3, Volume Incentive Program (“VIP”) (providing a simple Non-AIM rebate of \$0.12 in Tier 3).

The Exchange believes that its proposal is consistent with Section 6(b)(4) of the Act<sup>34</sup> in that the proposal is reasonable, equitable and not unfairly discriminatory as it applies uniformly to all similarly situated participants. The Exchange believes the PCRCP is reasonably designed because it will provide an incentive to providers of Priority Customer order flow to send that Priority Customer order flow to the Exchange to receive a credit in a manner that enables the Exchange to improve its overall competitiveness and strengthen its market quality for all participants.

The Exchange's proposal to provide a per contract credit to eligible cPRIME Agency Orders based upon the order break-up percentage is consistent with Section 6(b)(4) of the Act<sup>35</sup> because it applies equally to all participants of the PCRCP that submit cPRIME Agency Orders. The Exchange believes that the proposed rebate structure is fair, equitable, and not unreasonably discriminatory. The PCRCP is reasonably designed because it will provide an incentive to providers of Priority Customer order flow to send that Priority Customer order flow to the Exchange to receive a credit in a manner that enables the Exchange to improve its overall competitiveness and strengthen its market quality for all participants.

In addition, the Exchange believes that its proposal is consistent with Section 6(b)(5) of the Act<sup>36</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 an increase in Priority Customer order flow will bring greater volume and liquidity to the Exchange, which benefits all market participants by providing more trading opportunities and tighter spreads. To the extent Priority

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<sup>34</sup> 15 U.S.C. 78f(b)(4).

<sup>35</sup> 15 U.S.C. 78f(b)(4).

<sup>36</sup> 15 U.S.C. 78f(b)(5).

Customer order flow is increased by this proposal, market participants will increasingly compete for the opportunity to trade on the Exchange including sending more orders and provided narrower and larger-sized quotations in the effort to trade with such Priority Customer Order flow.

The Exchange believes that providing rebates for Priority Customers that submit cPRIME Agency Orders is equitable and not unfairly discriminatory because the proposed rebate schedule will apply equally to all cPRIME Agency Orders for Priority Customers. The Exchange believes that the application of the rebate is equitable and not unfairly discriminatory because, as stated above, Customer order flow enhances liquidity on the Exchange, in turn providing more trading opportunities and attracting other market participants, thus, facilitating tighter spreads, increased order flow and trading opportunities to the benefit of all market participants. Moreover, the options industry has a long history of providing preferential pricing to Priority Customer Orders, and the Exchange's current fees schedule currently does so in many places, as does the fee structure of at least one other exchange.<sup>37</sup>

As noted above, the Exchange operates in a highly competitive market. The Exchange is only one of several options venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. The Exchange believes that the proposed fees are reasonable, equitable, and not unfairly discriminatory in that competing options exchanges offer similar fees and credits in connection with similar price improvement auctions.<sup>38</sup>

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In

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<sup>37</sup> See Cboe Fee Schedule, "Break-Up Credits," available at [https://cdn.cboe.com/resources/membership/Cboe\\_FeeSchedule.pdf](https://cdn.cboe.com/resources/membership/Cboe_FeeSchedule.pdf).

<sup>38</sup> Id.

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 investors and listed companies.”<sup>39</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 or discontinue or reduce use of certain categories of products, in response to transaction and non-transaction fee changes. Accordingly, competitive forces constrain the Exchange’s transaction fees and rebates, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. The Exchange believes the proposal reflects a reasonable and competitive pricing structure which will continue to incentivize market participants to direct Priority Customer Orders to the Exchange, which the Exchange believes will enhance liquidity and market quality on the exchange to the benefit of all Members.

For the reasons discussed above, the Exchange submits that the proposal satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act<sup>40</sup> in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to unfairly discriminate between customers, issuers, brokers, or dealers.

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

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<sup>39</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

<sup>40</sup> 15 U.S.C. 78f(b)(4) and (5).

In accordance with Section 6(b)(8) of the Act,<sup>41</sup> the Exchange does not believe that the proposed rule change will impose any burden on intra-market or intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, as discussed above, the Exchange believes that the proposed changes will encourage the submission of additional liquidity to price improvement auctions, thereby promoting market depth, price discovery, transparency, and enhanced order execution and price improvement opportunities for all Members. As a result, the Exchange believes that the proposed change furthers the Commission’s goal in adopting Regulation NMS of fostering competition among orders, which promotes “more efficient pricing of individual stocks for all types of orders, large and small.”<sup>42</sup>

The Exchange does not believe that its proposal will impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes will apply uniformly to all eligible Priority Customers. The Exchange believes that this proposal will continue to encourage Members to submit cPRIME Agency Orders for Priority Customers, which will increase liquidity and benefit all market participants by providing more trading opportunities and tighter spreads. The Exchange notes the fact that preferential pricing to Priority Customers is a long-standing options industry practice. The proposed rebate changes serve to enhance Priority Customer order flow to the Exchange’s Price Improvement Mechanism, which, as a result, facilitates increased liquidity and execution opportunities to the benefit of all market participants.

Additionally, the Exchange does not believe its proposal to reduce the Tier 3 rebate for MIAX Select Symbols will impose any burden on intra-market competition that is not necessary

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<sup>41</sup> 15 U.S.C. 78f(b)(8).

<sup>42</sup> See Securities Exchange Act Release No. 51808, 70 FR 37495, 37498-99 (June 29, 2005) (S7-10-04) (Final Rule).

or appropriate in furtherance of the purposes of the Act because the proposed change will apply uniformly to all similarly situated participants.

The Exchange also does not believe that its proposal will impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because, as noted above, at least one other competing options exchange<sup>43</sup> has similar rebates in place in connection with similar price improvement auctions. Additionally, and as previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they participate on and direct their order flow to, including 15 other options exchanges, many of which offer substantially similar price improvement auctions. Based on publicly available information, no single options exchange has more than approximately 12-13% of the equity options market share.<sup>44</sup> Therefore, no exchange possesses significant pricing power in the execution of option order flow. Participants can readily choose to send their orders to other exchanges if they deem fee levels at those other exchanges to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and 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 investors and listed companies.”<sup>45</sup> The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and*

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<sup>43</sup> See supra note 37.

<sup>44</sup> See supra note 28.

<sup>45</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

Exchange Commission, the D.C. Circuit states as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’ . . .”<sup>46</sup> Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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.

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>47</sup> and Rule 19b-4(f)(2)<sup>48</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

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<sup>46</sup> NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

<sup>47</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>48</sup> 17 CFR 240.19b-4(f)(2).

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-2023-03 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-2023-03. 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. 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-2023-03 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>49</sup>

Sherry R. Haywood  
Assistant Secretary

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<sup>49</sup> 17 CFR 200.30-3(a)(12).