

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-72799; File No. SR-MIAX-2014-40)

August 8, 2014

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Its Fee Schedule

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 29, 2014, Miami International Securities Exchange LLC (“MIAX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule.

The text of the proposed rule change is available on the Exchange’s website at [http://www.miaxoptions.com/filter/wotitle/rule\\_filing](http://www.miaxoptions.com/filter/wotitle/rule_filing), at MIAX’s principal office, and at the Commission’s Public Reference Room.

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.

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

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

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

1. Purpose

The Exchange proposes to amend its current Priority Customer Rebate Program (the “Program”) to modify the volume thresholds of tiers 1, 2, and 3.<sup>3</sup> The Program is based on the substantially similar fees of another competing options exchange.<sup>4</sup> Under the Program, the Exchange shall credit each Member the per contract amount set forth in the table below resulting from each Priority Customer<sup>5</sup> order transmitted by that Member which is executed on the Exchange in all multiply-listed option classes (excluding mini-options 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 Rule 1400), provided the Member meets certain volume thresholds in a month as described below. For each Priority Customer order transmitted by that Member which is executed electronically on the Exchange in MIAX Select Symbols, MIAX shall credit each member at the separate per contract rate for MIAX Select Symbols.<sup>6</sup> The volume thresholds are calculated based on the customer average daily

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<sup>3</sup> See Securities Exchange Act Release Nos. 72355 (June 10, 2014), 79 FR 34368 (June 16, 2014) (SR-MIAX-2014-25); 71698 (March 12, 2014), 79 FR 15185 (March 18, 2014) (SR-MIAX-2014-12); 71283 (January 10, 2014), 79 FR 2914 (January 16, 2014) (SR-MIAX-2013-63); 71009 (December 6, 2013), 78 FR 75629 (December 12, 2013) (SR-MIAX-2013-56).

<sup>4</sup> See Chicago Board Options Exchange, Incorporated (“CBOE”) Fees Schedule, p. 3. See also Securities Exchange Act Release Nos. 66054 (December 23, 2011), 76 FR 82332 (December 30, 2011) (SR-CBOE-2011-120); 68887 (February 8, 2013), 78 FR 10647 (February 14, 2013) (SR-CBOE-2013-017).

<sup>5</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 accounts(s). See MIAX Rule 100.

<sup>6</sup> See Securities Exchange Release Nos. 71700 (March 12, 2014), 79 FR 15188 (March 18, 2014) (SR-MIAX-2014-13); 72356 (June 10, 2014), 79 FR 34384 (June 16, 2014) (SR-MIAX-2014-26); 72567 (July 8, 2014), 79 FR 40818 (July 14, 2014) (SR-MIAX-2014-

volume over the course of the month. Volume will be recorded for and credits will be delivered to the Member Firm that submits the order to the Exchange.

| Percentage Thresholds of National Customer Volume in Multiply-Listed Options Classes Listed on MIAX (Monthly) | Per Contract Credit |
|---|---------------------|
| 0.00% - 0.35%   | \$0.00              |
| Above 0.35% - 0.45%   | \$0.10              |
| Above 0.45% - 1.25%   | \$0.15              |
| Above 1.25% - 2.00%   | \$0.17              |
| Above 2.00%   | \$0.18              |

The Exchange will aggregate the contracts resulting from Priority Customer orders transmitted and executed electronically on the Exchange from affiliated Members for purposes of the thresholds above, provided there is at least 75% common ownership between the firms as reflected on each firm’s Form BD, Schedule A. In the event of a MIAX System outage or other interruption of electronic trading on MIAX, the Exchange will adjust the national customer volume in multiply-listed options for the duration of the outage. A Member may request to receive its credit under the Priority Customer Rebate Program as a separate direct payment.

In addition, the rebate payments will be calculated from the first executed contract at the applicable threshold per contract credit with the rebate payments made at the highest achieved volume tier for each contract traded in that month. For example, if Member Firm XYZ, Inc. (“XYZ”) has enough Priority Customer contracts to achieve 2.75% of the national customer

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34). The Exchange will credit each Member \$0.20 per contract resulting from each Priority Customer order transmitted by that Member executed on Exchange in MIAX Select Symbols. The \$0.20 per contract credit is in lieu of the applicable credit that would otherwise apply to the transaction based on the volume thresholds.

volume in multiply-listed option contracts during the month of October, XYZ will receive a credit of \$0.18 for each Priority Customer contract executed in the month of October.

The purpose of the Program is to encourage Members to direct greater Priority Customer trade volume to the Exchange. Increased Priority Customer volume will provide for greater liquidity, which benefits all market participants. The practice of incentivizing increased retail customer order flow in order to attract professional liquidity providers (Market-Makers) is, and has been, commonly practiced in the options markets. As such, marketing fee programs,<sup>7</sup> and customer posting incentive programs,<sup>8</sup> are based on attracting public customer order flow. The Program similarly intends to attract Priority Customer order flow, which will increase liquidity, thereby providing greater trading opportunities and tighter spreads for other market participants and causing a corresponding increase in order flow from such other market participants.

The specific volume thresholds of the Program's tiers were set based upon business determinations and an analysis of current volume levels. The volume thresholds are intended to incentivize firms that route some Priority Customer orders to the Exchange to increase the number of orders that are sent to the Exchange to achieve the next threshold and to incent new participants to send Priority Customer orders as well. Increasing the number of orders sent to the Exchange will in turn provide tighter and more liquid markets, and therefore attract more business overall. Similarly, the different credit rates at the different tier levels were based on an analysis of revenue and volume levels and are intended to provide increasing "rewards" for increasing the volume of trades sent to the Exchange. The specific amounts of the tiers and rates were set in order to encourage suppliers of Priority Customer order flow to reach for higher tiers.

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<sup>7</sup> See MIAX Fee Schedule, Section 1(b).

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

The Exchange limits the Program to multiply-listed options classes on MIAX because MIAX does not compete with other exchanges for order flow in the proprietary, singly-listed products.<sup>9</sup> In addition, the Exchange does not trade any singly-listed products at this time, but may develop such products in the future. If at such time the Exchange develops proprietary products, the Exchange anticipates having to devote a lot of resources to develop them, and therefore would need to retain funds collected in order to recoup those expenditures.

The Exchange excludes mini-options 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 from the Program. The Exchange notes these exclusions are nearly identical to the ones made by CBOE.<sup>10</sup> Mini-options contracts are excluded from the Program because the cost to the Exchange to process quotes, orders and trades in mini-options is the same as for standard options. This, coupled with the lower per-contract transaction fees charged to other market participants, makes it impractical to offer Members a credit for Priority Customer mini-option volume that they transact. Providing rebates to Priority Customer executions that occur on other trading venues would be inconsistent with the proposal. Therefore, routed away volume is excluded from the Program in order to promote the underlying goal of the proposal, which is to increase liquidity and execution volume on the Exchange.

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<sup>9</sup> If a multiply-listed options class is not listed on MIAX, then the trading volume in that options class will be omitted from the calculation of national customer volume in multiply-listed options classes.

<sup>10</sup> See CBOE Fee Schedule, page 3. CBOE also excludes QCC trades from their rebate program. CBOE excluded QCC trades because a bulk of those trades on CBOE are facilitation orders which are charged at the \$0.00 fee rate on their exchange.

The credits paid out as part of the program will be drawn from the general revenues of the Exchange.<sup>11</sup> The Exchange calculates volume thresholds on a monthly basis.

The proposed changes will become operative on August 1, 2014.

## 2. Statutory Basis

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

The Exchange believes that the proposed Priority Customer Rebate Program is fair, equitable and not unreasonably discriminatory. The Program is reasonably designed because it will incent 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 Program is also reasonably designed because the proposed credits are within the range of credits assessed by other exchanges employing similar rebate programs. The proposed rebate program is fair and equitable and not unreasonably discriminatory because it will apply equally to all Priority Customer orders. 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 Program is equitable and not unfairly discriminatory because, while only Priority Customer order flow qualifies for the Program, an increase in Priority

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<sup>11</sup> Despite providing credits under the Program, the Exchange represents that it will continue to have adequate resources to fund its regulatory program and fulfill its responsibilities as a self-regulatory organization while the Program will be in effect.

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

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

Customer order flow will bring greater volume and liquidity, which benefit all market participants by providing more trading opportunities and tighter spreads. Similarly, offering increasing credits for executing higher percentages of total national customer volume (increased credit rates at increased volume tiers) is equitable and not unfairly discriminatory because such increased rates and tiers encourage Members to direct increased amounts of Priority Customer contracts to the Exchange. 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 resulting increased volume and liquidity will benefit those Members who receive the lower tier levels, or do not qualify for the Program at all, by providing more trading opportunities and tighter spreads.

Limiting the Program to multiply-listed options classes listed on MIAX is reasonable because those parties trading heavily in multiply-listed classes will now begin to receive a credit for such trading, and is equitable and not unfairly discriminatory because the Exchange does not trade any singly-listed products at this time. If at such time the Exchange develops proprietary products, the Exchange anticipates having to devote a lot of resources to develop them, and therefore would need to retain funds collected in order to recoup those expenditures.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed change would increase both intermarket and intramarket competition by incenting Members to direct their Priority Customer orders to the Exchange,

which will enhance the quality of quoting and increase the volume of contracts traded here. To the extent that there is additional competitive burden on non-Priority Customers, the Exchange believes that this is appropriate because the rebate program should incent Members to direct additional order flow to the Exchange and thus provide additional liquidity that enhances the quality of its markets and increases the volume of contracts traded here. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market liquidity. Enhanced market quality and increased transaction volume that results from the anticipated increase in order flow directed to the Exchange will benefit all market participants and improve competition on the Exchange. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. The Exchange believes that the proposed rule change reflects this competitive environment because it reduces the Exchange's fees in a manner that encourages market participants to direct their customer order flow, to provide liquidity, and to attract additional transaction volume to the Exchange. Given the robust competition for volume among options markets, many of which offer the same products, implementing a volume based customer rebate program to attract order flow like the one being proposed in this filing is consistent with the above-mentioned goals of the Act. This is especially true for the smaller options markets, such as MIAX, which is competing for volume with much larger exchanges that dominate the options trading industry. MIAX has a nominal percentage of the average daily trading volume in options, so it is unlikely that the customer rebate program could cause any competitive harm to the options market or to market participants. Rather, the customer rebate program is a modest



attempt by a small options market to attract order volume away from larger competitors by adopting an innovative pricing strategy. The Exchange notes that if the rebate program resulted in a modest percentage increase in the average daily trading volume in options executing on MIAX, while such percentage would represent a large volume increase for MIAX, it would represent a minimal reduction in volume of its larger competitors in the industry. The Exchange believes that the proposal will help further competition, because market participants will have yet another additional option in determining where to execute orders and post liquidity if they factor the benefits of a customer rebate program into the determination.

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>14</sup> At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

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<sup>14</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MIAX-2014-40 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-MIAX-2014-40. 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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer

to File Number SR-MIAX-2014-40 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.<sup>15</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).