

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-97239; File No. SR-MIAX-2023-13)

April 3, 2023

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 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 March 22, 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 Options Fee Schedule (the “Fee Schedule”) to extend the SPIKES Options Market Maker Incentive Program (the “Incentive Program”) until June 30, 2023.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 the Fee Schedule to extend the Incentive Program until June 30, 2023.

On September 30, 2021, the Exchange filed its initial proposal to implement a SPIKES Options Market Maker Incentive Program for SPIKES options to incentivize Market Makers³ to improve liquidity, available volume, and the quote spread width of SPIKES options beginning October 1, 2021, and ending December 31, 2021.⁴ Technical details regarding the Incentive Program were published in a Regulatory Circular on September 30, 2021.⁵ On October 12, 2021, the Exchange withdrew SR-MIAX-2021-45 and refiled its proposal to implement the Incentive Program to provide additional details.⁶ In that filing, the Exchange specifically noted that the Incentive Program would expire at the end of the period (December 31, 2021) unless the Exchange filed another 19b-4 Filing to amend the fees (or extend the Incentive Program).⁷

³ The term “Market Makers” refers to “Lead Market Makers”, “Primary Lead Market Makers” and “Registered Market Makers” collectively. See Exchange Rule 100.

⁴ See SR-MIAX-2021-45.

⁵ See MIAX Options Regulatory Circular 2021-56, SPIKES Options Market Maker Incentive Program (September 30, 2021) available at https://www.miaxoptions.com/sites/default/files/circularfiles/MIAX_Options_RC_2021_56.pdf.

⁶ See Securities Exchange Act Release No. 93424 (October 26, 2021), 86 FR 60322 (November 1, 2021) (SR-MIAX-2021-49).

⁷ See id.

On December 23, 2021, the Exchange filed its proposal to extend the Incentive Program until March 31, 2022.⁸ In that filing, the Exchange specifically noted that the Incentive Program would expire at the end of the period (March 31, 2022) unless the Exchange filed another 19b-4 Filing to amend the fees (or extend the Incentive Program).⁹ On March 23, 2022, the Exchange filed its proposal to extend the Incentive Program until June 30, 2022.¹⁰ In that filing, the Exchange specifically noted that the Incentive Program would expire at the end of the period (June 30, 2022) unless the Exchange filed another 19b-4 Filing to amend the fees (or extend the Incentive Program).¹¹ On June 29, 2022, the Exchange filed its proposal to extend the Incentive Program until September 30, 2022.¹² In that filing, the Exchange specifically noted that the Incentive Program would expire at the end of the period (September 30, 2022) unless the Exchange filed another 19b-4 Filing to amend the fees (or extend the Incentive Program).¹³ On September 30, 2022, the Exchange filed its proposal to extend the Incentive Program until December 31, 2022.¹⁴ In that filing, the Exchange specifically noted that the Incentive Program would expire at the end of the period (December 31, 2022) unless the Exchange filed another 19b-4 Filing to amend the fees (or extend the Incentive Program).¹⁵ On December 20, 2022, the

⁸ See Securities Exchange Act Release No. 93881 (December 30, 2021), 87 FR 517 (January 5, 2022) (SR-MIAX-2021-63).

⁹ See id.

¹⁰ See Securities Exchange Act Release No. 94574 (April 1, 2022), 87 FR 20492 (April 7, 2022) (SR-MIAX-2022-12).

¹¹ See id.

¹² See Securities Exchange Act Release No. 95259 (July 12, 2022), 87 FR 42754 (July 17, 2022) (SR-MIAX-2022-24).

¹³ See id.

¹⁴ See Securities Exchange Act Release No. 96007 (October 7, 2022), 87 FR 62151 (October 13, 2022) (SR-MIAX-2022-32).

¹⁵ See id.

Exchange filed its proposal to extend the Incentive Program until March 31, 2023.¹⁶ In that filing, the Exchange specifically noted that the Incentive Program would expire at the end of the period (March 31, 2023) unless the Exchange filed another 19b-4 Filing to amend the fees (or extend the Incentive Program).¹⁷ The Exchange now proposes to extend the Incentive Program until June 30, 2023.¹⁸

The Exchange proposes to extend the Incentive Program for SPIKES options to continue to incentivize Market Makers to improve liquidity, available volume, and the quote spread width of SPIKES options. Currently, to be eligible to participate in the Incentive Program, a Market Maker must meet certain minimum requirements related to quote spread width in certain in-the-money (ITM) and out-of-the-money (OTM) options as determined by the Exchange and communicated to Members via Regulatory Circular.¹⁹ Market Makers must also satisfy a minimum time in the market in the front 2 expiry months of 70%, and have an average quote size of 25 contracts. The Exchange established two separate incentive compensation pools that are used to compensate Market Makers that satisfy the criteria pursuant to the Incentive Program.

The first pool (Incentive 1) has a total amount of \$40,000 per month, which is allocated to Market Makers that meet the minimum requirements of the Incentive Program. Market Makers are required to meet minimum spread width requirements in a select number of ITM and OTM SPIKES option contracts as determined by the Exchange and communicated to Members

¹⁶ See Securities Exchange Act Release No. 96588 (December 28, 2022), 88 FR 381 (January 4, 2023) (SR-MIAX-2022-47).

¹⁷ See id.

¹⁸ The Exchange notes that at the end of the extension period, the Incentive Program will expire unless the Exchange files another 19b-4 Filing to amend the terms or extend the Incentive Program.

¹⁹ See supra note **Error! Bookmark not defined.**

via Regulatory Circular.²⁰ A complete description of how the Exchange calculates the minimum spread width requirements in ITM and OTM SPIKES options can be found in the published Regulatory Circular.²¹ Market Makers are also required to maintain the minimum spread width, described above, for at least 70% of the time in the front two (2) SPIKES options contract expiry months and maintain an average quote size of at least 25 SPIKES options contracts. The amount available to each individual Market Maker is capped at \$10,000 per month for satisfying the minimum requirements of the Incentive Program. In the event that more than four Market Makers meet the requirements of the Incentive Program, each qualifying Market Maker is entitled to receive a pro-rated share of the \$40,000 monthly compensation pool dependent upon the number of qualifying Market Makers in that particular month.

The second pool (Incentive 2 Pool) is capped at a total amount of \$100,000 per month which is used during the Incentive Program to further incentivize Market Makers who meet or exceed the requirements of Incentive 1 (“qualifying Market Makers”) to provide tighter quote width spreads. The Exchange ranks each qualifying Market Maker’s quote width spread relative to each other qualifying Market Maker’s quote width spread. Market Makers with tighter spreads in certain strikes, as determined by the Exchange and communicated to Members via Regulatory Circular,²² are eligible to receive a pro-rated share of the compensation pool as calculated by the Exchange and communicated to Members via Regulatory Circular,²³ not to exceed \$25,000 per Member per month. Qualifying Market Makers are ranked relative to each other based on the quality of their spread width (i.e., tighter spreads are ranked higher than wider

²⁰ See id.

²¹ See id.

²² See id.

²³ See id.

spreads) and the Market Maker with the best quality spread width receives the highest rebate, while other eligible qualifying Market Makers receive a rebate relative to their quality spread width.

The Exchange proposes to extend the Incentive Program until June 30, 2023. The Exchange does not propose to make any amendments to how it calculates any of the incentives provided for in Incentive Pools 1 or 2. The details of the Incentive Program can continue to be found in the Regulatory Circular that was published on September 30, 2021 to all Exchange Members.²⁴ The purpose of this extension is to continue to incentivize Market Makers to improve liquidity, available volume, and the quote spread width of SPIKES options. The Exchange will announce the extension of the Incentive Program to all Members via a Regulatory Circular.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act²⁵ in general, and furthers the objectives of Section 6(b)(4) of the Act²⁶ 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

²⁴ See id.

²⁵ 15 U.S.C. 78f(b).

²⁶ 15 U.S.C. 78f(b)(4) and (5).

interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to extend the Incentive Program for Market Makers in SPIKES options until June 30, 2023. The Incentive Program is reasonably designed because it will continue to incentivize Market Makers to provide quotes and increased liquidity in select SPIKES options contracts. The Incentive Program is reasonable, equitably allocated and not unfairly discriminatory because all Market Makers in SPIKES options may continue to qualify for Incentive 1 and Incentive 2, dependent upon each Market Maker's quoting in SPIKES options in a particular month. Additionally, if a SPIKES Market Maker does not satisfy the requirements of Incentive Pool 1 or 2, then it simply will not receive the rebate offered by the Incentive Program for that month.

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to continue to offer this financial incentive to SPIKES Market Makers because it will continue to benefit all market participants trading in SPIKES options. SPIKES options is a Proprietary Product on the Exchange and the continuation of the Incentive Program encourages SPIKES Market Makers to satisfy a heightened quoting standard, average quote size, and time in market. A continued increase in quoting activity and tighter quotes may yield a corresponding increase in order flow from other market participants, which benefits all investors by deepening the Exchange's liquidity pool, potentially providing greater execution incentives and opportunities, while promoting market transparency and improving investor protection.

The Exchange believes that the Incentive Program is equitable and not unfairly discriminatory because it will continue to promote an increase in SPIKES options liquidity, which may facilitate tighter spreads and an increase in trading opportunities to the benefit of all

market participants. The Exchange believes it is reasonable to operate the Incentive Program for a continued limited period of time to strengthen market quality for all market participants. The resulting increased volume and liquidity will benefit those Members who are eligible to participate in the Incentive Program and will also continue to benefit those Members who are not eligible to participate in the Incentive Program by providing more trading opportunities and tighter spreads.

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.

Intra-Market Competition

The Exchange believes that the proposed extension of the Incentive Program to June 30, 2023 would continue to increase intra-market competition by incentivizing Market Makers to quote SPIKES options, which will continue to enhance the quality of quoting and increase the volume of contracts available to trade in SPIKES options. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market liquidity for SPIKES options. Enhanced market quality and increased transaction volume in SPIKES options that results from the anticipated increase in Market Maker activity on the Exchange will benefit all market participants and improve competition on the Exchange.

Inter-Market Competition

The Exchange does not believe that the proposed rule changes will impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed extension of the Incentive Program applies only to the Market Makers in SPIKES Options, which are traded exclusively on the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

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,²⁷ and Rule 19b-4(f)(2)²⁸ 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-2023-13 on the subject line.

²⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁸ 17 CFR 240.19b-4(f)(2).

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-2023-13. 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-2023-13, 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.²⁹

Sherry R. Haywood,

Assistant Secretary

²⁹ 17 CFR 200.30-3(a)(12).