

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-97771; File No. SR-MIAX-2023-24)

June 20, 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 for the Priority Customer Rebate Program and the Professional Rebate Program

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 June 9, 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 (“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

¹ 15 U.S.C. 78s(b)(1).

² 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 (i) amend Section 1)a)iii) of the Fee Schedule to modify the Priority Customer Rebate Program (“PCR³”) to remove a certain incremental rebate; and (ii) amend Section 1)a)iv) of the Fee Schedule to modify the Professional Rebate Program to simplify the calculation and application of the rebate. The Exchange originally filed this proposal on May 31, 2023, (SR-MIAX-2023-21). On June 9, 2023, the Exchange withdrew SR-MIAX-2023-21 and resubmitted this proposal.

Background

Priority Customer Rebate Program

The Exchange’s Fee Schedule provides for a Priority Customer Rebate Program, under which a Priority Customer⁴ rebate payment is calculated from the first executed contract at the

³ Under the PCR³, 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.

⁴ 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

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 QCC⁵ and cQCC Orders,⁶ Priority Customer-to-Priority Customer Orders, C2C,⁷ and cC2C Orders,⁸ PRIME⁹ and cPRIME AOC Responses, PRIME and cPRIME Contra-side Orders, and PRIME and cPRIME Orders¹⁰ 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

average during a calendar month for its own beneficial account(s). See Exchange Rule 100.

⁵ 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).

⁶ 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).

⁷ 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).

⁸ 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 and for the same quantity. Trading of cC2C Orders is governed by Rule 515(h)(3). See Exchange Rule 518(b)(5).

⁹ PRIME is a process by which a Member may electronically submit for execution (“Auction”) an order it represents as agent (“Agency Order”) against principal interest, and/or an Agency Order against solicited interest. See Exchange Rule 515A(a).

¹⁰ A Complex Prime or “cPRIME” Order is a complex order (as defined in Rule 518(a)(5)) that is submitted for participation in a cPRIME Auction. See Exchange Rule 518(b)(7).

volume tier threshold applicable to each transaction. Volume is recorded for, and credits are delivered to, the Member¹¹ that submits the order to MIAX. MIAX aggregates the contracts resulting from Priority Customer Orders¹² transmitted and executed electronically on MIAX from Members and Affiliates¹³ for purposes of the thresholds described in the PCR table.

Currently, MIAX will credit each “Qualifying Member” \$0.03 per contract (excluding QCC and cQCC Orders, mini-options, Priority Customer-to-Priority Customer Orders, C2C and cC2C Orders, PRIME and cPRIME Agency Orders, PRIME and cPRIME AOC Responses,

¹¹ The term “Member” means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed “members” under the Exchange Act. See Exchange Rule 100.

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

¹³ 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.

PRIME and cPRIME Contra-side Orders, PRIME and cPRIME Orders for which both the Agency and Contra-side Order are Priority Customers, and executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in MIAX Rule 1400) resulting from each Priority Customer order in simple or complex order executions which falls within the Priority Customer Rebate Program volume tier 1. “Qualifying Member” shall mean a Member or its Affiliate that qualifies for the Professional Rebate Program as described below and achieves a volume increase in excess of 0.065% for Professional orders transmitted by that Member which are executed electronically on the Exchange in all multiply-listed option classes for the account(s) of a Professional and which qualify for the Professional Rebate Program during a particular month relative to the applicable Baseline Percentage (as defined under the Professional Rebate Program).

The Exchange initially adopted this rebate in 2016 in order to provide an incentive for order flow providers to increase the volume of Professional orders and Priority Customer Orders submitted to the Exchange.¹⁴ The Exchange has observed that not a single Member has qualified for the incremental credit in the last six months. Since the incremental credit has not been utilized in recent months, the Exchange has determined to eliminate the incremental credit and now proposes to remove this incentive from the Exchange’s Fee Schedule.

Professional Rebate Program

Under the Professional Rebate Program, which is set forth in Section 1)a)iv) of the Fee Schedule, the Exchange credits each Member a per contract amount resulting from any contracts

¹⁴ See Securities Exchange Act Release No. 77777 (May 6, 2016), 81 FR 29603 (May 12, 2016) (SR-MIAX-2016-09).

executed from an order submitted by that Member for the account of a: (i) Public Customer¹⁵ that is not a Priority Customer;¹⁶ (ii) non-MIAX Options Market Maker;¹⁷ (iii) non-Member Broker-Dealer; or (iv) Firm¹⁸ (each, a “Professional”), which is executed electronically on the Exchange in all multiply-listed option classes (excluding, in simple or complex as applicable, mini-options, non-Priority Customer-to-non-Priority Customer orders, QCC orders, PRIME orders, PRIME AOC responses, PRIME contra-side orders, and executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in MIAX Options Rule 1400 (collectively, “Excluded Contracts”)), provided the Member achieves certain Professional volume increase percentage thresholds in the month relative to a baseline period.

Currently, the percentage thresholds in each tier are based upon the increase in the total volume submitted by a Member and executed for the account(s) of a Professional on MIAX (not including Excluded Contracts) during a particular month as a percentage of the total volume reported by the Options Clearing Corporation (OCC) in MIAX classes during the same month

¹⁵ The term “Public Customer” means a person that is not a broker or dealer in securities. See Exchange Rule 100.

¹⁶ “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 Exchange Rule 100, including Interpretations and Policies .01.

¹⁷ The term “Market Makers” refers to Lead Market Makers (“LMMs”), Primary Lead Market Makers (“PLMMs”), and Registered Market Makers (“RMMs”) collectively. See Exchange Rule 100. A Directed Order Lead Market Maker (“DLMM”) and Directed Primary Lead Market Maker (“DPLMM”) is a party to a transaction being allocated to the LMM or PLMM and is the result of an order that has been directed to the LMM or PLMM. See Fee Schedule note 2.

¹⁸ A “Firm” fee is assessed on a MIAX Electronic Exchange Member “EEM” that enters an order that is executed for an account identified by the EEM for clearing in the Options Clearing Corporation (“OCC”) “Firm” range. See Fee Schedule, Section 1)a)ii.

(the “Current Percentage”), less the greater of (x) total volume submitted by that Member and executed for the account(s) of a Professional on MIAX (not including Excluded Contracts) during the fourth quarter of 2015 as a percentage of the total volume reported by OCC in MIAX classes during the fourth quarter of 2015, and (y) 0.065% (the “Baseline Percentage”). Volume for transactions in both simple and complex orders will be aggregated to determine the appropriate volume tier threshold applicable to each transaction. For purposes of determining the Baseline Percentage for any Member that did not execute any contracts for the account(s) of a Professional on MIAX in the fourth quarter of 2015, the Baseline Percentage shall be 0.065%.

The Exchange now proposes to adjust the method of calculating the Baseline Percentage for the rebate by removing the provision relating to the fourth quarter of 2015 from the calculation. As proposed, the percentage thresholds in each tier will be based upon the increase in the total volume submitted by a Member and executed for the account(s) of a Professional on MIAX Options (not including Excluded Contracts) during a particular month as a percentage of the total volume reported by the Options Clearing Corporation (OCC) in MIAX classes during the same month (the “Current Percentage”), less 0.065% (the Baseline Percentage). Volume for transactions in both simple and complex orders will be aggregated to determine the appropriate volume tier threshold applicable to each transaction.

Given that the Baseline Percentage is standardized under the Exchange’s proposal, the Exchange also proposes to remove the last sentence from the paragraph that describes the calculation, which states, “for purposes of determining the Baseline Percentage for any Member that did not execute any contracts for the account(s) of a Professional on MIAX in the fourth quarter of 2015, the Baseline Percentage shall be 0.065%,” as this sentence is unnecessary given the proposed change to the calculation methodology.

The Exchange also proposes to amend the column heading on the Professional Rebate Program table to reflect the proposed change. Currently the column heading is titled, “Percentage Thresholds of Volume Increase in Multiply-Listed Options (except Excluded Contracts) for the Current Month Compared to Fourth Quarter 2015.” The Exchange now proposes to re-title this column heading as, “Percentage Thresholds of Volume Increase in Multiply-Listed Options (except Excluded Contracts) for the Current Month Compared to the Baseline Percentage,” to accurately reflect the methodology being used to determine the applicable tier.

The purpose for making these adjustments is to standardize and simplify the application of the Exchange’s incentive program.

Implementation

The proposed changes are immediately effective.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act¹⁹ in general, and furthers the objectives of Section 6(b)(4) of the Act²⁰ 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 Act²¹ 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

¹⁹ 15 U.S.C. 78f(b).

²⁰ 15 U.S.C. 78f(b)(4).

²¹ 15 U.S.C. 78f(b)(5).

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 May 25, 2023, for the month of May 2023.²² Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, as of May 25, 2023, the Exchange has a total market share of 6.58% of all equity options volume, for the month of May 2023.²³

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 assessable to Members pursuant to the PCRCP.²⁴ The Exchange experienced a decrease in total

²² See “The market at a glance/MTD AVERAGE”, available at <https://www.miaxglobal.com/> (data as of 5/1/2023 – 5/25/2023).

²³ See *id.*

²⁴ See Securities Exchange Act Release No. 85301 (March 13, 2019), 84 FR 10166 (March 19, 2019) (SR-MIAX-2019-09).

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 its proposal to eliminate an incremental credit in the Priority Customer Rebate Program is reasonable because the pricing incentive has been underutilized and has not incentivized Members to increase the volume of Professional orders and Priority Customer Orders submitted to the Exchange as anticipated. The Exchange notes that no Member has availed itself of the incremental credit in the last six months. The Exchange also does not anticipate that any Member will qualify for the pricing incentive that is the subject of this proposal in the near future. The Exchange believes that it is reasonable to eliminate incentives when such incentives are underutilized. The Exchange believes that eliminating incentive programs from the Fee Schedule when such incentives become ineffective is equitable and not unfairly discriminatory because the incentive would be eliminated in its entirety and would no longer be available to any Member.

Similarly, the Exchange believes that its proposal to simplify the application of a rebate under the Professional Rebate Program is reasonable because it standardizes the application of

the rebate for all eligible Members. The Exchange believes it is reasonable to amend the requirements of a rebate when the amendment simplifies and standardizes the application of the rebate.

The Exchange notes that all Members would continue to be subject to the same fee structure, and access to the Exchange's market would continue to be offered on fair and non-discriminatory terms. The Exchange also believes that the proposed changes would protect investors and the public interest because the removal of an underutilized pricing incentive in the PCRCP and the simplification of the calculation of a rebate in the Professional Rebate Program would simplify the Fee Schedule and facilitate market participants' understanding of the fees charged and rebates offered by the Exchange.

As noted above, 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 investors and listed companies."²⁵

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,

²⁵ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

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 Act²⁶ 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

The Exchange believes that the proposed change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intra-market Competition

The Exchange does not believe that the proposal will impose any burden on intra-market competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the elimination of an underutilized rebate from the PCRCP will not place any undue burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act given that not a single Member has qualified for the credit proposed for removal in the last six months. Additionally, the Exchange believes that the simplification of a rebate calculation in the Professional Rebate Program will not impose any burden on intra-market competition as the simplification and standardization of a rebate calculation applies uniformly to all Members and all Members are still eligible to earn the rebate.

²⁶ 15 U.S.C. 78f(b)(4) and (5).

Therefore 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.

Inter-market Competition

The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchanges if they deem fee levels and incentives at those other exchanges to be more favorable. As noted above, the Exchange's market share is currently 6.58%.²⁷ In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their own order routing practices, the Exchange does not believe its proposed fee change can impose any burden on inter-market competition.

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,²⁸ and Rule 19b-4(f)(2)²⁹ 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

²⁷ See supra note 22.

²⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁹ 17 CFR 240.19b-4(f)(2).

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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-MIAX-2023-24 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-2023-24. This file number should be included on the subject line if email 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 (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-MIAX-2023-24 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁰

J. Matthew DeLesDernier,

Deputy Secretary.

³⁰ 17 CFR 200.30-3(a)(12).