

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-76674; File No. SR-MIAX-2015-70)

December 17, 2015

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”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 4, 2015, Miami International Securities Exchange LLC (“MIAX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule (the “Fee Schedule”).

The text of the proposed rule change is available on the Exchange’s website at http://www.miaxoptions.com/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

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 amend its Fee Schedule to: (i) increase the transaction fees for transactions in standard options in non-Penny Pilot classes for Public Customers³ that are not a Priority Customer,⁴ Non-MIAX Market Makers, Non-Member Broker-Dealers, and Firms,⁵ and (ii) increase the transaction fees for transactions in standard options in Penny Pilot classes for Firms. The Exchange also proposes to modify the transaction fees for transactions for Public Customers that are not a Priority Customer, Non-MIAX Market Makers, Non-Member Broker-Dealers and Firms that achieve certain Priority Customer Rebate Program⁶ volume tiers. The proposed changes are based on the similar fees of other competing options exchanges.⁷

The Exchange is also proposing proportional fee changes applicable to Mini-Options in non-Penny Pilot classes, except that such fees applicable to Firms will be increased from \$0.04

³ The term “Public Customer” means a person that is not a broker or dealer in securities. 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 average during a calendar month for its own beneficial accounts(s).

⁵ This fee is assessed to an Electronic Exchange Member (“EEM”) that enters an order that is executed for an account identified by the EEM for clearing in the OCC “Firm” range. See Fee Schedule, Section 1)a)ii). The term “Electronic Exchange Member” 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.

⁶ See Fee Schedule, Section 1)a)iii).

⁷ See NASDAQ OMX PHLX LLC Pricing Schedule, Section II; and Chicago Board Options Exchange, Incorporated, Fees Schedule, p. 1.

to \$0.07 per contract, as described below. The Mini-Options transaction fee in Penny Pilot classes will remain unchanged.

Specifically, the Exchange proposes to assess a \$0.75 per contract fee for transactions in standard options in non-Penny Pilot classes by Public Customers that are not a Priority Customer. The Exchange also proposes to assess a \$0.75 per contract fee for transactions in standard options in non-Penny Pilot classes by Non-MIAX Market Makers. Additionally, the Exchange proposes to assess a \$0.75 per contract fee for transactions in standard options in non-Penny Pilot classes by Non-Member Broker-Dealers. The Exchange believes that these proposed fees are reasonable, equitable and not unfairly discriminatory because they are the same for all participants other than Priority Customers, who are not assessed transaction fees.

Finally, the Exchange proposes to assess a \$0.75 per contract fee for transactions in standard options in non-Penny Pilot classes by Firms. The Exchange believes that this proposed fee increase for Firms in non-Penny Pilot classes is equitable and not unfairly discriminatory. While Firms are currently charged significantly less (i.e., 20 cents per contract) than Public Customers that are not Priority Customers, non-MIAX Market Makers, and non-Member Broker-Dealers, the Exchange is simply proposing to place market participants in all of these categories on equal footing by increasing the transaction fees in non-Penny Pilot classes for such participants, including Firms, to an equal amount of \$0.75 per contract. This fee is intended to balance the costs incurred by the Exchange for the execution of such orders, and to encourage the submission and execution of Priority Customer orders on the Exchange at no charge.

The Exchange also proposes to increase the transaction fees assessed for transactions in standard options in Penny Pilot classes for Firms from \$0.37 to \$0.45 per contract. The Exchange believes that this proposed fee increase is reasonable, equitable and not unfairly

discriminatory because it creates a more even playing field among Public Customers that are not Priority Customers, non-MIAX Market Makers, non-Member Broker-Dealers, and Firms. The Exchange initially established the transaction fees for Firms at a significantly lower rate than the other named categories of participants as a competitive measure to attract order flow from Firms. The Exchange believes that a variety of incentives, including but not limited to transaction fees, now achieve this goal. Accordingly, the Exchange believes that it is reasonable, equitable and not unfairly discriminatory to increase the transaction fees in standard options for Firms in Penny Pilot classes to \$0.45 per contract. This is still \$0.02 less than the Penny Pilot class transaction fees for the other named categories of participants and the Exchange believes that it is still beneficial for competitive reasons to offer this fee to Firms.

The Exchange proposes to continue to offer Public Customers that are not a Priority Customer, Non-MIAX Market Makers, Non-Member Broker-Dealers and Firms the opportunity to reduce these transaction fees by \$0.02 per contract in standard options.⁸ In order to accomplish this reduction in transaction fees, any Member or its affiliates of at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A, that qualifies for Priority Customer Rebate Program volume tiers 3 or 4, and is: a Public Customer that is not a Priority Customer; a Non-MIAX Market Maker; a Non-Member Broker-Dealer; or a Firm will be assessed a reduced transaction fee of \$0.73 per contract for standard options in non-Penny Pilot option classes. Any Member or its affiliates of at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A, that qualifies for Priority Customer Rebate Program volume tiers 3 or 4 and is a Firm will be assessed a reduced

⁸ See Securities Exchange Release Nos. 72988 (September 4, 2014), 79 FR 53808 (September 10, 2014) (SR-MIAX-2014-46); 72989 (September 4, 2014), 79 FR 53792 (September 10, 2014) (SR-MIAX-2014-47).

transaction fee of \$0.43 per contract in Penny Pilot classes and \$0.73 per contract in non-Penny Pilot classes. The Exchange believes that these incentives will encourage these market participants to transact a greater number of orders on the Exchange.

The Exchange is also proposing to increase the transaction fees for Mini-Options in non-Penny classes from \$0.06 to \$0.07 for Public Customers that are not Priority Customers, Non-MIAX Market Makers and Non-Member Broker-Dealers. This represents a proportional increase in the applicable transaction fees for standard options in non-Penny Pilot classes. The Exchange is also proposing to increase the Mini-Option fee in non-Penny Pilot classes for Firms from its current \$0.04 per contract to \$0.07 per contract. This also represents a proportional increase relative to the proposed fees for non-Penny Pilot classes in standard options, placing Firms on an even playing field with other non-Priority Customer participants in Mini-Options.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act⁹ in general, and furthers the objectives of Section 6(b)(4) of the Act¹⁰ in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and issuers and other persons using its facilities.

The Exchange's proposal to increase the transaction fees is reasonable because the Exchange's fees will remain competitive with fees at other options exchanges.¹¹ The Exchange's proposal to increase the transaction fees for these market participants is equitable and not unfairly discriminatory because the increase applies equally to all of the participants in each

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4).

¹¹ See NASDAQ OMX PHLX LLC Pricing Schedule, Section II; and Chicago Board Options Exchange, Incorporated, Fees Schedule, p. 1.

category of market participant. The Exchange does not assess transactions fees on Priority Customers because Priority Customer order flow enhances liquidity on the Exchange for the benefit of all market participants by providing more trading opportunities, which attracts Market Makers and other market participants. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. MIAX Market Makers are assessed lower transaction fees as compared to Public Customers that are not a Priority Customer, Non-MIAX Market Makers, Non-Member Broker-Dealers, and Firms because they have market-making obligations and regulatory requirements, which normally do not apply to market participants that are not MIAX Market Makers.¹² MIAX Market Makers have obligations to make continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with a course of dealings. In addition, Members are subject to other fees and dues associated with their membership to the Exchange that do not apply to non-Members, and the instant proposal recognizes the differing contributions made to the liquidity and trading environment on the Exchange by these market participants. The \$0.75 per contract fee for transactions in standard options in non-Penny Pilot classes by Public Customers that are not a Priority Customer, Non-MIAX Market Makers, Non-Member Broker-Dealers and Firms are reasonable, equitable and not unfairly discriminatory because they are the same for all market participants other than Priority Customers, who are not assessed transaction fees.

The Exchange believes that the proposed fee increase for standard options in Penny Pilot classes for Firms is reasonable, equitable and not unfairly discriminatory because it creates a

¹² See Exchange Rules 603 and 604.

more even playing field among Public Customers that are not Priority Customers, non-MIAX Market Makers, non-Member Broker-Dealers, and Firms.

The Exchange further believes that the proposed increase in transaction fees in Mini-Options in non-Penny Pilot classes for Firms from its current \$0.04 per contract to \$0.07 per contract is reasonable, equitable, and not unfairly discriminatory because it simply represents a proportional increase relative to the proposed fees for non-Penny Pilot classes in standard options, placing Firms on an even playing field with other non-Priority Customer participants in Mini-Options.

The Exchange's proposal to offer Public Customers that are not a Priority Customer, Non-MIAX Market Makers, Non-Member Broker-Dealers and Firms the continued opportunity to reduce transaction fees by \$0.02 per contract in standard options is reasonable because the Exchange desires to offer all such market participants an opportunity to lower their transaction fees. The Exchange's proposal to offer such market participants the continued opportunity to reduce transaction fees by \$0.02 per contract in standard options, provided certain criteria are met, is equitable and not unfairly discriminatory because the Exchange will offer all market participants that are charged transaction fees a means to reduce such transaction fees by reaching volume tiers in the Priority Customer Rebate Program. The Exchange believes that the opportunity to lower transaction fees through incentives to transact Priority Customer order flow benefits all market participants.

The Exchange believes that the proposal to allow the aggregation of trading activity of Members and their affiliates for purposes of the fee reduction is fair, equitable and not unreasonably discriminatory. The Exchange believes the proposed rule change is reasonable because it would allow aggregation of the trading activity of qualified affiliates only in very

narrow circumstances, namely, where the affiliate meets the definition of an “affiliate” as stated in the Fee Schedule. Furthermore, other exchanges and MIAX have rules that permit the aggregation of the trading activity of affiliated entities for the purposes of calculating and assessing certain fees.¹³ The Exchange believes that the opportunity for all such market participants to lower transaction fees by transacting greater Priority Customer order flow in turn benefits all market participants.

The Exchange believes that its proposal to assess transaction fees in non-Penny Pilot options classes, which differs from Penny Pilot options classes, is consistent with other options markets that also assess different transaction fees for non-Penny Pilot options classes as compared to Penny Pilot options classes. The Exchange believes that establishing different pricing for non-Penny Pilot options and Penny Pilot options is reasonable, equitable, and not unfairly discriminatory because Penny Pilot options are more liquid options as compared to non-Penny Pilot options. Additionally, other competing options exchanges differentiate pricing in a similar manner.¹⁴

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal is similar to the transaction fees found on other options exchanges; therefore, the Exchange believes the proposal is consistent with robust competition by increasing the intermarket competition for order flow from market participants. The proposal more closely

¹³ See, e.g., NASDAQ OMX PHLX LLC Pricing Schedule Preface; and Chicago Board Options Exchange, Incorporated, Fees Schedule, Footnote 10.

¹⁴ See NASDAQ OMX PHLX LLC Pricing Schedule, Section II; NYSE Amex Options Fee Schedule, p. 6; Chicago Board Options Exchange, Incorporated, Fees Schedule, p. 1; NASDAQ OMX BX Options Pricing Schedule, Section 2.

aligns the fees for Public Customers that are not a Priority Customer, Non-MIAX Market Makers, Non-Member Broker-dealers and Firms on the Exchange to those of other exchanges for the same market participants. To the extent that there is additional competitive burden on non-Member market participants, the Exchange believes that this is appropriate because charging non-Members higher transaction fees is a common practice amongst exchanges, and because Members are subject to other fees and dues associated with their membership to the Exchange that do not apply to non-Members. 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. The Exchange believes that the proposal reflects this competitive environment.

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,¹⁵ and Rule 19b-4(f)(2)¹⁶ 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

¹⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁶ 17 CFR 240.19b-4(f)(2).

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-2015-70 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-2015-70. 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 Web site (<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-2015-70 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.¹⁷

Robert W. Errett
Deputy Secretary

¹⁷ 17 CFR 200.30-3(a)(12).