

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-78681; File No. SR-MIAX-2016-28)

August 25, 2016

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 August 11, 2016, 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](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

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

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

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)b) of the Fee Schedule, Marketing Fee, to add to the list of symbols for which the Exchange assesses a \$0.12 per contract Posted Liquidity Marketing Fee. In addition to the current symbols listed in Section 1)b), the Exchange is proposing to assess the Posted Liquidity Marketing Fee for contracts executed in DIA, FB, GDX, SLV, USO, UVXY, and VXX. The Exchange also proposes to assess the applicable per contract non-Market Maker transaction fees for executions in these new symbols, as described more fully below.

A Marketing Fee is assessed on certain transactions of all Market Makers.<sup>3</sup> Currently, Section 1) b) of the Fee Schedule provides that the Exchange will assess:

(i) a Marketing Fee to all Market Makers for contracts, including mini options, they execute in their assigned classes when the contra-party to the execution is a Priority Customer. MIAX will not assess a Marketing Fee to Market Makers for contracts executed as a PRIME Agency Order, Contra-side Order, Qualified Contingent Cross Order, PRIME Participating Quote or Order, or a PRIME AOC Response in the PRIME Auction, unless it executes against an unrelated order.

(ii) an additional \$0.12 per contract Posted Liquidity Marketing Fee to all Market Makers for any standard options overlying EEM, GLD, IWM, QQQ, and SPY that Market Makers

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<sup>3</sup> See MIAX Fee Schedule, Section 1)b), entitled "Marketing Fee" for more detail regarding the Marketing Fee.

execute in their assigned class when the contra-party to the execution is a Priority Customer and the Priority Customer order was posted on the MIAX Book at the time of the execution. MIAX will not assess the additional Posted Liquidity Marketing Fee to Market Makers for contracts executed as a PRIME Agency Order, Contra-side Order, Qualified Contingent Cross Order, or a PRIME AOC Response or PRIME Participating Quote or Order in the PRIME Auction. MIAX will also not assess the additional Posted Liquidity Marketing Fee to Market Makers for contracts executed pursuant to a Liquidity Refresh Pause, route timer, or during the Opening Process. This Posted Liquidity Marketing Fee is in addition to the current Marketing Fee of \$0.25 per contract for standard options overlying these enumerated symbols that Market Makers execute in their assigned class when the contra-party to the execution is a Priority Customer.<sup>4</sup>

Funds collected via the Marketing Fee, including the additional \$0.12 per contract Posted Liquidity Marketing Fee, are put into “pools” controlled by Primary Lead Market Makers (“PLMMs”)<sup>5</sup> and Lead Market Makers (“LMMs”)<sup>6</sup>. So for example, the \$0.12 per contract Posted Liquidity Marketing Fee goes into the broader Marketing Fee pool for the Directed LMM

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<sup>4</sup> See Securities Exchange Act Release No. 73848 (December 16, 2014), 79 FR 76421 (December 22, 2014) (SR-MIAX-2014-62) (Notice of Filing and Immediate Effectiveness of MIAX Posted Liquidity Marketing Fee with respect to EEM, GLD, IWM, QQQ and SPY).

<sup>5</sup> The term “Primary Lead Market Maker” means a Lead Market Maker appointed by the Exchange to act as the Primary Lead Market Maker for the purpose of making markets in securities traded on the Exchange. The Primary Lead Market Maker is vested with the rights and responsibilities specified in Chapter VI of these Rules with respect to Primary Lead Market Makers. See Exchange Rule 100.

<sup>6</sup> The term “Lead Market Maker” means a Member registered with the Exchange for the purpose of making markets in securities traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VI of these Rules with respect to Lead Market Makers. When a Lead Market Maker is appointed to act in the capacity of a Primary Lead Market Maker, the additional rights and responsibilities of a Primary Lead Market Maker specified in Chapter VI of these Rules will apply. See Exchange Rule 100.

or the PLMM in EEM, GLD, IWM, QQQ or SPY, as applicable. The PLMM or LMM controlling a certain pool of funds can then determine the Electronic Exchange Member(s) (“EEM”)<sup>7</sup> to which the funds should be directed in order to encourage such EEM(s) to send orders to the Exchange. In accordance with Exchange Rule 514, an EEM can designate an order (“Directed Order”) to a specific LMM.

The purpose of the Posted Liquidity Marketing Fee is to further encourage Members to post additional Priority Customer orders on the Exchange’s Book in the enumerated high volume symbols. Increased Priority Customer orders on the Exchange’s Book in these symbols provides for greater liquidity, which benefits all market participants on the Exchange. The Exchange now proposes to add to the following high volume symbols to its Posted Liquidity Marketing Fee program: DIA, FB, GDX, SLV, USO, UVXY, and VXX,<sup>8</sup> as reflected in the proposed amendments to Section 1)b) and Footnote 15 of the Fee Schedule. The practice of encouraging increased retail customer order flow in order to attract professional liquidity providers (Market Makers) is, and has been, commonly applied in the options markets. As such, marketing fee programs<sup>9</sup> and posting incentive programs<sup>10</sup> are based on attracting public customer order flow. Additional incentives intended to increase order flow in high volume symbols are, and have

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<sup>7</sup> 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 Act. See Exchange Rule 100.

<sup>8</sup> DIA, FB, GDX, SLV, USO, UVXY, and VXX had among the highest MIAX volume by class as reported by the Options Clearing Corporation (“OCC”) for June 2016. See <http://www.optionsclearing.com/webapps/volbyclass-reports?reportClass=miax>.

<sup>9</sup> See MIAX Fee Schedule, Section 1) b); Chicago Board Options Exchange, Incorporated (“CBOE”) Fees Schedule, p. 4; NYSE Amex Options Fee Schedule, p. 7.

<sup>10</sup> See NYSE Arca, Inc. (“Arca”) Options Fees and Charges Schedule, page 5.

been, commonly offered in the options markets.<sup>11</sup> The proposed Posted Liquidity Marketing Fee with respect to high volume symbols DIA, FB, GDX, SLV, USO, UVXY, and VXX similarly is intended 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. Increasing the number of orders sent to the Exchange will in turn provide tighter and more liquid markets, and therefore attract more business overall.

The Exchange also proposes to adopt the same additional \$0.50 per contract transaction fee for options overlying DIA, FB, GDX, SLV, USO, UVXY, and VXX executed by non-MIAX Market Makers as currently applies to options overlying EEM, GLD, IWM, QQQ, and SPY executed by non-MIAX Market Makers as set forth in footnote 8, Section 1) a) ii) of the Fee Schedule.<sup>12</sup> The purpose of the proposed fee change is to assess the transaction fee for non-MIAX Market Makers in the new symbols (DIA, FB, GDX, SLV, USO, UVXY, and VXX) that are being added to the Exchange's Posted Liquidity Marketing Fee, in the same manner as the current symbols that are included in each fee.

## 2. Statutory Basis

MIAX believes that its proposed rule change is consistent with Section 6(b) of the Act<sup>13</sup> in general, and in particular, furthers the objectives of Section 6(b)(4) of the Act,<sup>14</sup> in that it is an

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<sup>11</sup> See International Securities Exchange, LLC ("ISE") Schedule of Fees, p. 6 ; Arca Option Fees and Charges Schedule, p. 5.

<sup>12</sup> See Securities Exchange Act Release No. 73850 (December 16, 2014), 79 FR 76424 (December 22, 2014) (SR-MIAX-2014-63) (Notice of Filing and Immediate Effectiveness of MIAX non-Market Maker Transaction Fee with respect to EEM, GLD, IWM, QQQ and SPY).

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

<sup>14</sup> 15 U.S.C. 78f(b)(4).

equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities, and 6(b)(5) of the Act,<sup>15</sup> in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The proposed changes are designed to incentivize order flow providers to post additional Priority Customer orders in DIA, FB, GDX, SLV, USO, UVXY, and VXX options on the Exchange's Book. The proposed marketing fee rate is reasonable in that although it may result in a marketing fee that is slightly higher than similar marketing fee programs, it is still in the range of marketing fee programs on other competing exchanges which charge lower marketing fees for Penny Pilot options classes versus non-Penny Pilot options classes.<sup>16</sup> The proposed marketing fee is fair, equitable, and not unreasonably discriminatory because it will apply equally to all Market Makers that execute against Priority Customer orders in DIA, FB, GDX, SLV, USO, UVXY, and VXX options posted on the Exchange's Book. All similarly situated Market Makers that execute against Priority Customer orders in DIA, FB, GDX, SLV, USO, UVXY, and VXX options that are posted to the Exchange's Book are subject to the same marketing fee, and access to the Exchange is offered on terms that are not unfairly discriminatory. In addition, the proposal is equitable and not unfairly discriminatory because, while only posted Priority Customer order flow qualifies for the additional marketing fee, an increase in Priority Customer orders posted to the Exchange's Book will bring greater volume and liquidity as market participants compete to trade with the additional Priority Customer order

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<sup>15</sup> 15 U.S.C. 78f(b)(1) and (b)(5).

<sup>16</sup> See CBOE Fees Schedule, p. 4; NYSE Amex Options Fee Schedule, p. 7.

flow, which benefits all market participants by providing more trading opportunities and tighter spreads. Market participants want to trade with Priority Customer order flow. To the extent the posting of Priority Customer orders on the Exchange's Book 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 their effort to trade with such Priority Customer order flow. The resulting increased volume and liquidity will benefit non-Market Makers that do not pay the proposed fee and do not qualify for the marketing fee program at all, by providing more trading opportunities and tighter spreads as market participants increasingly compete by sending more orders and providing narrower and larger sized quotations in the effort to trade with such Priority Customer order flow. In addition, the proposed change is equitable and not unfairly discriminatory because it is designed to allow LMMs to encourage greater order flow to be sent to the Exchange. The Exchange believes it is equitable to assess marketing fees on Market Makers and not non-Market Makers because the benefits of the marketing fee program flow to PLMM and Directed LMMs that can use the marketing fee funds to attract additional flow to the Exchange, which benefits Market Makers. An LMM could amass a greater pool of funds to use to incentivize order flow providers to send order flow to the Exchange. This increased order flow would benefit all market participants on the Exchange as well.

The Exchange believes that its proposal to assess the additional Posted Liquidity Marketing Fee for transactions in DIA, FB, GDX, SLV, USO, UVXY, and VXX options, and not other options classes, is consistent with other options markets that provide additional incentives to increase order flow in high volume symbols including assessing different marketing

fees for Penny options classes as compared to non-Penny options classes.<sup>17</sup> The Exchange believes that establishing different pricing for DIA, FB, GDX, SLV, USO, UVXY, and VXX Penny Pilot options is reasonable, equitable, and not unfairly discriminatory because DIA, FB, GDX, SLV, USO, UVXY, and VXX options are more liquid options<sup>18</sup> as compared to other Penny Pilot options and the Exchange wants to provide incentive for order flow providers to send such orders to MIAX in order to increase trading opportunities and overall volume executed on the Exchange.

Further, the Exchange's proposed transaction fees for non-MIAX Market Makers in DIA, FB, GDX, SLV, USO, UVXY, and VXX are reasonable in order to ensure that the net transaction fees for non-MIAX Market Makers remain higher than Market Makers in a manner that is designed to encourage market participants to become members and register as Market Makers versus otherwise sending orders to the Exchange as a non-MIAX Market Maker in order to avoid a higher transaction fee.

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 designed to encourage an increase in Priority Customer orders in DIA, FB, GDX, SLV, USO, UVXY, and VXX options posted to the Exchange's Book in order to bring greater volume and liquidity, which benefit all market participants by providing more trading opportunities and tighter spreads. An increase in the submission of Priority Customer orders in DIA, FB, GDX, SLV, USO, UVXY, and VXX options on the Exchange's Book should result in

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<sup>17</sup> See CBOE Fees Schedule, p. 4; NYSE Amex Options Fee Schedule, p. 7; ISE Schedule of Fees, p. 13; NYSE Arca Options Fees and Charges Schedule, p. 5.

<sup>18</sup> See supra note 8.

an increase in competition for the opportunity to trade on the Exchange by, among other things, 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 non-Market Makers that do not pay the proposed fee and do not qualify for the marketing fee program at all, by providing more trading opportunities and tighter spreads.

To the extent that there is additional competitive burden on market participants that are not Priority Customers or Market Makers or trading in other symbols, the Exchange believes that this is appropriate because the proposal should encourage 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 on the Exchange. The Exchange believes that all of the Exchange's market participants will 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 establishes a fee structure in a manner that encourages market participants to direct their order flow, to provide liquidity, and to attract additional transaction volume to 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,<sup>19</sup> and Rule 19b-4(f)(2)<sup>20</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 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-2016-28 on the subject line.

#### Paper comments:

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

All submissions should refer to File Number SR-MIAX-2016-28. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

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<sup>19</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>20</sup> 17 CFR 240.19b-4(f)(2).

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; 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-2016-28, 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>21</sup>

Robert W. Errett  
Deputy Secretary

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<sup>21</sup> 17 CFR 200.30-3(a)(12).