

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-78919; File No. SR-MIAX-2016-32)

September 23, 2016

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Its Fee Schedule to Modify the Exchange's Connectivity Fees

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 September 12, 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") to modify the Exchange's connectivity fees.

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

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

<sup>2</sup> 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 regarding connectivity to the Exchange. Specifically, the Exchange proposes to amend Section 4 of the Fee Schedule, Testing and Certification Fees, to state that Member and Non-Member Network Connectivity Testing and Certification Fees will not be assessed for testing and certification of connectivity to the Exchange's disaster recovery systems (for purposes of the Fee Schedule, the "Disaster Recovery Facility").<sup>3</sup> The Exchange also proposes to amend Section 5 of the Fee Schedule, System Connectivity Fees, to establish a new connectivity fee for 1 Gigabit ("Gb") and 10 Gb fiber connections to the Exchange's Disaster Recovery Facility.

Testing and Certification Fees

The Exchange currently offers various bandwidth alternatives for connectivity to the Exchange's System<sup>4</sup>, including a 10 Gb fiber connection, a 1 Gb fiber connection and a 10 Gb ultra-low latency ("ULL") fiber connection. The Exchange currently assesses a Member Network Connectivity Testing and Certification Fee of \$1,000 for each 1 Gb connection, and \$4,000 for each 10 Gb or 10 Gb ULL connection.<sup>5</sup> Non-Members are assessed a Non-Member Network Connectivity Testing and Certification Fee of \$1,200 for each 1 Gb connection, and

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<sup>3</sup> See Exchange Rule 321. See also, Securities Exchange Act Release No. 76303 (October 29, 2015), 80 FR 68373 (November 4, 2015) (SR-MIAX-2015-61).

<sup>4</sup> The term "System" means the automated trading system used by the Exchange for the trading of securities. See Exchange Rule 100.

<sup>5</sup> See Fee Schedule Section 4)c).

\$4,200 for each 10 Gb or 10 Gb ULL connection.<sup>6</sup> The Exchange proposes to amend Sections 4)c) and 4)d) of the Fee Schedule to state that these Member and Non-Member Network Connectivity Testing and Certification Fees will not be assessed for testing and certification of connectivity to the Exchange's Disaster Recovery Facility.

The purpose of the Exchange's proposal not to charge Member and Non-Member network connectivity testing and certification fees for testing required in order to connect to the Disaster Recovery Facility is to eliminate any potential impediment to Members and Non-Members in testing and certifying for connectivity to the Disaster Recovery Facility, and to encourage Members and Non-Members to set up the connections to such Facility for disaster recovery purposes.

#### System Connectivity Fees

The Exchange currently assesses Monthly Member Network Connectivity fees for the applicable connectivity in any month when a Member or Non-Member is credentialed to use any of the MIAX APIs or Market Data feeds in the production environment.

The Exchange proposes to amend the table in Section 5 of the Fee Schedule to explicitly reflect the monthly Member and Non-Member Network connectivity fees as they apply to the Exchange's primary and secondary facilities, and to the Exchange's Disaster Recovery Facility. Under the proposal, fees for connectivity to the Exchange's primary and secondary (i.e., backup) facilities will remain unchanged. The Exchange is proposing to amend the table in Section 5 to reflect the current per connection fees for connectivity with the primary and secondary facilities by labelling the heading of the columns reflecting such fees as "Primary/Secondary Facility" for a 1 Gb, 10 Gb and 10 Gb ULL connection, respectively.

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<sup>6</sup> See Fee Schedule Section 4)d).

The Exchange is proposing to add new columns to the table in Section 5 with the heading “Disaster Recovery Facility” to set forth the monthly per connection fees for a 1 Gb and 10 Gb connection to the Disaster Recovery Facility. Specifically, the Exchange proposes a monthly per connection Network Connectivity Fee of \$500 for each 1 Gb connection to the Disaster Recovery Facility and a monthly per connection Network Connectivity Fee of \$2,500 for each 10 Gb connection to the Disaster Recovery Facility for both Members and Non-Members. The Exchange does not propose to offer a 10 Gb ULL connection to the Disaster Recovery Facility at this time; the 10 Gb ULL fees will therefore remain unchanged. The Exchange proposes to amend the tables in Sections 5)a) and b) to reflect this.

The Exchange believes that the proposed pricing for connectivity to the Disaster Recovery Facility is reflective of the value it will provide to users of the Exchange. The Exchange further believes that the assessment of connectivity fees to the Disaster Recovery Facility will assist the Exchange in recouping some of the costs to the Exchange associated with developing and maintaining this facility for disaster recovery use. Not charging users a testing and certification fee for testing required in order to connect to the Disaster Recovery Facility should encourage Members and Non-Members to connect to such facility. The Exchange notes that other exchanges charge fees for connection to their Disaster Recovery facilities by their market participants.<sup>7</sup>

The Exchange proposes to implement the proposed changes to the Fee Schedule effective as of September 16, 2016.

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<sup>7</sup> See Chicago Board Options Exchange, Incorporated (“CBOE”) Fees Schedule, p. 13; see also NASDAQ PHLX LLC (“Phlx”) Pricing Schedule, Section XI [sic].

## 2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act<sup>8</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>9</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act<sup>10</sup> 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 interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes that its proposal is consistent with Section 6(b)(4) of the Act because the fees assessed for the connectivity to the Disaster Recovery Facility will allow the Exchange to cover certain of the costs associated with maintaining these Facility for disaster recovery use by users of the Exchange. The Exchange believes that the proposal to establish fees for the Disaster Recovery Facility connectivity is fair, equitable and not unreasonably discriminatory because the fees are assessed equally among all users according to the bandwidth that such user determines is the best suited for its purposes, i.e., either 1 Gb or 10 Gb, and how many connections such Users require.

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<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(4).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

The Exchange believes that the Exchange's decision not to charge Member and Non-Member network connectivity testing and certification fees for testing required in order to connect to the Disaster Recovery Facility is consistent with Section 6(b)(4) of the Act because it will encourage Members and Non-Members to set up the connections to such Facility for disaster recovery purposes. Therefore, the Exchange believes that it is reasonable not to charge Members and Non-Members for testing and certification in relation to connecting to the Disaster Recovery Facility.

The Exchange also believes the proposed Disaster Recovery Facility connectivity fees are equitably allocated in that all Members and Non-Members will be charged the same amount to cover the connection costs depending on the speed of the connection as well as the number of connections selected by such user. All Members and Non-Members may subscribe to this connectivity to the Disaster Recovery Facility, and the Exchange is not eliminating any existing connectivity.

The Exchange also believes that its proposal is consistent with the objectives of Section 6(b)(5) of the Act<sup>11</sup> because the Disaster Recovery Facility connectivity will be beneficial to all MIAX participants. The Exchange anticipates that providing the opportunity to connect to the Disaster Recovery Facility to all users of the Exchange will further enhance the Exchange's support of risk management in the form of disaster recovery on behalf of its Member and Non-Member users.

The Exchange also believes that providing connectivity testing and certification at no cost for the Disaster Recovery Facility is consistent with Section 6(b)(5) of the Act because it is being offered to all MIAX participants at no cost. There is no differentiation among MIAX

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<sup>11</sup> 15 U.S.C. 78f(b)(5).

participants with regard to the testing and certification required to receive the disaster recovery services through the Disaster Recovery Facility.

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. On the contrary, the Exchange believes that the proposed changes should increase both intermarket and intramarket competition. Specifically, the Exchange believes that the changes will promote competition by offering MIAX participants more flexibility in their choice of disaster recovery services, which will in turn enhance their trading operations and ultimately bring greater efficiency to trading in the marketplace.

As to inter-market competition, 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. The Exchange believes that the proposed changes reflect this competitive environment and may result in enhanced services to a market participant. Given the robust competition among options markets for the services that they each offer to market participants, expanding and thereby enhancing the services available on MIAX is consistent with the goals of the Act.

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>12</sup> and Rule 19b-4(f)(2)<sup>13</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-2016-32 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.

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>13</sup> 17 CFR 240.19b-4(f)(2).

All submissions should refer to File Number SR-MIAX-2016-32. 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-2016-32 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>14</sup>

Brent J. Fields  
Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).