

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-80190; File No. SR-MIAX-2017-11)

March 9, 2017

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Its Fee Schedule Relating to the Professional Rebate Program

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 February 28, 2017, Miami International Securities Exchange LLC (“MIAX Options” 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/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 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule to make adjustments to its Professional Rebate Program (the “Program”). Under the Program, which is set forth in Section 1)a)iv) of the Fee Schedule, the Exchange credits each Member<sup>3</sup> a per contract amount resulting from any contracts executed from an order submitted by that Member for the account of a: (i) Public Customer<sup>4</sup> that is not a Priority Customer;<sup>5</sup> (ii) non-MIAX Options Market Maker;<sup>6</sup> (iii) non-Member Broker-Dealer; or (iv) Firm<sup>7</sup> (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,

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<sup>3</sup> 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.

<sup>4</sup> The term “Public Customer” means a person that is not a broker or dealer in securities. See Exchange Rule 100.

<sup>5</sup> “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.

<sup>6</sup> 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.

<sup>7</sup> 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.

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.

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 Options (not including Excluded Contracts) during a particular month, as a percentage of the total volume reported by OCC in MIAX Options classes during the same month (the “Current Percentage”), less the total volume submitted by that Member and executed for the account(s) of a Professional on MIAX Options (not including Excluded Contracts) during the fourth quarter of 2015 as a percentage of the total volume reported by OCC in MIAX Options classes during the fourth quarter of 2015 (the “Baseline Percentage”). For Members who did not execute contracts for the account(s) of a Professional during the fourth quarter of 2015, the Exchange currently assigns such Member a Baseline Percentage of .03%. The Member’s percentage increase is calculated as the Current Percentage less the Baseline Percentage. Members receive rebates for contracts that they submit on behalf of a Professional(s) that are executed within a particular percentage tier based upon that percentage tier only, and do not receive rebates for such contracts that apply to any other tier.

The purpose of the Program is to encourage Members to direct greater Professional order flow to the Exchange. Increased Professional order flow provides for greater liquidity, which benefits all market participants. The practice of incentivizing increased retail customer order flow in order to attract liquidity is, and has been, commonly practiced in the options markets. As

such, marketing fee programs,<sup>8</sup> and customer posting incentive programs,<sup>9</sup> are based on attracting public customer order flow.<sup>10</sup>

The Exchange now proposes to adjust the method of calculating the Baseline Percentage, for purposes of determining whether the Member qualifies for rebates under the Program. Pursuant to the new calculation, the Baseline Percentage shall now be the greater of (x) total volume submitted by that Member and executed for the account(s) of a Professional on MIAX Options (not including Excluded Contracts) during the fourth quarter of 2015 as a percentage of the total volume reported by OCC in MIAX Options classes during the fourth quarter of 2015, and (y) 0.065%. The Exchange also proposes to change the default Baseline Percentage (for Members who did not execute contracts for the account(s) of a Professional during the fourth quarter of 2015) to 0.065%, so that it is consistent with the new calculation method.

The purpose for making these adjustments is to update the Program to better reflect the Exchange's current operating environment and business strategy. It is intended to continue to incentivize Members to send a greater amount of Professional order flow to the Exchange so that they can achieve rebates under the Program, as adjusted and in line with current market conditions. The Baseline Percentage and other thresholds amounts contained in the Program were initially established over a year ago, and thus were based on the then-current business and economic conditions. The Exchange believes that a number of events have occurred and certain business factors have change since the establishment of the Program (including, but not limited

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<sup>8</sup> See MIAX Fee Schedule, Section 1(b).

<sup>9</sup> See NYSE Arca, Inc. Fees Schedule, page 4 (section titled "Customer Monthly Posting Credit Tiers and Qualifications for Executions in Penny Pilot Issues").

<sup>10</sup> For a complete description of the Program, see Securities Exchange Act Release Nos. 77097 (February 9, 2016), 81 FR 7877 (February 16, 2016)(SR-MIAX-2016-05); 77777 (May 6, 2016), 81 FR 29603 (May 12, 2016)(SR-MIAX-2016-09); 79157 (October 26, 2016), 81 FR 75885 (November 1, 2016)(SR-MIAX-2016-38).

to, the launch of complex orders on the Exchange), and thus the Exchange believes it is reasonable and appropriate to update the Program to align it with current economic conditions and business strategy. The Exchange notes that the Baseline Percentage definition is also used as a factor for determining whether a Member qualifies for certain additional credits under the Exchange's Priority Customer Rebate Program ("PCR"), which is contained in Section 1(a)(iii) of the Exchange's Fee Schedule, and the Exchange incorporated this indirect impact into its determination as well. As overall market conditions continue to evolve, the Exchange will continue to analyze and re-assess the calculation of the Baseline Percentage and other threshold amounts contained in the Program, and if its analysis justifies a further change, the Exchange will submit a proposed rule change reflecting this.

The credits paid out as part of the program will be drawn from the general revenues of the Exchange.<sup>11</sup> The proposed rule change is to take effect March 1, 2017.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its fee schedule is consistent with Section 6(b) of the Act<sup>12</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>13</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange believes that the proposed changes to the Program are fair, equitable and not unreasonably discriminatory. The Program itself is reasonably designed because it

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<sup>11</sup> Despite providing credits under the Program, the Exchange represents that it will continue to have adequate resources to fund its regulatory program and fulfill its responsibilities as a self-regulatory organization during the limited period that the Program will be in effect.

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(4).

encourages providers of Professional order flow to send that Professional order flow to the Exchange in order to receive credits, in a manner that enables the Exchange to improve its overall competitiveness and strengthen its market quality for all market participants. The proposed changes to the Program are fair and equitable and not unreasonably discriminatory because they apply equally to all Members submitting orders for the account(s) of Professionals. All similarly situated Professional orders are subject to the same rebate schedule, and access to the Exchange is offered on terms that are not unfairly discriminatory. In addition, the proposed changes to the Program are equitable and not unfairly discriminatory because, while only Professional order flow qualifies for the Program, an increase in Professional order flow will bring greater volume and liquidity, which benefit all market participants by providing more trading opportunities and tighter spreads. Similarly, offering increasing credits to Members for submitting and executing higher percentages of total national customer volume (increased credit rates at increased volume tiers) is equitable and not unfairly discriminatory because such increased rates and tiers encourage Members to direct increased amounts of Professional contracts to the Exchange.

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 Exchange believes that the proposed rule change would increase both intermarket and intramarket competition by incenting Members to direct orders for the account(s) of Professionals to the Exchange, which should enhance the quality of the Exchange's markets and increase the volume of contracts traded here. To the extent that this purpose is achieved, all the Exchange's market participants should 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 reduces the Exchange's fees through rebates in a manner that encourages market participants to direct their customer order flow, to provide liquidity, and to attract additional transaction volume to the Exchange. Given the robust competition for volume among options markets, many of which offer the same products, implementing a volume increase based rebate program to attract order flow like the one being proposed in this filing is consistent with the above-mentioned 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>14</sup> and Rule 19b-4(f)(2)<sup>15</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

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<sup>14</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>15</sup> 17 CFR 240.19b-4(f)(2).

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-2017-11 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-2017-11. 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-2017-11, 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>16</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).