

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 27	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2012 - * 01	Amendment No. (req. for Amendments *)
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Proposed Rule Change by Miami International Securities Exchange, LLC.  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>			
			Rule					
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	19b-4(f)(1) <input type="checkbox"/>	19b-4(f)(2) <input checked="" type="checkbox"/>	19b-4(f)(3) <input type="checkbox"/>	19b-4(f)(4) <input type="checkbox"/>	19b-4(f)(5) <input type="checkbox"/>	19b-4(f)(6) <input type="checkbox"/>

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**

Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked \*).

Adoption of the MIAX Options Fee Schedule

**Contact Information**

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name \* Claire Last Name \* McGrath  
 Title \* Senior Vice President  
 E-mail \* cmcgrath@miami-holdings.com  
 Telephone \* (609) 897-1464 Fax

**Signature**

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date 12/07/2012  
 By Claire McGrath Senior Vice President  
 (Name \*) (Title \*)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Claire McGrath, cmcgrath@miami

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

**Form 19b-4 Information (required)**

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change (required)**

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit Sent As Paper Document

**Exhibit 3 - Form, Report, or Questionnaire**

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit Sent As Paper Document

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

**1. Text of the Proposed Rule Change**

(a) Miami International Securities Exchange, LLC (“MIAX” or “Exchange”), 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> proposes to adopt the MIAX Options Fee Schedule (the “Fee Schedule”). Specifically, the Fee Schedule would establish select transaction and regulatory fees applicable to Members trading options on and using services provided by MIAX.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1, and a copy of the proposed Fee Schedule is attached hereto as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

**2. Procedures of the Self-Regulatory Organization**

The proposed rule change was approved by the MIAX Board of Directors on December 5, 2012. No other action by the Exchange is necessary for the filing of the proposed rule change.

Questions and comments on the proposed rule change may be directed to Claire P. McGrath, Senior Vice President, at (609) 897-1464.

**3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change****a. Purpose**

The purpose of the proposed rule change is to establish select transaction and regulatory fees applicable to Members trading options on and using services provided by the MIAX.

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

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

Marketing Fee

MIAX will assess a Marketing Fee to all MIAX Market Makers for contracts they execute in their assigned classes when the contra-party to the execution is a Priority Customer. The Marketing Fee is charged only in a Market Maker's assigned classes because it is in these classes that the Market Maker has the general obligation to attract order flow to the Exchange. MIAX will, on a monthly basis, disburse collected Marketing Fees to specific Electronic Exchange Members in accordance with instructions received from the applicable Primary Lead Market Maker "PLMM" or Lead Market Maker "LMM" in the option class. The PLMM will provide instructions regarding the disbursement of Marketing Fees collected in those option classes in which he is the appointed PLMM on transactions resulting from orders that have been directed to him and from non-directed orders in that option class. The LMM will provide instructions regarding the disbursement of Marketing Fees collected on transactions resulting from orders that have been directed to him.

Undispersed Marketing Fees will be reimbursed to Market Makers based upon their pro-rata portion of the entire amount of Marketing Fees collected on a three month rolling schedule. In order to provide PLMMs and LMMs flexibility in the timing of their disbursements to Electronic Exchange Members, PLMMs and LMMs may choose to disburse the Market Fees collected in one month over a three month period. Reimbursement of undispersed Marketing Fees will take this into consideration.

The amount of the Marketing Fee would depend upon whether the affected option class is included in the option Penny Pilot Program. A Marketing Fee of \$0.25 per contract will be assessed to Market Makers for transactions in option classes that are included in the Penny Pilot Program. A Marketing Fee of \$0.70 per contract will be assessed to Market Makers for

transactions in option classes that are not in the Penny Pilot Program. A list of option classes included in the Penny Pilot Program is available on the MIAX Website. MIAX's Marketing Fees are the same as CBOE, ISE, NYSE Amex and PHLX for transactions in option classes in the Penny Pilot Program. For option classes not in the Penny Pilot Program, MIAX's Marketing Fees are the same as PHLX (\$0.70) and higher than CBOE, ISE and NYSE Amex (\$0.65 each respectively).

### Routing Fees

MIAX will assess Routing Fees in order to recoup costs incurred by MIAX when routing to various away markets. MIAX will also pay to its Member any rebate it receives on transactions routed to an away market where there is such a rebate paid. To establish the appropriate Routing Fee for a particular order that is routed to, and executed on, an away market, MIAX will assess the transaction fee that is being assessed by the away market, plus a specified fixed fee, which represents the costs incurred by the Exchange for routing an order to an away market. The transaction fee portion of the routing fee will be the actual charge assessed by the away market at the time that the order was entered into the MIAX Trading System. This transaction fee will be calculated on an order-by-order basis since different away markets charge different amounts.<sup>3</sup> In the case where there is no transaction fee assessed by the away market, the Routing Fee assessed by MIAX will be only the fixed rate surcharge described below.

MIAX will assess a routing fee surcharge at a fixed rate of \$0.10 per contract for Public Customer orders that are routed to and executed on away markets. The routing fee surcharge represents the cost to MIAX for routing the order to the away market. In analyzing its costs, the

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<sup>3</sup> This is similar to the methodologies utilized by the NASDAQ OMX PHLX LLC ("PHLX") and the International Securities Exchange, LLC ("ISE") in assessing Routing Fees. See PHLX's Pricing Schedule and ISE's Fee Schedule.

Exchange took into account clearing costs,<sup>4</sup> administrative, regulatory and technical costs associated with routing orders to an away market. The Exchange uses unaffiliated routing brokers to route orders to the away markets; the costs associated with the use of these services are included in the fixed fee surcharge. The Exchange analyzed its potential costs in determining to assess a fixed fee surcharge of \$0.10 per contract to represent the overall cost to the Exchange for technical, administrative, clearing, regulatory, compliance and other costs, which is in addition to the transaction fee assessed by the away market. The routing fee surcharge of \$0.10 is the same as the fixed fee charged by PHLX for orders routed to exchanges other than NASDAQ OMX BX, Inc. (“BX”) and NASDAQ Options Market (“NOM”).<sup>5</sup>

MIAX is also proposing to pay a market participant any rebate offered by an away market where there is such a rebate paid. Any rebate paid would be netted against the fixed fee surcharge assessed by MIAX. For example, if a Public Customer order is routed to BOX Options Exchange, LLC (“BOX”), and BOX offers a customer rebate of \$0.20 per contract, MIAX would deduct its fixed fee surcharge of \$0.10 per contract from the rebate and pay the \$0.10 per contract rebate to the market participant for the customer order that was routed.

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<sup>4</sup> The Options Clearing Corporation (“OCC”) recently amended its clearing fee from \$0.03 per contract side to \$0.01 per contract side. See Securities Exchange Act Release No. 68025 (October 10, 2012), 77 FR 63398 (October 16, 2012) (SR-OCC-2012-18).

<sup>5</sup> See Securities Exchange Act Release No. 68213 (November 13, 2012), 77 FR 69530 (November 19, 2012) (SR-PHLX-2012-129).

## Regulatory Fees

### A. Sales Value Fee

The Sales Value Fee<sup>6</sup> is assessed by the Exchange to each Member for sales on the Exchange with respect to which the Exchange is obligated to pay a fee to the Commission pursuant to Section 31 of the Exchange Act. The Sales Value Fee is equal to the Section 31 fee rate multiplied by the Member's aggregate dollar amount of covered sales resulting from options transactions occurring on the Exchange during any computational period. To the extent there may be any excess monies collected under this rule, the Exchange may retain those monies to help fund general operating expenses. The sales transactions to which the fee applies are sales of options (other than options on a security index) and the sales of securities resulting from the exercise of physical-delivery options. The fee is collected indirectly from Members through their clearing firms by The Options Clearing Corporation on behalf of MIAX with respect to option sales and options exercises.

### B. Web CRD<sup>7</sup> Fees

Financial Industry Regulatory Authority ("FINRA"), through the Web CRD<sup>SM</sup> registration system for the registration of associated persons of Electronic Exchange Member and Market Maker organizations that are not also FINRA members, collects from those MIAX Members general registration fees and fingerprint processing fees. The MIAX Options Fee Schedule sets forth both the Web CRD Fees FINRA is currently charging and the new Web CRD Fees it will begin charging January 2, 2013.

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<sup>6</sup> See Exchange Rule 1207.

<sup>7</sup> FINRA operates the Web Central Registration Depository (CRD®), the central licensing and registration system for the U.S. securities industry and its regulators. It contains the registration records of more than 6,800 registered broker-dealers and the qualification, employment, and disclosure histories of more than 660,000 active registered individuals.

b. Statutory Basis

MIAX believes that its proposal to adopt its Fee Schedule for select transaction and regulatory fees 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 is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange believes the fees proposed for transactions on MIAX are reasonable. MIAX will operate within a highly competitive market in which market participants can readily send order flow to any of ten other competing venues if they deem fees at a particular venue to be excessive. The proposed fee structure is intended to attract order flow to MIAX by offering market participants incentives to submit their orders to MIAX.

MIAX notes that the U.S. options markets are highly competitive, and the Marketing Fee is intended to provide an incentive for PLLMs and LMMs to enter into marketing agreements with Electronic Exchange Members so that they will provide order flow to MIAX. The Marketing Fee is charged only in a Market Maker's assigned classes because it is in these classes that the Market Maker has the general obligation to attract order flow to the Exchange. MIAX believes that its program of Marketing Fees, which is similar to marketing fee programs that have previously been implemented on other options exchanges,<sup>10</sup> will enhance the MIAX's

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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> See e.g., Securities Exchange Act Release Nos. 53969 (June 9, 2006), 71 FR 34973 (June 16, 2006) (SR-CBOE-2006-53); 55265 (February 9, 2007), 72 FR 7697 (February 16, 2007) (SR-CBOE-2007-11); 55271 (February 12, 2007), 72 FR 7699 (February 16, 2007) (SR-ISE-2007-08); and 54152 (July 14,



competitive position and will result in increased liquidity on the MIAX, thereby providing more of an opportunity for customers to receive best executions on MIAX. MIAX believes that its Marketing Fee is reasonable since the amount of MIAX's Marketing Fee is the same as other exchanges for options classes in the Penny Pilot Program and slightly higher than some of the other exchanges and the same as two of the exchanges for options classes not in the Penny Pilot Program.

The Exchange believes that the proposed Routing Fees are reasonable because they seek to recoup costs that are incurred by the Exchange when routing Public Customer orders to away markets on behalf of members. Each destination market's transaction charge varies and there is a cost incurred by the Exchange when routing orders to away markets. The costs to the Exchange include clearing costs, administrative, regulatory and technical costs associated with routing options. The Exchange believes that the proposed Routing Fees would enable the Exchange to recover the costs it incurs to route orders to away markets in addition to transaction fees assessed to market participants for the execution of Public Customer orders by the away market. The Exchange believes that it is reasonable for it to recoup its actual costs associated with routing orders to away markets. Also, market participants whose orders routed to away markets will be entitled to receive rebates offered by the away markets, which rebates will net against fees assessed by the Exchange for routing orders. The Exchange believes that the opportunity to collect a rebate will reduce Routing Fees.

MIAX also believes that it is equitable and not unfairly discriminatory for market participants to receive rebates on orders routed to away markets that pay rebates. MIAX would

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2006), 71 FR 41488 (July 21, 2006). See also, Securities Exchange Act Release Nos. 53841 (May 19, 2006), 71 FR 30461 (May 26, 2006) (SR-Phlx-2006-33); 54297 (August 9, 2006), 71 FR 47280 (August 16, 2006) (SR-Phlx-2006-47); 54485 (September 22, 2006), 71 FR 57017 (September 28, 2006) (SR-Phlx-2006-56); 55290 (February 13, 2007), 72 FR 8051 (February 22, 2007) (SR-Phlx- 2007-05); and 55473 (March 14, 2007), 72 FR 13338 (March 21, 2007) (SR-Phlx- 2007-12).

pay rebates offered by away markets uniformly to market participants when their orders are routed to a destination market that offers a rebate.

The proposed Sales Value Fee allows the Exchange to offset the cost it incurs in payment to the Commission of a transaction fee that is designed to recover the costs related to the government's supervision and regulation of the securities markets and securities professionals. The amount of the fee is the same amount assessed to the Exchange pursuant to Section 31 of the Exchange Act. The Exchange believes it is reasonable to recover the actual costs associated with the payment of Section 31 fees.

Finally, the Exchange believes it is reasonable, equitable and not unfairly discriminatory for the FINRA fees to be included on the Fee Schedule because these fees are not being assessed or set by MIAX, but by FINRA, and will be assessed to broker-dealers that register associated persons through FINRA's WebCRD system.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must establish fees that are competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed MIAX Options Fee Schedule for select transaction and regulatory fees appropriately reflects this competitive environment.

**4. Self-Regulatory Organization's Statement on Burden on Competition**

MIAX does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

**5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others**

No written comments were either solicited or received.

6. **Extension of Time Period for Commission Action**

Not applicable.

7. **Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)**

Pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>11</sup> and Rule 19b-4(f)(2) thereunder<sup>12</sup> the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

8. **Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

The proposed rule change is based on fee schedules that have previously been in place on other options exchanges.

9. **Exhibits**

1. Notice of proposed rule for publication in the Federal Register.
5. A copy of the MIAX Options Fee Schedule

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>12</sup> 17 CFR 240.19b-4.

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-MIAX-2012-01

December \_\_, 2012

Self-Regulatory Organizations: Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by Miami International Securities Exchange LLC to Adopt the MIAX Options 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 December 7, 2012, 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 adopt the MIAX Options Fee Schedule (the “Fee Schedule”). Specifically, the Fee Schedule would establish select transaction and regulatory fees applicable to Members trading options on and using services provided by MIAX.

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.

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

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

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 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 purpose of the proposed rule change is to establish select transaction and regulatory fees applicable to Members trading options on and using services provided by the MIAX.

Marketing Fee

MIAX will assess a Marketing Fee to all MIAX Market Makers for contracts they execute in their assigned classes when the contra-party to the execution is a Priority Customer. The Marketing Fee is charged only in a Market Maker's assigned classes because it is in these classes that the Market Maker has the general obligation to attract order flow to the Exchange. MIAX will, on a monthly basis, disburse collected Marketing Fees to specific Electronic Exchange Members in accordance with instructions received from the applicable Primary Lead Market Maker "PLMM" or Lead Market Maker "LMM" in the option class. The PLMM will provide instructions regarding the disbursement of Marketing Fees collected in those option classes in which he is the appointed PLMM on transactions resulting from orders that have been directed to him and from non-directed orders in that option class. The LMM will provide instructions regarding the disbursement of Marketing Fees collected on transactions resulting from orders that have been directed to him.

Undispersed Marketing Fees will be reimbursed to Market Makers based upon their pro-rata portion of the entire amount of Marketing Fees collected on a three month rolling schedule. In order to provide PLMMs and LMMs flexibility in the timing of their disbursements to Electronic Exchange Members, PLMMs and LMMs may choose to disburse the Market Fees collected in one month over a three month period. Reimbursement of undispersed Marketing Fees will take this into consideration.

The amount of the Marketing Fee would depend upon whether the affected option class is included in the option Penny Pilot Program. A Marketing Fee of \$0.25 per contract will be assessed to Market Makers for transactions in option classes that are included in the Penny Pilot Program. A Marketing Fee of \$0.70 per contract will be assessed to Market Makers for transactions in option classes that are not in the Penny Pilot Program. A list of option classes included in the Penny Pilot Program is available on the MIAX Website. MIAX's Marketing Fees are the same as CBOE, ISE, NYSE Amex and PHLX for transactions in option classes in the Penny Pilot Program. For option classes not in the Penny Pilot Program, MIAX's Marketing Fees are the same as PHLX (\$0.70) and higher than CBOE, ISE and NYSE Amex (\$0.65 each respectively).

#### Routing Fees

MIAX will assess Routing Fees in order to recoup costs incurred by MIAX when routing to various away markets. MIAX will also pay to its Member any rebate it receives on transactions routed to an away market where there is such a rebate paid. To establish the appropriate Routing Fee for a particular order that is routed to, and executed on, an away market, MIAX will assess the transaction fee that is being assessed by the away market, plus a specified fixed fee, which represents the costs incurred by the Exchange for routing an order to an away market. The transaction fee portion of the routing fee will be the actual charge assessed by the

away market at the time that the order was entered into the MIAX Trading System. This transaction fee will be calculated on an order-by-order basis since different away markets charge different amounts.<sup>3</sup> In the case where there is no transaction fee assessed by the away market, the Routing Fee assessed by MIAX will be only the fixed rate surcharge described below.

MIAX will assess a routing fee surcharge at a fixed rate of \$0.10 per contract for Public Customer orders that are routed to and executed on away markets. The routing fee surcharge represents the cost to MIAX for routing the order to the away market. In analyzing its costs, the Exchange took into account clearing costs,<sup>4</sup> administrative, regulatory and technical costs associated with routing orders to an away market. The Exchange uses unaffiliated routing brokers to route orders to the away markets; the costs associated with the use of these services are included in the fixed fee surcharge. The Exchange analyzed its potential costs in determining to assess a fixed fee surcharge of \$0.10 per contract to represent the overall cost to the Exchange for technical, administrative, clearing, regulatory, compliance and other costs, which is in addition to the transaction fee assessed by the away market. The routing fee surcharge of \$0.10 is the same as the fixed fee charged by PHLX for orders routed to exchanges other than NASDAQ OMX BX, Inc. (“BX”) and NASDAQ Options Market (“NOM”).<sup>5</sup>

MIAX is also proposing to pay a market participant any rebate offered by an away market where there is such a rebate paid. Any rebate paid would be netted against the fixed fee surcharge assessed by MIAX. For example, if a Public Customer order is routed to BOX

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<sup>3</sup> This is similar to the methodologies utilized by the NASDAQ OMX PHLX LLC (“PHLX”) and the International Securities Exchange, LLC (“ISE”) in assessing Routing Fees. See PHLX’s Pricing Schedule and ISE’s Fee Schedule.

<sup>4</sup> The Options Clearing Corporation (“OCC”) recently amended its clearing fee from \$0.03 per contract side to \$0.01 per contract side. See Securities Exchange Act Release No. 68025 (October 10, 2012), 77 FR 63398 (October 16, 2012) (SR-OCC-2012-18).

<sup>5</sup> See Securities Exchange Act Release No. 68213 (November 13, 2012), 77 FR 69530 (November 19, 2012) (SR-PHLX-2012-129).

Options Exchange, LLC (“BOX”), and BOX offers a customer rebate of \$0.20 per contract, MIAX would deduct its fixed fee surcharge of \$0.10 per contract from the rebate and pay the \$0.10 per contract rebate to the market participant for the customer order that was routed.

### Regulatory Fees

#### A. Sales Value Fee

The Sales Value Fee<sup>6</sup> is assessed by the Exchange to each Member for sales on the Exchange with respect to which the Exchange is obligated to pay a fee to the Commission pursuant to Section 31 of the Exchange Act. The Sales Value Fee is equal to the Section 31 fee rate multiplied by the Member’s aggregate dollar amount of covered sales resulting from options transactions occurring on the Exchange during any computational period. To the extent there may be any excess monies collected under this rule, the Exchange may retain those monies to help fund general operating expenses. The sales transactions to which the fee applies are sales of options (other than options on a security index) and the sales of securities resulting from the exercise of physical-delivery options. The fee is collected indirectly from Members through their clearing firms by The Options Clearing Corporation on behalf of MIAX with respect to option sales and options exercises.

#### B. Web CRD<sup>7</sup> Fees

Financial Industry Regulatory Authority (“FINRA”), through the Web CRD<sup>SM</sup> registration system for the registration of associated persons of Electronic Exchange Member and Market Maker organizations that are not also FINRA members, collects from those MIAX Members general registration fees and fingerprint processing fees. The MIAX Options Fee

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<sup>6</sup> See Exchange Rule 1207.

<sup>7</sup> FINRA operates the Web Central Registration Depository (CRD®), the central licensing and registration system for the U.S. securities industry and its regulators. It contains the registration records of more than 6,800 registered broker-dealers and the qualification, employment, and disclosure histories of more than 660,000 active registered individuals.



Schedule sets forth both the Web CRD Fees FINRA is currently charging and the new Web CRD Fees it will begin charging January 2, 2013.

2. Statutory Basis

The Exchange believes that its proposal to adopt its Fee Schedule for select transaction and regulatory fees 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 is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange believes the fees proposed for transactions on MIAX are reasonable. MIAX will operate within a highly competitive market in which market participants can readily send order flow to any of ten other competing venues if they deem fees at a particular venue to be excessive. The proposed fee structure is intended to attract order flow to MIAX by offering market participants incentives to submit their orders to MIAX.

MIAX notes that the U.S. options markets are highly competitive, and the Marketing Fee is intended to provide an incentive for PLLMs and LMMs to enter into marketing agreements with Electronic Exchange Members so that they will provide order flow to MIAX. The Marketing Fee is charged only in a Market Maker's assigned classes because it is in these classes that the Market Maker has the general obligation to attract order flow to the Exchange. MIAX believes that its program of Marketing Fees, which is similar to marketing fee programs that have previously been implemented on other options exchanges,<sup>10</sup> will enhance the MIAX's

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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> See e.g., Securities Exchange Act Release Nos. 53969 (June 9, 2006), 71 FR 34973 (June 16, 2006) (SR-CBOE-2006-53); 55265 (February 9, 2007), 72 FR 7697 (February 16, 2007) (SR-CBOE-2007-11);

competitive position and will result in increased liquidity on the MIAX, thereby providing more of an opportunity for customers to receive best executions on MIAX. MIAX believes that its Marketing Fee is reasonable since the amount of MIAX's Marketing Fee is the same as other exchanges for options classes in the Penny Pilot Program and slightly higher than some of the other exchanges and the same as two of the exchanges for options classes not in the Penny Pilot Program.

The Exchange believes that the proposed Routing Fees are reasonable because they seek to recoup costs that are incurred by the Exchange when routing Public Customer orders to away markets on behalf of members. Each destination market's transaction charge varies and there is a cost incurred by the Exchange when routing orders to away markets. The costs to the Exchange include clearing costs, administrative, regulatory and technical costs associated with routing options. The Exchange believes that the proposed Routing Fees would enable the Exchange to recover the costs it incurs to route orders to away markets in addition to transaction fees assessed to market participants for the execution of Public Customer orders by the away market. The Exchange believes that it is reasonable for it to recoup its actual costs associated with routing orders to away markets. Also, market participants whose orders routed to away markets will be entitled to receive rebates offered by the away markets, which rebates will net against fees assessed by the Exchange for routing orders. The Exchange believes that the opportunity to collect a rebate will reduce Routing Fees.

MIAX also believes that it is equitable and not unfairly discriminatory for market participants to receive rebates on orders routed to away markets that pay rebates. MIAX would

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55271 (February 12, 2007), 72 FR 7699 (February 16, 2007) (SR-ISE-2007-08); and 54152 (July 14, 2006), 71 FR 41488 (July 21, 2006). See also, Securities Exchange Act Release Nos. 53841 (May 19, 2006), 71 FR 30461 (May 26, 2006) (SR-Phlx-2006-33); 54297 (August 9, 2006), 71 FR 47280 (August 16, 2006) (SR-Phlx-2006-47); 54485 (September 22, 2006), 71 FR 57017 (September 28, 2006) (SR-Phlx-2006-56); 55290 (February 13, 2007), 72 FR 8051 (February 22, 2007) (SR-Phlx- 2007-05); and 55473 (March 14, 2007), 72 FR 13338 (March 21, 2007) (SR-Phlx- 2007-12).

pay rebates offered by away markets uniformly to market participants when their orders are routed to a destination market that offers a rebate.

The proposed Sales Value Fee allows the Exchange to offset the cost it incurs in payment to the Commission of a transaction fee that is designed to recover the costs related to the government's supervision and regulation of the securities markets and securities professionals. The amount of the fee is the same amount assessed to the Exchange pursuant to Section 31 of the Exchange Act. The Exchange believes it is reasonable to recover the actual costs associated with the payment of Section 31 fees.

Finally, the Exchange believes it is reasonable, equitable and not unfairly discriminatory for the FINRA fees to be included on the Fee Schedule because these fees are not being assessed or set by MIAX, but by FINRA, and will be assessed to broker-dealers that register associated persons through FINRA's WebCRD system.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must establish fees that are competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed MIAX Options Fee Schedule for select transaction and regulatory fees appropriately reflects this competitive environment.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes 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 or 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>11</sup> 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-2012-01 on the subject line.

#### Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-MIAX-2012-01. This file number should be included on the subject line if e-mail is used. To help the Commission process and

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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-2012-01 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>12</sup>

Kevin M. O'Neill  
Deputy Secretary

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

Exhibit 5

*New text is underlined*

**MIAX Options Fee Schedule**

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# MIAX Options Fee Schedule

## 1) Transaction Fees

### a) Exchange Fees

[Reserved]

### b) Marketing Fee

MIAX will assess a Marketing Fee to all Market Makers for contracts they execute in their assigned classes when the contra-party to the execution is a Priority Customer.

Members that are assigned as PLMMs and LMMs will have a Marketing Fee “pool” into which the Exchange will deposit the per-contract Marketing Fee for the appropriate transactions in option classes in which they are assigned as PLMM or LMM. For orders directed to an LMM or PLMM, applicable Marketing Fees are allocated to the LMM’s or PLMM’s Marketing Fee “pool.” For non-directed orders, applicable Marketing Fees are allocated to the PLMM’s Marketing Fee “pool.” All Market Makers that participated in such transactions will pay the applicable Marketing Fee to the Exchange, which will allocate such funds to the Member that controls the distribution of the Marketing Fee “pool.” Each month the Member will submit written instructions to MIAX describing how MIAX is to distribute the Marketing Fees in the “pool” to Electronic Exchange Members identified by the Member.

Undispersed Marketing Fees will be reimbursed to Market Makers that contributed to the “pool” based upon their pro-rata portion of the entire amount of Marketing Fees collected on a three month rolling schedule.

<u>Amount of Marketing Fee Assessed</u>	<u>Option Classes</u>
<b>\$0.70</b> <b>(per contract)</b>	<u>Transactions in Option Classes that are not in the Penny Pilot Program</u>
<b>\$0.25</b> <b>(per contract)</b>	<u>Transactions in Option Classes that are in the Penny Pilot Program</u> <u>(a List of those Option Classes in the Penny Pilot Program is available on the MIAX Website)</u>



### c) Fees and Rebates for Customer Orders Routed to Another Options Exchange

MIAX will assess a Routing Fee to market participants on all Public Customer orders routed to and executed on an away market that is equal to the amount charged by the away market to which such orders were routed and executed. MIAX will also pay any rebate offered by an away market. Such market participants will also be assessed a Fixed Fee Surcharge by MIAX, which is added to the fee charged, or netted against the rebate paid, by an away market.

#### Fixed Fee Surcharge:

\$0.10 per contract in addition to the actual transaction fee assessed, or less the rebate paid, by the away exchange.

## 2) Regulatory Fees

### a) Sales Value Fee

Current Fee Rate: Defined amount per \$1,000,000 of the aggregate dollar amount of covered sales.

The Sales Value Fee<sup>1</sup> is assessed by the Exchange to each Member for sales on the Exchange for which the Exchange is obligated to pay a fee to the SEC pursuant to Section 31 of the Exchange Act. The Sales Value Fee is equal to the Section 31 fee rate multiplied by the Member's aggregate dollar amount of covered sales resulting from options transactions occurring on the Exchange during any computational period. To the extent there may be any excess monies collected under this rule, the Exchange may retain those monies to help fund general operating expenses. The sales transactions to which the fee applies are sales of options (other than options on a security index) and the sales of securities resulting from the exercise of physical-delivery options.

<u>Sales Value Fee</u>	<u>Per Executed Sell Contract side and Sales of Securities Resulting from the Exercise of Physical Delivery Options</u> (per million dollars in notional value)
<u>All Classes</u>	Rate set annually and sometimes adjusted semi-annually by the SEC. See <a href="http://www.sec.gov/divisions/marketreg/sec31info.htm">http://www.sec.gov/divisions/marketreg/sec31info.htm</a> for the current rate

### b) Options Regulatory Fee

[Reserved]

### c) Web CRD Fees

The following fees will be collected and retained by FINRA through the Web Central Registration Depository (CRD<sup>SM</sup>) registration system for the registration of associated persons of Electronic Exchange Members and Market Maker organizations that are not also FINRA members:

<sup>1</sup> For a detailed description of the Sales Value Fee, see MIAX Rule 1207

**GENERAL REGISTRATION FEES: (These fees will be in effect through January 1, 2013)**

<u>\$85.00</u>	<u>FINRA CRD Processing Fee<sup>2</sup></u>
<u>\$95.00</u>	<u>FINRA Disclosure Processing Fee<sup>3</sup> (Form U4, Form U5, &amp; amendments)</u>
<u>\$30.00</u>	<u>FINRA Annual System Processing Fee assessed only during Renewals</u>
<u>\$27.50</u>	<u>FINRA Fingerprint Card Processing Fee for first card submission</u>
<u>\$13.00</u>	<u>FINRA Fingerprint Card Processing Fee for second card submission</u>
<u>\$27.50</u>	<u>FINRA Fingerprint Card Processing Fee for third card submission</u>
<u>\$13.00</u>	<u>FINRA Processing Fee for Fingerprint Results Submitted by Other SROs</u>
<u>\$00.00</u>	<u>MIAX Initial Registration Fee (Individual)</u>
<u>\$00.00</u>	<u>MIAX Annual Individual Renewal Fee</u>
<u>\$00.00</u>	<u>MIAX Transfer Fee</u>
<u>\$00.00</u>	<u>MIAX Termination Fee</u>
<u>\$00.00</u>	<u>MIAX Broker Dealer Registration Fee</u>
<u>\$00.00</u>	<u>MIAX Broker Dealer Renewal Fee</u>

**GENERAL REGISTRATION FEES: (These fees will be in effect on and after January 2, 2013.)**

<u>\$100.00</u>	<u>FINRA CRD Processing Fee<sup>4</sup></u>
<u>\$110.00</u>	<u>FINRA Disclosure Processing Fee<sup>5</sup> (Form U4, Form U5, Form BD &amp; amendments)</u>
<u>\$45.00</u>	<u>FINRA Annual System Processing Fee assessed only during Renewals</u>
	<u>FINRA Fingerprint Card Processing Fees:</u>
<u>\$29.50</u>	<u>First card submission (electronic)</u>
<u>\$44.50</u>	<u>First card submission (hard copy)</u>
<u>\$15.00</u>	<u>Second card submission (electronic)</u>
<u>\$30.00</u>	<u>Second card submission (hard copy)</u>
<u>\$29.50</u>	<u>Third card submission (electronic)</u>
<u>\$44.50</u>	<u>Third card submission (hard copy)</u>
<u>\$30.00</u>	<u>FINRA Processing Fee for Fingerprint Results Submitted by Other SROs</u>
<u>\$00.00</u>	<u>MIAX Initial Registration Fee (Individual)</u>
<u>\$00.00</u>	<u>MIAX Annual Individual Renewal Fee</u>

<sup>2</sup> For all Initial, Transfer, Relicense, and Dual Registration Form U4 filings. This fee is assessed when a non-FINRA firm (i.e., a firm that is not a member of FINRA) submits its first Initial, Transfer, Relicense, or Dual Registration Form U4 filing on behalf of a registered person.

<sup>3</sup> For all registration, transfer, or termination filings with new or amended disclosure information or that require certification, as well as any amendment to disclosure information.

<sup>4</sup> For all Initial, Transfer, Relicense, and Dual Registration Form U4 filings. This fee is assessed when a non-FINRA firm (i.e., a firm that is not a member of FINRA) submits its first Initial, Transfer, Relicense, or Dual Registration Form U4 filing on behalf of a registered person.

<sup>5</sup> For all registration, transfer, or termination filings with new or amended disclosure information or that require certification, as well as any amendment to disclosure information.

\$00.00    MIAX Transfer Fee  
\$00.00    MIAX Termination Fee  
\$00.00    MIAX Broker Dealer Registration Fee  
\$00.00    MIAX Broker Dealer Renewal Fee