

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-69381; File No. SR-MIAX-2013-16)

April 16, 2013

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Modify the MIAX 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 April 5, 2013, 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 the Substance of the Proposed Rule Change

The Exchange is filing a proposal to modify the MIAX Fee Schedule (“Fee Schedule”) to establish fees for option contracts overlying 10 shares of a security (“Mini Options”). The Exchange proposes to implement these fee changes to coincide with the Exchange’s listing and trading of Mini Options on April 17, 2013.

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 Exchange proposes to modify the Fee Schedule to establish fees for Mini Options. The Exchange represented in its filing with the Securities and Exchange Commission ("SEC" or the "Commission") to establish Mini Options that, "the current schedule of Fees will not apply to the trading of mini-options contracts. The Exchange will not commence trading of mini-option contracts until specific fees for mini-options contracts trading have been filed with the Commission."<sup>3</sup> As the Exchange intends to begin trading Mini Options on April 17, 2013 it is submitting this filing to describe the transaction fees that will be applicable to the trading of Mini Options.

Mini Options have a smaller exercise and assignment value due to the reduced number of shares they deliver as compared to standard option contracts. As such, the Exchange is proposing generally lower per contract fees as compared to standard option contracts, with some exceptions

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<sup>3</sup> See Securities Exchange Act Release No. 69136 (March 14, 2013), 78 FR 17259 (March 20, 2013) (SR-MIAX-2013-06). The Commission notes that the actual language from the Exchange's filing is: "the current MIA X Fee Schedule will not apply to the trading of mini-option contracts. The Exchange will not commence trading of mini-option contracts until specific fees for mini-option contracts trading have been filed with the Commission."

to be fully described below. Despite the smaller exercise and assignment value of a Mini Option, the cost to the Exchange to process quotes and orders in Mini Options, perform regulatory surveillance and retain quotes and orders for archival purposes is the same as for a standard contract. This leaves the Exchange in a position of trying to strike the right balance of fees applicable to Mini Options – too low and the costs of processing Mini Options quotes and orders will necessarily cause the Exchange to either raise fees for everyone or only for participants trading Mini Options; too high and participants may be deterred from trading Mini Options, leaving the Exchange less able to recoup costs associated with development of the product, which is designed to offer investors a way to take less risk in high dollar securities. The Exchange, therefore, believes that adopting fees for Mini Options that are in some cases lower than fees for standard contracts, and in other cases the same as for standard contracts, is appropriate, not unreasonable, not unfairly discriminatory and not burdensome on competition between participants, or between the Exchange and other exchanges in the listed options market place.

#### Exchange Transaction Fees

The Exchange proposes establishing Mini Options transaction fees for all Market Makers and other market participants that would be 10% of the fee associated with standard options. The Mini Options transaction fee, as its standard option counterpart, would apply per executed contract to Registered Market Makers, Lead Market Makers, Directed Order-Lead Market Makers, Primary Lead Market Makers, Directed Order-Primary Lead Market Makers, Public Customers that are not Priority Customers, Non-MIAX Market Makers, Non-Member Broker-Dealers, and Firms. Below is a chart providing a comparison of the transaction fees for standard options and to the proposed fees for Mini Options:

<b>Type of MIAX Market Maker</b>	<b>Standard Options Transaction Fee (per executed contract)</b>	<b>Mini Options Transaction Fee (per executed contract)</b>
<i>Registered Market Maker</i>	<b>\$ 0.23</b>	<b>\$ 0.023</b>
<i>Lead Market Maker</i>	<b>\$ 0.20</b>	<b>\$ 0.020</b>
<i>Directed Order—Lead Market Maker</i>	<b>\$ 0.18</b>	<b>\$ 0.018</b>
<i>Primary Lead Market Maker</i>	<b>\$ 0.18</b>	<b>\$ 0.018</b>
<i>Directed Order— Primary Lead Market Maker</i>	<b>\$ 0.16</b>	<b>\$ 0.016</b>
<i>Priority Customer</i>	<b>\$ 0.00</b>	<b>\$ 0.000</b>
<i>Public Customer that is Not a Priority Customer</i>	<b>\$ 0.25</b>	<b>\$ 0.025</b>
<i>Non-MIAX Market Maker</i>	<b>\$ 0.45</b>	<b>\$ 0.045</b>
<i>Non-Member Broker-Dealer</i>	<b>\$ 0.45</b>	<b>\$ 0.045</b>
<i>Firm</i>	<b>\$ 0.25</b>	<b>\$ 0.025</b>

In proposing Mini Options transaction fees that are 10% of the related standard option transaction fee, the Exchange acknowledges and takes into account that Mini Options have a smaller exercise and assignment value due to the reduced number of shares to be delivered as compared to standard option contracts. The Mini Options transaction fee charged to Priority Customers<sup>4</sup> would remain at \$0.00 because the transaction fee for standard options, currently set at \$0.00, cannot be reduced any lower.

#### Marketing Fee

Currently, the Exchange assesses 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.

<sup>4</sup> The term “Priority Customer” means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). See Exchange Rule 100.

The Exchange proposes assessing a Marketing Fee for applicable transactions in Mini Options and setting the fee to be 10% of the associated fee for standard options. As noted above, the Exchange bases this proposal on the smaller exercise and assignment value due to the reduced number of shares to be delivered with Mini Options as compared to standard option contracts. Below is a chart providing a comparison of the Marketing Fees for standard options and to the proposed fees for Mini Options:

<b>Amount of Marketing Fee Assessed</b>	<b>Option Classes</b>
<b>\$0.70 (per contract)</b>	Transactions in Standard Option Classes that are not in the Penny Pilot Program
<b>\$0.25 (per contract)</b>	Transactions in Standard Option Classes that are in the Penny Pilot Program
<b>\$0.070 (per contract)</b>	Transactions in Mini Options where the corresponding Standard Option is not in the Penny Pilot Program
<b>\$0.025 (per contract)</b>	Transactions in Mini Options where the corresponding Standard Option is in the Penny Pilot Program

#### Fixed Fee Surcharge

In order to comply with the requirements of the Distributive Linkage Plan,<sup>5</sup> the Exchange uses various means of accessing better priced interest located on other exchanges. Presently, the Exchange charges a Fixed Fee Surcharge of \$0.10 per contract plus a pass through of the fees associated with the execution of the routed order on the other exchanges. The \$0.10 is designed to recover the Exchange's costs in routing orders to the other exchanges. Those costs include clearance charges imposed by The Options Clearing Corporation ("OCC") and per contract routing fees charged by the broker dealers who charge the Exchange for the use of their systems to route orders to other exchanges. It is the Exchange's understanding that both the OCC and the

<sup>5</sup> See Exchange Rule 529.

broker dealers have kept their charges applicable to Mini Options the same as for standard option contracts, as their cost to process a contract (i.e., routing or clearing) is the same irrespective of the exercise and assignment value of the contract. As such, the Exchange intends to charge the same Fixed Fee Surcharge for Mini Options as it presently does for standard options, as described in Section (1)(c) of the current Fee Schedule. The Exchange notes that participants can avoid the Fixed Fee Surcharge in several ways. First, they can simply route to the exchange with the best priced interest. The Exchange, in recognition of the fact that markets can move while orders are in flight, also offers participants the ability to utilize an order type that does not route to other exchanges. Specifically, the Do Not Route (“DNR”) order modifier is one such order that would never route to another exchange. Given this ability to avoid the Fixed Fee Surcharge, coupled with the fixed third-party costs associated with routing, the Exchange believes it is reasonable to charge the same Routing Surcharge for Mini Options that is charged for standard option contracts.

#### Options Regulatory Fee

Presently the Exchange charges an Options Regulatory Fee (“ORF”) of \$0.004 per contract. The ORF is assessed on each MIAX Member for all options transactions executed or cleared by the MIAX Member that are cleared by the OCC in the customer range, regardless of the exchange on which the transaction occurs. The Exchange is proposing to charge the same rate for transactions in Mini Options, \$0.004 per contract, since, as noted, the costs to the Exchange to process quotes, orders, trades and the necessary regulatory surveillance programs and procedures in Mini Options are the same as for standard option contracts. As such, the Exchange feels that it is appropriate to charge the ORF at the same rate as the standard option contract.

## 2. Statutory Basis

MIAX believes that its proposal to amend fee schedule is consistent with Section 6(b) of the Act<sup>6</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>7</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange noted earlier that, while Mini Options have a smaller exercise and assignment value due to the reduced number of shares to be delivered as compared to standard option contracts, and despite the smaller exercise and assignment value of a Mini Option, the cost to the Exchange to process quotes and orders in Mini Options, perform regulatory surveillance and retain quotes and orders for archival purposes is the same as for a standard contract. This leaves the Exchange in a position of trying to strike the right balance of fees applicable to Mini Options – too low and the costs of processing Mini Options quotes and orders will necessarily cause the Exchange to either raise fees for everyone or only for participants trading Mini Options; too high and participants may be deterred from trading Mini Options, leaving the Exchange less able to recoup costs associated with development of the product, which is designed to offer investors a way to take less risk in high dollar securities. Given these realities, the Exchange believes that adopting fees for Mini Options that are in some cases lower than standard contracts, and in other cases the same as for standard contracts, is appropriate, not unreasonable, not unfairly discriminatory and not burdensome on competition between participants, or between the Exchange and other exchanges in the listed options market place.

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<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(4).

In the case of most trade related charges, the Exchange has decided to offer lower per contract fees to participants as part of trying to strike the right balance between recovering costs associated with trading Mini Options and encouraging use of the new Mini Option contracts, which are designed to allow investors to reduce risk in high dollar underlying securities.

The Exchange proposal to establish transaction fees applicable to Market Makers and all other participants to be 10% of the fee charged for standard options is reasonable in light of the fact that the Mini Options do have a smaller exercise and assignment value, specifically 1/10th that of a standard option contract. The Exchange's proposal is based on the already established classification of Market Makers and other market participants for standard option contracts, which is an effective fee on the Exchange and has not been determined to be inequitable or unfairly discriminatory. Therefore, the Exchange believes the proposed pricing for Mini Options to be equitable and not unfairly discriminatory as it would apply to all members of a given class (i.e., the Mini Options transaction fee for Register Market Makers would apply to all Register Market Makers).

The Exchange believes the proposal to charge Priority Customers \$.00 per contract to be reasonable, as Priority Customers have traded for free all options on the Exchange since the inception of the Exchange. The ability to trade for free attracts Priority Customer order flow to the Exchange, which is beneficial to all other participants on the Exchange who generally seek to trade with Priority Customer order flow. The proposed fee of \$.00 per contract is the same fee charged to Priority Customer orders in standard option contracts, which is an effective fee on the Exchange and has not been determined to be inequitable or unfairly discriminatory. Therefore, the proposed Priority Customer pricing for Mini Options would be equitable and not unfairly discriminatory.



The Exchange believes its proposal to assess a Marketing Fee to all Market Makers for Mini Options contracts they execute in their assigned classes when the contra-party to the execution is a Priority Customer with such Marketing Fee set at 10% of the related fee charged for standard options to be reasonable in light of the fact that the Minis do have a smaller exercise and assignment value, specifically 1/10th that of a standard contract. The Exchange does not believe its proposal to be unfairly discriminatory because it applies to all applicable Market Makers evenly.

The Exchange proposal to treat Mini Options the same as standard options for purposes of the Fixed Fee Surcharge is reasonable, equitable and not unfairly discriminatory for the following reasons. Presently, the Exchange charges a Routing Surcharge of \$0.10 per contract plus a pass through of the fees associated with the execution of the routed order on the other exchanges. The \$0.10 is designed to recover the Exchange's costs in routing orders to the other exchanges. Those costs include clearance charges imposed by the OCC and per contract routing fees charged by the broker dealers who charge the Exchange for the use of their systems to route orders to other exchanges. The Exchange understands that both the OCC and the broker dealers have kept their charges applicable to Mini Options the same as for standard option contracts, as their cost to process a contract (i.e., routing or clearing) is the same irrespective of the exercise and assignment value of the contract. As such, the Exchange intends to charge the same Fixed Fee Surcharge for Mini Options as it presently does for standard options, as described in Section (1)(c) of the current Fee Schedule. The Exchange notes that participants can avoid the Fixed Fee Surcharge in several ways. First they can simply route to the exchange with the best priced interest. The Exchange, in recognition of the fact that markets can move while orders are in flight, also offers participants the ability to utilize an order type that does not route to other

exchanges. Specifically, the DNR order type is an order that would never route to another exchange. Given this ability to avoid the Fixed Fee Surcharge, coupled with the fixed third party costs associated with routing, the Exchange feels it is reasonable and equitable to charge the same Fixed Fee Surcharge for Mini Options that is charged for standard option contracts. Since the Fixed Fee Surcharge will apply to all participants in Mini Options as it is applied for standard options, and because such surcharge has not previously been found to be unreasonable, inequitable or unfairly discriminatory, the Exchange believes it is the case for Mini Options as well.

The Exchange notes, particularly in the context of the ORF, that the cost to perform surveillance to ensure compliance with various Exchange and industry-wide rules is no different for a Mini Option than it is for a standard option contract. Reducing the ORF for Mini options could result in a higher ORF for standard options. Such an outcome would arguably be discriminatory towards investors in standard options for the benefit of investors in Minis. As such, the appropriate approach is to treat both Mini Options and standard options the same with respect to the amount of the ORF that is being charged.

**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. The proposed change designed to provide greater specificity and precision within the Fee Schedule with respect to the fees that will be applicable to Mini Options when they begin trading on the Exchange on or about April 17, 2013.

The Exchange believes that adopting fees for Mini Options that are in some cases lower than for standard contracts, but in other cases the same as for standard contracts, strikes the

appropriate balance between fees applicable to standard contracts versus fees applicable to Mini Options, and will not impose a burden on competition among various market participants on the Exchange, or between the Exchange and other exchanges in the listed options market place, not necessary or appropriate in furtherance of the purposes of the Act. In this regard, as Mini Options are a new product being introduced into the listed options marketplace, the Exchange is unable at this time to absolutely determine the impact that the fees proposed herein will have on trading in Mini Options. That said, however, the Exchange believes that the rates proposed for Mini Options, would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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 continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

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

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>8</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

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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-2013-16 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-2013-16. 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, D.C. 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-2013-16, 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>9</sup>

Elizabeth M. Murphy  
Secretary

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<sup>9</sup> 17 CFR 200.30-3(a)(12).