

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-70109; File No. SR-MIAX-2013-38)

August 5, 2013

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the MIAX Options Fee Schedule

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 23, 2013, Miami International Securities Exchange LLC (“Exchange” or “MIAX”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 allow certain Lead Market Makers (“LMMs”) to be allocated Marketing Fees for orders directed to that LMM.

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

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

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

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 amend its marketing fee.<sup>3</sup> The marketing fee is assessed on certain transactions of all Market Makers.<sup>4</sup> The funds collected via this marketing fee are then put into pools controlled by Primary Lead Market Makers ("PLMMs") and LMMs. The PLMM or LMM controlling a certain pool of funds can then determine the Electronic Exchange Member(s) ("EEM") to which the funds should be directed in order to encourage such EEM(s) to send orders to the Exchange. In accordance with Exchange Rule 514, an EEM can designate an order ("Directed Order") to a specific LMM.

Currently, Section 1(b) of the Fee Schedule, which relates to the marketing fee, states that an LMM will only be given access to marketing fee funds generated from a Directed Order if the LMM has an appointment in the class in which the Directed Order is received and executed. However, other options exchanges allow an LMM (or similar position) to have access to the marketing fee funds generated from a Directed Order (or similar order type) regardless of whether the LMM has an appointment in a class in which the Directed Order is received and

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<sup>3</sup> The proposal is based on a substantially similar filing by the Chicago Board Options Exchange, Incorporated. See Securities Exchange Act Release No. 68131 (November 1, 2012), 77 FR 67032 (November 8, 2012) (SR-CBOE-2012-101).

<sup>4</sup> See MIAX Options Fee Schedule, Section (1)(b), entitled Marketing Fee for more detail regarding the marketing fee. The Exchange is also proposing [sic] changes to its Directed Order program in order to allow LMMs in unassigned options classes to receive Directed Orders in a related companion filing SR-MIAX-2013-20. See Securities Exchange Act Release No. 69507 (May 3, 2013), 78 FR 27269 (May 9, 2013) (SR-MIAX-2013-20).

executed.<sup>5</sup> The Exchange has determined to offer similar functionality on MIAX in order to be on even competitive footing as these other exchanges.<sup>6</sup>

The Exchange proposes amending the Fee Schedule to allow qualifying LMMs to receive an allocation of marketing fees generated by Directed Orders sent to the qualifying LMM. Specifically, the Exchange proposes that for an LLM to qualify to be allocated Marketing Fees for Directed Orders for an applicable month, the LMM must either: (i) have an appointment in the relevant option class at the time of being directed the order; or (ii) for the month preceding the applicable month (the “qualifying month”) have an appointment as an LMM for at least ten (10) trading days in a minimum of fifty percent (50%) of the option classes listed on the Exchange for the entire qualifying month. The first prong is a carry-over from the current requirements and thus no change is proposed to this means of qualification. The Exchange proposes in the second prong a new means of qualifying for allocation of marketing fees, one which would allow qualifying LMMs without an appointment in the relevant class access to marketing fees. The Exchange designed the additional means of qualifying for access to marketing fee funds to be an appropriate counterbalance to the benefit of being allocated marketing fees. The Exchange believes that qualifying LMMs have demonstrated a commitment to providing liquidity on the Exchange through meeting the quoting and other regulatory

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<sup>5</sup> See CBOE Fees Schedule, fn. 6; NASDAQ OMX Phlx, LLC (“Phlx”) Pricing Schedule, section on Payment for Order Flow Fee; NYSE Amex Options Fee Schedule, fn. 10; International Securities Exchange, LLC (“ISE”) Schedule of Fees, Section IV(D). None of which contain requirements that a PLMM or LMM (or similar position) have an appointment in the class in which a Directed Order (or similar order type) is received and executed in order to have access to the marketing fee funds generated from that Preferred order.

<sup>6</sup> See Securities Exchange Act Release No. 69507 (May 3, 2013), 78 FR 27269 (May 9, 2013) (SR-MIAX-2013-20).

obligations required of an LMM in either the relevant option class or a significant portion of option classes traded on the Exchange (i.e., 50%) for a significant portion of the previous trading month (i.e., 10 trading days). In contrast, the Exchange proposes that orders directed to non-qualifying LMMs be treated similar to non-directed orders and the marketing fee be allocated to the PLMM's "pool."

Permitting qualifying LMMs to be allocated marketing fees generated from a Directed Order would allow LMMs to encourage greater order flow to be sent to the Exchange. This increased order flow would benefit all market participants on the Exchange, such as customer orders with resting orders on the Exchange and LMMs that have an appointment and quote in the relevant option. Allowing qualifying LMMs to be allocated marketing fees generated from a Directed Order would provide LMMs with an incentive to encourage the routing of order flow into classes in which the LMM otherwise would not (such as classes in which the LMM is not appointed and quoting). Further, this will also provide LMMs with more flexibility to change their appointments, as they will not have to be concerned with whether or not they have made arrangements to pay for order flow in a specific class prior to changing appointments.

The proposed fee changes are to take effect on August 1, 2013.

## 2. Statutory Basis

MIAX believes that its proposed rule change is consistent with Section 6(b) of the Act<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>8</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and

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

<sup>8</sup> 15 U.S.C. 78f(b)(5).

open market and a national market system and, in general, to protect investors and the public interest

The Exchange believes that this proposal removes a requirement that other exchanges do not share and perfects the mechanism for a free and open market and a national market system by allowing the Exchange's marketing fee program to operate in a manner similar to competing options exchanges. In addition, the proposal promotes just and equitable principles of trade by encouraging greater order flow to be sent to the Exchange through Directed Orders in a manner that will benefit all market participants on the Exchange.

The Exchange also believes that allowing qualifying LMMs to be allocated marketing fees generated by a Directed Order is consistent with Section 6(b)(4) of the Act<sup>9</sup> which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The proposed change is reasonable because it will allow LMMs greater access to marketing fee funds. The proposed change is equitable and not unfairly discriminatory because it is designed to allow LMMs to encourage greater order flow to be sent to the Exchange. A qualifying LMM could be able to amass a greater pool of funds with which to use to incent order flow providers to send order flow to the Exchange. This increased order flow would benefit all market participants on the Exchange. Further, allowing a qualified LMM to access marketing fee funds generated from a Directed Order would provide certain LMMs with an incentive to encourage the routing of order flow into classes in which the LMM otherwise would not (i.e., classes in which the qualifying LMM is not appointed and quoting).

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

Additionally, the Exchange designed the qualifying criteria for LMMs, either (i) having an appointment in the relevant option class the time of being directed the order or (ii) having an appointment as an LMM for at least ten (10) trading days in a minimum of fifty percent (50%) of the option classes listed on the Exchange for the entire qualifying month, to be an appropriate counterbalance to the benefit of being allocated marketing fees. The Exchange believes that qualifying LMMs have demonstrated a commitment to providing liquidity on the Exchange through meeting the quoting and other regulatory obligations required of an LMM in either the specific option class or a significant portion of option classes traded on the Exchange (i.e., 50%) and for a significant portion of the previous trading month (i.e., 10 trading days).

Lastly, the Exchange believes it to be equitable to treat orders directed to non-qualifying LMMs similar to non-directed order and allocate any applicable marketing fees to the PLMM's "pool" because the PLMM faces the highest quoting standard of any Market Maker in the relevant option class.

**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 rule change would place the Exchange on equal footing as other exchanges that allow their LMM equivalents to be allocated marketing fees generated by Directed Orders, regardless of having an appointment in the relevant option class. The Exchange believes that such an even playing field will promote competition among options exchanges.

The Exchange designed the qualifying criteria for LMMs to be an appropriate counterbalance to the benefit of being allocated marketing fees. The Exchange believes that qualifying LMMs have demonstrated a commitment to providing liquidity on the Exchange

through meeting the quoting and other regulatory obligations required of an LMM in either the specific option class or a significant portion of option classes traded on the Exchange (i.e., 50%) and for a significant portion of the previous trading month (i.e., 10 trading days). The Exchange believes that the proposal to treat orders directed to non-qualifying LMMs similar to non-directed order and allocate any applicable marketing fees to the PLMM's "pool" would not create an undue burden on competition because the PLMM faces the highest quoting standard of any Market Maker in the relevant option class.

The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues who offer similar fee structures. Many competing venues offer similar fee structures to market participants. To this end, the Exchange is proposing a market enhancement to encourage market participants to trade on the Exchange. The Exchange believes the proposed rule change is procompetitive because it would enable the Exchange to provide member organizations with a fee structure that is similar to that of other exchanges.

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>10</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>10</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-2013-38 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-2013-38. 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 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 publicly available. All submissions should refer to File Number SR-MIAX-2013-38 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>11</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).