

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-78519; File No. SR-MIAX-2016-21)

August 9, 2016

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Its 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 July 29, 2016, Miami International Securities Exchange LLC (“MIAX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule (the “Fee Schedule”).

The text of the proposed rule change is available on the Exchange’s website at [http://www.miaxoptions.com/filter/wotitle/rule\\_filing](http://www.miaxoptions.com/filter/wotitle/rule_filing), at MIAX’s principal office, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its current MIAX Market Maker<sup>3</sup> Sliding Scale for transaction fees to: (i) modify the current Market Maker Sliding Scale table of Market Maker Transaction Fees in Section 1)a)i) of the Fee Schedule, as described more fully below; and (ii) adopt a “maker” fee and a “taker” fee for the various Tiers in the Market Maker Sliding Scale, as described below.

The Market Maker Sliding Scale for Transaction Fees reduces a Market Maker's per contract transaction fee based on the Market Maker's percentage of total national Market Maker volume of any options classes that trade on the Exchange during the calendar month, currently based on the following scale:

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<sup>3</sup> The term “Market Maker” means any MIAX Market Maker including Registered Market Makers (“RMMs”), Primary Lead Market Makers (“PLMMs”), Lead Market Makers (“LMMs”), Directed Order Lead Market Makers (“DLMMs”) and Directed Primary Lead Market Makers (“DPLMMs”). See Exchange Rule 100. See also Fee Schedule, Footnote 1.

Tier	Percentage of National Market Maker Volume	Per Contract Fee for Penny Classes	Per Contract Fee for Non-Penny Classes
1	0.00% - 0.05%	\$0.25	\$0.29
2	Above 0.05% - 0.50%	\$0.19	\$0.23
3	Above 0.50% - 1.00%	\$0.12	\$0.16
4	Above 1.00% - 1.50%	\$0.07	\$0.11
5	Above 1.50%	\$0.05	\$0.09

The Market Maker Sliding Scale applies to all Market Makers for transactions in all products except mini-options, with different per-contract transaction fees established for Penny option classes and non-Penny option classes. A Market Maker's initial \$0.25 per contract rate in Penny classes and \$0.29 per contract in non-Penny classes is reduced when the Market Maker reaches the volume thresholds set forth in the Market Maker Sliding Scale in a month. As a Market Maker's monthly volume increases, its per contract transaction fee decreases when the monthly volume thresholds described in the Market Maker Sliding Scale are achieved.

The Exchange proposes to amend the Fee Schedule by deleting the current Market Maker Sliding Scale table, and to create two new tables based upon volume thresholds in the Priority Customer Rebate Program<sup>4</sup> applicable to Members and their Affiliates (as defined below). One

<sup>4</sup> MIAX credits each Member the per contract amount resulting from each Priority Customer order transmitted by that Member which is executed electronically on the Exchange in all multiply-listed option classes (excluding QCC Orders, mini-options, Priority Customer-to-Priority Customer Orders, PRIME AOC Responses, PRIME Contra-side Orders, PRIME Orders for which both the Agency and Contra-side Order are Priority Customers, and executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market

of the new tables will apply to Members and their Affiliates<sup>5</sup> that are included in Priority Customer Rebate Program Volume Tier 3 or higher, and the other new table will apply to Members and their Affiliates that are not included in Priority Customer Rebate Program Volume Tier 3 or higher. Currently, the Fee Schedule provides discounted transaction fees for Members and their qualified Affiliates that achieve certain volume thresholds through the submission of Priority Customer Orders<sup>6</sup> under the Exchange's Priority Customer Rebate Program.<sup>7</sup> The current Fee Schedule describes the discounted fees in narrative text and footnotes to the table. The Exchange is proposing to delete this narrative text and parts of the footnotes to simply include the discounted transaction fees in the two new tables. The Market Maker sliding scale will continue to apply to MIAX Market Maker transaction fees in all products except mini-

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Plan referenced in MIAX Rule 1400), provided the Member meets certain percentage thresholds in a month as described in the Priority Customer Rebate Program table. See Fee Schedule, Section 1)a)iii).

<sup>5</sup> For purposes of the MIAX Options Fee Schedule, the term "Affiliate" means an affiliate of a Member of at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A ("Affiliate"). See proposed new Footnote 1 to the Fee Schedule.

<sup>6</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). A "Priority Customer Order" means an order for the account of a Priority Customer. See Exchange Rule 100.

<sup>7</sup> The Exchange will aggregate the trading activity of separate MIAX Market Maker firms for purposes of the sliding scale if there is at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A. Any Member or its affiliates of at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A, that qualifies for Priority Customer Rebate Program volume tiers 3 or 4 will be assessed \$0.23 per contract for tier 1, \$0.17 per contract for tier 2, \$0.10 per contract for tier 3, \$0.05 per contract for tier 4, and \$0.03 per contract for tier 5 for transactions in standard options in Penny Pilot Classes. Any Member or its affiliates of at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A, that qualifies for Priority Customer Rebate Program volume tiers 3 or 4 will be assessed \$0.27 per contract for tier 1, \$0.21 per contract for tier 2, \$0.14 per contract for tier 3, \$0.09 per contract for tier 4, and \$0.07 per contract for tier 5 for transactions in standard options in non-Penny Pilot classes. See Fee Schedule Section 1)a)i).

options. MIAX Market Makers will continue to be assessed a \$0.02 per executed contract fee for transactions in mini-options. The purpose of basing the proposed two new tables on the volume thresholds in the Priority Customer Rebate Program is to clarify that the Exchange provides incentives for Members and their Affiliates to submit a greater number of Priority Customer Orders to the Exchange. The Exchange is simply deleting this information from the narrative text in the Fee Schedule and conveying it more simply and clearly in table format. The proposed language “or higher,” which replaces “or 4,” is intended to account for potential additional tiers in the Priority Customer Rebate Program that may be added in the future.

The Exchange also proposes to establish new percentage thresholds of national customer volume in the current Tiers in the Market Maker Sliding Scale. The new thresholds will be the same in each new table. Specifically, the Exchange proposes to establish new percentage thresholds of national customer volume in the Market Maker Sliding Scale as follows: (i) in Tier 1, from 0-0.0% to 0-0.075%; (ii) in Tier 2, from above 0.075% to 0.60%; (iii) in Tier 3, from above 0.60% to 1.00%; (iv) in Tier 4, from above 1.00% to 1.50%; and (v) in Tier 5, above 1.50%. These Tiers will apply to both new tables. The Exchange notes that a number of other exchanges have tiered fee schedules that offer different transaction fee rates depending on the monthly average daily volume (“ADV”) of liquidity providing executions on their facilities.<sup>8</sup>

The new tables will continue to list separate per contract transaction fees for Penny classes and non-Penny classes. The new tables will also establish, and the Exchange will assess, different fees to MIAX Market Makers that are “makers” and Market Makers that are “takers” in Penny and non-Penny classes. Market Makers that place resting liquidity, i.e., quotes or orders

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<sup>8</sup> See Chicago Board Options Exchange, Incorporated (“CBOE”) Fee Schedule, p. 3; see also NASDAQ Options Market (“NOM”) Fees and Rebates, Chapter XV, Section 2.

on the MIAX System,<sup>9</sup> will be assessed the “maker” fees described in the new tables. MIAX Market Makers that execute against resting liquidity will be assessed a different, higher “taker” fee. This is distinguished from traditional “maker-taker” models where “makers” typically receive a rebate and “takers” do not; the Exchange is not proposing a rebate but instead is simply proposing to assess lower transaction fees to “makers” as compared to “takers.” It is, however, similar to the manner in which other exchanges assess fees for resting market maker liquidity.<sup>10</sup>

The revised Market Maker Sliding Scale proposed by the Exchange will be as follows:

**Members And Their Affiliates In Priority Customer Rebate Program Volume Tier 3 or Higher**

			Per Contract Fee For Penny Classes		Per Contract Fee For Non-Penny Classes	
	Tier	Percentage Thresholds	Maker	Taker	Maker	Taker
All MIAX Market Makers	1	0.00% - 0.075%	\$0.21	\$0.23	\$0.25	\$0.30
	2	Above 0.075% - 0.60%	\$0.15	\$0.22	\$0.19	\$0.27
	3	Above 0.60% - 1.00%	\$0.08	\$0.15	\$0.12	\$0.20
	4	Above 1.00% - 1.50%	\$0.04	\$0.06	\$0.08	\$0.12
	5	Above 1.50%	\$0.02	\$0.04	\$0.06	\$0.10

<sup>9</sup> The term “System” means the automated trading system used by the Exchange for the trading of securities. See Exchange Rule 100.

<sup>10</sup> The Exchange notes that maker-taker pricing has been adopted on at least one other exchange for certain classes of options. See, e.g., ISE Schedule of Fees, Section I. The Exchange’s proposed maker fees are similar in that resting ISE liquidity from makers is charged lower fees than the fees for takers. ISE’s maker-taker fees are distinguished from the proposed MIAX maker-taker fees because the ISE maker-taker fee applies to ISE market maker orders sent to ISE by ISE Electronic Access Members, whereas the current Exchange proposal affords lower maker fees for resting quotes and orders submitted by Market Makers. Despite this distinction, the result is that MIAX will charge a lower fee for resting Market Maker liquidity, as ISE does today.

**Members And Their Affiliates Not In Priority Customer Rebate Program Volume  
Tier 3 or Higher**

	Tier	Percentage Thresholds	Per Contract Fee For Penny Classes		Per Contract Fee For Non-Penny Classes	
			Maker	Taker	Maker	Taker
All MIAX Market Makers <sup>11</sup>	1	0.00% - 0.075%	\$0.23	\$0.25	\$0.27	\$0.32
	2	Above 0.075% - 0.60%	\$0.17	\$0.24	\$0.21	\$0.29
	3	Above 0.60% - 1.00%	\$0.10	\$0.17	\$0.14	\$0.22
	4	Above 1.00% - 1.50%	\$0.06	\$0.08	\$0.10	\$0.14
	5	Above 1.50%	\$0.04	\$0.06	\$0.08	\$0.12

The Exchange further proposes that the lower per contract “maker” fee for both Penny pilot classes and non-Penny pilot classes will apply to opening transactions, transactions resulting from quotes that uncross the Away Best Bid or Offer (“ABBO”) and to any other transaction that is not a taker transaction.

For clarity and ease of reference, the Exchange is proposing to define the term “Affiliate” in the Fee Schedule as an affiliate of a Member of at least 75% common ownership between the firms as reflected on each firm’s Form BD, Schedule A (“Affiliate”). This definition will be included in proposed new Footnote 1 to the Fee Schedule, and the term “Affiliate” will be used in subsequent text and footnotes in the Fee Schedule for brevity, clarity and ease of reference. The Exchange believes this simplifies and streamlines these sections of the Fee Schedule.

<sup>11</sup> See MIAX Rule 100 for the definition of Registered Market Maker (“RMM”), Primary Lead Market Maker (“PLMM”) and Lead Market Maker (“LMM”). Directed Order Lead Market Maker (“DLMM”) and Directed Primary Lead Market Maker (“DPLMM”) are each a party to a transaction being allocated to the LMM or PLMM and are each the result of an order that has been directed to the LMM or PLMM.

The Exchange believes the proposed changes to the Market Maker Sliding Scale are objective because the proposed transaction fees are based on the achievement of stated volume thresholds, and on rewarding Market Makers that provide liquidity on the Exchange with the reduced “maker” transaction fees. The specific volume thresholds of the tiers were set based upon business determinations and an analysis of current volume levels. The specific volume thresholds and rates were set in order to encourage MIAX Market Makers to reach for higher tiers. The Exchange believes that the proposed changes to the tiered fee schedule will cause Market Makers to display their quotes and orders on the Exchange, to improve the price and size of such quotes and orders, and thus increase the volume of contracts traded on the Exchange.

As stated above, the Exchange does not propose a change in the corresponding fees for mini options. The proposed rule change is scheduled to become operative August 1, 2016.

## 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 that it is an equitable allocation of reasonable fees and other charges among Exchange members, and issuers and other persons using its facilities, and 6(b)(5) of the Act,<sup>14</sup> 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 open market and a national market system and, in general, to protect investors and the public interest.

The proposed fee structure is equitable and not unfairly discriminatory because all

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

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

<sup>14</sup> 15 U.S.C. 78f(b)(1) and (b)(5).



similarly situated MIAX Market Makers are subject to the same fee structure, and access to the Exchange is offered on terms that are not unfairly discriminatory.

Volume-based pricing models such as those currently maintained and proposed on the Exchange have been widely adopted by options exchanges and are equitable because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to the value of an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns, and introduction of higher volumes of orders into the price and volume discovery processes.

The Exchange's proposal to offer a reduced fee to Market Makers that provide liquidity in Penny and non-Penny options is also equitable and not unfairly discriminatory under the Act. While distinguished from the traditional "maker-taker" fee model under which an exchange pays a per-share rebate to their members to encourage them to place resting liquidity-providing quotes and orders on their trading systems, the instant proposal reflects a substantially similar fee structure that provides a reduced fee for "makers." If an execution occurs, rather than giving the liquidity providing "maker" a rebate and assessing the "taker" that executes against that resting order a fee, the Exchange is simply proposing a reduced fee for "makers" as compared to "takers."

The Exchange believes that the proposed maker-taker model is an important competitive tool for exchanges and directly or indirectly can provide better prices for investors. The proposed fee structure may narrow the MIAX Bid and Offer ("MBBO") because the reduced fee for "makers" effectively subsidizes, and thus encourages, the posting of liquidity. The Exchange believes that the reduced "maker" fees will also provide MIAX Market Makers with greater incentive to either match or improve upon the best price displayed on MIAX, all to the benefit of

investors and the public in the form of improved execution prices.

The use of volume-based incentives has long been accepted as an equitable and not unfairly discriminatory pricing practice employed at multiple competing options exchanges. In fact, the specific volume-based incentives proposed here, a reduced fee for providing greater amounts of liquidity in Penny and non-Penny options (i.e., in the Priority Customer Rebate Program), is currently employed by other exchanges and it has been accepted as equitable and not unfairly discriminatory under the Act.<sup>15</sup> The discounted fees for Members and their Affiliates that achieve the Tier 3 volume threshold or higher are equitable, reasonable and not unfairly discriminatory because they provide incentive for Members and their Affiliates to submit more orders to the Exchange, thus enhancing liquidity and removing impediments to and perfecting the mechanisms of a free and open market and a national market system. The proposed reduced maker fee is equitable and not unfairly discriminatory because it benefits all market participants by attracting valuable liquidity to the market and thereby enhancing the quality and efficiency of the MIAX marketplace. The market participants that post liquidity to the Book, thereby contributing to price discovery and size discovery while taking the risk of not receiving an execution by posting passive liquidity are justly rewarded with a lower transaction fee.

The Exchange's proposal to charge Market Makers who remove liquidity a higher fee is equitable and not unfairly discriminatory and follows a similar line of reasoning. It is common practice among options exchanges to differentiate between fees for adding liquidity and fees for removing liquidity, and such differentiation has been accepted as not unfairly discriminatory

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<sup>15</sup> See, supra note 8. See also, NOM Fees and Rebates, Chapter XV, Section 2, and BATS BZX Exchange Fee Schedule (providing rebates for adding liquidity and charging fees for removing liquidity in securities at or above \$1.00).

under the Act.<sup>16</sup> The Exchange believes that the differentiation in pricing between “makers” and “takers” is appropriate, because “takers” remove liquidity and benefit disproportionately from their executions compared to “makers,” without assuming the obligations that “makers” assume in making continuous, two-sided markets, and without engaging in competitive price discovery and improvement in the same manner as “makers.” Liquidity removers benefit from the price and size discovery function that liquidity providers have performed in posting their quotations and orders, and when executing against resting liquidity a “taker” is not taking the risk of an order or quote sitting unexecuted on the Book. The Exchange believes for these reasons that a “taker” fee that is higher than a “maker” fee or rebate is equitable, reasonable and not unfairly discriminatory, and thus consistent with the Act.

The lower fees charged for providing liquidity have been considered beneficial in that attracting this liquidity benefits all market participants by improving the overall quality of trading on the Exchange. The level of differentiation between the “maker” fee and the “taker” fee is also within the bounds of what has been accepted as not unfairly discriminatory under the Act. Finally, the proposed fees will be imposed equally among all participants.

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 “maker-taker” model is an important competitive tool for the Exchange and directly or indirectly can provide better prices for investors. The proposed fee structure is intended to promote narrower spreads and greater liquidity at the best prices. The fee-based incentives for market participants to submit liquidity providing orders and quotes to

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<sup>16</sup> Id.

the Exchange, and thereafter to improve the MBBO to ensure participation, should enable the Exchange to attract, and compete for, order flow with other exchanges.

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. The Exchange believes that the proposed rule changes reflect this competitive environment because they modify the Exchange's fees in a manner that encourages market participants to provide liquidity and to send order flow to the Exchange.

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>17</sup> and Rule 19b-4(f)(2)<sup>18</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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<sup>17</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>18</sup> 17 CFR 240.19b-4(f)(2).

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MIAX-2016-21 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-MIAX-2016-21. 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 available publicly. All submissions should refer to File Number SR-MIAX-2016-21, 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>19</sup>

Robert W. Errett  
Deputy Secretary

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<sup>19</sup> 17 CFR 200.30-3(a)(12).