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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77097; File No. SR-MIAX-2016-05]

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

February 9, 2016

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 January 27, 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

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

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

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 amend its Fee Schedule by implementing a Professional Rebate Program (the “Program”). Under the Program, the Exchange will credit each Member the per contract amount resulting from any contracts executed from an order submitted by a Member for the account(s) of a (i) Public Customer that is not a Priority Customer; (ii) Non-MIAX Market Maker; (iii) Non-Member Broker-Dealer; or (iv) Firm (for purposes of the Professional Rebate Program, “Professional”) which is executed electronically on the Exchange in all multiply-listed option classes (excluding mini-options, Non-Priority Customer to Non-Priority Customer orders, QCC Orders, PRIME Orders, PRIME AOC Responses, PRIME Contra-side Orders, and executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in MIAX Rule 1400 (collectively, for purposes of the Professional Rebate Program, “Excluded Contracts”)), provided the Member achieves certain Professional volume increase percentage thresholds in the month relative to the fourth quarter of 2015.

The percentage thresholds in each tier are based upon the increase in the total volume submitted by a Member and executed for the account(s) of a Professional on MIAX (not including Excluded Contracts) during a particular month as a percentage of the total volume

reported by the Options Clearing Corporation (OCC) in MIAX classes during the same month (the “Current Percentage”), less the total volume submitted by that Member and executed for the account(s) of a Professional on MIAX (not including Excluded Contracts) during the fourth quarter of 2015 as a percentage of the total volume reported by OCC in MIAX classes during the fourth quarter of 2015 (the “Baseline Percentage”).

The Member’s percentage increase will be calculated as the Current Percentage less the Baseline Percentage. Members will receive rebates for contracts submitted by such Member on behalf of a Professional(s) that are executed within a particular percentage tier based upon that percentage tier only, and will not receive a rebate for such contracts that applies to any other tier.

Thus, the per contract credit of \$0.10 for Tier 1 will apply to percentage thresholds from above 0.00% up to 0.005%. Next, the per contract credit of \$0.15 for Tier 2 will apply only to percentage thresholds from above 0.005% up to 0.020%, beginning with the first contract executed in Tier 2, but will not apply to contracts executed in Tier 1, to which the \$0.10 per contract credit applied. Thereafter, the per contract credit of \$0.20 for Tier 3 will apply to percentage thresholds from above 0.020%, beginning with the first contract executed in Tier 3, but will not apply to contracts executed in Tier 1, to which the \$0.10 per contract credit applied, and will not apply to contracts executed in Tier 2, to which the \$0.15 per contract credit applied.

The below table applies to Members submitting orders for the account(s) of Professionals, as defined above.

| Percentage Thresholds of Volume Increase in Multiply-Listed Options Classes Listed on MIAX (Current Month Compared to Prior Calendar Quarter) | Per Contract Credit |
|---|---------------------|
| Tier 1 - Above 0.00% - 0.005%   | \$0.10              |
| Tier 2 - Above 0.005% - 0.020%  | \$0.15              |

|                       |        |
|-----------------------|--------|
| Tier 3 - Above 0.020% | \$0.20 |
|-----------------------|--------|

The increase in volume will be recorded for and credits will be delivered to the Member Firm that submits the order to the Exchange. The Exchange will aggregate the contracts resulting from Professional orders transmitted and executed electronically on the Exchange from affiliated Members for purposes of the thresholds above, provided there is at least 75% common ownership between the firms as reflected on each firm’s Form BD, Schedule A. A Member may request to receive its credit under the Program as a separate direct payment.

In the event of a MIAX System outage or other interruption of electronic trading on MIAX, the Exchange will adjust the increase in volume in multiply-listed options (not including Excluded Contracts) for the duration of the outage.

The purpose of the Program is to encourage Members to direct greater Professional trade volume to the Exchange. Increased Professional volume will provide for greater liquidity, which benefits all market participants. The practice of incentivizing increased retail customer order flow in order to attract liquidity is, and has been, commonly practiced in the options markets. As such, marketing fee programs,<sup>3</sup> and customer posting incentive programs,<sup>4</sup> are based on attracting public customer order flow. The Program similarly intends to attract Professional order flow, which will increase liquidity, thereby providing greater trading opportunities and tighter spreads for other market participants and causing a corresponding increase in order flow from such other market participants.

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<sup>3</sup> See MIAX Fee Schedule, Section 1(b).

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

The specific volume increase thresholds of the Program's tiers were set based upon business determinations and an analysis of current volume levels. The volume increase thresholds are intended to encourage firms that route some Professional orders to the Exchange to increase the number of such orders that are sent to the Exchange to achieve the next threshold and to provide incentive for new participants to send Professional orders as well. Increasing the number of such orders sent to the Exchange will in turn provide tighter and more liquid markets, and therefore attract more business overall. Similarly, the different credit rates at the different tier levels were based on an analysis of revenue and volume levels and are intended to provide increasing rewards for increasing the volume of trades sent to and executed on the Exchange. The specific amounts of the tiers and rates were set in order to encourage suppliers of Professional order flow to reach for higher tiers.

The purpose of calculating the Baseline Percentage as the total volume submitted by that Member and executed for the account(s) of a Professional on MIAX (not including Excluded Contracts) during the fourth quarter of 2015 as a percentage of the total volume reported by OCC in MIAX classes during the fourth quarter of 2015 is to maintain a constant measuring methodology based upon a sample of the most current market conditions available over a meaningful period of time (e.g., three months), which should help Members submitting orders designated as Professional (as defined above) better understand the volume thresholds that will result in higher rebate amounts. As overall market conditions evolve, the Exchange will analyze and re-assess the calculation of the Baseline Percentage, and if its analysis justifies a change in the calculation of the Baseline Percentage due to changing overall market conditions, the Exchange will submit a proposed rule change reflecting this.

The Exchange proposes to leave certain Excluded Contracts (specifically, Non-Priority Customer to Non-Priority Customer orders, QCC Orders, PRIME Orders, PRIME AOC Responses, and PRIME Contra-side Orders) out of the calculation of the Current and Baseline percentages measuring contracts executed on MIAX and accordingly from the calculation of the percentage thresholds of volume increase. The Exchange believes that it is unnecessary and redundant to offer an incentive where both sides of the trade are submitted and executed by the same Member that submits such orders on behalf of Professionals.

Executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in MIAX Rule 1400 would be excluded from the calculation because the execution of such orders occurs on away markets. Providing rebates to Professional executions that occur on other trading venues would be inconsistent with the proposal. Therefore, such volume is excluded from the Program in order to promote the underlying goal of the proposal, which is to increase liquidity and execution volume on the Exchange.

The Exchange also proposes to exclude mini-options from the calculation of the percentage thresholds of volume increase. Mini-options contracts are excluded from the Program because the cost to the Exchange to process quotes, orders and trades in mini-options is the same as for standard options. This, coupled with the lower per-contract transaction fees charged to other market participants, makes it impractical to offer Members a credit for Professional mini-option volume that they transact.

The Exchange proposes limiting the Program to multiply-listed options classes on MIAX because MIAX does not compete with other exchanges for order flow in the proprietary, singly-listed products. In addition, the Exchange does not trade any singly-listed products at this time,

but may develop such products in the future. If at such time the Exchange develops proprietary products, the Exchange anticipates having to devote a lot of resources to develop them, and therefore would need to retain funds collected in order to recoup those expenditures.

The credits paid out as part of the program will be drawn from the general revenues of the Exchange.<sup>5</sup> The proposed rule change is to take effect February 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>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 Exchange members, and issuers and other persons using its facilities.

The Exchange believes that the proposed Program is fair, equitable and not unreasonably discriminatory. The Program is reasonably designed because it will encourage providers of Professional order flow to send that Professional order flow to the Exchange in order to receive a credit in a manner that enables the Exchange to improve its overall competitiveness and strengthen its market quality for all market participants. The proposed Program is fair and equitable and not unreasonably discriminatory because it will apply equally to all Members submitting orders for the account(s) of Professionals. All similarly situated Professional orders are subject to the same rebate schedule, and access to the Exchange is offered on terms that are not unfairly discriminatory. In addition, the Program is equitable and not unfairly discriminatory

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<sup>5</sup> Despite providing credits under the Program, the Exchange represents that it will continue to have adequate resources to fund its regulatory program and fulfill its responsibilities as a self-regulatory organization during the limited period that the Program will be in effect.

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

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

because, while only Professional order flow qualifies for the Program, an increase in Professional order flow will bring greater volume and liquidity, which benefit all market participants by providing more trading opportunities and tighter spreads. Similarly, offering increasing credits to Members for submitting and executing higher percentages of total national customer volume (increased credit rates at increased volume tiers) is equitable and not unfairly discriminatory because such increased rates and tiers encourage Members to direct increased amounts of Professional contracts to the Exchange.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change would increase both intermarket and intramarket competition by incenting Members to direct orders for the account(s) of Professionals to the Exchange, which should enhance the quality of the Exchange's markets and increase the volume of contracts traded here. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market liquidity. Enhanced market quality and increased transaction volume that results from the anticipated increase in order flow directed to the Exchange will benefit all market participants and improve competition on the Exchange. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. The Exchange believes that the proposed rule change reflects this competitive environment because it reduces the Exchange's fees through rebates in a manner that encourages market participants to

direct their customer order flow, to provide liquidity, and to attract additional transaction volume to the Exchange. Given the robust competition for volume among options markets, many of which offer the same products, implementing a volume increase based rebate program to attract order flow like the one being proposed in this filing is consistent with the above-mentioned goals of the Act.

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

Written comments were neither solicited nor received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>8</sup> and Rule 19b-4(f)(2)<sup>9</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.

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:

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

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

- 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:to-rule-comments@sec.gov). Please include File Number SR-MIAX-2016-05 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-MIAX-2016-05. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission’s Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer

to File Number SR-MIAX-2016-05 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

Brent J. Fields  
Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).

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