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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-79157; File No. SR-MIAX-2016-38)

October 26, 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 to Adopt Fees and Credits for Transactions Involving Complex Orders

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 21, 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, 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

¹ 15 U.S.C. 78s(b)(1).

² 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule to adopt fees and credits for transactions involving complex orders. The Securities and Exchange Commission (“SEC” or “Commission”) recently approved Exchange rules³ that authorize and govern the trading of complex orders⁴ on MIAX utilizing the MIAX System⁵. Accordingly, the Exchange is proposing to adopt certain fees and credits that will apply to Exchange Members⁶ for transactions involving complex orders. All complex order fees will be charged on a per contract per side basis.

Market Maker Transaction Fees

³ See Securities Exchange Act Release No. 79072(October 7, 2016), 81 FR 71131 (October 14, 2016)(SR-MIAX-2016-26).

⁴ A “complex order” is any order involving the concurrent purchase and/or sale of two or more different options in the same underlying security (the “legs” or “components” of the complex order), for the same account, in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purposes of executing a particular investment strategy. A complex order can also be a “stock-option” order, which is an order to buy or sell a stated number of units of an underlying security coupled with the purchase or sale of options contract(s) on the opposite side of the market, subject to certain contingencies set forth in the proposed rules governing complex orders. See Securities Exchange Act Release No. 78620 (August 18, 2016), 81 FR 58770 (August 25, 2016)(SR-MIAX-2016-26).

⁵ The term “System” means the automated trading system used by the Exchange for the trading of securities. See Exchange Rule 100.

⁶ The term “Member” means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed “members” under the Exchange Act. See Exchange Rule 100.

Section 1)a)i) of the Fee Schedule sets forth the Exchange’s Market Maker Sliding Scale for Market Maker Transaction Fees (the “Sliding Scale”). The Sliding Scale assesses a per contract transaction fee on a Market Maker⁷ for the execution of simple orders and quotes (collectively, “simple orders”). The amount of the transaction fee is based on the Market Maker’s percentage of total national market maker volume in an options class that trades on the Exchange during a particular calendar month. The Sliding Scale applies to all Market Makers for transactions in all products (except for mini-options, for which there are separate product fees), with fees established for option classes in the Penny Pilot Program⁸ (“penny option classes”) and separate fees for non-penny option classes.

The Exchange is proposing to use the same Sliding Scale structure to establish per contract transaction fees for executions in complex orders. More specifically, the Exchange is proposing to use the same tiers and percentage thresholds that it uses for the execution of simple orders for the execution of complex orders and quotes (collectively, “complex orders”), and will aggregate the volume executed by Market Makers in both simple orders and complex orders for purposes of determining the applicable tier and corresponding per contract transaction fee amount.⁹

⁷ The term “Market Makers” refers to Lead Market Makers (“LMMs”), Primary Lead Market Makers (“PLMMs”), and Registered Market Makers (“RMMs”) collectively. See Exchange Rule 100. A Directed Order Lead Market Maker (“DLMM”) and Directed Primary Lead Market Maker (“DPLMM”) is a party to a transaction being allocated to the LMM or PLMM and is the result of an order that has been directed to the LMM or PLMM. See Fee Schedule note 2.

⁸ See Securities Exchange Act Release No. 78080 (June 15, 2016), 81 FR 40377 (June 21, 2016)(SR-MIAX-2016-16).

⁹ The calculation of the volume thresholds does not include QCC Orders, PRIME AOC Responses, and PRIME Participating Quotes or Orders. For a discussion of these exclusions, see Securities Exchange Act Release No. 78299 (July 12, 2016), 81 FR 46734 (July 18, 2016)(SR-MIAX-2016-20).

Since the Exchange will aggregate the number of contracts executed in both simple orders and complex orders in its calculation of the Market Maker's relevant tier, Market Maker transaction fees in both simple orders and complex orders will be incrementally reduced once the Market Maker reaches a higher tier. The Exchange believes that aggregating simple and complex volume will provide a direct benefit to Market Makers, because it provides Market Makers with enhanced potential to lower their incremental transaction fees on the Exchange. Furthermore, it should encourage Market Makers to provide complex order liquidity on the Exchange because their executed volume in complex orders will enhance their ability to achieve discounted transaction fees in simple orders.

Since the Exchange provides discounted transaction fees for Members and their qualified Affiliates that achieve certain volume thresholds through the submission of Priority Customer¹⁰ orders under the Exchange's Priority Customer Rebate Program ("PCR")¹¹, the Sliding Scale contains two tables: one setting forth the transaction fees applicable to Members and their Affiliates¹² that are in PCR volume Tier 3 or higher; and the other setting forth the transaction

¹⁰ 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.

¹¹ Under the PCR, 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 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).

¹² 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 Fee Schedule note 1.

fees applicable to Members and their Affiliates that are not in PCRP volume Tier 3 or higher. The Exchange is proposing to maintain that same, two table construct, and establish a per contract transaction fee for complex orders per tier level. Although the proposed per transaction fees for complex orders will be included in both tables (i.e., one for Members and their Affiliates that are in PCRP volume Tier 3 or higher and the other for Members and their Affiliates that are not in PCRP volume Tier 3 or higher), the per contract fees for complex orders will be the same in each table. Furthermore, the Exchange is not proposing a different maker and taker fee in each tier for complex orders. Instead, the Exchange will assess one per contract fee for complex orders in each tier for penny option classes, and one per contract fee for complex orders in non-penny option classes, with a surcharge for removing liquidity, as described below. The Exchange believes that, with respect to transaction fees for complex orders, it is appropriate to distinguish between (and thus have different transaction fee amounts for) penny option classes and non-penny option classes, as is the case with the current Fee Schedule for transaction fees for simple orders. Accordingly, the Exchange is proposing separate per contract transaction fees for penny option classes and non-penny option classes for complex orders. Specifically, the Exchange would charge a Market Maker a per contract fee in penny option classes of: \$0.25 in Tier 1, \$0.19 in Tier 2, \$0.12 in Tier 3, \$0.07 in Tier 4, \$0.05 in Tier 5. The Exchange would charge a Market Maker a per contract fee in non-penny option classes of: \$0.29 in Tier 1, \$0.23 in Tier 2, \$0.16 in Tier 3, \$0.11 in Tier 4, \$0.09 in Tier 5.

The proposed Market Maker transaction fees are generally in line with the Market Maker transaction fees charged by other exchanges for executing complex orders.¹³ The Exchange

¹³ See, e.g., CBOE Fees Schedule Options Transaction Fees; NASDAQ PHLX LLC (“Phlx”) Pricing Schedule, Section II; International Securities Exchange LLC (“ISE”) Schedule of Fees, Section II.

believes that the proposed transaction fees for complex orders are reasonable, and have been set at an initial level that is favorable to Market Makers and are designed to encourage Market Makers to provide complex order liquidity on the Exchange.

For simple orders, the Sliding Scale assesses a per contract transaction fee, which is based upon whether the Market Maker is a “maker” or a “taker.”¹⁴ As an incentive for Market Makers to provide liquidity on the Exchange, the Exchange’s “maker” fees are lower than the “taker” fees. The Exchange is not proposing to distinguish between a “maker” and a “taker” for complex order executions as it does in the traditional construct for simple orders. Rather, the Exchange proposes to adopt a surcharge of \$0.08 per executed contract for executions in complex orders assessed to a Market Maker and all other market participants except Priority Customers when it removes liquidity by trading against a Priority Customer order that is resting on the Strategy Book.¹⁵ Market Maker complex orders resting on the Strategy Book before executing against a Priority Customer order would not be assessed the \$0.08 per contract surcharge, as reflected in the below tables. The Exchange believes that this \$0.08 surcharge is a reasonable alternative to the maker/taker pricing structure in place for simple orders, and is substantially similar in structure and amount to a CBOE surcharge of the same type.¹⁶

All fees assessed under the Sliding Scale will be assessed on a per contract/per side basis. The fees will apply to complex orders when those complex orders are matched against other

¹⁴ See Securities Exchange Act Release No. 78519 (August 9, 2016), 81 FR 54162 (August 15, 2016)(SR-MIAX-2016-21).

¹⁵ The “Strategy Book” is the Exchange’s electronic book of complex orders and complex quotes. See Exchange Rule 518(a)(17).

¹⁶ See CBOE Fees Schedule, Complex Taker Fee, and note 35. The Exchange notes that, although its base fee is slightly higher (with a similar complex fee approach), the Exchange believes that this is fair and equitable because the Exchange offers technology with unique risk mitigation features not available elsewhere, such as the Implied Away Best Bid or Offer (“ixABBO”) Price Protection. See Exchange Rule 518.05(d).

complex orders on the Strategy Book, and will also apply, to the complex side of the trade, when they leg into and match against simple orders in the simple order book. Additionally, for the avoidance of doubt, when legging into the simple order book, the contracts that were entered directly in to the simple order book will be subject to all standard transaction fees, marketing fees, rebates, and credits, as set forth in the Exchange's Fee Schedule and as applicable to simple orders.

The revised Market Maker Sliding Scale tables proposed by the Exchange will be as follows (with new text underlined):

**Members and Their Affiliates¹⁷ In
Priority Customer Rebate Program Volume Tier 3 or Higher**

	Tier	Percentage Thresholds	Simple				Complex		
			Per Contract Fee For Penny Classes		Per Contract Fee For Non-Penny Classes		Per Contract Fee for Penny Classes	Per Contract Fee for Non-Penny Classes	Per Contract Surcharge for Removing Liquidity Against a Resting Priority Customer Complex Order on the Strategy Book for Penny and Non-Penny Classes
			Maker *	Taker	Maker *	Taker			
All MIAX Market Makers	1	0.00% - 0.075%	\$0.21	\$0.23	\$0.25	\$0.30	<u>\$0.25</u>	<u>\$0.29</u>	<u>\$0.08</u>
	2	Above 0.075% - 0.60%	\$0.15	\$0.22	\$0.19	\$0.27	<u>\$0.19</u>	<u>\$0.23</u>	<u>\$0.08</u>
	3	Above 0.60% - 1.00%	\$0.08	\$0.15	\$0.12	\$0.20	<u>\$0.12</u>	<u>\$0.16</u>	<u>\$0.08</u>
	4	Above 1.00% - 1.50%	\$0.04	\$0.06	\$0.08	\$0.12	<u>\$0.07</u>	<u>\$0.11</u>	<u>\$0.08</u>
	5	Above 1.50%	\$0.02	\$0.04	\$0.06	\$0.10	<u>\$0.05</u>	<u>\$0.09</u>	<u>\$0.08</u>

¹⁷ 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”).

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

	Tier	Percentage Thresholds	Simple				Complex		
			Per Contract Fee For Penny Classes		Per Contract Fee For Non-Penny Classes		Per Contract Fee for Penny Classes	Per Contract Fee for Non-Penny Classes	Per Contract Surcharge for Removing Liquidity Against a Resting Priority Customer Complex Order on the Strategy Book for Penny and Non-Penny Classes
			Maker *	Taker	Maker *	Taker			
All MIAX Market Makers	1	0.00% - 0.075%	\$0.23	\$0.25	\$0.27	\$0.32	<u>\$0.25</u>	<u>\$0.29</u>	<u>\$0.08</u>
	2	Above 0.075% - 0.60%	\$0.17	\$0.24	\$0.21	\$0.29	<u>\$0.19</u>	<u>\$0.23</u>	<u>\$0.08</u>
	3	Above 0.60% - 1.00%	\$0.10	\$0.17	\$0.14	\$0.22	<u>\$0.12</u>	<u>\$0.16</u>	<u>\$0.08</u>
	4	Above 1.00% - 1.50%	\$0.06	\$0.08	\$0.10	\$0.14	<u>\$0.07</u>	<u>\$0.11</u>	<u>\$0.08</u>
	5	Above 1.50%	\$0.04	\$0.06	\$0.08	\$0.12	<u>\$0.05</u>	<u>\$0.09</u>	<u>\$0.08</u>

Other Market Participant Transaction Fees

Section 1)a)ii) of the Fee Schedule sets forth, in a single table format, transaction fees for Other Market Participants, including Priority Customers, Public Customers¹⁸ that are not Priority Customers, non-MIAX Market Makers, non-Member Broker-Dealers, and Firms¹⁹ (the “Fee

¹⁸ The term “Public Customer” means a person that is not a broker or dealer in securities. See Exchange Rule 100.

¹⁹ A “Firm” fee is assessed on a MIAX Electronic Exchange Member “EEM” that enters an order that is executed for an account identified by the EEM for clearing in the Options Clearing Corporation (“OCC”) “Firm” range. See Fee Schedule, Section 1)a)ii.

Table”). The Fee Table currently assesses on participants that are non-MIAX Market Makers a per contract transaction fee for simple order executions. The Fee Table applies to the listed participants for transactions in all products (except mini-options, for which there are separate product fees), with fees established for penny option classes and separate fees for non-penny option classes.

The Exchange is proposing to use the same Fee Table structure to establish per contract transaction fees for executions in complex orders. The Exchange is also proposing to assess the same per-contract transaction fee amounts that are set forth in the Fee Table for execution of simple orders for the execution of complex orders. Thus, as proposed, a participant would be charged the same fee per contract for executing a complex order as it would for executing a simple order for the same option class for the same participant type. Accordingly, the Exchange would charge a Member: \$0.00 per contract per complex order executed in both penny option classes and non-penny option classes for a Priority Customer; \$0.47 per contract per complex order executed in a penny option class for a Public Customer that is not a Priority Customer, for a non-MIAX Market Maker, and for a non-Member Broker-Dealer (and \$0.75 per contract per complex order executed in a non-penny option class for each of those participant types); \$0.45 per contract per complex order executed in a penny option class for a Firm (and \$0.75 per contract per complex order executed in a non-penny option class for a Firm). The Exchange believes that the proposed fees for complex orders are reasonable and appropriate because they apply to all similarly situated participants equally. The Exchange’s proposal to assess the same fees for simple and complex orders to other market participants (listed in Section 1)a)ii of the Fee Schedule) for complex orders is reasonable and not unfairly discriminatory because the fees apply equally to all similarly situated market participants. Just as with the current fees assessed

for simple orders in Section 1)a)ii, the PCRP tier discounts will not apply to these participants because Market Makers, who qualify for the discounts, have quoting and other obligations that these other market participants do not have, and the Exchange believes that the PCRP tier discounts are thus equitable and not unfairly discriminatory.²⁰

The Exchange also proposes to assess the same \$0.08 per contract surcharge that it assesses on Market Makers for removing liquidity against a resting Priority Customer on the Strategy Book on other market participants, specifically: (i) Public Customers that are not Priority Customers; (ii) non-MIAX Market Makers; (iii) non-Member Broker-Dealers; and (iv) Firms. The purpose of this proposed surcharge is to encourage Members to add liquidity to the Strategy Book, and to recoup costs associated with the execution of complex orders on the Strategy Book. Moreover, the Exchange believes that the proposed fee structure may also narrow the MIAX Bid and Offer (“MBBO”) on the Strategy Book because assessing the surcharge only on participants removing liquidity effectively subsidizes, and thus encourages, the posting of liquidity. The Exchange believes that this fee structure will also provide MIAX Market Makers with greater incentive to either match or improve upon the best price displayed on the Strategy Book, all to the benefit of investors and the public in the form of improved execution prices.

The revised Fee Table proposed by the Exchange will be as follows:

²⁰ The Commission notes that the Exchange currently offers a discount to the standard option transaction fees for simple orders for Members that qualify for the PCRP volume Tier 3 or higher in Section 1)a)ii. The Exchange is not proposing to offer that discount to the standard option transaction fees for complex orders. See footnotes 4, 5, and 8-13 in Section 1)a)ii) of the Fee Schedule.

Other Market Participant Transaction Fees

Types of Other Market Participants	Standard Options Transaction Fee for Simple and Complex Orders (per executed contract)		Per Contract Surcharge for Removing Liquidity Against a Resting Priority Customer Complex Order on the Strategy Book for Penny and Non-Penny Classes	Mini Options Transaction Fee (per executed contract)		These fees will apply to all option classes traded on MIAX
	Penny Classes	Non-Penny Classes		Penny Classes	Non-Penny Classes	
<i>Priority Customer</i>	\$0.00	\$0.00	<u>\$0.00</u>	\$0.000	\$0.000	There is no fee assessed to an Electronic Exchange Member (an “EEM,” as defined in MIAX Rule 100) that enters an order that is executed for the account of a Priority Customer.
<i>Public Customer that is Not a Priority Customer</i>	\$0.47	\$0.75	<u>\$0.08</u>	\$0.05	\$0.07	This fee is assessed to an EEM that enters an order that is executed for the account of a Public Customer ²¹ that does not meet the criteria for designation as a Priority Customer. This fee will also be charged to an EEM that enters an order for the account of a Public Customer that has elected to be treated as a Voluntary Professional. ²²
<i>Non-MIAX Market Maker</i>	\$0.47	\$0.75	<u>\$0.08</u>	\$0.045	\$0.07	This fee is assessed to an EEM that enters an order that is executed for the account of a non-MIAX market maker. A non-MIAX market maker is a market maker registered as such on another options exchange.

²¹ The term “Public Customer” means a person that is not a broker or dealer in securities. See Exchange Rule 100.

²² The term “Voluntary Professional” means any Public Customer that elects, in writing, to be treated in the same manner as a broker or dealer in securities for purposes of Rule 514, as well as the Exchange’s schedule of fees. See Exchange Rule 100.

Types of Other Market Participants	Standard Options Transaction Fee for Simple and Complex Orders (per executed contract)		Per Contract Surcharge for Removing Liquidity Against a Resting Priority Customer Complex Order on the Strategy Book for Penny and Non-Penny Classes	Mini Options Transaction Fee (per executed contract)		These fees will apply to all option classes traded on MIAX
	Penny Classes	Non-Penny Classes		Penny Classes	Non-Penny Classes	
<i>Non-Member Broker-Dealer</i>	\$0.47	\$0.75	\$0.08	\$0.045	\$0.07	This fee is assessed to an EEM that enters an order that (i) is executed for the account of a non-Member Broker-Dealer, and (ii) is identified by the EEM for clearing in the Options Clearing Corporation (“OCC”) “customer” range. A non-Member Broker-Dealer is a broker-dealer that is not a member of the OCC, and that is not registered as a Member at MIAX or another options exchange.
<i>Firm</i>	\$0.45	\$0.75	\$0.08	\$0.04	\$0.07	This fee is assessed to an EEM that enters an order that is executed for an account identified by the EEM for clearing in the OCC “Firm” range.

The Exchange currently offers a discount to the standard option transaction fees for simple orders for Members that qualify for the PCR volume Tier 3 or higher. The Exchange is not proposing to offer that discount to the standard option transaction fees for complex orders. Thus, the Exchange is proposing to amend Footnotes 4, 5, and 8-13 in Section 1)a)ii) of the Fee Schedule to explicitly state that these discounts only apply for standard options in simple order executions. Additionally, pursuant to Footnote 8 of the Fee Schedule, the Exchange currently

assesses Members a \$0.48 per contract transaction fee (and a \$0.50 per contract transaction fee for non-MIAX market makers) for transactions that occur on or after September 1, 2016 and extending through October 31, 2016 in options overlying EEM, GLD, IWM, QQQ, and SPY. The Exchange is not proposing to apply that transaction fee to complex orders. Thus, the Exchange is proposing to further amend Footnote 8 in Section 1)a)ii) of the Fee Schedule to explicitly state that such fees only apply for standard options in simple order executions.

Priority Customer Rebate Program

The Exchange also proposes to amend the PCRCP contained in Section 1)a)iii) of the Fee Schedule by adopting per contract credits for complex orders. Currently, with respect to simple orders, the Exchange credits each Member the per contract amount set forth in the table below 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 Plan referenced in MIAX Rule 1400), provided the Member meets certain volume thresholds in a month as described below. The volume thresholds are calculated based on the customer average daily volume over the course of the month. Volume is recorded for and credits are delivered to the Member that submits the order to the Exchange. The Exchange proposes to extend this per contract credit to executions in complex orders.

The Exchange proposes to apply the same volume tier thresholds in the PCRCP for complex orders that it currently applies to simple orders. In the same manner that the Exchange

proposes to aggregate simple order volume and complex order volume of Market Makers towards the volume tiers in the Sliding Scale, the Exchange proposes to aggregate contract volume for both simple and complex orders in the calculation of the PCRPs volume tier threshold applicable to each transaction, and to effect the same exclusions for transactions involving both simple and complex orders, as applicable, with respect to the PCRPs volume tier calculation.²³

The Exchange proposes to distinguish the amount of the proposed per contract credits in the PCRPs for complex orders from the credits currently available to simple orders, except for Tier 1 transactions, for which there would be a \$0.00 per contract credit for both simple and complex orders. The proposed per contract credits for complex orders would be: \$0.21 for PCRPs Tier 2 transactions; \$0.24 for PCRPs Tier 3 transactions, and \$0.25 for PCRPs Tier 4 transactions, respectively. The proposed per contract credits for complex orders are greater than the current per contract credits for simple orders. As a new entrant in the complex order marketplace, the Exchange believes that it is appropriate to establish aggressive per contract credits in order to attract order flow in this new segment of the Exchange.

For simple orders, the Exchange currently assesses different PCRPs credit amounts for executions in the MIAx Select Symbols²⁴ versus non-MIAx Select Symbols. The PCRPs table

²³ MIAx excludes contracts executed as part of QCC Orders, mini-options, Priority Customer-to-Priority Customer Orders, PRIME Agency 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 Plan referenced in MIAx Rule 1400 from this calculation. See Fee Schedule Section 1)a)iii.

²⁴ The term “MIAx Select Symbols” means options overlying AA, AAL, AAPL, AIG, AMAT, AMD, AMZN, BA, BABA, BBRY, BIDU, BP, C, CAT, CBS, CELG, CLF, CVX, DAL, EBAY, EEM, FB, FCX, GE, GILD, GLD, GM, GOOGL, GPRO, HAL, HTZ, INTC, IWM, JCP, JNJ, JPM, KMI, KO, MO, MRK, NFLX, NOK, NQ, ORCL, PBR, PFE, PG, QCOM, QQQ, RIG, S, SPY, SUNE, T, TSLA, USO, VALE, VXX, WBA, WFC, WMB, WY, X, XHB, XLE, XLF, XLP, XOM, XOP and YHOO. See Fee

in the Fee Schedule will reflect these different credits in simple orders for MIAX Select Symbols versus non-MIAX Select Symbols. The Exchange, however, does not believe it is necessary at this time to distinguish the amount of the proposed PCRCP credits for executions in the MIAX Select Symbols versus non-MIAX Select Symbols for complex orders, and thus the per contract credit for complex orders will be the same for transactions involving complex orders in both MIAX Select Symbols and non-MIAX Select Symbols.

The Exchange is not proposing to establish at this time a price improvement mechanism for complex orders, such as the Exchange has for simple orders, known as MIAX PRIME.²⁵ Thus, the Exchange proposes to amend the narrative portion of Section 1)a)iii) to state that, for each Priority Customer order submitted into a PRIME auction as a PRIME agency simple order, MIAX shall credit each Member at the separate per contract rate for PRIME agency simple orders; however, no rebates will be paid if the PRIME agency simple order executes against a contra-side order which is also a Priority Customer. The purpose of this proposed amendment is to explicitly state that these provisions apply only to simple orders, and not to complex orders.

The Exchange currently credits each MIAX “Qualifying Member”²⁶ \$0.03 per contract (except exclusions²⁷) resulting from each Priority Customer order that falls within the PCRCP

Schedule note 14.

²⁵ The MIAX Price Improvement Mechanism (“PRIME”) is a process by which a Member may electronically submit for execution (“Auction”) an order it represents as agent (“Agency Order”) against principal interest. See Exchange Rule 515A.

²⁶ A “Qualifying Member” is a Member or its Affiliate that qualifies for the Professional Rebate Program and achieves a volume increase in excess of 0.065% for Professional orders transmitted by that Member which are executed electronically on the Exchange in all multiply-listed option classes for the account(s) of a Professional and which qualify for the Professional Rebate Program during a particular month relative to the applicable Baseline Percentage (as defined under the Professional Rebate Program).

²⁷ MIAX excludes contracts executed as part of QCC Orders, mini-options, Priority Customer-to-Priority Customer Orders, PRIME Agency Orders, PRIME AOC

volume Tier 1, as set forth below. The Exchange believes that it is appropriate to extend this credit to complex orders. Thus, the Exchange proposes to amend the narrative portion of Section 1)a)iii) to state that such credits will apply to both simple and complex order executions.

The revised PCRП table proposed by the Exchange will be as follows:

Origin	Tier	Percentage Thresholds of National Customer Volume in Multiply-Listed Options Classes Listed on MIAХ (Monthly)	Per Contract Credit for <u>Simple Orders in non-MIAХ Select Symbols</u>	Per Contract Credit for <u>Simple Orders in MIAХ Select Symbols</u>	Per Contract Credit for <u>PRIME Agency Order</u>	<u>Per Contract Credit for Complex Orders</u>
<i>Priority Customer</i>	1	0.00% - 0.50%	\$0.00	\$0.00	\$0.10	<u>\$0.00</u>
	2	Above 0.50% - 1.20%	\$0.10	\$0.10	\$0.10	<u>\$0.21</u>
	3	Above 1.20% - 1.75%	\$0.15	\$0.20	\$0.10	<u>\$0.24</u>
	4	Above 1.75%	\$0.21	\$0.24	\$0.10	<u>\$0.25</u>

Professional Rebate Program

Under the Professional Rebate Program (“PRP”), the Exchange credits each Member the per contract amount listed in the table below 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-MIAХ Market Maker; (iii) non-Member Broker-Dealer; or (iv) Firm (for purposes of the Professional Rebate Program, “Professionals”). The Exchange proposes to

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 Plan referenced in MIAХ Rule 1400 from this credit. See Fee Schedule Section 1)a)iii.

amend Section 1)a)iv) of the Fee Schedule to include per contract credits for complex orders in the Exchange's PRP.

The PRP affords a per contract credit 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 Contracts²⁸) 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 Exchange proposes to use the same volume tier thresholds for complex orders that it currently uses for simple orders, and proposes the following per contract credits to Public Customers that are not a Priority Customer, or are a non-MIAX market maker, non-Member broker-dealer, or Firm: (i) \$0.03 per contract for contracts executed in Tier 1; (ii) \$0.05 per contract for contracts executed in Tier 2; and (iii) \$0.07 per contract for contracts executed in Tier 3. The current credits for contracts that are part of simple orders will remain unchanged, and the amended table in Section 1)a)iv) will include separate columns, one indicating the credits applicable to contracts from simple orders, and the other indicating the credits applicable to contracts from complex orders. Additionally, proposed amended Section 1)a)iv) will include a clarifying statement that volume for transactions in both

²⁸ Excluded Contracts are any contracts executed as 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.

simple and complex orders will be aggregated to determine the appropriate volume tier threshold applicable to each transaction.

The revised PRP table proposed by the Exchange will be as follows:

Professional Rebate Program

Type of Market Participants Eligible for Rebate	Tier	Percentage Thresholds of Volume Increase in Multiply-Listed Options (except Excluded Contracts) for the Current Month Compared to Fourth Quarter 2015	Per Contract Credit (except Excluded Contracts) for Simple Orders	Per Contract Credit (except Excluded Contracts) for Complex Orders
<i>Public Customer that is Not a Priority Customer</i>	1	Above 0.00% - 0.005%	\$0.10	<u>\$0.03</u>
<i>Non-MIAX Market Maker</i>	2	Above 0.005% - 0.020%	\$0.15	<u>\$0.05</u>
<i>Non-Member Broker-Dealer Firm</i>	3	Above 0.020%	\$0.20	<u>\$0.07</u>

Marketing Fee

Section 1)b) of the Fee Schedule describes Marketing Fees assessed on all Market Makers for contracts, including mini options, they execute in their assigned classes when the contra-party to the execution is a Priority Customer. The current Marketing Fees are: (i) \$0.70 per contract for transactions in standard option classes (\$0.070 per contract for transactions in mini options) that are not penny option classes; and (ii) \$0.25 per contract for transactions in standard option classes (\$0.025 per contract for transactions in mini options) that are penny option classes. The Exchange proposes to amend Section 1)b) to state that the Marketing Fee applies to contracts in simple and complex order executions, and that the Marketing Fee in complex order executions will be assessed per contract whether the transaction executes in the

Strategy Book, a Complex Auction, or by Legging into the simple order book (i.e., regardless of how the complex contracts are executed).²⁹

The Exchange is not proposing to extend the Posted Liquidity Marketing Fee to contracts executed from complex orders. Currently, for transactions that occur on or after September 1, 2016 and extending through October 31, 2016, MIAX assesses an additional \$0.12 per contract Posted Liquidity Marketing Fee to all Market Makers for any standard options overlying EEM, GLD, IWM, QQQ and SPY that Market Makers execute in their assigned class when the counterparty to the execution is a Priority Customer and the Priority Customer order was posted on the MIAX order book at the time of the execution. The Exchange proposes to amend Section 1)b) to state that the Posted Liquidity Marketing Fee applies only to contracts from simple order executions. The revised Marketing Fee table proposed by the Exchange will be as follows:

²⁹ For a discussion of these types of executions, see Securities Exchange Act Release No. 78620 (August 18, 2016), 81 FR 58770 (August 25, 2016)(SR-MIAX-2016-26).

Amount of Marketing Fee Assessed	Option Classes
\$0.70 (per contract)	<u>Simple and complex order t[T]ransactions</u> in Standard Option Classes that are not in the Penny Pilot Program
\$0.25³⁰ (per contract)	<u>Simple and complex order t[T]ransactions</u> in Standard Option Classes that are in the Penny Pilot Program (a List of those Standard Option Classes in the Penny Pilot Program is available on the MIAX Website)
\$0.070 (per contract)	<u>Simple and complex order t[T]ransactions</u> in Mini Options where the corresponding Standard Option is not in the Penny Pilot Program
\$0.025 (per contract)	<u>Simple and complex order t[T]ransactions</u> in Mini Options where the corresponding Standard Option is in the Penny Pilot Program (a List of those Standard Option Classes in the Penny Pilot Program is available on the MIAX Website)

All other aspects of the Marketing Fee program of the Exchange will remain unchanged.

The proposed rule changes are scheduled to become operative October 24, 2016

2. Statutory Basis

MIAX believes that its proposed rule change is consistent with Section 6(b) of the Act³¹ in general, and in particular, furthers the objectives of Section 6(b)(4) of the Act,³² 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,³³ in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,

³⁰ Extending through October 31, 2016, the Exchange will assess an additional \$0.12 per contract Posted Liquidity Marketing Fee to all Market Makers for any simple orders in standard options overlying EEM, GLD, IWM, QQQ, and SPY that Market Makers execute in their assigned class when the contra-party to the execution is a Priority Customer and the Priority Customer order was posted on the MIAX Book at the time of the execution.

³¹ 15 U.S.C. 78f(b).

³² 15 U.S.C. 78f(b)(4).

³³ 15 U.S.C. 78f(b)(1) and (b)(5).

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 similarly situated market participants are subject to the same fee and rebate structure for complex order transactions, and access to the Exchange is offered on terms that are not unfairly discriminatory. The inclusion of the number of contracts executed in both simple and complex orders in the calculation of the Market Maker's monthly percentage threshold in Section 1)a)i) is reasonable, equitable and not unfairly discriminatory because it provides a direct and equal fee benefit to Market Makers that trade complex orders. All complex order volume executed will count towards the monthly percentage thresholds required to receive the enumerated discounts in both simple and complex transactions, thus benefiting all Market Makers equally. Furthermore, it should encourage Market Makers to provide liquidity in complex orders on the Exchange because their executed volume in complex orders will enhance their ability to achieve discounted per contract transaction fees in transactions involving both simple and complex orders, thus functioning to remove impediments to and perfect the mechanisms of a free and open market and a national market system.

The Exchange's proposal to assess per contract transaction fees to MIAX Market Makers for complex orders in penny option classes and non-penny option classes is reasonable and not unfairly discriminatory because it enhances the ability of Market Makers to achieve volume levels that qualify them for fees in the higher tiers, and equally rewards all Market Makers that achieve the tiers that include even further discounted per contract transaction fees. The amount of the fees in the tiers for complex orders are very similar to the amount of the fees in the tiers

for simple orders, therefore the Exchange believes that fee amounts are reasonable and appropriate.

The Exchange's proposal to assess the same fees for simple and complex orders to other market participants (listed in Section 1)a)ii of the Fee Schedule) for complex orders is reasonable and not unfairly discriminatory because the fees apply equally to all similarly situated market participants. Just as with the current fees assessed for simple orders in Section 1)a)ii, the PCRP tier discounts will not apply to these participants because Market Makers, who qualify for the discounts, have quoting and other obligations that the listed other market participants do not have and the Exchange believes that the PCRP tier discounts are thus equitable and not unfairly discriminatory.³⁴

The Exchange believes that it is reasonable and not unfairly discriminatory to offer discounted fees to Market Makers in simple orders if they fall within PCRP volume Tier 3 or higher, while not discounting the per contract fees for complex orders regardless of their PCRP Tier level. While the Exchange has the ability to justify and determine the level of incentives with respect to simple orders, the Exchange believes it would be premature to offer additional incentives and rewards to Market Makers above what the Exchange is offering until Market Makers actually use the new and value-added complex order functionality. The Exchange will better be able to determine if additional incentives or rewards are warranted, and if so at what level, once Market Makers begin using the new functionality and have established a performance baseline for complex orders.

The Exchange's proposal to offer certain credits for complex order transactions under the PCRP and the PRP and to include contracts executed from both simple and complex transactions

³⁴ See supra note 20.

in the calculation of the various percentage volume thresholds is intended to encourage participants 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 Exchange notes that the proposed per contract credits for the PCRP are higher for complex orders than they are for simple orders, and the per contract credits for the PRP are lower for complex orders than they are for simple orders. The Exchange believes that this is equitable and reasonable because the nature of the two rebate programs (PCR and PRP) is fundamentally different in structure and purpose.

On the one hand, the PCRP rewards executed Priority Customer volume from “contract-one.”³⁵ This structure is designed to enable the Exchange to compete with the multitude of Priority Customer payment programs, such as maker-taker rebates and payment for order flow programs that are established in the industry. By offering an aggressive incentive for Priority Customer volume beginning on day one, the Exchange believes it can best compete for order flow in complex orders as soon as they become available on the Exchange.

On the other hand, the PRP credit is aimed at Professional volume executed on the Exchange on an incremental basis. The PRP credit is based on a volume increase above and beyond an established baseline. Because the trading of complex orders on the Exchange represents new functionality and new volume to the Exchange, all complex order volume executed on the Exchange is by its nature incremental. As such, the Exchange believes it is not

³⁵ The Priority Customer rebate payment will be calculated from the first executed contract at the applicable threshold per contract credit with rebate payments made at the highest achieved volume tier for each contract traded in that month. See Fee Schedule, Section 1)a)iii.

necessary to provide rewards at the same level to Professional complex orders that it provides for Professional simple orders.

The Exchange's proposal to establish and assess a surcharge of \$0.08 per contract for Market Makers and other participants for removing liquidity by trading against a Priority Customer order on the Strategy Book is consistent with Section 6(b)(4) of the Act³⁶ because it applies equally to all participants that remove Priority Customer liquidity from the Strategy Book, and does not apply to participants whose orders or quotes resting on the Strategy Book are executed against Priority Customer complex orders on the Strategy Book. This incentive for providing resting liquidity applies to all participants. Assessing the surcharge to market participants who take liquidity from Priority Customers is reasonable and not unfairly discriminatory because it will provide MIAX Market Makers with equal surcharges for removing liquidity, and no surcharge for resting liquidity. As stated above, this is substantially similar to a surcharge assessed on another exchange.³⁷ The Exchange notes that, although its base fee is slightly higher (with a similar complex fee approach), the Exchange believes that this is fair and equitable because the Exchange offers technology with unique risk mitigation features not available elsewhere, such as the Implied Away Best Bid or Offer ("ixABBO") Price Protection. See Exchange Rule 518.05(d).

The Exchange's proposal to assess the \$.08 surcharge is also consistent with Section 6(b)(5) of the Act³⁸ because it perfects the mechanisms of a free and open market and a national market system and protect investors and the public interest by encouraging participants to provide liquidity on the Strategy Book, which the Exchange believes is an important competitive

³⁶ 15 U.S.C. 78f(b)(4).

³⁷ See supra note 16.

³⁸ 15 U.S.C. 78f(b)(1) and (b)(5).

tool that directly or indirectly can provide better prices for investors. The proposed fee structure may narrow the MIAX Bid and Offer (“MBBO”) because not charging the \$0.08 surcharge to participants with resting liquidity on the Strategy Book effectively subsidizes, and thus encourages, the posting of liquidity on MIAX. Giving greater incentive for Market Makers to either match or improve upon the best price displayed on MIAX benefits investors and the public by improving execution prices.

Non-Priority Customers, non-MIAX Market Makers, broker-dealers and Firms that use sophisticated trading systems will be able to remove liquidity quickly from the Strategy Book, and thus the Exchange believes that assessing the surcharge to participants who remove liquidity, and not assessing the surcharge to participants with complex orders resting on the Strategy Book is reasonable and not unfairly discriminatory. Moreover, the proposed surcharge is substantially similar to the surcharge on CBOE,³⁹ and has been accepted as not unfairly discriminatory under the Act.⁴⁰ The Exchange believes for these reasons that the surcharge is equitable, reasonable and not unfairly discriminatory, and thus consistent with the Act.

The proposed assessment of the Marketing Fee for all complex order transactions that are executed by a Market Maker in their assigned classes when the contra-party to the trade is a Priority Customer is equitable and not unfairly discriminatory because the fee will apply equally to all Market Makers in their assigned classes. Further, the assessment of a Marketing Fee for

³⁹ See supra notes 16, 37.

⁴⁰ See CBOE Fees Schedule Complex Taker Fee, (describing a per contract, per side surcharge at note 35); see also International Securities Exchange (“ISE”) Schedule of Fees, Section II. ISE’s fee structure does not include a specific “taker surcharge” in the same manner as CBOE (and which is also proposed by the Exchange) but instead includes a higher taker fee for complex transactions that remove liquidity from the complex order book.

complex transactions is a common practice of other exchanges.⁴¹ Attracting more order flow to the Exchange will bring greater volume and liquidity which in turn benefits all market participants by providing more trading opportunities and tighter spreads.

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 fee structure for complex order transactions is intended to promote narrower spreads and greater liquidity at the best prices. The fee-based incentives for market participants to provide liquidity by submitting complex orders to the Exchange, and thereafter to improve the MBBO to ensure participation, should enable the Exchange to attract order flow and compete with other exchanges which also provide such incentives to their market participants for similar transactions.⁴²

The Exchange believes that increased complex order flow will bring greater volume and liquidity which in turn benefits all market participants by providing more trading opportunities and tighter spreads. Therefore, any potential effects that the adoption of the complex transaction fees may have on intra-market competition are justifiable due to the reasons stated above.

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

⁴¹ See CBOE Fees Schedule, p. 4; see also Phlx Pricing Schedule, Section II.

⁴² See, e.g., Phlx Pricing Schedule, Section B (Customer Rebate Program).

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,⁴³ and Rule 19b-4(f)(2)⁴⁴ 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:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-MIAX-2016-38 on the subject line.

⁴³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴⁴ 17 CFR 240.19b-4(f)(2).

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-2016-38. 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 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-2016-38, 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.⁴⁵

Brent J. Fields
Secretary

⁴⁵ 17 CFR 200.30-3(a)(12).

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