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SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-79983; File No. SR-MIAX-2017-02)

February 7, 2017

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by Miami International Securities Exchange LLC to Amend Its Fee Schedule to Modify Its Market Maker and Other Market Participant Transaction Fees

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, 2017, Miami International Securities Exchange LLC (“MIAX Options” 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/rule-filings>, 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule to increase the per contract surcharge assessed for transactions by all market participants, except for Priority Customers<sup>3</sup>, which remove liquidity against a resting Priority Customer complex order<sup>4</sup> on the strategy book for standard option classes in the Penny Pilot Program<sup>5</sup> (“Penny classes”) and for standard option classes which are not in the Penny Pilot Program (“Non-Penny classes”).

Market Maker Transaction Fees

Section 1)a)i) of the Fee Schedule sets forth the Exchange’s Market Maker<sup>6</sup> Transaction Fees (the “Sliding Scale”). The Exchange assesses a per contract transaction fee on a Market

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<sup>3</sup> “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 accounts(s). See Exchange Rule 100.

<sup>4</sup> 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).

<sup>5</sup> See Securities Exchange Act Release Nos. 78080 (June 15, 2016), 81 FR 40377 (June 21, 2016)(SR-MIAX-2016-16); 79432 (November 30, 2016), 81 FR 87990 (December 6, 2016)(SR-MIAX-2016-45).

<sup>6</sup> The term “Market Makers” refers to Lead Market Makers (“LMMs”), Primary Lead Market Makers (“PLMMs”), and Registered Market Makers (“RMMs”) collectively. See

Maker for the execution of simple orders and quotes and complex orders. The amount of the transaction fee is based on the Market Maker's percentage of total national market maker volume that trades on the Exchange during a particular calendar month and the Exchange aggregates the volume executed by the Members in both simple orders and quotes and complex orders for purposes of determining the applicable tier and corresponding per contract transaction fee amount.<sup>7</sup> In addition, the amount of the transaction fee is also based on which tier the Members and their affiliates reach in the Priority Customer Rebate Program. Members who reach Tier 3 or higher are charged a different set of rates than those who don't for simple orders and quotes and complex orders. The transaction fees are assessable to all Market Makers for transactions in all products (except for mini-options, for which there are separate product fees), in both Penny classes and Non-Penny classes.

Additionally, the Exchange assesses one per contract fee for complex orders in each tier for Penny classes, and one per contract fee for complex orders in Non-Penny classes, with a surcharge for removing liquidity in a specific scenario, as described below. For simple orders and quotes, the Sliding Scale assesses a per contract transaction fee, which is based upon whether the Market Maker is a "maker" or a "taker."<sup>8</sup> As an incentive for Market Makers to provide liquidity on the Exchange, the Exchange's "maker" fees are lower than the "taker" fees.

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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.

<sup>7</sup> 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).

<sup>8</sup> See Securities Exchange Act Release Nos. 78519 (August 9, 2016), 81 FR 54162 (August 15, 2016)(SR-MIAX-2016-21); 79157 (October 26, 2016), 81 FR 75885 (November 1, 2016 (SR-MIAX-2016-38).

The Exchange does not distinguish between a “maker” and a “taker” for complex order executions as it does in the traditional construct for simple orders and quotes and instead assesses the per contract transaction fee for all executions and 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<sup>9</sup> (each a “Taker Surcharge”). The purpose of the Taker 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. The Exchange believes that assessing the Taker Surcharge only on participants removing liquidity effectively subsidizes, and thus encourages the posting of liquidity, which benefits investors and the public in the form of a deeper, more liquid marketplace. This Taker Surcharge is substantially similar in structure and amount to a CBOE surcharge of the same type.<sup>10</sup>

The Exchange proposes to increase the Taker Surcharge assessable to Market Makers from \$0.08 to \$0.10. The increase in the Taker Surcharge is similar to the increase that was recently made by CBOE with regard to its taker surcharge.<sup>11</sup>

#### Other Market Participant Transaction Fees

Section 1)a)ii) of the Fee Schedule sets forth transaction fees for Other Market Participants, including Priority Customers, Public Customers<sup>12</sup> that are not Priority Customers,

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<sup>9</sup> The “Strategy Book” is the Exchange’s electronic book of complex orders and complex quotes. See Exchange Rule 518(a)(17).

<sup>10</sup> See CBOE Fees Schedule, Complex Taker Fee, and note 35.

<sup>11</sup> See SR-CBOE-2017-008, filed on January 17, 2017, posted on the CBOE website ([www.cboe.com](http://www.cboe.com)).

<sup>12</sup> The term “Public Customer” means a person that is not a broker or dealer in securities. See Exchange Rule 100.

non-MIAX Options Market Makers, non-Member Broker-Dealers, and Firms<sup>13</sup>. The Exchange currently assesses on these market participants, except for Priority Customers, a per contract transaction fee for simple and complex order executions. The transaction fees apply to the listed participants for transactions in all products (except mini-options, for which there are separate product fees), with fees established for Penny classes and separate fees for Non-Penny classes.

The Exchange also assesses the same \$0.08 per contract Taker Surcharge that it assesses on Market Makers for removing liquidity against a resting Priority Customer on the Strategy Book on the above-indicated other market participants, specifically: (i) Public Customers that are not Priority Customers; (ii) non-MIAX Options Market Makers; (iii) non-Member Broker-Dealers; and (iv) Firms.

The Exchange proposes to also increase the \$0.08 per contract Taker Surcharge assessable to all of the other market participants indicated above to \$0.10 per contract. As stated above, the Exchange believes that assessing the Take Surcharge only on participants removing liquidity effectively subsidizes, and thus encourages the posting of liquidity, which benefits investors and the public in the form of a deeper, more liquid marketplace.

All other aspects of the transaction fees assessable to Market Makers and to the other indicated market participants other than Priority Customers by the Exchange will remain unchanged. Transaction fees for Priority Customers will remain unchanged. The proposed rule changes are scheduled to become operative February 1, 2017.

## 2. Statutory Basis

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<sup>13</sup> 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.

The Exchange believes that its proposal to amend its fee schedule is consistent with Section 6(b) of the Act<sup>14</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>15</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>16</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 Exchange's proposal to increase the Taker Surcharge 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 Act<sup>17</sup> 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. Assessing the Taker Surcharge to market participants who take liquidity from Priority Customers is reasonable and not unfairly discriminatory because it will provide MIAX Options Market Makers and other participants 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.<sup>18</sup> The Exchange notes that, although this represents a slight fee increase, the Exchange believes that this increase is fair

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

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

<sup>16</sup> 15 U.S.C. 78f(b)(1) [sic] and (b)(5).

<sup>17</sup> 15 U.S.C. 78f(b)(4).

<sup>18</sup> See supra notes 10 and 11.

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, and the increase will help offset the credits given to complex orders under the Exchange’s Priority Customer Rebate Program (“PCRP”)<sup>19</sup> and the Professional Rebate Program (“PRP”).<sup>20</sup>

The Exchange’s proposal to increase the Taker Surcharge is also consistent with Section 6(b)(5) of the Act<sup>21</sup> 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 tool that directly or indirectly can provide better prices for investors. The Exchange believes that assessing the Taker Surcharge only on participants removing liquidity effectively subsidizes, and

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<sup>19</sup> Under the PCRP, MIAX Options 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, in simple or complex as applicable, 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).

<sup>20</sup> Under the PRP, MIAX Options credits each Member the per contract amount resulting from contracts executed from an order submitted by that 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, in simple or complex as applicable, 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), provided the Member achieves certain Professional volume increase percentage thresholds in the month relative to the fourth quarter of 2015, as described in the table above [sic]. See Fee Schedule, Section (1)(a)(iv).

<sup>21</sup> 15 U.S.C. 78f(b)(1) [sic] and (b)(5).

thus encourages the posting of liquidity, which benefits investors and the public in the form of a deeper, more liquid marketplace.

Public Customers that are not Priority Customers, non-MIAX Options Market Makers, non-Member Broker-Dealers and Firms that use sophisticated trading systems will be able to remove liquidity from the Strategy Book, and thus the Exchange believes that assessing the Taker Surcharge to participants who remove liquidity, and not assessing the Taker Surcharge to participants with complex orders resting on the Strategy Book, is reasonable and not unfairly discriminatory. Moreover, the proposed Taker Surcharge increase is substantially similar to the surcharge increase on CBOE<sup>22</sup>. The Exchange believes for these reasons that the Taker Surcharge for complex orders is equitable, reasonable and not unfairly discriminatory, and thus consistent with the Act.

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 increase in the Taker Surcharge for complex 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 thereby 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.

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

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<sup>22</sup> See supra notes 10 and 11.



and tighter spreads. Therefore, any potential effects that the increased Taker Surcharge for complex transactions 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 change reflects 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>23</sup> and Rule 19b-4(f)(2)<sup>24</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>23</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>24</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-2017-02 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-2017-02. 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-2017-02, 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>25</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>25</sup> 17 CFR 200.30-3(a)(12).

