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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-82740; File No. SR-MIAX-2018-04]

### **Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Its Fee Schedule**

February 20, 2018.

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 February 9, 2018, Miami International Securities Exchange, LLC (“MIAX” or “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 (“Fee Schedule”) to change the application of a fee waiver relating to certain market data feed products.

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

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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 to change the application of a fee waiver relating to certain market data feed products offered by the Exchange – namely, the Exchange's Administrative Information Subscriber ("AIS") market data feed, and the Exchange's Complex Top of Market ("cToM") market data feed.

When the Exchange first launched trading in complex orders in October 2016, the Exchange began offering its cToM market data feed.<sup>3</sup> The cToM market data feed is complex order specific and is available to those who wish to subscribe to it. cToM provides subscribers with the same information as the ToM market data product (for the simple market), but it relates to the complex market of orders on the Strategy Book (i.e., the Exchange's best bid and offer for a complex strategy, known as the "cMBBO," with aggregate size, based on displayable order and quoting interest in the complex strategy on the Exchange).<sup>4</sup> Additionally, cToM provides subscribers with the identification of the complex strategies currently trading on MIAX Options; complex strategy last sale information; and the status of securities underlying the complex

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<sup>3</sup> See Securities Exchange Act Release No. 79146 (October 24, 2016), 81 FR 75171 (October 28, 2016) (SR-MIAX-2016-36).

<sup>4</sup> For a complete description of ToM, see Securities Exchange Act Release No. 69007 (February 28, 2013), 78 FR 14617 (March 6, 2013) (SR-MIAX-2013-05).

strategy (e.g., halted, open, or resumed). Since the launch of complex orders on the Exchange and the availability of cToM, and continuing through the present time, the Exchange has made the cToM market data feed available to subscribers free of charge.

The Exchange began offering its AIS market data feed product in April 2013.<sup>5</sup> The AIS market data feed currently includes administrative information for both simple and complex orders. The AIS market data feed includes, among other information, opening imbalance condition information; opening routing information; expanded quote range information; post-halt notification; and liquidity refresh condition information. The Exchange assesses a monthly fee of \$1,250.00 for all AIS Internal Distributors and a monthly fee of \$1,750.00 for all AIS External Distributors. However, the monthly fee for Distributors of AIS is waived if the Distributor also subscribes to ToM or cToM. Presently, the Exchange assesses a monthly fee of \$1,250.00 for ToM Internal Distributors and a monthly fee of \$1,750.00 for ToM External Distributors. As stated previously, the Exchange does not presently assess any fee on Internal or External Distributors of cToM.

As a result of the AIS fee waiver provision, a subscriber who only subscribes to AIS will be charged the AIS monthly fee (\$1,250.00 for Internal Distributors and \$1,750.00 for External Distributors). A subscriber who subscribes to both ToM and AIS will be charged the ToM monthly fee (\$1,250.00 for Internal Distributors and \$1,750.00 for External Distributors). However, a subscriber who subscribes to both cToM and AIS will be charged no fees.

The Exchange did not intend for subscribers to receive the AIS feed for free as a result of receiving the cToM feed for free. Thus, until such time as the Exchange adopts a fee for cToM,

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<sup>5</sup> See Securities Exchange Act Release No. 69320 (April 5, 2013), 78 FR 21661 (April 11, 2013) (SR-MIAX-2013-13).

the Exchange proposes to eliminate the fee waiver for subscribers to receive the AIS feed for free solely by receiving the cToM feed.

The Exchange is not proposing to modify any other aspect of either the AIS market data feed product or the cToM market data feed product. The Exchange is solely eliminating the fee waiver for a subscriber of cToM, which is currently free, to also receive a subscription to AIS for free. Accordingly, effective with this change, a subscriber who wishes to subscribe to both cToM and AIS will be charged the AIS monthly fee (\$1,250.00 for Internal Distributors and \$1,750.00 for External Distributors).

The Exchange initially filed the proposal on January 30, 2018 (SR-MIAX-2018-03). That filing was withdrawn and replaced with the current filing (SR-MIAX-2018-04).

## 2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b)<sup>6</sup> of the Act in general, and furthers the objectives of Section 6(b)(4)<sup>7</sup> of the Act, in that it is designed to provide for an equitable allocation of reasonable dues, fees and other charges among Exchange Members<sup>8</sup> and other persons using its facilities, because it applies equally to all Members and any persons using the facilities or services of the Exchange. The Exchange also believes that the proposal furthers the objectives of Section 6(b)(5)<sup>9</sup> of the Act in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with

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

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

<sup>8</sup> 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.

<sup>9</sup> 15 U.S.C. 78f(b)(5).

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, and it is not designed to permit unfair discrimination among customers, brokers, or dealers.

The Exchange believes that the proposed amendment to the application of a fee waiver relating to certain market data feed products offered by the Exchange – namely, the Exchange’s AIS market data feed, and the Exchange’s cToM market data feed – is reasonable, equitable, and not unfairly discriminatory. The proposal to eliminate the ability of a subscriber to subscribe to cToM (for free), to also subscribe to the AIS feed (for free), is designed to promote just and equitable principles of trade by providing MIAX Options participants with access to the same market data products with a reasonably designed fee structure and fee incentives. Because there is no charge to subscribe to the cToM market data feed, the Exchange believes that a subscription to cToM should not entitle a subscriber to receive for free, another market data feed product which, when subscribed to without the cToM market data feed, is fee liable. Furthermore, the proposed changes to the application of the fee waiver are fair and equitable and not unreasonably discriminatory because they apply equally to all MIAX Options participants as the market data feeds are available for purchase for all MIAX Options participants, and access to such market data is offered on terms that are not unfairly discriminatory.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change would promote transparency by providing MIAX Options participants with access to the same market data products with a reasonably

designed fee structure and fee incentives. Because there is no charge to subscribe to the cToM market data feed, the Exchange believes that a subscription to cToM should not entitle a subscriber to receive for free, another market data feed product which, when subscribed to without the cToM market data feed, is fee liable. Additionally, respecting intra-market competition, the value-added features relating to complex orders in the [sic] either the AIS feed or the cToM market data product are available to all subscribers, thus providing all subscribers to the data products with an even playing field with respect to information and access to trade complex orders on MIAX Options. 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 and fee waivers to remain competitive with other exchanges and to attract 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>10</sup> and Rule 19b-4(f)(2)<sup>11</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

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

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](mailto:rule-comments@sec.gov). Please include File Number SR-MIAX-2018-04 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-2018-04. 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MIAX-2018-04 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>12</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

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

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