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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-87041; File No. SR-MIAX-2019-40]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Its Fee Schedule September 20, 2019.

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 September 10, 2019, 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 Exchange previously filed the proposal on August 30, 2019 (SR-MIAX-2019-39). That filing has been withdrawn and replaced with the current filing (SR-MIAX-2019-40).

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

¹ 15 U.S.C. 78s(b)(1).

² 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 the Fee Schedule to: (i) increase the Priority Customer Rebate Program (“PCRP”) per contract credit for Complex Orders³ assessable to Members and Affiliates (defined below) who qualify for the volume thresholds in Tiers 1, 3 and 4 of the PCRP; (ii) adopt new Initiator rebates for QCC Orders (defined below) for any Public Customer⁴ that is not a Priority Customer,⁵ MIAX Market Maker⁶, non-MIAX Market Maker, non-Member

³ 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. Mini-options may only be part of a complex order that includes other mini-options. Only those complex orders in the classes designated by the Exchange and communicated to Members via Regulatory Circular with no more than the applicable number of legs, as determined by the Exchange on a class-by-class basis and communicated to Members via Regulatory Circular, are eligible for processing. A complex order can also be a “stock-option order” as described further, and subject to the limitations set forth, in Interpretations and Policies .01 of Exchange Rule 518. See Exchange Rule 518.

⁴ The term “Public Customer” means a person that is not a broker or dealer in securities. See Exchange Rule 100.

⁵ 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 accounts(s). See Exchange Rule 100.

Broker-Dealer, and Firm (collectively, for the purposes of this filing, “Professionals”) who is the Initiator of a QCC transaction and when the contra is an Origin other than Priority Customer; and (iii) adopt new Initiator rebates for cQCC Orders (defined below) for any Public Customer that is not a Priority Customer, MIAX Market Maker, non-MIAX Market Maker, non-Member Broker-Dealer, and Firm who is the Initiator of a cQCC transaction and when the contra is an Origin other than Priority Customer.

Background

Under the PCRP, the Priority Customer rebate payment is 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. The percentage thresholds are calculated based on the percentage of national customer volume in multiply-listed options classes listed on MIAX entered and executed over the course of the month (excluding QCC and cQCC Orders, Priority Customer-to-Priority Customer Orders, C2C and cC2C Orders, PRIME and cPRIME AOC Responses, PRIME and cPRIME Contra-side Orders, and PRIME and cPRIME Orders for which both the Agency and Contra-side Order are Priority Customers). Volume for transactions in both simple and complex orders are aggregated to determine the appropriate volume tier threshold applicable to each transaction. Volume is recorded for and credits are delivered to the Member that submits the order to MIAX. MIAX aggregates the contracts resulting from Priority Customer orders transmitted and executed electronically on MIAX from Members and Affiliates⁷ for purposes of the thresholds described in the PCRP table.

⁶ The term “Market Makers” refers to “Lead Market Makers”, “Primary Lead Market Makers” and “Registered Market Makers” collectively. See Exchange Rule 100.

⁷ For purposes of the MIAX Options Fee Schedule, the term “Affiliate” means (i) 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”), or (ii) the Appointed Market Maker

Currently, Members and Affiliates that qualify for the PCRP and execute Priority Customer non-paired complex volume receive the following rebates for Complex Orders: (i) \$0.00 per contract in Tier 1; (ii) \$0.21 per contract in Tier 2; (iii) \$0.24 per contract in Tier 3; and (iv) \$0.25 per contract in Tier 4.⁸

Next, a QCC Order is comprised of an order to buy or sell at least 1,000 contracts that is identified as being part of a qualified contingent trade, coupled with a contra side order to buy or sell an equal number of contracts.⁹ Currently, the Exchange provides an Initiator transaction rebate for all types of market participants of \$0.14 per contract for a QCC Order. The rebate is

of an Appointed EEM (or, conversely, the Appointed EEM of an Appointed Market Maker). An “Appointed Market Maker” is a MIAX Market Maker (who does not otherwise have a corporate affiliation based upon common ownership with an EEM) that has been appointed by an EEM and an “Appointed EEM” is an EEM (who does not otherwise have a corporate affiliation based upon common ownership with a MIAX Market Maker) that has been appointed by a MIAX Market Maker, pursuant to the following process. A MIAX Market Maker appoints an EEM and an EEM appoints a MIAX Market Maker, for the purposes of the Fee Schedule, by each completing and sending an executed Volume Aggregation Request Form by email to membership@miaxoptions.com no later than 2 business days prior to the first business day of the month in which the designation is to become effective. Transmittal of a validly completed and executed form to the Exchange along with the Exchange’s acknowledgement of the effective designation to each of the Market Maker and EEM will be viewed as acceptance of the appointment. The Exchange will only recognize one designation per Member. A Member may make a designation not more than once every 12 months (from the date of its most recent designation), which designation shall remain in effect unless or until the Exchange receives written notice submitted 2 business days prior to the first business day of the month from either Member indicating that the appointment has been terminated. Designations will become operative on the first business day of the effective month and may not be terminated prior to the end of the month. Execution data and reports will be provided to both parties. See Fee Schedule, note 1.

⁸ See Fee Schedule, Section 1)a)iii.

⁹ A Qualified Contingent Cross Order is comprised of an originating order to buy or sell at least 1,000 contracts, or 10,000 mini-option contracts, that is identified as being part of a qualified contingent trade, as that term is defined in Interpretation and Policy .01 to Rule 516, coupled with a contra-side order or orders totaling an equal number of contracts. See Exchange Rule 516(j); see also Fee Schedule, Section 1)a)vii.

paid to the Member¹⁰ that enters the QCC Order into the System¹¹, but is only paid on the initiating side of the QCC transaction. No rebates are paid for QCC transactions in which both the Initiator and contra-side orders are from Priority Customers. The Exchange notes that with regard to order entry, the first order submitted into the System is marked as the initiating side and the second order is marked as the contra side.

A cQCC Order is comprised of an initiating complex order to buy or sell where each component is at least 1,000 contracts that is identified as being part of a qualified contingent trade, coupled with a contra-side complex order or orders to sell or buy an equal number of contracts.¹² Currently, the Exchange provides an Initiator transaction rebate for all types of market participants of \$0.14 per contract for a cQCC Order. All fees and rebates are per contract per leg. Rebates are delivered to the Member that enters the order into the System, but are only paid on the initiating side of the cQCC transaction. However, no rebates are paid for cQCC transactions for which both the Initiator and contra-side orders are Priority Customers.

The Exchange notes that QCC and cQCC Orders are excluded from: (i) the volume threshold calculations for the Market Maker Sliding Scale; (ii) the rebates and volume calculations as part of the PCRP; (iii) participation in the Professional Rebate Program; and (iv)

¹⁰ 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.

¹¹ The term “System” means the automated trading system used by the Exchange for the trading of securities. See Exchange Rule 100.

¹² A Complex Qualified Contingent Cross or “cQCC” Order is comprised of an originating complex order to buy or sell where each component is at least 1,000 contracts that is identified as being part of a qualified contingent trade, as defined in Rule 516, Interpretation and Policy .01, coupled with a contra-side complex order or orders totaling an equal number of contracts. See Exchange Rule 518(b)(6); see also Fee Schedule, Section 1)a)viii.

the Marketing Fee that is assessed to Market Makers in their assigned classes in simple or complex order executions when the contra-party to the execution is a Priority Customer.

Proposed Changes

First, the Exchange proposes to amend Section 1)a)iii of the Fee Schedule to increase the PCRCP per contract credit for Complex Orders assessable to Members and Affiliates who qualify for the volume thresholds in Tiers 1, 3 and 4 of the PCRCP. The Exchange proposes to increase the PCRCP per contract credit for Complex Orders assessable to Members and Affiliates who qualify for the volume thresholds in Tier 1 of the PCRCP from the current \$0.00 per contract to the proposed \$0.20 per contract. The Exchange also proposes to increase the PCRCP per contract credit for Complex Orders assessable to Members and Affiliates who qualify for the volume thresholds in Tiers 3 and 4 of the PCRCP depending on whether (i) the executing buyer and seller are the same Member or are Affiliates or, (ii) the executing buyer and seller are not the same Member or are not Affiliates. The Exchange proposes to increase PCRCP per contract credit for Complex Orders assessable to Members and Affiliates who qualify for the volume threshold in Tier 3 of the PCRCP from the current \$0.24 per contract to: (i) the proposed \$0.26 per contract when the executing buyer and seller are the same Member or are Affiliates, or (ii) the proposed \$0.27 per contract when the executing buyer and seller are not the same Member or are not Affiliates. Similarly, the Exchange proposes to increase PCRCP per contract credit for Complex Orders assessable to Members and Affiliates who qualify for the volume threshold in Tier 4 of the PCRCP from the current \$0.25 per contract to: (i) the proposed \$0.27 per contract when the executing buyer and seller are the same Member or are Affiliates, or (ii) the proposed \$0.28 per contract when the executing buyer and seller are not the same Member or are not Affiliates.

In order to differentiate between the proposed increased Complex Order credits for Members and Affiliates who qualify for Tiers 3 and 4 in the PCRP, which are dependent upon whether the executing buyer and seller are the same Member or Affiliates, the Exchange proposes to insert two new symbols after the symbol “**”,¹³ immediately following the PCRP table of rebates in Section 1)a)iii of the Fee Schedule. In particular, the Exchange proposes to adopt new symbol “◆,” and the following explanatory sentence: “This rebate is for executed Priority Customer non-paired Complex Orders when the executing buyer and seller are the same Member or Affiliates.” The Exchange also proposes to adopt new symbol “■,” and the following explanatory sentence: “This rebate is for executed Priority Customer non-paired Complex Orders when the executing buyer and seller are not the same Member or Affiliates.” Accordingly, the Exchange proposes to insert each symbol following the proposed new increased credits for Members and Affiliates who qualify for Tiers 3 and 4 for Complex Orders in the PCRP, corresponding to the new proposed rebate in each Tier.

The Exchange believes the proposed changes to increase rebates for certain Tiers of the PCRP for Complex Orders will encourage market participants to submit more Priority Customer Complex Orders and therefore increase Priority Customer order flow, resulting in increased liquidity which benefits all Exchange participants by providing more trading opportunities and tighter spreads. The Exchange believes it is reasonable and appropriate to adopt a higher PCRP per contract credit for Complex Orders when the executing buyer and seller are not the same Member or Affiliates (versus when the executing buyer and seller are the same Member or Affiliates) since the Exchange already offers certain transaction fee discounts to Members and their Affiliates that aggregate their order flow on these types of transactions through various tier-

¹³ See Fee Schedule, Section 1)a)iii.

based pricing structures, such as in Section 1)a)i of the Fee Schedule for Market Maker transaction fees¹⁴ and in Section 1)a)ii of the Fee Schedule for Other Market Participants transaction fees.¹⁵ Accordingly, the Exchange believes it is reasonable, equitable, and not unfairly discriminatory to offer a higher PCR per contract credit for Complex Orders when the executing buyer and seller are not the same Members or Affiliates, as other fee discount programs currently exist for the same Members and Affiliates. The Exchange also notes that at least one other competing exchange similarly provides for different pricing dependent upon whether the executing buyer and seller are the same market participant or have some form of common ownership.¹⁶

¹⁴ See Fee Schedule, Section 1)a)i.

¹⁵ See Fee Schedule, Section 1)a)ii.

¹⁶ See Nasdaq Options Pricing Schedule, Options 7, Section 2(1), note 2 (Participants that add 1.30% of Customer, Professional, Firm, Broker-Dealer or Non-NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of total industry customer equity and ETF option ADV contracts per day in a month will be subject to the following pricing applicable to executions: a \$0.48 per contract Penny Pilot Options Fee for Removing Liquidity when the Participant is (i) both the buyer and the seller or (ii) the Participant removes liquidity from another Participant under Common Ownership. Participants that add 1.50% of Customer, Professional, Firm, Broker-Dealer or Non-NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of total industry customer equity and ETF option ADV contracts per day in a month and meet or exceed the cap for The Nasdaq Stock Market Opening Cross during the month will be subject to the following pricing applicable to executions less than 10,000 contracts: a \$0.32 per contract Penny Pilot Options Fee for Removing Liquidity when the Participant is (i) both the buyer and seller or (ii) the Participant removes liquidity from another Participant under Common Ownership. Participants that add 1.75% of Customer, Professional, Firm, Broker-Dealer or Non-NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of total industry customer equity and ETF option ADV contracts per day in a month will be subject to the following pricing applicable to executions less than 10,000 contracts: a \$0.32 per contract Penny Pilot Options Fee for Removing Liquidity when the Participant is (i) both the buyer and seller or (ii) the Participant removes liquidity from another Participant under Common Ownership.).

Next, the Exchange proposes to amend Section 1)a)vii of the Fee Schedule to adopt new Initiator rebates for QCC Orders for any Professional who is the Initiator of a QCC Order and when the contra is an Origin other than Priority Customer. In particular, the Exchange proposes to adopt a new Initiator rebate of \$0.27 per contract for a Public Customer that is not a Priority Customer who is the Initiator of a QCC Order and when the contra is an Origin other than Priority Customer. The Exchange also proposes to adopt a new Initiator rebate of \$0.22 per contract for a MIAX Market Maker, Non-MIAX Market Maker, non-Member Broker-Dealer and Firm that is the Initiator of a QCC Order and when the contra is an Origin other than Priority Customer. The Exchange notes that the current Initiator rebate of \$0.14 per contract will continue to apply when a Priority Customer is the Initiator of a QCC transaction. The Exchange notes that no rebates are paid for QCC transactions in which both the Initiator and contra-side orders are from Priority Customers. Pursuant to this proposal, the Exchange would add a new Initiator rebate column on the right side of the QCC transaction fees and rebates table in Section 1)a)vii of the Fee Schedule. With the proposed changes, the QCC transaction fees and rebates in Section 1)a)vii of the Fee Schedule would be as follows:

Types of Market Participants	QCC Order			
	Per Contract Fee for Initiator	Per Contract Fee for Contra-side	Per Contract Rebate for Initiator	Per Contract Rebate for Initiator when Contra is Origin Other than Priority Customer
<i>Priority Customer</i>	\$0.00	\$0.00	\$0.14	\$0.14
<i>Public Customer that is Not a Priority Customer</i>	\$0.15	\$0.17	\$0.14	\$0.27
<i>MIAX Market Maker</i>	\$0.15	\$0.17	\$0.14	\$0.22
<i>Non-MIAX Market Maker</i>	\$0.15	\$0.17	\$0.14	\$0.22
<i>Non-Member Broker-Dealer</i>	\$0.15	\$0.17	\$0.14	\$0.22
<i>Firm</i>	\$0.15	\$0.17	\$0.14	\$0.22

Rebates will be delivered to the Member firm that enters the order into the MIAX system, but will only be paid on the initiating side of the QCC transaction. However, no rebates will be paid for QCC transactions for which both the initiator and contra-side orders are Priority Customers. A QCC transaction is comprised of an ‘initiating order’ to buy (sell) at least 1000 contracts or 10,000 mini-option contracts, coupled with a contra-side order to sell (buy) an equal number of contracts. QCC orders comprised of mini-contracts will be assessed QCC fees and afforded rebates equal to 10% of the fees and rebates applicable to QCC Orders comprised of standard option contracts.

Next, the Exchange proposes to amend Section 1)a)viii of the Fee Schedule to adopt new Initiator rebates for cQCC Orders for any Professional who is the Initiator of a cQCC Order and when the contra is an Origin other than Priority Customer. In particular, the Exchange proposes to adopt a new Initiator rebate of \$0.27 per contract for a Public Customer that is not a Priority Customer who is the Initiator of a cQCC Order and when the contra is an Origin other than Priority Customer. The Exchange also proposes to adopt a new Initiator rebate of \$0.22 per contract for a MIAX Market Maker, non-MIAX Market Maker, non-Member Broker-Dealer and Firm that is the Initiator of a cQCC Order and when the contra is an Origin other than Priority

Customer. The Exchange notes that the current Initiator rebate of \$0.14 per contract will continue to apply when a Priority Customer is the Initiator of a cQCC transaction. The Exchange notes that no rebates are paid for cQCC transactions in which both the Initiator and contra-side orders are from Priority Customers. Pursuant to this proposal, the Exchange would add a new Initiator rebate column on the right side of the cQCC transaction fees and rebates table in Section 1)a)viii of the Fee Schedule. With the proposed changes, the cQCC transaction fees and rebates in Section 1)a)viii of the Fee Schedule would be as follows:

Types of Market Participants	cQCC Order			Per Contract Rebate for Initiator when Contra is Origin Other than Priority Customer
	Per Contract Fee for Initiator	Per Contract Fee for Contra-side	Per Contract Rebate for Initiator	
<i>Priority Customer</i>	\$0.00	\$0.00	\$0.14	\$0.14
<i>Public Customer that is Not a Priority Customer</i>	\$0.15	\$0.17	\$0.14	\$0.27
<i>MIAX Market Maker</i>	\$0.15	\$0.17	\$0.14	\$0.22
<i>Non-MIAX Market Maker</i>	\$0.15	\$0.17	\$0.14	\$0.22
<i>Non-Member Broker-Dealer</i>	\$0.15	\$0.17	\$0.14	\$0.22
<i>Firm</i>	\$0.15	\$0.17	\$0.14	\$0.22

All fees and rebates are per contract per leg. Rebates will be delivered to the Member firm that enters the order into the MIAX system, but will only be paid on the initiating side of the cQCC transaction. However, no rebates will be paid for cQCC transactions for which both the initiator and contra-side orders are Priority Customers. A cQCC transaction is comprised of an ‘initiating complex order’ to buy (sell) where each component is at least 1,000 contracts that is identified as being part of a qualified contingent trade, coupled with a contra-side complex order or orders to sell (buy) an equal number of contracts.

The purpose of adopting new Initiator rebates for QCC and cQCC Orders for any Professional who is the Initiator of a QCC or cQCC Order and when the contra is an Origin other

than Priority Customer is for business and competitive reasons. The Exchange has different net transaction revenues based on different combinations of Origins and Contra. For example, when Priority Customer is both the Initiator and Contra-side, no rebates are paid (for both QCC and cQCC transactions). This is in the Exchange's current Fee Schedule and in competitors' fee schedules as well. The Exchange notes that Priority Customers are generally assessed a \$0.00 transaction fee. Accordingly, the Exchange has made a business decision to adopt the proposed new Initiator rebates for QCC and cQCC Orders for Professionals when they are the Initiator of a QCC or cQCC Order and when they trade against an Origin other than Priority Customer, in order to increase competition and potentially attract different combinations of additional QCC and cQCC order flow to the Exchange. The Exchange believes that it is appropriate to adopt these new Initiator rebates in order to attract additional QCC and cQCC order flow and grow the Exchange's market share in this segment, through offering newly structured and higher rebates. The Exchange also believes it is appropriate to adopt higher Initiator rebates for QCC and cQCC Orders for Professionals when they trade against Origins other than Priority Customers, since Priority Customers are already incentivized by a reduced fee for submitting QCC and cQCC Orders. The Exchange also notes that other competing exchanges similarly provide rebates on QCC and cQCC initiating orders.¹⁷

¹⁷ See BOX Fee Schedule, Section I(D)(1) (a \$0.14 per contract rebate will be applied to the Agency Order where at least one party to the QCC transaction is a Non-Public Customer); see also Cboe Fee Schedule, "QCC Rate Table," Page 5 (a \$0.10 per contract credit will be delivered to the TPH Firm that enters the order into Cboe Command but will only be paid on the initiating side of the QCC transaction); see also NYSE American Options Fee Schedule, Section I.F (a \$0.07 credit is applied to Floor Brokers executing 300,000 or fewer contracts in a month and a \$0.10 credit is applied to Floor Brokers executing more than 300,000 contracts in a month); see also Nasdaq ISE Pricing Schedule, Options 7, Section 6, Other Options Fees and Rebate, A. QCC and Solicitation Rebate (rebates range from \$0.00 to \$0.11 per contract).

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and self-regulatory organization (“SRO”) revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹⁸ There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has exceeded approximately 15% of the market share of executed volume of multiply-listed equity and exchange-traded fund (“ETF”) options as of August 26, 2019, for the month of August 2019.¹⁹ Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, for all of July 2019, the Exchange had a total market share of 3.61% of all equity options and ETF volume.²⁰ The Exchange believes that the ever-shifting market shares among the exchanges from month to month demonstrates that market participants can shift order flow (as further described below), or discontinue or reduce use of certain categories of products, in response to transaction and non-transaction fee changes. For example, on March 1, 2019, the Exchange filed with the Commission an immediately effective filing to decrease certain credits assessable to Members pursuant to the PCRP.²¹ The Exchange

¹⁸ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

¹⁹ The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available at: <https://www.theocc.com/market-data/volume/default.jsp>.

²⁰ See id.

²¹ See Securities Exchange Act Release No. 85301 (March 13, 2019), 84 FR 10166 (March 19, 2019) (SR-MIAX-2019-09).

experienced a decrease in total market share between the months of February and March of 2019. Accordingly, the Exchange believes that the March 1, 2019 fee change may have contributed to the decrease in the Exchange's market share and, as such, the Exchange believes competitive forces constrain options exchange transaction and non-transaction fees.

The Exchange cannot predict with certainty whether any Priority Customers would avail themselves of the proposed fee changes to the PCRP, but the Exchange believes that approximately three Members have the potential to achieve the applicable Tier volume thresholds to receive the proposed increased Complex Order credits for Members in Tiers 3 or 4 of the PCRP. Similarly, the Exchange cannot predict with certainty whether any Professional Customer that is not a Priority Customer, MIAX Market Maker, non-MIAX Market Maker, non-Member Broker-Dealer or Firm will initiate a QCC or cQCC transaction to receive the proposed new Initiator rebates for those types of market participants of QCC or cQCC transactions when the contra is an Origin other than Priority Customer. The Exchange does not currently have any Members that are actively sending QCC or cQCC Orders to the Exchange on a regular basis. Therefore, no current Members will be impacted by this proposed change. However, this proposal is intended to encourage Members to start actively sending QCC or cQCC Orders to the Exchange on a regular basis.

The proposed rule change is immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act²² in general, and furthers the objectives of Section 6(b)(4) of the Act²³ in particular, in that it is an equitable allocation of reasonable fees and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes its proposal to increase the PCRP per contract credit for Complex Orders assessable to Members and Affiliates who qualify for the volume thresholds in Tiers 1, 3 and 4 of PCRP and adopt new Initiator rebates for QCC and cQCC Orders provides for the equitable allocation of reasonable dues and fees and is not unfairly discriminatory for the following reasons. First, the Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to

²² 15 U.S.C. 78f(b).

²³ 15 U.S.C. 78f(b)(4) and (5).

investors and listed companies.”²⁴ There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has exceeded approximately 15% of the market share of executed volume of multiply-listed equity and ETF options as of August 26, 2019, for the month of August 2019.²⁵ Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, for all of July 2019, the Exchange had a total market share of 3.61% for all equity options volume.²⁶

The Exchange also believes that the ever-shifting market shares among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to transaction and/or non-transaction fee changes. For example, on March 1, 2019, the Exchange filed with the Commission an immediately effective filing to decrease certain credits assessable to Members pursuant to the PCRP.²⁷ The Exchange experienced a decrease in total market share between the months of February and March of 2019. Accordingly, the Exchange believes that the March 1, 2019 fee change may have contributed to the decrease in the Exchange’s market share and, as such, the Exchange believes competitive forces constrain options exchange transaction and non-transaction fees and market participants can shift order flow based on fee changes instituted by the exchanges.

Second, the Exchange believes its proposal to increase the PCRP per contract credit for Complex Orders assessable to Members and Affiliates who qualify for the volume thresholds in

²⁴ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

²⁵ See supra note 19.

²⁶ See id.

²⁷ See supra note 21.

Tiers 1, 3 and 4 of PCRP and adopt new Initiator rebates for QCC and cQCC Orders is an equitable allocation of reasonable dues and fees pursuant to Section 6(b)(4) of the Act²⁸ because the proposed changes are designed to incentivize overall Priority Customer and QCC and cQCC order flow, respectively. The Exchange believes that with the proposed changes, providers of Priority Customer or QCC and cQCC order flow will be incentivized to send that order flow to the Exchange in order to obtain the highest volume threshold or Initiator rebate and receive credits in a manner that enables the Exchange to improve its overall competitiveness and strengthen its market quality for all market participants. The Exchange believes that increased Priority Customer or QCC and cQCC order flow will attract liquidity providers, which in turn should make the MIAX marketplace an attractive venue where Market Makers may submit narrow quotations with greater size, deepening and enhancing the quality of the MIAX marketplace. This should provide more trading opportunities and tighter spreads for other market participants and result in a corresponding increase in order flow from such other market participants.

The Exchange believes the proposal to adopt a higher PCRP per contract credit for Complex Orders when the executing buyer and seller are not the same Member or Affiliates (versus when the executing buyer and seller are the same Member or Affiliates) provides for the equitable allocation of reasonable dues and fees and is not unfairly discriminatory since the Exchange already offers certain transaction fee discounts to Members and their Affiliates that aggregate their order flow on these types of transactions through various tier-based pricing structures, such as in Section 1)a)i of the Fee Schedule for Market Maker transaction fees²⁹ and

²⁸ 15 U.S.C. 78f(b)(4).

²⁹ See supra note 14.

in Section 1)a)ii of the Fee Schedule for Other Market Participants transaction fees.³⁰

Accordingly, the Exchange believes it is reasonable, equitable, and not unfairly discriminatory to offer a higher PCRP per contract credit for Complex Orders when the executing buyer and seller are not the same Members or Affiliates, as other discount programs currently exist for the same Member and Affiliates.

The Exchange believes the proposal to adopt new Initiator rebates for QCC and cQCC Orders for any Professional who is the Initiator of a QCC or cQCC Order and when the contra is an Origin other than Priority Customer provides for the equitable allocation of reasonable dues and fees and is not unfairly discriminatory since the Exchange has different net transaction revenues based on different combinations of Origins and Contra. For example, when Priority Customer is both the Initiator and Contra-side, no rebates are paid (for both QCC and cQCC transactions). This is in the Exchange's current Fee Schedule and in competitors' fee schedules as well. The Exchange notes that Priority Customers are generally assessed a \$0.00 transaction fee. Accordingly, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to adopt the proposed new Initiator rebates for QCC and cQCC Orders for Professionals when they are the Initiator of a QCC or cQCC Order and when they trade against an Origin other than Priority Customer, in order to increase competition and potentially attract different combinations of additional QCC and cQCC order flow to the Exchange. The Exchange also believes it is reasonable, equitable, and not unfairly discriminatory to adopt higher Initiator rebates for QCC and cQCC Orders for Professionals when they trade against Origins other than Priority Customers, since Priority Customers are already incentivized by a reduced fee for submitting QCC and cQCC Orders.

³⁰ See supra note 15.

The Exchange believes that the proposed rule changes would be an equitable allocation of reasonable dues and fees and would not permit unfair discrimination between market participants. The Exchange cannot predict with certainty whether any Priority Customers would avail themselves of the proposed fee changes to the PCRP, but the Exchange believes that approximately three Members have the potential to achieve the applicable Tier volume thresholds to receive the proposed increased Complex Order credits for Members in Tiers 3 or 4 of the PCRP. Similarly, the Exchange cannot predict with certainty whether any Professional Customer that is not a Priority Customer, MIA X Market Maker, non-MIA X Market Maker, non-Member Broker-Dealer or Firm will initiate a QCC or cQCC transaction to receive the proposed new Initiator rebates for those types of market participants of QCC or cQCC transaction when the contra is an Origin other than Priority Customer. The Exchange does not currently have any Members that are actively sending QCC or cQCC Orders to the Exchange on a regular basis. Therefore, no current Members will be impacted by this proposed change. However, this proposal is intended to encourage Members to start actively sending QCC or cQCC Orders to the Exchange on a regular basis.

The Exchange also believes its proposal is consistent with Section 6(b)(5) of the Act³¹ and is designed to prevent fraudulent and manipulative acts and practices, promotes just and equitable principles of trade, fosters cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest; and is not designed to permit unfair discrimination. This is because the Exchange believes the proposed

³¹ 15 U.S.C. 78f(b)(1) and (b)(5).

changes will incentivize Priority Customer or QCC and cQCC order flow and an increase in such order flow will bring greater volume and liquidity, which benefits all market participants by providing more trading opportunities and tighter spreads. To the extent Priority Customer, QCC and cQCC order flow is increased by the proposal, market participants will increasingly compete for the opportunity to trade on the Exchange including sending more orders and providing narrower and larger-sized quotations in the effort to trade with such order flow.

Further, based on the current Tier volume thresholds achieved by the Exchange's Members and the potential changes going forward as a result of the proposed fee change to the PCRCP, the Exchange believes that the proposed increase to certain credit amounts for Complex Orders in the PCRCP may result in many Members receiving higher credit amounts per contract.

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

In accordance with Section 6(b)(8) of the Act,³² the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all market participants. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders.

Intra-Market Competition

The Exchange does not believe that other market participants at the Exchange would be placed at a relative disadvantage by the proposed changes to increase the PCRCP per contract

³² 15 U.S.C. 78f(b)(8).

credit for Complex Orders assessable to Members and Affiliates who qualify for the volume thresholds in Tiers 1, 3 and 4 of PCRP, or by the proposed adoption of the new Initiator rebates for QCC and cQCC Orders. The proposed changes are designed to attract additional order flow to the Exchange. Accordingly, the Exchange believes that increasing the PCRP per contract credit for Complex Orders assessable to Members and Affiliates who qualify for the volume thresholds in Tiers 1, 3 and 4 of PCRP and adopting new Initiator rebates for QCC and cQCC Orders will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act because it will continue to encourage Priority Customer or QCC and cQCC Order flow, which will bring greater volume and liquidity, thereby benefiting all market participants by providing more trading opportunities and tighter spreads.

Further, based on the current Tier volume thresholds achieved by the Exchange's Members and the potential changes going forward as a result of the proposed fee change to the PCRP, the Exchange believes that the proposed increase to certain credit amounts for Complex Orders in the PCRP may not result in any Member receiving a lower credit amount per contract, and may result in three Members receiving a higher credit amount per contract.

Inter-Market Competition

The Exchange 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. There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has exceeded approximately 15% of the market share of executed volume of multiply-listed equity and ETF options as of August 26, 2019, for the month of August 2019.³³ Therefore, no

³³ See supra note 19.

exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, for all of July 2019, the Exchange had a total market share of 3.61% for all equity options volume.³⁴ In such an environment, the Exchange must continually adjust its transaction and non-transaction fees to remain competitive with other exchanges and to attract order flow. The Exchange believes that the proposed rule changes reflect this competitive environment because they modify the Exchange's fees in a manner that encourages market participants to provide Priority Customer, QCC and cQCC liquidity and to send order flow to the Exchange. To the extent this is achieved, all the Exchange's market participants should benefit from the improved market quality.

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,³⁵ and Rule 19b-4(f)(2)³⁶ 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.

³⁴ See id.

³⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

³⁶ 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. Please include File Number SR-MIAX-2019-40 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-2019-40. 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 Web site (<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-2019-40 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.³⁷

Jill M. Peterson,

Assistant Secretary.

³⁷ 17 CFR 200.30-3(a)(12).

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