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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-89771; File No. SR-MIAX-2020-28]

### **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 4, 2020.

Pursuant to 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 August 25, 2020, 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

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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 the Fee Schedule to extend the cap waiver of 1,000 contracts per leg for complex PRIME (“cPRIME”)<sup>3</sup> Agency Order rebates for all tiers under the Priority Customer Rebate Program (“PCRP”)<sup>4</sup> until December 31, 2020.

Background

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<sup>3</sup> “cPRIME” is the process by which a Member may electronically submit a “cPRIME Order” (as defined in Rule 518(b)(7)) it represents as agent (a “cPRIME Agency Order”) against principal or solicited interest for execution (a “cPRIME Auction”), subject to the restrictions set forth in Exchange Rule 515A, Interpretation and Policy .12. See Exchange Rule 515A.

<sup>4</sup> Under the PCRP, 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, in simple or complex as applicable, QCC and cQCC Orders, mini-options, Priority Customer-to-Priority Customer Orders, C2C and cC2C Orders, PRIME and cPRIME AOC Responses, PRIME and cPRIME Contra-side Orders, PRIME and cPRIME 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 Exchange Rule 1400), provided the Member meets certain percentage thresholds in a month as described in the PCRP table. See Fee Schedule, Section 1)a)iii. “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). A “Priority Customer Order” means an order for the account of a Priority Customer. See Exchange Rule 100.

Exchange Rule 518(b)(7) defines a cPRIME Order as a type of complex order<sup>5</sup> that is submitted for participation in a cPRIME Auction and trading of cPRIME Orders is governed by Rule 515A, Interpretation and Policy .12.<sup>6</sup> cPRIME Orders are processed and executed in the Exchange’s PRIME mechanism, the same mechanism that the Exchange uses to process and execute simple PRIME orders, pursuant to Exchange Rule 515A.<sup>7</sup> PRIME is a process by which a Member may electronically submit for execution an order it represents as agent (an “Agency Order”) against principal interest and/or solicited interest. The Member that submits the Agency Order (“Initiating Member”) agrees to guarantee the execution of the Agency Order by submitting a contra-side order representing principal interest or solicited interest (“Contra-Side Order”). When the Exchange receives a properly designated Agency Order for Auction processing, a request for response (“RFR”) detailing the option, side, size and initiating price is broadcasted to MIAX participants up to an optional designated limit price. Members may submit responses to the RFR, which can be either an Auction or Cancel (“AOC”) order or an

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<sup>5</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. For a complete definition of a “complex order,” see Exchange Rule 518(a)(5). See also Securities Exchange Act Release No. 78620 (August 18, 2016), 81 FR 58770 (August 25, 2016) (SR-MIAX-2016-26).

<sup>6</sup> See Securities Exchange Act Release No. 81131 (July 12, 2017), 82 FR 32900 (July 18, 2017) (SR-MIAX-2017-19) (Order Granting Approval of a Proposed Rule Change to Amend MIAX Options Rules 515, Execution of Orders and Quotes; 515A, MIAX Price Improvement Mechanism (“PRIME”) and PRIME Solicitation Mechanism; and 518, Complex Orders).

<sup>7</sup> Id.

AOC eQuote. A cPRIME Auction is the price-improvement mechanism of the Exchange's System pursuant to which an Initiating Member electronically submits a complex Agency Order into a cPRIME Auction. The Initiating Member, in submitting an Agency Order, must be willing to either (i) cross the Agency Order at a single price against principal or solicited interest, or (ii) automatically match against principal or solicited interest, the price and size of a RFR that is broadcast to MIAX participants up to an optional designated limit price. Such responses are defined as cPRIME AOC Responses or cPRIME eQuotes. The PRIME mechanism is used for orders on the Exchange's Simple Order Book.<sup>8</sup> The cPRIME mechanism is used for Complex Orders<sup>9</sup> on the Exchange's Strategy Book,<sup>10</sup> with the cPRIME mechanism operating in the same manner for processing and execution of cPRIME Orders that is used for PRIME Orders on the Simple Order Book.

The Exchange proposes to amend footnote “\*” in Section 1)a)iii) of the Fee Schedule to extend the waiver of the contracts cap per leg for cPRIME Agency Order rebates for all tiers under the PCRFP until December 31, 2020. Prior to a rule filing by the Exchange (described below), the Exchange limited the cPRIME Agency Order Credit to be payable only to the first

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<sup>8</sup> The “Simple Order Book” is the Exchange's regular electronic book of orders and quotes. See Exchange Rule 518(a)(15).

<sup>9</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. 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. See Exchange Rule 518(a)(5).

<sup>10</sup> The “Strategy Book” is the Exchange's electronic book of complex orders and complex quotes. See Exchange Rule 518(a)(17).

1,000 contracts per leg for each cPRIME Agency Order in all tiers under the PCRCP. On February 28, 2020, the Exchange filed, and the Commission approved, the Exchange's proposal to waive the 1,000 contracts cap per leg for cPRIME Agency Order rebates for all tiers under the PCRCP from March 1, 2020 until May 31, 2020.<sup>11</sup>

On May 29, 2020, the Exchange filed, and the Commission approved, the Exchange's proposal to extend the waiver of the 1,000 contracts cap per leg for cPRIME Agency Order rebates for all tiers under the PCRCP from June 1, 2020 until July 31, 2020.<sup>12</sup> On July 31, 2020, the Exchange filed, and the Commission approved, the Exchange's proposal to extend the waiver of the 1,000 contracts cap per leg for cPRIME Agency Order rebates for all tiers under the PCRCP from August 1, 2020 until August 31, 2020.<sup>13</sup> The Exchange now proposes to extend the cap waiver of 1,000 contracts per leg for cPRIME Agency Order rebates for all tiers under the PCRCP until December 31, 2020. The purpose of this proposed change is for business and competitive reasons and to continue to entice market participants to submit larger-sized cPRIME Agency Orders.

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

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<sup>11</sup> See Securities Exchange Act Release No. 88349 (March 10, 2020), 85 FR 14995 (March 15, 2020) (SR-MIAX-2020-05).

<sup>12</sup> See Securities Exchange Act Release No. 89035 (June 9, 2020), 85 FR 36249 (June 15, 2020) (SR-MIAX-2020-12).

<sup>13</sup> See Securities Exchange Act Release No. 89530 (August 12, 2020) (SR-MIAX-2020-26).

broader forms that are most important to investors and listed companies.”<sup>14</sup> There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange had more than approximately 14% of the market share of executed volume of multiply-listed equity options trades for the month of July 2020.<sup>15</sup> Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity options order flow. More specifically, for the month of July 2020, the Exchange had a total market share of 4.85% of all equity options volume.<sup>16</sup>

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 PCR. <sup>17</sup> 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.

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<sup>14</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

<sup>15</sup> 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>.

<sup>16</sup> See *id.*

<sup>17</sup> See Securities Exchange Act Release No. 85301 (March 13, 2019), 84 FR 10166 (March 19, 2019) (SR-MIAX-2019-09).

## 2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act<sup>18</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>19</sup> 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 extend the waiver of the cap of 1,000 contracts per leg for cPRIME Agency Order rebates for all tiers under the PCRCP until December 31, 2020 provides for the equitable allocation of reasonable dues and fees and is not unfairly discriminatory for the following reasons. 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

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<sup>18</sup> 15 U.S.C. 78f(b).

<sup>19</sup> 15 U.S.C. 78f(b)(4) and (5).

important to investors and listed companies.”<sup>20</sup> There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange had more than approximately 14% of the market share of executed volume of multiply-listed equity options trades for the month of July 2020.<sup>21</sup> Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, for the month of July 2020, the Exchange had a total market share of 4.85% of all equity options volume.<sup>22</sup>

The Exchange 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 PCRCP.<sup>23</sup> 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.

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<sup>20</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

<sup>21</sup> See supra note 15.

<sup>22</sup> See id.

<sup>23</sup> See supra note 17.



The Exchange believes that its proposal to continue to waive the 1,000 contracts cap per leg for cPRIME Agency Order rebates for all tiers in the PCRCP until December 31, 2020 is reasonable, equitably allocated and not unfairly discriminatory because this change is for business and competitive reasons and available equally to all market participants. The Exchange cannot predict with certainty whether any market participant would submit additional cPRIME Agency Orders in excess of 1,000 contracts per leg in light of the proposal to continue to waive the cap of 1,000 contracts per leg for cPRIME Agency Order rebates for all tiers under the PCRCP, but believes that market participants would continue to be encouraged to submit larger orders to obtain the additional credits. The Exchange believes that this proposed change would encourage increased cPRIME Agency Order flow, which will bring greater volume and liquidity to the Exchange, which benefits all market participants by providing more trading opportunities and tighter spreads.

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

In accordance with Section 6(b)(8) of the Act,<sup>24</sup> the Exchange believes that the proposed rule changes would not impose any burden on competition that are not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed change would continue to 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.

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<sup>24</sup> 15 U.S.C. 78f(b)(8).

The Exchange does not believe that other market participants at the Exchange would be placed at a relative disadvantage by the proposed change to continue to waive the cap of 1,000 contracts per leg for cPRIME Agency Order rebates for all tiers under the PCRCP until December 31, 2020. The proposed change is designed to attract additional order flow to the Exchange. The Exchange believes that this proposal will continue to encourage Members to submit Priority Customer cPRIME Agency Orders, which will increase liquidity and benefit all market participants by providing more trading opportunities and tighter spreads. Accordingly, the Exchange believes that the proposed change 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 order flow, which provides greater volume and liquidity, benefiting all market participants by providing more trading opportunities and tighter spreads.

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 more than approximately 14% of the market share of executed volume of multiply-listed equity options trades for the month of July 2020.<sup>25</sup> Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity options order flow. More specifically, for the month of July 2020, the Exchange had a total market share of 4.85% of all equity options volume.<sup>26</sup> 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

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<sup>25</sup> See supra note 15.

<sup>26</sup> See id.

Exchange believes that the proposed rule change reflects this competitive environment because it continues to encourage market participants to provide and 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,<sup>27</sup> and Rule 19b-4(f)(2)<sup>28</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Comments may be submitted by any of the following methods:

Electronic Comments:

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<sup>27</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>28</sup> 17 CFR 240.19b-4(f)(2).

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MIAX-2020-28 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-2020-28. 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-2020-28 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>29</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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<sup>29</sup> 17 CFR 200.30-3(a)(12).