

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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MIAX-2019-28 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-2019-28. This file number should be included on the subject line if email 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-2019-28 and should be submitted on or before July 11, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Vanessa A. Countryman,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-86110; File No. SR-MIAX-2019-29]

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

June 14, 2019.

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 May 31, 2019, Miami International Securities Exchange LLC ("MIAX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule (the "Fee Schedule") to adopt a rebate program for Market Makers<sup>3</sup> that submit aggressively priced quotes in SPIKES options.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on June 1, 2019.

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.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The term "Market Makers" refers to "Lead Market Makers", "Primary Lead Market Makers" and "Registered Market Makers" collectively. See Exchange Rule 100.

#### 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 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

###### Background

On October 12, 2018, the Exchange received approval from the Commission to list and trade on the Exchange, options on the SPIKES<sup>®</sup> Index, a new index that measures expected 30-day volatility of the SPDR S&P 500 ETF Trust (commonly known and referred to by its ticker symbol, "SPY").<sup>4</sup> The Exchange adopted its initial SPIKES transaction fees on February 15, 2019.<sup>5</sup>

###### Proposal

The Exchange now proposes to amend Section (1)(a)(xi) of the Fee Schedule to adopt a Market Turner Incentive Program (the "Program") that will provide rebates to Market Makers that submit aggressively priced quotes in options on SPIKES. The term "Market Turner" will mean a Market Maker simple quote (not eQuote) that establishes and maintains the new MIAX best bid (the "MBB") or the MIAX best offer ("MBO") in a SPIKES option. Under the Program, the Exchange will pay a per contract rebate to the Market Turner for each contract that executes as the MBB (MBO). The amount of the rebate shall be (i) \$0.20 per executed contract, for options having a premium price greater than \$0.10, or (ii) \$0.05 per executed contract, for options having a premium price of \$0.10 or less. The Exchange

<sup>4</sup> See Securities Exchange Act Release No. 84417 (October 12, 2018), 83 FR 52865 (October 18, 2018) (SR-MIAX-2018-14) (Order Granting Approval of a Proposed Rule Change by Miami International Securities Exchange, LLC to List and Trade on the Exchange Options on the SPIKES<sup>™</sup> Index).

<sup>5</sup> See Securities Exchange Release No. 85283 (March 11, 2019), 84 FR 9567 (March 15, 2019) (SR-MIAX-2019-11). (The Exchange initially filed the proposal on February 15, 2019 (SR-MIAX-2019-04). That filing was withdrawn and replaced with (SR-MIAX-2019-11)).

notes that a Market Maker who is also a Maker but not a Market Turner will not receive the Market Turner rebate and will receive the Maker rate currently prescribed in the Simple and Complex Fee table in Section (xi) of the Fee Schedule. The purpose of the Program is to encourage Market Makers to submit aggressively-priced quotes in SPIKES options, which will enable the Exchange to strengthen its market quality for all market participants in SPIKES options.

Under the Program, a Market Turner must submit a resting quote that sets a more aggressive price, and subsequently does not become inferior to another quote or order. A Market Turner will lose its Market Turner status if a more aggressively priced resting quote or order price improves the current Market Turner's quote. Market Turner status will also be lost if the Market Turner's quote becomes inferior. Market Turner quote size changes without any price change will not affect Market Turner status. The Exchange also proposes that, under the Program, Market Turner status is not available for quotes coming out of the opening, reopening after a trading halt, or uncrossing. Further, the Exchange proposes that there will not be Market Turner status for a Taker, except when there is remaining interest that rests (becomes the Maker).

The Program is similar to a NBBO setter incentive plan in place at Cboe BZX Exchange, Inc. ("Cboe BZX").<sup>6</sup> However, the Exchange notes that there are several differences between MIA's proposal and the plan adopted by Cboe BZX: (1) The Program only includes rebates for Market Makers in SPIKES options (a Proprietary Product) while Cboe BZX's plan includes multi-listed options; (2) the Program will not require an ADV threshold while Cboe BZX requires certain thresholds to be met; (3) the Program has one level of rebate while Cboe BZX has different tier levels; and (4) the Program requires that a "Market Turner must submit a resting quote that sets a more aggressive price, and subsequently does not become inferior to another quote or order" whereas under Cboe BZX's plan, "[a]n order that is entered at the most aggressive price both on the [Cboe BZX] book and according to then current OPRA data will be determined to have set the NBB or NBO for purposes of the NBBO Setter Rebate without regard to whether a more aggressive order is

entered prior to the original order being executed."<sup>7</sup>

The proposed rebates are targeted at Market Makers in SPIKES options. There are currently fewer than five (5) Market Makers in SPIKES options that could benefit from these rebates, however the Program is also designed to attract additional market makers (both existing Market Maker members of MIA as well as non-members to join MIA) to quote in SPIKES options. Thus, the Exchange estimates that, overall, there would be fewer than fifteen (15) such market participants that could benefit from these rebates. The proposed rebates do not apply differently to different sizes of market participants, however they do only apply to Market Makers (and not EEMs). The Exchange believes it is reasonable to only offer rebates to Market Makers because the Exchange is seeking continuous, two-sided quoting liquidity providers for SPIKES options, in order to enhance liquidity and spreads in SPIKES Options, which is traditionally provided by Market Makers, as opposed to EEMs.

The proposed rule change is to become operative June 1, 2019.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act<sup>8</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>9</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Exchange Members<sup>10</sup> 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<sup>11</sup> 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 customer, issuers, brokers and dealers.

The Exchange believes that its proposal to adopt the Program for Market Makers in SPIKES options is consistent with Section 6(b)(4) of the Act in that the proposal is reasonable,

equitable and not unfairly discriminatory. The proposed fee changes are reasonably designed because they are intended to incentivize Market Makers to quote aggressively in SPIKES options on the Exchange, which will enable the Exchange to strengthen its market quality for all market participants in SPIKES options. In particular, the proposed changes are designed to incentivize Market Makers in SPIKES options to enter quotes which establish and maintain a new MBB or MBO on the Exchange in an effort to qualify for a rebate as a Market Turner under the Program.

The Exchange believes that it is equitable and not unfairly discriminatory to have the Program rebates apply only to Market Makers (as compared to Electronic Exchange Members<sup>12</sup> ("EEMs")) because Market Makers, unlike other market participants, take on a number of obligations, including quoting obligations that other market participants do not have. In particular, the proposed rebates will encourage Market Maker quotes at the MBB or MBO, and is therefore directly focused on encouraging aggressively priced liquidity in SPIKES options. Further, Market Makers have added market making and regulatory requirements, which normally do not apply to other market participants. For example, Market Makers have obligations to maintain continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and to not make bids or offers or enter into transactions that are inconsistent with a course of dealing.

The Exchange believes that it is reasonable to establish a separate incentive program for Market Makers in SPIKES options in order to encourage trading in SPIKES options on the Exchange. Defining the proposed Program on the Fee Schedule promotes just and equitable principles of trade, 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 by creating a clear understanding of the Program.

The proposed Program rebates are reasonable, equitable, and not unfairly discriminatory because they will apply similarly to all Market Makers who trade in SPIKES options and establish a Market Turner quote. All similarly

<sup>7</sup> See *supra* note 6.

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

<sup>9</sup> 15 U.S.C. 78f(b)(4).

<sup>10</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>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> The term "Electronic Exchange Member" or "EEM" means the holder of a Trading Permit who is not a Market Maker. Electronic Exchange Members are deemed "members" under the Exchange Act. See Exchange Rule 100.

<sup>6</sup> See Securities Exchange Act Release No. 63632 (January 3, 2011), 76 FR 1205 (January 7, 2011) (SR-BATS-2010-038).

situated Market Makers are subject to the same transaction rebate schedule, and access to the Exchange is offered on terms that are not unfairly discriminatory.

The Exchange believes that the proposed rebates constitute an equitable allocation of reasonable fees and other charges among its members and issuers and other persons using its facilities. The proposed rebates are available to all Market Maker Members of the Exchange that quote in SPIKES options. The proposed rebates do not apply to EEMs, because the Exchange is seeking to enhance the quality of its markets in SPIKES options through introducing more competition among market makers in SPIKES options. The Exchange believes that offering the proposed rebates to Market Makers will cause Market Makers to quote more aggressively, thus improving the overall market quality in SPIKES options, for the benefit of all market participants in SPIKES options. In order to increase competition among Market Makers, the Exchange believes that it must pay rebates to Market Makers. EEMs do not provide the same type of continuous, two-sided market liquidity which is provided by Market Makers, therefore the Exchange believes it is reasonable and not unfairly discriminatory to only offer the proposed rebates to Market Makers (and not EEMs).

#### *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 changes would increase intramarket competition by incentivizing Market Makers to quote aggressively in SPIKES options, which will enhance the quality of quoting and increase the volume of contracts in SPIKES options traded on MIAAX. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market liquidity for the Exchange's SPIKES options. Enhanced market quality and increased transaction volume in SPIKES options that results from the anticipated increase in Market Maker activity on the Exchange will benefit all market participants and improve competition on the Exchange.

The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes for

Market Makers will be assessed equally to all such Market Makers. While different fees are assessed to different market participants in some circumstances, these different market participants have different obligations and different circumstances as discussed above. For example, Market Makers have quoting obligations that other market participants (such as EEMs) do not have.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rebates relate solely to SPIKES options, which are traded exclusively on 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>13</sup> and Rule 19b-4(f)(2)<sup>14</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*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MIAAX-2019-29 on the subject line.

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>14</sup> 17 CFR 240.19b-4(f)(2).

#### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

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For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Vanessa A. Countryman,**

*Acting Secretary.*

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<sup>15</sup> 17 CFR 200.30-3(a)(12).