

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 40	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No. * SR 2021 - * 42 Amendment No. (req. for Amendments *)
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Filing by Miami International Securities Exchange, LLC.  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	Rule		
			<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input checked="" type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010 Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 3C(b)(2) * <input type="checkbox"/>
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Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**  
Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).  
Amend the Exchange Fee Schedule

**Contact Information**  
Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name *	Gregory	Last Name *	Ziegler
Title *	Senior Counsel		
E-mail *	gziegler@miaxoptions.com		
Telephone *	(609) 897-1483	Fax	

**Signature**  
Pursuant to the requirements of the Securities Exchange of 1934, Miami International Securities Exchange, I has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date	09/30/2021	(Title *)	
By	Gregory P. Ziegler (Name *)	Senior Counsel	

NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Date: 2021.09.30 14:47:21 -04'00'
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Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

**Form 19b-4 Information \***

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

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SR-MIAX-2021-42- Exhibit 1.docx

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit Sent As Paper Document

**Exhibit 3 - Form, Report, or Questionnaire**

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit Sent As Paper Document

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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SR-MIAX-2021-42 Exhibit 5 20210927.docx

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

**1. Text of the Proposed Rule Change**

(a) Miami International Securities Exchange, LLC (“MIAX” or “Exchange”), 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> proposes to amend the MIAX Options Fee Schedule (“Fee Schedule”).

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1, and a copy of the applicable section of the proposed Fee Schedule is attached hereto as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

**2. Procedures of the Self-Regulatory Organization**

The proposed rule change was approved by the Chief Executive Officer of the Exchange or his designee pursuant to authority delegated by the MIAX Board of Directors on January 28, 2021. Exchange staff will advise the Board of Directors of any action taken pursuant to delegated authority. No other action by the Exchange is necessary for the filing of the proposed rule change.

Questions and comments on the proposed rule change may be directed to Greg Ziegler, VP, Senior Counsel, at (609) 897-1483.

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

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

### 3. **Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

#### a. Purpose

The Exchange proposes to amend the Fee Schedule to modify (i) the MIAX Price Improvement Mechanism (“PRIME”) Fees table and accompanying notes; and (ii) the MIAX Complex Price Improvement Mechanism (“cPRIME”) Fees table. The Exchange proposes to implement the fee changes effective October 1, 2021.

#### Background

PRIME is a process by which a Member<sup>3</sup> 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<sup>4</sup> or an AOC eQuote.<sup>5</sup> The PRIME mechanism is used for

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<sup>3</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>4</sup> An Auction-or-Cancel or “AOC” order is a limit order used to provide liquidity during a specific Exchange process (such as the Opening Imbalance process described in Rule 503) with a time in force that corresponds with that event. AOC orders are not displayed to any market participant, are not included in the MBBO and therefore are not eligible for trading outside of the event, may not be routed, and may not trade at a price inferior to the away markets. See Exchange Rule 516(b)(4).

<sup>5</sup> AOC eQuote An Auction or Cancel or “AOC” eQuote is a quote submitted by a Market Maker to provide liquidity in a specific Exchange process (such as the Opening Imbalance Process described in Rule 503) with a time in force that corresponds with the

orders on the Exchange's Simple Order Book.<sup>6</sup> The Exchange notes that for Complex Orders<sup>7</sup> on the Strategy Book,<sup>8</sup> the Exchange's cPRIME<sup>9</sup> mechanism operates in the same manner for processing and execution of cPRIME Orders that is used for PRIME Orders on the Simple Order Book.

Exchange Rule 518(b)(7) defines a cPRIME Order as a type of complex order that is submitted for participation in a cPRIME Auction and trading of cPRIME Orders is governed by Rule 515A, Interpretation and Policies .12.<sup>10</sup> cPRIME Orders are processed and executed in the

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duration of that event and will automatically expire at the end of that event. AOC eQuotes are not displayed to any market participant, are not included in the MBBO and therefore are not eligible for trading outside of the event. An AOC eQuote does not automatically cancel or replace the Market Maker's previous Standard quote or eQuote. See Exchange Rule 517(a)(2)(ii).

<sup>6</sup> The "Simple Order Book" is the Exchange's regular electronic book of orders and quotes. See Exchange Rule 518(a)(15).

<sup>7</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>8</sup> The "Strategy Book" is the Exchange's electronic book of complex orders and complex quotes. See Exchange Rule 518(a)(17).

<sup>9</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>10</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).

Exchange's PRIME mechanism, the same mechanism that the Exchange uses to process and execute simple PRIME orders, pursuant to Exchange Rule 515A.<sup>11</sup> 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. The cPRIME mechanism is used for Complex Orders on the Exchange's Strategy Book, 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.

#### Responder to PRIME Auction Fee

The Exchange proposes to amend the Fee Schedule to modify the transaction fees for Members that participate in the PRIME Auction. Specifically, the Exchange proposes to amend the Responder to PRIME Auction Fee, Per Contract Fee for Non-Penny Classes, in the PRIME Fees table. Currently, the Exchange charges a fee of \$0.99 for all Origins (Priority Customer,<sup>12</sup>

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<sup>11</sup> Id.

<sup>12</sup> 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 290 orders in listed options per day on average during a calendar month for its own beneficial account(s). See Exchange Rule 100.

Public Customer<sup>13</sup> that is not a Priority Customer, MIAX Market Maker,<sup>14</sup> Non-MIAX Market Maker, Non-Member Broker-Dealer, and Firm). The Exchange now proposes to increase the Responder fee for Non-Penny Classes from \$0.99 to \$1.10 per contract for all Origins in the PRIME Fees table.

The purpose of adjusting the per contract Responder fee for Non-Penny Classes in the PRIME Fees table for all Origins is for business and competitive reasons. In order to attract order flow the Exchange initially set its PRIME rebates and fees so that they were meaningfully higher/lower than other options exchanges that provide a comparable price improvement mechanism. The Exchange now believes that it is appropriate to further adjust these fees so that they are more in line with other exchanges,<sup>15</sup> but remain competitive such that it should enable the Exchange to continue to attract order flow to PRIME Auctions and to also maintain market share.

#### Priority Customer PRIME Break-up Credit

The Exchange proposes to amend the Fee Schedule to modify the PRIME Break-up Credit per contract credit for Non-Penny Classes for the Priority Customer Origin in PRIME. Currently, the Exchange provides Priority Customers a PRIME break-up credit of \$0.60 per

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<sup>13</sup> The term “Public Customer” means a person that is not a broker or dealer in securities. See Exchange Rule 100.

<sup>14</sup> The term “Market Makers” refers to “Lead Market Makers”, “Primary Lead Market Makers” and “Registered Market Makers” collectively. See Exchange Rule 100.

<sup>15</sup> The Exchange notes that BOX Options has a \$1.15 responder fee in Non-Penny classes. See BOX Options Fee Schedule as of September 1, 2021, Section I. Electronic Transaction Fees, B. PIP and COPIP Transactions at <https://boxoptions.com/regulatory/fee-schedule/>. The Exchange also notes that Nasdaq MRX has a responder fee of \$1.10 in Non-Penny classes. See Nasdaq MRX Options 7 Pricing Schedule, Section 3. Regular Order Fees and Rebates, A. PIM Pricing for Regular and Complex Orders at <https://listingcenter.nasdaq.com/rulebook/mrx/rules/mrx-options-7>.

contract for Non-Penny Classes in a PRIME Auction. The Exchange now proposes to adopt an alternative Priority Customer PRIME break-up credit of \$0.69, instead of \$0.60, per contract for Non-Penny Classes when the order breakup percentage is greater than 40%. Orders in this segment with order break-up percentages of 40% or less will continue to receive the \$0.60 per contract break-up credit. The Exchange proposes to add new footnote “\*” after the PRIME Fee table that will provide the following: MIAX will apply an enhanced PRIME Break-up credit of \$0.69 per contract to the EEM that submitted a PRIME Order in Non-Penny Classes that is submitted to the PRIME Auction that trades with PRIME AOC Responses and/or PRIME Participating Quotes or Orders, if the PRIME Order experiences a break-up of greater than forty percent (40%).

The decision to offer an alternative enhanced Priority Customer Break-up credit is based on an analysis of current revenue and volume levels and is designed to encourage Priority Customer order flow to PRIME Auctions.

Remove Discounted PRIME Response Fee for PCRCP Tier 3 or Higher

Next, the Exchange proposes to remove the discounted PRIME Response fee for standard options in Penny Classes and discounted PRIME Response fee for standard options in Non-Penny Classes for Members or their Affiliates that qualifies for Priority Customer Rebate Program (“PCRCP”) volume tier 3 or higher.

Currently MIAX will assess the Responder to PRIME Auction Fee to: (i) a PRIME AOC Response that executes against a PRIME Order, and (ii) a PRIME Participating Quote or Order that executes against a PRIME Order. MIAX will apply the PRIME Break-up credit to the EEM that submitted the PRIME Order for agency contracts that are submitted to the PRIME Auction that trade with a PRIME AOC Response or a PRIME Participating Quote or Order that trades



with the PRIME Order. Transaction fees in mini-options will be 1/10th of the standard per contract fee or rebate described in the table above for the PRIME Auction. MIAX will assess the standard transaction fees to a PRIME AOC Response if it executes against unrelated orders. Any Member or its Affiliate<sup>16</sup> that qualifies for Priority Customer Rebate Program volume tiers 3 or higher and submits a PRIME AOC Response that is received during the Response Time Interval and executed against the PRIME Order, or a PRIME Participating Quote or Order that is received during the Response Time Interval and executed against the PRIME Order, will be assessed a Discounted PRIME Response Fee of \$0.46 per contract for standard options in Penny Program classes. Any Member or its Affiliate that qualifies for Priority Customer Rebate Program (“PCR”) volume tiers 3 or higher and submits a PRIME AOC Response that is

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<sup>16</sup> 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 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.

received during the Response Time Interval and executed against the PRIME Order, or a PRIME Participating Quote or Order that is received during the Response Time Interval and executed against the PRIME Order, will be assessed a Discounted PRIME Response Fee of \$0.95 per contract for standard options in non-Penny Program classes.

The Exchange now proposes to remove both the Discounted PRIME Response Fee of \$0.46 per contract for standard options in Penny Classes and the Discounted PRIME Response Fee of \$0.95 per contract for standard options in Non-Penny Classes, and will remove the portion that describes the discounted fees from the accompanying footnotes. The purpose of this change is for business and competitive reasons.

#### Responder to cPRIME Auction Fee

The Exchange proposes to amend the Fee Schedule to modify the transaction fees for Members that participate in the cPRIME Auction. Specifically, the Exchange proposes to amend the per contract Responder fee for Non-Penny Classes in a cPRIME Auction for all Origins in the cPRIME Fees table. Currently, the Exchange charges a Responder fee of \$0.99 per contract for Non-Penny Classes in all Origins for a cPRIME Auction. The Exchange now proposes to increase the Responder fee to \$1.10 per contract for Non-Penny Classes for all Origins in a cPRIME Auction.

The purpose of adjusting the per contract Responder fee for Non-Penny Classes for all Origins is for business and competitive reasons. In order to attract order flow the Exchange initially set its cPRIME rebates and fees so that they were meaningfully higher/lower than other options exchanges that provide a comparable complex order price improvement mechanism. The Exchange now believes that it is appropriate to further adjust these fees so that they are more in

line with other exchanges,<sup>17</sup> but will remain competitive such that it should enable the Exchange to continue to attract complex order flow to cPRIME Auctions and also maintain market share.

b. 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 that its proposal 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

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<sup>17</sup> See supra note 15.

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

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

competition in its broader forms that are most 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, for the month of September 2021, no single exchange has more than approximately 12% - 13% of the market share of executed volume of multiply-listed equity and exchange-traded fund (“ETF”) options trades as of September 28, 2021.<sup>21</sup> Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, as of September 28, 2021, the Exchange had a market share of approximately 5.46% of executed volume of multiply-listed equity and ETF options for the month of September 2021.<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 February 28, 2019, the Exchange’s affiliate, MIAX PEARL, LLC (“MIAX Pearl”), filed with the Commission a proposal to increase Taker fees in certain Tiers for options transactions in certain Penny classes for Priority Customers and decrease Maker rebates in certain Tiers for options transactions in Penny classes for Priority Customers (which fee was to be effective March 1, 2019).<sup>23</sup> MIAX Pearl experienced a decrease in total market share between the months of February and March of 2019, after the fees were in effect. Accordingly,

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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 MIAX’s “The Market at a Glance”, available at <https://www.miaxoptions.com/> (last visited September 28, 2021).

<sup>22</sup> See id.

<sup>23</sup> See Securities Exchange Act Release No. 85304 (March 13, 2019), 84 FR 10144 (March 19, 2019) (SR-PEARL-2019-07).

the Exchange believes that the MIAX Pearl March 1, 2019, fee change may have contributed to the decrease in the MIAX Pearl's market share and, as such, the Exchange believes competitive forces constrain options exchange transaction fees and market participants can shift order flow based on fee changes instituted by the exchanges.

Accordingly, competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. In response to the competitive environment, the Exchange offers specific rates and credits in its fee schedule, like those of other options exchanges', which the Exchange believes provides incentives to Members to increase order flow of certain qualifying orders.

The Exchange believes its proposal to amend its Responder fees for Non-Penny Classes for all Origins in PRIME and cPRIME Auctions is reasonable, equitably allocated and not unfairly discriminatory because these changes are for business and competitive reasons. In order to attract order flow the Exchange initially set its rebates and fees for its PRIME and cPRIME Auctions so that they were meaningfully higher/lower than other options exchanges that provide a comparable price improvement mechanisms. The Exchange now believes that it is appropriate to further adjust these fees so that they are more in line with those of other exchanges,<sup>24</sup> but will remain competitive and should enable the Exchange to continue to attract order flow to PRIME and cPRIME Auctions and also maintain market share.

The Exchange also believes that its proposal to amend the Responder fees for Non-Penny Classes for all Origins in PRIME and cPRIME Auctions is not unfairly discriminatory as all Origins that respond to a PRIME or cPRIME Auction will be assessed an identical fee and access

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<sup>24</sup> See supra note 15.

to the Exchange is offered on terms that are not unfairly discriminatory. The Exchange believes it is equitable and not unfairly discriminatory to increase the Responder fee as certain other option exchanges that offer similar price improvement functionality charge similar fees.<sup>25</sup> The Exchange believes that it is appropriate to increase the fees so that they are more in line with other exchanges,<sup>26</sup> and will still remain competitive such that they should enable the Exchange to continue to attract order flow to its PRIME and cPRIME Auctions and maintain market share.

The Exchange believes its proposal to offer an enhanced PRIME Break-up Credit for Non-Penny Classes for Priority Customers is reasonable, equitably allocated and not unfairly discriminatory because this change is for business and competitive reasons. The Exchange believes that its proposal will encourage Priority Customer order flow to PRIME Auctions. Increased Priority Customer order flow benefits all market participants because it continues to attract liquidity to the Exchange by providing more trading opportunities. This attracts Market Makers and other liquidity providers, thus, facilitating price improvement in the auction process, signaling additional corresponding increase in order flow from other market participants, and, as a result, increasing liquidity on the Exchange.

As noted above, the Exchange operates in a highly competitive market. The Exchange is only one of several options venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. The Exchange believes that the proposed fees are reasonable, equitable, and not unfairly discriminatory in that at least one competing

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<sup>25</sup> See id.

<sup>26</sup> See id.

options exchange offers similar fees and credits in connection with similar price improvement auctions.<sup>27</sup>

The Exchange believes its proposal to remove the discounted PRIME Response fees for Penny and Non-Penny Classes for Members who achieve Tier 3 or higher in the PCRCP is reasonable, equitably allocated and not unfairly discriminatory because these changes are for business and competitive reasons. In order to attract order flow, the Exchange initially set its rebates and fees so that they were meaningfully higher/lower than other options exchanges that provide a comparable price improvement mechanism. The Exchange conducted an internal review and analysis of fees and rebates and determined that it was appropriate to remove the discounted PRIME Response fees so that all PRIME response fees are more in line with other exchanges,<sup>28</sup> but will still remain highly competitive such that it should enable the Exchange to continue to attract order flow to PRIME Auctions and also maintain market share.

In addition, The Exchange believes that its proposal is consistent with Section 6(b) (5) of the Act<sup>29</sup> because it perfects the mechanisms of a free and open market and a national market system and protects investors and the public interest because an increase in Priority Customer order flow will bring greater volume and liquidity to the Exchange, which benefits all market participants by providing more trading opportunities and tighter spreads. To the extent Priority Customer order flow is increased by this proposal, market participants will increasingly compete for the opportunity to trade on the Exchange including sending more orders and provided

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<sup>27</sup> The Cboe Exchange provides for a \$0.60 per contract credit in Non-Penny classes. See Cboe Fee Schedule, "Break-Up Credits," available at [https://cdn.cboe.com/resources/membership/Cboe\\_FeeSchedule.pdf](https://cdn.cboe.com/resources/membership/Cboe_FeeSchedule.pdf)

<sup>28</sup> See supra note 15.

<sup>29</sup> 15 U.S.C. 78f(b)(4).

narrower and larger-sized quotations in the effort to trade with such Priority Customer order flow.

The Exchange believes that increasing the Responder fees for PRIME and cPRIME Auctions is equitable and not unfairly discriminatory because the proposed fees will apply equally to all Origins that respond to PRIME and cPRIME Auctions. The Exchange believes that the application of this fee is equitable and not unfairly discriminatory because the fee is identical for all market participants that respond to PRIME and cPRIME Auctions.

#### **4. Self-Regulatory Organization's Statement on Burden on Competition**

In accordance with Section 6(b)(8) of the Act,<sup>30</sup> the Exchange does not believe that the proposed rule change will impose any burden on intra-market or intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that its proposal will impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because its proposal to amend its Responder fees for PRIME and cPRIME Auctions is uniform and will be applied equally to all Origins that respond to PRIME and cPRIME Auctions.

The Exchange does not believe its proposal to remove the discounted PRIME Response fees for Penny and Non-Penny Classes for Members who achieve Tier 3 or higher in the PCRCP will impose any burden to intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange conducted an internal review and analysis of fees and rebates and determined that it was appropriate to remove the discounted PRIME Response fees so that all PRIME response fees are more in line with other exchanges,<sup>31</sup> but will

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<sup>30</sup> 15 U.S.C. 78f(b)(8).

<sup>31</sup> See supra note 15.



still remain highly competitive such that it should enable the Exchange to continue to attract order flow to PRIME Auctions and also maintain market share. The removal of these fees will impact all Priority Customers equally.

The Exchange believes its proposal to offer an enhanced PRIME Break-up Credit for Non-Penny Classes for Priority Customers is reasonable, equitably allocated and not unfairly discriminatory because this change is for business and competitive reasons. The Exchange believes that its proposal will encourage additional Priority Customer order flow to PRIME Auctions. Increased Priority Customer order flow benefits all market participants because it continues to attract liquidity to the Exchange by providing more trading opportunities and tighter spreads.

The Exchange does not believe that its proposal will impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because, as noted above, other competing options exchanges currently have similar rebates in place in connection with similar price improvement auctions.<sup>32</sup> Additionally, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they participate on and direct their order flow to, including 15 other options exchanges, many of which offer substantially similar price improvement auctions. Based on publicly available information, no single options exchange has more than 12-13% of the market share.<sup>33</sup> Therefore, no exchange possesses significant pricing power in the execution of option order flow. Participants can readily choose to send their orders to other exchanges if they deem fee levels at those other exchanges to be more favorable. Moreover, the Commission has repeatedly

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<sup>32</sup> See supra note 15.

<sup>33</sup> See supra note 21.

expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, 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 investors and listed companies.”<sup>34</sup> The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit states as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’ . . .”<sup>35</sup> Accordingly, the Exchange does not believe its proposed fee changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

**5. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others**

No written comments were either solicited or received.

**6. Extension of Time Period for Commission Action**

Not applicable.

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<sup>34</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

<sup>35</sup> *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

7. **Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)**

Pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>36</sup> and Rule 19b-4(f)(2) thereunder<sup>37</sup> the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

8. **Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

Not applicable.

9. **Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act**

Not applicable.

10. **Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act**

Not applicable.

11. **Exhibits**

1. Notice of proposed rule for publication in the Federal Register.

5. Applicable section of the MIAX Options Fee Schedule.

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<sup>36</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>37</sup> 17 CFR 240.19b-4.

**EXHIBIT 1**SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-MIAX-2021-42)

September \_\_\_\_\_, 2021

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

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 September 30, 2021, 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”).

The text of the proposed rule change is available on the Exchange’s website at <http://www.miaxoptions.com/rule-filings>, at MIAX’s principal office, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on

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

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

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 modify (i) the MIAX Price Improvement Mechanism (“PRIME”) Fees table and accompanying notes; and (ii) the MIAX Complex Price Improvement Mechanism (“cPRIME”) Fees table. The Exchange proposes to implement the fee changes effective October 1, 2021.

Background

PRIME is a process by which a Member<sup>3</sup> 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

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<sup>3</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.

Auction or Cancel (“AOC”) order<sup>4</sup> or an AOC eQuote.<sup>5</sup> The PRIME mechanism is used for orders on the Exchange’s Simple Order Book.<sup>6</sup> The Exchange notes that for Complex Orders<sup>7</sup> on the Strategy Book,<sup>8</sup> the Exchange’s cPRIME<sup>9</sup> mechanism operates in the same manner for processing and execution of cPRIME Orders that is used for PRIME Orders on the Simple Order Book.

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<sup>4</sup> An Auction-or-Cancel or “AOC” order is a limit order used to provide liquidity during a specific Exchange process (such as the Opening Imbalance process described in Rule 503) with a time in force that corresponds with that event. AOC orders are not displayed to any market participant, are not included in the MBBO and therefore are not eligible for trading outside of the event, may not be routed, and may not trade at a price inferior to the away markets. See Exchange Rule 516(b)(4).

<sup>5</sup> AOC eQuote An Auction or Cancel or “AOC” eQuote is a quote submitted by a Market Maker to provide liquidity in a specific Exchange process (such as the Opening Imbalance Process described in Rule 503) with a time in force that corresponds with the duration of that event and will automatically expire at the end of that event. AOC eQuotes are not displayed to any market participant, are not included in the MBBO and therefore are not eligible for trading outside of the event. An AOC eQuote does not automatically cancel or replace the Market Maker’s previous Standard quote or eQuote. See Exchange Rule 517(a)(2)(ii).

<sup>6</sup> The “Simple Order Book” is the Exchange’s regular electronic book of orders and quotes. See Exchange Rule 518(a)(15).

<sup>7</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>8</sup> The “Strategy Book” is the Exchange’s electronic book of complex orders and complex quotes. See Exchange Rule 518(a)(17).

<sup>9</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.

Exchange Rule 518(b)(7) defines a cPRIME Order as a type of complex order that is submitted for participation in a cPRIME Auction and trading of cPRIME Orders is governed by Rule 515A, Interpretation and Policies .12.<sup>10</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>11</sup> 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. The cPRIME mechanism is used for Complex Orders on the Exchange's Strategy Book, 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.

#### Responder to PRIME Auction Fee

The Exchange proposes to amend the Fee Schedule to modify the transaction fees for Members that participate in the PRIME Auction. Specifically, the Exchange proposes to amend the Responder to PRIME Auction Fee, Per Contract Fee for Non-Penny Classes, in the PRIME

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<sup>10</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>11</sup> Id.

Fees table. Currently, the Exchange charges a fee of \$0.99 for all Origins (Priority Customer,<sup>12</sup> Public Customer<sup>13</sup> that is not a Priority Customer, MIAX Market Maker,<sup>14</sup> Non-MIAX Market Maker, Non-Member Broker-Dealer, and Firm). The Exchange now proposes to increase the Responder fee for Non-Penny Classes from \$0.99 to \$1.10 per contract for all Origins in the PRIME Fees table.

The purpose of adjusting the per contract Responder fee for Non-Penny Classes in the PRIME Fees table for all Origins is for business and competitive reasons. In order to attract order flow the Exchange initially set its PRIME rebates and fees so that they were meaningfully higher/lower than other options exchanges that provide a comparable price improvement mechanism. The Exchange now believes that it is appropriate to further adjust these fees so that they are more in line with other exchanges,<sup>15</sup> but remain competitive such that it should enable the Exchange to continue to attract order flow to PRIME Auctions and to also maintain market share.

#### Priority Customer PRIME Break-up Credit

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<sup>12</sup> 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 290 orders in listed options per day on average during a calendar month for its own beneficial account(s). See Exchange Rule 100.

<sup>13</sup> The term “Public Customer” means a person that is not a broker or dealer in securities. See Exchange Rule 100.

<sup>14</sup> The term “Market Makers” refers to “Lead Market Makers”, “Primary Lead Market Makers” and “Registered Market Makers” collectively. See Exchange Rule 100.

<sup>15</sup> The Exchange notes that BOX Options has a \$1.15 responder fee in Non-Penny classes. See BOX Options Fee Schedule as of September 1, 2021, Section I. Electronic Transaction Fees, B. PIP and COPIP Transactions at <https://boxoptions.com/regulatory/fee-schedule/>. The Exchange also notes that Nasdaq MRX has a responder fee of \$1.10 in Non-Penny classes. See Nasdaq MRX Options 7 Pricing Schedule, Section 3. Regular Order Fees and Rebates, A. PIM Pricing for Regular and Complex Orders at <https://listingcenter.nasdaq.com/rulebook/mrx/rules/mrx-options-7>.



The Exchange proposes to amend the Fee Schedule to modify the PRIME Break-up Credit per contract credit for Non-Penny Classes for the Priority Customer Origin in PRIME. Currently, the Exchange provides Priority Customers a PRIME break-up credit of \$0.60 per contract for Non-Penny Classes in a PRIME Auction. The Exchange now proposes to adopt an alternative Priority Customer PRIME break-up credit of \$0.69, instead of \$0.60, per contract for Non-Penny Classes when the order breakup percentage is greater than 40%. Orders in this segment with order break-up percentages of 40% or less will continue to receive the \$0.60 per contract break-up credit. The Exchange proposes to add new footnote “\*” after the PRIME Fee table that will provide the following: MIAX will apply an enhanced PRIME Break-up credit of \$0.69 per contract to the EEM that submitted a PRIME Order in Non-Penny Classes that is submitted to the PRIME Auction that trades with PRIME AOC Responses and/or PRIME Participating Quotes or Orders, if the PRIME Order experiences a break-up of greater than forty percent (40%).

The decision to offer an alternative enhanced Priority Customer Break-up credit is based on an analysis of current revenue and volume levels and is designed to encourage Priority Customer order flow to PRIME Auctions.

Remove Discounted PRIME Response Fee for PCRCP Tier 3 or Higher

Next, the Exchange proposes to remove the discounted PRIME Response fee for standard options in Penny Classes and discounted PRIME Response fee for standard options in Non-Penny Classes for Members or their Affiliates that qualifies for Priority Customer Rebate Program (“PCRCP”) volume tier 3 or higher.

Currently MIAX will assess the Responder to PRIME Auction Fee to: (i) a PRIME AOC Response that executes against a PRIME Order, and (ii) a PRIME Participating Quote or Order that executes against a PRIME Order. MIAX will apply the PRIME Break-up credit to the EEM

that submitted the PRIME Order for agency contracts that are submitted to the PRIME Auction that trade with a PRIME AOC Response or a PRIME Participating Quote or Order that trades with the PRIME Order. Transaction fees in mini-options will be 1/10th of the standard per contract fee or rebate described in the table above for the PRIME Auction. MIAX will assess the standard transaction fees to a PRIME AOC Response if it executes against unrelated orders. Any Member or its Affiliate<sup>16</sup> that qualifies for Priority Customer Rebate Program volume tiers 3 or higher and submits a PRIME AOC Response that is received during the Response Time Interval and executed against the PRIME Order, or a PRIME Participating Quote or Order that is received during the Response Time Interval and executed against the PRIME Order, will be assessed a Discounted PRIME Response Fee of \$0.46 per contract for standard options in Penny Program classes. Any Member or its Affiliate that qualifies for Priority Customer Rebate

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<sup>16</sup> 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 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.

Program (“PCR”) volume tiers 3 or higher and submits a PRIME AOC Response that is received during the Response Time Interval and executed against the PRIME Order, or a PRIME Participating Quote or Order that is received during the Response Time Interval and executed against the PRIME Order, will be assessed a Discounted PRIME Response Fee of \$0.95 per contract for standard options in non-Penny Program classes.

The Exchange now proposes to remove both the Discounted PRIME Response Fee of \$0.46 per contract for standard options in Penny Classes and the Discounted PRIME Response Fee of \$0.95 per contract for standard options in Non-Penny Classes, and will remove the portion that describes the discounted fees from the accompanying footnotes. The purpose of this change is for business and competitive reasons.

#### Responder to cPRIME Auction Fee

The Exchange proposes to amend the Fee Schedule to modify the transaction fees for Members that participate in the cPRIME Auction. Specifically, the Exchange proposes to amend the per contract Responder fee for Non-Penny Classes in a cPRIME Auction for all Origins in the cPRIME Fees table. Currently, the Exchange charges a Responder fee of \$0.99 per contract for Non-Penny Classes in all Origins for a cPRIME Auction. The Exchange now proposes to increase the Responder fee to \$1.10 per contract for Non-Penny Classes for all Origins in a cPRIME Auction.

The purpose of adjusting the per contract Responder fee for Non-Penny Classes for all Origins is for business and competitive reasons. In order to attract order flow the Exchange initially set its cPRIME rebates and fees so that they were meaningfully higher/lower than other options exchanges that provide a comparable complex order price improvement mechanism. The Exchange now believes that it is appropriate to further adjust these fees so that they are more in

line with other exchanges,<sup>17</sup> but will remain competitive such that it should enable the Exchange to continue to attract complex order flow to cPRIME Auctions and also maintain market share.

## 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 that its proposal 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 important to investors and listed companies.”<sup>20</sup>

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<sup>17</sup> See supra note 15.

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

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

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

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, for the month of September 2021, no single exchange has more than approximately 12% - 13% of the market share of executed volume of multiply-listed equity and exchange-traded fund (“ETF”) options trades as of September 21, 2021.<sup>21</sup> Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, as of September 21, 2021, the Exchange had a market share of approximately 5.47% of executed volume of multiply-listed equity and ETF options for the month of September 2021.<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 February 28, 2019, the Exchange’s affiliate, MIAX PEARL, LLC (“MIAX Pearl”), filed with the Commission a proposal to increase Taker fees in certain Tiers for options transactions in certain Penny classes for Priority Customers and decrease Maker rebates in certain Tiers for options transactions in Penny classes for Priority Customers (which fee was to be effective March 1, 2019).<sup>23</sup> MIAX Pearl experienced a decrease in total market share between the months of February and March of 2019, after the fees were in effect. Accordingly, the Exchange believes that the MIAX Pearl March 1, 2019, fee change may have contributed to the decrease in the MIAX Pearl’s market share and, as such, the Exchange believes competitive

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<sup>21</sup> See MIAX’s “The Market at a Glance”, available at <https://www.miaxoptions.com/> (last visited September 21, 2021).

<sup>22</sup> See *id.*

<sup>23</sup> See Securities Exchange Act Release No. 85304 (March 13, 2019), 84 FR 10144 (March 19, 2019) (SR-PEARL-2019-07).

forces constrain options exchange transaction fees and market participants can shift order flow based on fee changes instituted by the exchanges.

Accordingly, competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. In response to the competitive environment, the Exchange offers specific rates and credits in its fee schedule, like those of other options exchanges', which the Exchange believes provides incentives to Members to increase order flow of certain qualifying orders.

The Exchange believes its proposal to amend its Responder fees for Non-Penny Classes for all Origins in PRIME and cPRIME Auctions is reasonable, equitably allocated and not unfairly discriminatory because these changes are for business and competitive reasons. In order to attract order flow the Exchange initially set its rebates and fees for its PRIME and cPRIME Auctions so that they were meaningfully higher/lower than other options exchanges that provide a comparable price improvement mechanisms. The Exchange now believes that it is appropriate to further adjust these fees so that they are more in line with those of other exchanges,<sup>24</sup> but will remain competitive and should enable the Exchange to continue to attract order flow to PRIME and cPRIME Auctions and also maintain market share.

The Exchange also believes that its proposal to amend the Responder fees for Non-Penny Classes for all Origins in PRIME and cPRIME Auctions is not unfairly discriminatory as all Origins that respond to a PRIME or cPRIME Auction will be assessed an identical fee and access to the Exchange is offered on terms that are not unfairly discriminatory. The Exchange believes it is equitable and not unfairly discriminatory to increase the Responder fee as certain other

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<sup>24</sup> See supra note 15.

option exchanges that offer similar price improvement functionality charge similar fees.<sup>25</sup> The Exchange believes that it is appropriate to increase the fees so that they are more in line with other exchanges,<sup>26</sup> and will still remain competitive such that they should enable the Exchange to continue to attract order flow to its PRIME and cPRIME Auctions and maintain market share.

The Exchange believes its proposal to offer an enhanced PRIME Break-up Credit for Non-Penny Classes for Priority Customers is reasonable, equitably allocated and not unfairly discriminatory because this change is for business and competitive reasons. The Exchange believes that its proposal will encourage Priority Customer order flow to PRIME Auctions. Increased Priority Customer order flow benefits all market participants because it continues to attract liquidity to the Exchange by providing more trading opportunities. This attracts Market Makers and other liquidity providers, thus, facilitating price improvement in the auction process, signaling additional corresponding increase in order flow from other market participants, and, as a result, increasing liquidity on the Exchange.

As noted above, the Exchange operates in a highly competitive market. The Exchange is only one of several options venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. The Exchange believes that the proposed fees are reasonable, equitable, and not unfairly discriminatory in that at least one competing options exchange offers similar fees and credits in connection with similar price improvement auctions.<sup>27</sup>

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<sup>25</sup> See id.

<sup>26</sup> See id.

<sup>27</sup> The Cboe Exchange provides for a \$0.60 per contract credit in Non-Penny classes. See Cboe Fee Schedule, "Break-Up Credits," available at [https://cdn.cboe.com/resources/membership/Cboe\\_FeeSchedule.pdf](https://cdn.cboe.com/resources/membership/Cboe_FeeSchedule.pdf)

The Exchange believes its proposal to remove the discounted PRIME Response fees for Penny and Non-Penny Classes for Members who achieve Tier 3 or higher in the PCRCP is reasonable, equitably allocated and not unfairly discriminatory because these changes are for business and competitive reasons. In order to attract order flow, the Exchange initially set its rebates and fees so that they were meaningfully higher/lower than other options exchanges that provide a comparable price improvement mechanism. The Exchange conducted an internal review and analysis of fees and rebates and determined that it was appropriate to remove the discounted PRIME Response fees so that all PRIME response fees are more line with other exchanges,<sup>28</sup> but will still remain highly competitive such that it should enable the Exchange to continue to attract order flow to PRIME Auctions and also maintain market share.

In addition, The Exchange believes that its proposal is consistent with Section 6(b) (5) of the Act<sup>29</sup> because it perfects the mechanisms of a free and open market and a national market system and protects investors and the public interest because an increase in Priority Customer order flow will bring greater volume and liquidity to the Exchange, which benefits all market participants by providing more trading opportunities and tighter spreads. To the extent Priority Customer order flow is increased by this proposal, market participants will increasingly compete for the opportunity to trade on the Exchange including sending more orders and provided narrower and larger-sized quotations in the effort to trade with such Priority Customer order flow.

The Exchange believes that increasing the Responder fees for PRIME and cPRIME Auctions is equitable and not unfairly discriminatory because the proposed fees will apply equally to all Origins that respond to PRIME and cPRIME Auctions. The Exchange believes that

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<sup>28</sup> See supra note 15.

<sup>29</sup> 15 U.S.C. 78f(b)(4).



the application of this fee is equitable and not unfairly discriminatory because the fee is identical for all market participants that respond to PRIME and cPRIME Auctions.

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

In accordance with Section 6(b)(8) of the Act,<sup>30</sup> the Exchange does not believe that the proposed rule change will impose any burden on intra-market or intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that its proposal will impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because its proposal to amend its Responder fees for PRIME and cPRIME Auctions is uniform and will be applied equally to all Origins that respond to PRIME and cPRIME Auctions.

The Exchange does not believe its proposal to remove the discounted PRIME Response fees for Penny and Non-Penny Classes for Members who achieve Tier 3 or higher in the PCRCP will impose any burden to intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange conducted an internal review and analysis of fees and rebates and determined that it was appropriate to remove the discounted PRIME Response fees so that all PRIME response fees are more in line with other exchanges,<sup>31</sup> but will still remain highly competitive such that it should enable the Exchange to continue to attract order flow to PRIME Auctions and also maintain market share. The removal of these fees will impact all Priority Customers equally.

The Exchange believes its proposal to offer an enhanced PRIME Break-up Credit for Non-Penny Classes for Priority Customers is reasonable, equitably allocated and not unfairly

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<sup>30</sup> 15 U.S.C. 78f(b)(8).

<sup>31</sup> See supra note 15.

discriminatory because this change is for business and competitive reasons. The Exchange believes that its proposal will encourage additional Priority Customer order flow to PRIME Auctions. Increased Priority Customer order flow benefits all market participants because it continues to attract liquidity to the Exchange by providing more trading opportunities and tighter spreads.

The Exchange does not believe that its proposal will impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because, as noted above, other competing options exchanges currently have similar rebates in place in connection with similar price improvement auctions.<sup>32</sup> Additionally, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they participate on and direct their order flow to, including 15 other options exchanges, many of which offer substantially similar price improvement auctions. Based on publicly available information, no single options exchange has more than 12-13% of the market share.<sup>33</sup> Therefore, no exchange possesses significant pricing power in the execution of option order flow. Participants can readily choose to send their orders to other exchanges if they deem fee levels at those other exchanges to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, 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

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<sup>32</sup> See supra note 15.

<sup>33</sup> See supra note 21.

investors and listed companies.”<sup>34</sup> The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit states as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’ . . .”<sup>35</sup> Accordingly, the Exchange does not believe its proposed fee changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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>36</sup> and Rule 19b-4(f)(2)<sup>37</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>34</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

<sup>35</sup> *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

<sup>36</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>37</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:to-rule-comments@sec.gov). Please include File Number SR-MIAX-2021-42 on the subject line.

##### Paper comments:

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

All submissions should refer to File Number SR-MIAX-2021-42. 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-MIAX-2021-42 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>38</sup>

Vanessa Countryman  
Secretary

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<sup>38</sup> 17 CFR 200.30-3(a)(12).

**Exhibit 5**

New text is underlined;  
Deleted text is in [brackets]

**MIAX Options Fee Schedule**

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**1) Transaction Fees****a) Multiply-Listed Options Exchange Fees**

i) – iv) No change.

**v) MIAX Price Improvement Mechanism (“PRIME”) Fees**

Types of Market Participants	PRIME Order Fee		Responder to PRIME Auction Fee		PRIME Break-up Credit	
	Per Contract Fee for Agency Order	Per Contract Fee for Contra-side Order	Per Contract Fee for Penny Classes	Per Contract Fee for Non-Penny Classes	Per Contract Credit for Penny Classes	Per Contract Credit for Non-Penny Classes
<i>Priority Customer</i>	\$0.00	\$0.00	\$0.50	<del>[\$0.99]</del> <u>\$1.10</u>	\$0.25	\$0.60 / <u>\$0.69*</u>
Public Customer that is Not a Priority Customer	\$0.30	\$0.05	\$0.50	<del>[\$0.99]</del> <u>\$1.10</u>	\$0.25	\$0.60
<i>MIAX Market Maker</i>	\$0.30	\$0.05	\$0.50	<del>[\$0.99]</del> <u>\$1.10</u>	\$0.25	\$0.60
Non-MIAX Market Maker	\$0.30	\$0.05	\$0.50	<del>[\$0.99]</del> <u>\$1.10</u>	\$0.25	\$0.60
<i>Non-Member Broker-Dealer</i>	\$0.30	\$0.05	\$0.50	<del>[\$0.99]</del> <u>\$1.10</u>	\$0.25	\$0.60
Firm	\$0.30	\$0.05	\$0.50	<del>[\$0.99]</del> <u>\$1.10</u>	\$0.25	\$0.60

MIAX will assess the Responder to PRIME Auction Fee to: (i) a PRIME AOC Response that executes against a PRIME Order, and (ii) a PRIME Participating Quote or Order that executes against a PRIME Order. MIAX will apply the PRIME Break-up credit to the EEM that submitted the PRIME Order for agency contracts that are submitted to the PRIME Auction that trade with a PRIME AOC Response or a PRIME Participating Quote or Order that trades with the PRIME Order. Transaction fees in mini-options will be 1/10th of the standard per contract fee or rebate described in the table above for the PRIME Auction. MIAX will assess the standard transaction fees to a PRIME AOC Response if it executes against unrelated orders. [Any Member or its Affiliate that qualifies for Priority Customer Rebate Program volume tiers 3 or higher and submits a PRIME AOC Response that is received during

the Response Time Interval and executed against the PRIME Order, or a PRIME Participating Quote or Order that is received during the Response Time Interval and executed against the PRIME Order, will be assessed a Discounted PRIME Response Fee of \$0.46 per contract for standard options in Penny Program classes. Any Member or its Affiliate that qualifies for Priority Customer Rebate Program volume tiers 3 or higher and submits a PRIME AOC Response that is received during the Response Time Interval and executed against the PRIME Order, or a PRIME Participating Quote or Order that is received during the Response Time Interval and executed against the PRIME Order, will be assessed a Discounted PRIME Response Fee of \$0.95 per contract for standard options in non-Penny Program classes.]

\* MIAX will apply an enhanced PRIME Break-up credit of \$0.69 per contract to the EEM that submitted a PRIME Order in Non-Penny Classes that is submitted to the PRIME Auction that trades with PRIME AOC Responses and/or PRIME Participating Quotes or Orders, if the PRIME Order experiences a break-up of greater than forty percent (40%).

#### vi) MIAX Complex Price Improvement Mechanism (“cPRIME”) Fees

Types of Market Participants	cPRIME Order Fee			Responder to cPRIME Auction Fee		cPRIME Break-up Credit*	
	Per Contract Fee for Agency Order	Per Contract Fee for Contra-side Order for Penny Classes	Per Contract Fee for Contra-side Order for Non-Penny Classes	Per Contract Fee for Penny Classes	Per Contract Fee for Non-Penny Classes	Per Contract Credit for Penny Classes	Per Contract Credit for Non-Penny Classes
<i>Priority Customer</i>	\$0.00	\$0.00	\$0.00	\$0.50	[\$0.99] <u>\$1.10</u>	\$0.25	\$0.60
<i>Public Customer that is Not a Priority Customer</i>	\$0.30	\$0.04	\$0.04	\$0.50	[\$0.99] <u>\$1.10</u>	\$0.25	\$0.60
<i>MIAX Market Maker</i>	\$0.30	\$0.04	\$0.04	\$0.50	[\$0.99] <u>\$1.10</u>	\$0.25	\$0.60
<i>Non-MIAX Market Maker</i>	\$0.30	\$0.04	\$0.04	\$0.50	[\$0.99] <u>\$1.10</u>	\$0.25	\$0.60
<i>Non-Member Broker-Dealer</i>	\$0.30	\$0.04	\$0.04	\$0.50	[\$0.99] <u>\$1.10</u>	\$0.25	\$0.60
<i>Firm</i>	\$0.30	\$0.04	\$0.04	\$0.50	[\$0.99] <u>\$1.10</u>	\$0.25	\$0.60

\* MIAX will apply an enhanced cPRIME Break-up credit to the EEM that submitted the cPRIME Order for agency contracts that are submitted to the cPRIME Auction that trade with a cPRIME AOC Response or a cPRIME Participating Quote or Order that trades with the cPRIME Order if the EEM experiences a greater than sixty percent (60%) break-up of their cPRIME order in the cPRIME Auction. If the EEM is entitled to an enhanced cPRIME Break-up credit, the Exchange will pay a \$0.28 cPRIME Break-up credit

for options in Penny classes and a \$0.72 cPRIME Break-up credit for options in Non-Penny classes instead of the regular cPRIME Break-up credit.

All fees and credits are per contract per leg. MIAX will assess the Responder to cPRIME Auction Fee to: (i) a cPRIME AOC Response that executes against a cPRIME Order, and (ii) a cPRIME Participating Quote or Order that executes against a cPRIME Order. MIAX will apply the cPRIME Break-up credit to the EEM that submitted the cPRIME Order for agency contracts that are submitted to the cPRIME Auction that trade with a cPRIME AOC Response or a cPRIME Participating Quote or Order that trades with the cPRIME Order. MIAX will assess the standard complex transaction fees to a cPRIME AOC Response if it executes against unrelated complex orders.

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