

change was published for comment in the **Federal Register** on October 5, 2021.<sup>3</sup> The Commission has received comments on the proposed rule change.<sup>4</sup>

Section 19(b)(2) of the Act<sup>5</sup> provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is November 19, 2021. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change and the comments received. Accordingly, pursuant to Section 19(b)(2) of the Act,<sup>6</sup> the Commission designates January 3, 2022, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR-NYSEArca-2021-67).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021-25017 Filed 11-16-21; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-93550; File No. SR-MIAX-2021-56]

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

November 10, 2021.

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 October 29, 2021, Miami International Securities Exchange, LLC (“MIAX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the 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 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: (1) Amend the criteria

for Members<sup>3</sup> to receive the additional incremental MIAX Price Improvement Mechanism (“PRIME”) Agency Order (defined below) credit that is available for Priority Customer<sup>4</sup> PRIME Agency Orders for Members who achieve Priority Customer Rebate Program (“PCRP”) Tier 3 or higher and who achieve over a threshold of 0.60% of national customer volume in multiply-listed options classes listed on MIAX during the relevant month; and (2) make a minor, non-substantive corrective edit.

##### Background

PRIME is a process by which a Member may electronically submit for execution an order it represents as agent (an “Agency Order”) against principal interest and/or solicited interest. The Member that submits the Agency Order (“Initiating Member”) agrees to guarantee the execution of the Agency Order by submitting a contra-side order representing principal interest or solicited interest (“Contra-Side Order”). When the Exchange receives a properly designated Agency Order for Auction processing, a request for response (“RFR”) detailing the option, side, size and initiating price is broadcasted to MIAX participants up to an optional designated limit price. Members may submit responses to the RFR, which can be either an Auction or Cancel (“AOC”) order or an AOC eQuote. The PRIME mechanism applies to orders on the Exchange’s Simple Order Book.<sup>5</sup>

The Priority Customer rebate payment is calculated from the first executed contract at the applicable threshold per contract credit with rebate payments made at the highest achieved volume tier for each contract traded in that month. The percentage thresholds are calculated based on the percentage of national customer volume in multiply-listed options classes listed on MIAX entered and executed over the course of the month (excluding QCC and cQCC Orders, Priority Customer-to-Priority Customer Orders, C2C and cC2C Orders, PRIME and cPRIME AOC Responses, PRIME and cPRIME Contra-side Orders, and PRIME and cPRIME Orders for

<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> “Priority Customer” means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial accounts(s). A “Priority Customer Order” means an order for the account of a Priority Customer. See Exchange Rule 100.

<sup>5</sup> The “Simple Order Book” is the Exchange’s regular electronic book of orders and quotes. See Exchange Rule 518(a)(15).

<sup>3</sup> See Securities Exchange Act Release No. 93171 (Sept. 29, 2021), 86 FR 55073.

<sup>4</sup> Comments received on the proposed rule change are available at: <https://www.sec.gov/comments/sr-nysearca-2021-67/srnysearca202167.htm>.

<sup>5</sup> 15 U.S.C. 78s(b)(2).

<sup>6</sup> *Id.*

<sup>7</sup> 17 CFR 200.30-3(a)(31).

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

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

which both the Agency and Contra-side Order are Priority Customers). Volume for transactions in both simple and complex orders are aggregated to determine the appropriate volume tier threshold applicable to each transaction. Volume is recorded for and credits are delivered to the Member that submits the order to MIAX. MIAX aggregates the contracts resulting from Priority Customer orders transmitted and executed electronically on MIAX from Members and their Affiliates<sup>6</sup> for purposes of the thresholds described in the PCRCP table.

#### Additional Agency Order Credit for Members in PCRCP Tier 3 or Higher

The Exchange proposes to amend Section 1(a)(iii) of the Fee Schedule to amend the criteria for Members to receive the additional PRIME Agency Order credit that is available for Priority Customer PRIME Agency Orders for Members who achieve PCRCP Tier 3 or higher and who achieve over a threshold of 0.60% of national customer volume in multiply-listed options classes listed on MIAX during the relevant month. Currently, any Member or its Affiliate that qualifies for PCRCP Tier 3 or higher is credited an additional \$0.01 per contract on incremental volume for each Priority Customer order executed in the PRIME Auction as a

<sup>6</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](mailto: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.

PRIME Agency Order over a threshold of above 0.60% of national customer volume in multiply-listed options classes listed on MIAX during the relevant month.<sup>7</sup>

The Exchange proposes to amend the criteria to include an additional requirement for Members to receive the additional PRIME Agency Order credit that is available for Priority Customer PRIME Agency Orders for Members who achieve PCRCP Tier 3 or higher and who achieve over a threshold of 0.60% of national customer volume in multiply-listed options classes listed on MIAX during the relevant month. To qualify for the additional PRIME Agency Order credit, the Exchange proposes that Members must also achieve greater than 0.85% in Priority Customer complex volume on MIAX during a relevant month, represented as a percentage of the total national customer volume in multiply-listed options classes listed on MIAX during the same month. Accordingly, with the proposed change, Members will be eligible to receive the additional PRIME Agency Order credit of \$0.01 per contract for their incremental Priority Customer PRIME Agency Orders if the Member executes over a monthly threshold of 0.60% of national customer volume in multiply-listed options classes listed on MIAX during the relevant month, the Member achieves PCRCP Tier 3 or higher, and the Member achieves greater than 0.85% in Priority Customer complex volume on MIAX during a particular month, represented as a percentage of national customer volume in multiply-listed options classes listed on MIAX during the relevant month.

#### Fee Schedule Cleanup Item

The Exchange also proposes to amend Section 1(a)(iv) of the Fee Schedule to make a minor, non-substantive corrective edit. In particular, the Exchange proposes to amend the explanatory paragraph immediately below the table in Section 1(a)(iv) of the Fee Schedule to delete the phrase "Non-Priority Customer-to-Non-Priority Customer Orders." The purpose of this change is to remove an order type that

<sup>7</sup> The Exchange notes that the following orders are excluded from counting towards this threshold: QCC and cQCC Orders, mini-options, Priority Customer-to-Priority Customer Orders, C2C and cC2C Orders, cPRIME Agency Orders, PRIME and cPRIME AOC Responses, PRIME and cPRIME Contra-side Orders, PRIME and cPRIME Orders for which both the Agency and Contra-side Order are Priority Customers, and executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in MIAX Rule 1400. See Fee Schedule, Section 1(a)(iii).

does not exist on the Exchange, which will provide clarity to all market participants that the Fee Schedule is accurate and concise.

#### Implementation

The proposed changes will become effective on November 1, 2021.

#### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>8</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>9</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>10</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or 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>11</sup> There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, as of October 20, 2021, no

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

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

<sup>10</sup> *Id.*

<sup>11</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

single exchange has more than approximately 12% of the market share of executed volume of multiply-listed equity and exchange-traded fund (“ETF”) options trades, for the month of October 2021.<sup>12</sup> Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, as of October 20, 2021, the Exchange had a market share of approximately 5.87% of executed volume of multiply-listed equity and ETF options for the month of October 2021.<sup>13</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>14</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 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 the criteria for Members to

receive the additional PRIME Agency Order credit that is available for Priority Customer PRIME Agency Orders for Members who achieve PCRP Tier 3 or higher to include an additional requirement is reasonable, equitably allocated and not unfairly discriminatory because this change is for business and competitive reasons.

The Exchange believes its proposal is consistent with Section 6(b)(4) of the Act<sup>15</sup> because it applies equally to all participants with similar order flow who reach Tier 3 of the PCRP or higher. The Exchange believes that the proposed new requirement to achieve the additional PRIME Agency Order credit will encourage market participants to execute greater Priority Customer complex volume in order to receive the additional PRIME Agency Order credit. The Exchange believes this will result in increased liquidity that benefits all Exchange participants by providing more trading opportunities and tighter spreads.

Further, the Exchange believes that its proposal will continue to 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. The PCRP is reasonably designed because it incentivizes providers of Priority Customer order flow to send that Priority Customer order flow to the Exchange in order to obtain the highest volume threshold and receive a credit in a manner that enables the Exchange to improve its overall competitiveness and strengthen its market quality for all market participants.

In addition, the Exchange believes that its proposal is consistent with Section 6(b)(5) of the Act<sup>16</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 and complex 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 and/or complex order flow.

The Exchange believes the proposed change to remove the incorrect phrase regarding a certain order type promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market and a national market system because the proposed change makes a clarifying, non-substantive edit to the Fee Schedule. The Exchange believes that this proposed change will provide greater clarity to Members and the public regarding the Exchange’s Fee Schedule and that it is in the public interest for the Fee Schedule to be accurate and concise so as to eliminate the potential for confusion.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### *Intra-Market Competition*

The Exchange does not believe that other market participants at the Exchange would be placed at a relative disadvantage by the proposed change to amend the criteria for Members to receive the additional PRIME Agency Order credit that is available for Priority Customer PRIME Agency Orders for Members who achieve PCRP Tier 3 or higher to include an additional requirement. The proposed change is designed to attract additional order flow to the Exchange. Accordingly, the Exchange believes that the proposal will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act because it will continue to encourage Priority Customer order flow and an increase in Priority Customer order flow will bring greater volume and liquidity, which benefits all market participants by providing more trading opportunities and tighter spreads.

#### *Inter-Market Competition*

The Exchange operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. There are currently 16 registered options exchanges competing for order flow. Based on publicly-available

<sup>12</sup> See MIAX’s “The Market at a Glance”, available at <https://www.miaxoptions.com/> (last visited October 20, 2021).

<sup>13</sup> See *id.*

<sup>14</sup> See Securities Exchange Act Release No. 85304 (March 13, 2019), 84 FR 10144 (March 19, 2019) (SR-PEARL-2019-07).

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

<sup>16</sup> 15 U.S.C. 78f(b)(4).

information, and excluding index-based options, no single exchange has exceeded approximately 12% of the market share of executed volume of multiply-listed equity and ETF options trades as of October 20, 2021, for the month of October 2021.<sup>17</sup> Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, as of October 20, 2021, the Exchange had a market share of approximately 5.87% of executed volume of multiply-listed equity and ETF options for the month of October 2021. In such an environment, the Exchange must continually adjust its transaction and non-transaction fees to remain competitive with other exchanges and to attract order flow. The Exchange believes that the proposed rule changes reflect this competitive environment because they modify the Exchange's fees in a manner that encourages market participants to provide Priority Customer liquidity and to send order flow to the Exchange. To the extent this is achieved, all the Exchange's market participants should benefit from the improved market quality.

#### Fee Schedule Cleanup Item

The Exchange believes that the proposed change to remove an incorrect order type will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not a competitive filing but rather is designed to remedy a minor non-substantive issue and provide added clarity to the Fee Schedule in order to avoid potential confusion on the part of market participants. In addition, the Exchange does not believe the proposal will impose any burden on inter-market competition as the proposal does not address any competitive issues and is intended to protect investors by providing further transparency regarding the Exchange's Fee Schedule.

#### 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>18</sup> and Rule 19b-4(f)(2)<sup>19</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-MIAX-2021-56 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-2021-56. 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-2021-56, and should be submitted on or before December 8, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

[FR Doc. 2021-25015 Filed 11-16-21; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-93549; File No. SR-EMERALD-2021-39]

### Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Section 1(a)(ii) of the Fee Schedule To Revise the Application of the Tier Calculation

November 10, 2021.

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 October 29, 2021, MIAX Emerald, LLC ("MIAX Emerald" 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 Emerald 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/emerald>, at MIAX's principal office, and at the Commission's Public Reference Room.

<sup>20</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>18</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>19</sup> 17 CFR 240.19b-4(f)(2).

<sup>17</sup> See *supra* note 12.