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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97167; File No. SR–MIAX–2023–12]

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

March 20, 2023.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 9, 2023, 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 Fee Schedule (''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: (i) modify the volume thresholds for the volume criteria in all tiers (described below) set forth in the Exchange's Market Maker [3] Sliding Scale for Market Maker transaction fees (the ''Sliding Scale''); and (ii) modify the volume thresholds for the volume criteria for tiers 2, 3, and 4 for Priority Customer [4] orders in the Priority Customer Rebate Program (the ''PCRP,'' described below).[5] The Exchange originally filed this proposal on February 28, 2023 (SR–MIAX–2023–10). On March 9, 2023, the Exchange withdrew SR–MIAX–2023–10 and resubmitted this proposal.

Background

In general, the Exchange assesses transaction fees to all Market Makers, which are based upon a threshold tier structure. Section 1)a)i) of the Fee Schedule sets forth the Market Maker Sliding Scale for Market Maker transaction fees. Pursuant to the Sliding Scale, the Exchange assesses a per contract transaction fee on a Market Maker for the execution of simple orders and quotes (collectively, ''simple orders'') and complex orders and quotes (collectively, ''complex orders'') based on the tier achieved. For Market Makers, the percentage threshold by tier is based on the Market Maker's percentage of total national Market Maker volume in all multiply-listed options classes that trade on the Exchange during a particular calendar month, or total aggregated volume (''TAV''), and the Exchange aggregates the volume executed by Market Makers in both simple and complex orders for purposes of determining the applicable tier and corresponding per contract transaction fee amount.[6] The Sliding Scale applies to all MIAX Market Makers for transactions in all multiply-listed products (except for mini-options), with fees established for standard option classes in the Penny Interval Program [7] (''Penny Classes'') and separate fees for standard option classes which are not in the Penny Program (''non-Penny Classes''), and further based on whether the Market Maker is acting as a ''Maker'' or a ''Taker'' in simple orders.[8] Market Makers that place resting liquidity, *i.e.,* quotes or orders on the MIAX System,[9] are assessed the ''maker'' fee (each a ''Maker''). Market Makers that execute against (remove) resting liquidity are generally assessed a higher ''taker'' fee (each a ''Taker'').

Further, the Exchange provides certain discounted Market Maker transaction fees for Members [10] and their qualified Affiliates [11] that achieve certain volume thresholds through the submission of Priority Customer orders under the Exchange's PCRP. Market Maker transaction fees are set forth in two tables in Section 1)a)i) of the Fee

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Market Makers'' refers to ''Lead Market Makers'', ''Primary Lead Market Makers'' and ''Registered Market Makers'' collectively. *See* Exchange Rule 100.

[4] The term ''Priority Customer'' means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). *See* Exchange Rule 100.

[5] *See* Fee Schedule, Section 1)a)iii.

[6] The calculation of the volume thresholds does not include QCC and cQCC Orders, PRIME and cPRIME AOC Responses, and unrelated MIAX Market Maker quotes or unrelated MIAX Market Maker orders that are received during the Response Time Interval and executed against the PRIME Order (''PRIME Participating Quotes or Orders'') and unrelated MIAX Market Maker complex quotes or unrelated MIAX Market Maker complex orders that are received during the Response Time Interval and executed against a cPRIME Order (''cPRIME Participating Quote or Order'') (herein ''Excluded Contracts''). *See* Fee Schedule, page 2.

[7] *See* Securities Exchange Act Release No. 88988 (June 2, 2020), 85 FR 35153 (June 8, 2020) (SR–MIAX–2020–13). *See also* Exchange Rule 510(c).

[8] *See* Securities Exchange Act Release No. 78519 (August 9, 2016), 81 FR 54162 (August 15, 2016) (SR–MIAX–2016–21).

[9] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[10] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[11] The term ''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.

Schedule: the first table sets forth the transaction fees applicable to Members and their Affiliates that are in PCRP volume tier 3 or higher; and the second table sets forth the transaction fees applicable to Members and their Affiliates that are not in PCRP volume tier 3 or higher. The Sliding Scale also includes Maker and Taker fees in both tables in each tier for simple orders in Penny Classes and non-Penny Classes, where the fees are discounted/differentiated between the tables.

Section 1)a)iii) of the Fee Schedule describes the PCRP. Pursuant to the PCRP, the Exchange credits each Member the per contract amount set forth in the PCRP table [12] resulting from each Priority Customer order transmitted by that Member which is executed electronically on the Exchange in all multiply-listed option classes, provided the Member meets certain percentage thresholds in a month as described in the PCRP table. However, the Exchange excludes the following orders from participating in the PCRP: in simple or complex, as applicable, QCC [13] and cQCC Orders,[14] mini-options, Priority Customer-to-Priority Customer Orders, C2C,[15] cC2C Orders,[16] PRIME and cPRIME AOC Responses, PRIME and cPRIME contra-side orders, PRIME [17] and cPRIME Orders,[18] 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).

Volume for transactions in both simple and complex and in applicable PRIME and cPRIME orders in the PCRP 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 for purposes of the volume thresholds described in the PCRP table.

Modifications to Volume Criteria Percentage Thresholds in all Tiers for the Market Maker Origin Applicable to Members and Affiliates in PCRP Volume Tier 3 or Higher

Currently, the Market Maker Sliding Scale volume thresholds applicable to Members and their Affiliates that are in PCRP volume tier 3 or higher are as follows: (i) 0.00% to 0.075% in tier 1; (ii) above 0.075% to 0.70% in tier 2; (iii) above 0.70% to 1.10% in tier 3; (iv) above 1.10% to 1.50% in tier 4; and (v) above 1.50% in tier 5.[19] For these types of transactions where the Market Maker is a Maker in Penny Classes for simple orders, the Exchange assesses per contract fees as follows: $0.21 in tier 1, $0.16 in tier 2, $0.10 in tier 3, $0.05 in tier 4, and $0.03 in tier 5. For these types of transactions where the Market Maker is a Taker in Penny Classes for simple orders, the Exchange assesses per contract fees as follows: $0.23 in tier 1, $0.22 in tier 2, $0.19 in tier 3, $0.18 in tier 4, and $0.17 in tier 5. For these types of transactions where the Market Maker is a Maker in non-Penny Classes for simple orders, the Exchange assesses per contract fees as follows: $0.25 in tier 1, $0.19 in tier 2, $0.12 in tier 3, $0.08 in tier 4, and $0.06 in tier 5. For these types of transactions where the Market Maker is a Taker in non-Penny Classes for simple orders, the Exchange assesses per contract fees as follows: $0.30 in tier 1, $0.27 in tier 2, $0.23 in tier 3, $0.22 in tier 4, and $0.21 in tier 5. For these types of transactions where the Market Maker is a Maker or Taker in Penny Classes for complex orders, the Exchange assesses per contract fees as follows: $0.25 in tier 1, $0.24 in tier 2, $0.21 in tier 3, $0.20 in tier 4, and $0.19 in tier 5. For these types of transactions where the Market Maker is a Maker or Taker in non-Penny Classes for complex orders, the Exchange assesses per contract fees as follows: $0.32 in tier 1, $0.29 in tier 2, $0.25 in tier 3, $0.24 in tier 4, and $0.23 in tier 5. The Exchange also assesses a surcharge of $0.12 per contract in all tiers for Market Maker transactions in complex orders when the Market Maker is trading against a Priority Customer complex order in Penny and non-Penny Classes.

The Exchange proposes to modify the volume thresholds for the volume criteria for the Market Maker Sliding Scale applicable to Members and their Affiliates that are in PCRP volume tier 3 or higher as follows: (i) tier 1 will be amended from 0.00% to 0.075% to now be 0.00% to 0.40%; (ii) tier 2 will be amended from above 0.075% to 0.70% to now be above 0.40% to 0.80%; (iii) tier 3 will be amended from above 0.70% to 1.10% to now be above 0.80% to 1.20%; (iv) tier 4 will be amended from above 1.10% to 1.50% to now be above 1.20% to 1.60%; and (v) tier 5 will be amended from above 1.50% to now be above 1.60%. The Exchange does not proposes to amend any of the Maker or Taker fee amounts pursuant to this proposal.

Modifications to Volume Criteria Percentage Thresholds in all Tiers for the Market Maker Origin Applicable to Members and Affiliates That Are Not in PCRP Volume Tier 3 or Higher

Currently, the Market Maker Sliding Scale volume thresholds applicable to Members and their Affiliates that are not in PCRP volume tier 3 or higher are as follows: (i) 0.00% to 0.075% in tier 1; (ii) above 0.075% to 0.70% in tier 2; (iii) above 0.70% to 1.10% in tier 3; (iv) above 1.10% to 1.50% in tier 4; and (v) above 1.50% in tier 5.[20] For these types of transactions where the Market Maker is a Maker in Penny Classes for simple orders, the Exchange assesses per contract fees as follows: $0.23 in tier 1, $0.18 in tier 2, $0.12 in tier 3, $0.07 in tier 4, and $0.05 in tier 5. For these types of transactions where the Market Maker is a Taker in Penny Classes for simple orders, the Exchange assesses per contract fees as follows: $0.25 in tier 1, $0.24 in tier 2, $0.21 in tier 3, $0.20 in tier 4, and $0.19 in tier 5. For these types of transactions where the Market Maker is a Maker in non-Penny Classes

[12] The Exchange notes an exception for broken up cPRIME Agency Orders in the PCRP, which are subject to the per contract credits described in the cPRIME Agency Order Break-up Table in Section 1)a)iii) of the Fee Schedule, below the PCRP table.

[13] A Qualified Contingent Cross Order is comprised of an originating order to buy or sell at least 1,000 contracts, or 10,000 mini-option contracts, that is identified as being part of a qualified contingent trade, as that term is defined in Interpretations and Policies .01 below, coupled with a contra-side order or orders totaling an equal number of contracts. *See* Exchange Rule 516(j).

[14] A Complex Qualified Contingent Cross or ''cQCC'' Order is comprised of an originating complex order to buy or sell where each component is at least 1,000 contracts that is identified as being part of a qualified contingent trade, as defined in Rule 516, Interpretations and Policies .01, coupled with a contra-side complex order or orders totaling an equal number of contracts. Trading of cQCC Orders is governed by Rule 515(h)(4). *See* Exchange Rule 518(b)(6).

[15] A Customer Cross Order is comprised of a Priority Customer Order to buy and a Priority Customer Order to sell at the same price and for the same quantity. *See* Exchange Rule 516(i).

[16] A Complex Customer Cross or ''cC2C'' Order is comprised of one Priority Customer complex order to buy and one Priority Customer complex order to sell at the same price and for the same quantity. Trading of cC2C Orders is governed by Rule 515(h)(3). *See* Exchange Rule 518(b)(5).

[17] The Price Improvement Mechanism (''PRIME'') is a process by which a Member may electronically submit for execution (''Auction'') an order it represents as agent (''Agency Order'') against principal interest, and/or an Agency Order against solicited interest. *See* Exchange Rule 515A(a).

[18] Members may use PRIME to execute complex orders at a net price. ''cPRIME'' is the process by which a Member may electronically submit a ''cPRIME Order'' (as defined in Exchange Rule 518(b)(7)) it represents as agent (a ''cPRIME Agency Order'') against principal or solicited interest for execution (a ''cPRIME Auction''), pursuant to the provisions of Exchange Rule 515A. *See* Exchange Rule 515A, Interpretation and Policy .12(a).

[19] *See* Fee Schedule, Section 1)a)i), page 1.

[20] *See* Fee Schedule, Section 1)a)i), page 2.

for simple orders, the Exchange assesses per contract fees as follows: $0.27 in tier 1, $0.21 in tier 2, $0.14 in tier 3, $0.10 in tier 4, and $0.08 in tier 5. For these types of transactions where the Market Maker is a Taker in non-Penny Classes for simple orders, the Exchange assesses per contract fees as follows: $0.32 in tier 1, $0.29 in tier 2, $0.25 in tier 3, $0.24 in tier 4, and $0.23 in tier 5. For these types of transactions where the Market Maker is a Maker or Taker in Penny Classes for complex orders, the Exchange assesses per contract fees as follows: $0.25 in tier 1, $0.24 in tier 2, $0.21 in tier 3, $0.20 in tier 4, and $0.19 in tier 5. For these types of transactions where the Market Maker is a Maker or Taker in non-Penny Classes for complex orders, the Exchange assesses per contract fees as follows: $0.32 in tier 1, $0.29 in tier 2, $0.25 in tier 3, $0.24 in tier 4, and $0.23 in tier 5. The Exchange also assesses a surcharge of $0.12 per contract in all tiers for Market Maker transactions in complex orders when the Market Maker is trading against a Priority Customer complex order in Penny and non-Penny Classes.

The Exchange proposes to modify the volume thresholds for the volume criteria for the Market Maker Sliding Scale applicable to Members and their Affiliates that are not in PCRP volume tier 3 or higher as follows: (i) tier 1 will be amended from 0.00% to 0.075% to now be 0.00% to 0.40%; (ii) tier 2 will be amended from above 0.075% to 0.70% to now be above 0.40% to 0.80%; (iii) tier 3 will be amended from above 0.70% to 1.10% to now be above 0.80% to 1.20%; (iv) tier 4 will be amended from above 1.10% to 1.50% to now be above 1.20% to 1.60%; and (v) tier 5 will be amended from above 1.50% to now be above 1.60%. The Exchange does not proposes to amend any of the Maker or Taker fee amounts pursuant to this proposal.

The purpose of adjusting the percentage thresholds for the volume criteria in all tiers of the Market Maker Sliding Scale for both tables is for business and competitive reasons. In order to attract order flow, the Exchange initially set its volume thresholds so that they were meaningfully lower than other options exchanges. The Exchange now believes that it is appropriate to adjust the volume thresholds so that they are more in line with other exchanges, but will still remain highly competitive such that it should enable the Exchange to continue to attract order flow and maintain market share.

For example, NYSE American, LLC (''NYSE American'') provides a similar sliding scale for NYSE American Options Market Maker transactions. Pursuant to the NYSE American Options Market Maker sliding scale, the NYSE American Market Maker's tier for transaction fees is calculated based on that Market Maker's average daily volume (''ADV'') as a percentage of TCADV.[21] Similar to the Exchange's Market Maker Sliding Scale, the NYSE American Options Market Maker sliding scale tiers are as follows (including applicable fees for ''non-take volume'' and ''take volume''): [22] (i) 0.00% to 0.25% in tier 1 (per contract fee of $0.25 regardless of non-take or take volume); (ii) above 0.25% to 0.70% in tier 2 (per contract fees of $0.22 for non-take volume and $0.24 for take volume); (iii) above 0.70% to 1.50% in tier 3 (per contract fees of $0.12 for non-take volume and $0.17 for take volume); and (iv) above 1.50% in tier 4 (per contract fees of $0.09 for non-take volume and $0.14 for take volume).[23]

Modifications to Volume Criteria Percentage Thresholds in PCRP Tiers 2, 3 and 4

Currently, the volume thresholds applicable to Priority Customer orders in PCRP tiers 2, 3 and 4 are as follows: (i) above 0.50% to 1.20% in tier 2; (ii) above 1.20% to 1.75% in tier 3; and (iii) above 1.75% in tier 4.[24] For Priority Customer orders in the PCRP, the Exchange provides a per contract credit for simple orders in non-MIAX Select Symbols [25] as follows: $0.00 in tier 1, $0.10 in tier 2, $0.15 in tier 3, and $0.21 in tier 4. For Priority Customer orders in the PCRP, the Exchange provides a per contract credit for simple orders in MIAX Select Symbols as follows: $0.00 in tier 1, $0.10 in tier 2, $0.18 in tier 3, and $0.24 in tier 4. For Priority Customer orders in the PCRP, the Exchange provides a per contract credit for PRIME Agency Orders as follows: $0.10 in tier 1, $0.11 in tier 2, $0.11 in tier 3, and $0.11 in tier 4. For Priority Customer orders in the PCRP, the Exchange provides a per contract credit for cPRIME Agency orders based on the order break-up percentage, described in the cPRIME Agency Order Break-up Table in Section 1)a)iii) of the Fee Schedule.[26] For Priority Customer orders in the PCRP, the Exchange provides a per contract credit for complex orders as follows: $0.20 in tier 1, $0.21 in tier 2, $0.26 or $0.27 in tier 3 (depending on whether the executing buyer and seller are the same Member and Affiliate or not),[27] and $0.27 or $0.28 in tier 4 (depending on whether the executing buyer and seller are the same Member and Affiliate or not).[28]

The Exchange proposes to modify the volume thresholds for the volume criteria for Priority Customer orders in PCRP tiers 2, 3 and 4 as follows: (i) tier 2 will be amended from above 0.50% to 1.20% to now be above 0.50% to 1.50%; (ii) tier 3 will be amended from above 1.20% to 1.75% to now be above 1.50% to 2.00%; and (iv) tier 4 will be amended from above 1.75% to now be above 2.00%. The Exchange does not propose to amend any of the credit amounts in the PCRP pursuant to this proposal.

The purpose of adjusting the percentage thresholds for the volume criteria in tiers 2, 3 and 4 of the PCRP is for business and competitive reasons. In order to attract order flow, the Exchange initially set its volume thresholds so that they were meaningfully lower than other options exchanges. The Exchange now believes that it is appropriate to adjust the volume thresholds so that they are more in line with other exchanges, but will still remain highly competitive such that it should enable the Exchange to continue to attract order flow and maintain market share.

For example, NYSE American provides a similar range of volume thresholds for its American Customer Engagement (''ACE'') Program. Pursuant to the ACE Program, NYSE American Customer tiers for credits are calculated utilizing two different methods: (1) based on the Customer's electronic ADV as a percentage of TCADV; or (2) based on the total electronic ADV (of which 20% or greater of the minimum qualifying volume for each tier must be

[21] ''TCADV'' refers to Total Industry Customer equity and ETF option average daily volume. TCADV includes OCC calculated Customer volume of all types, including Complex Order transactions and QCC transactions, in equity and ETF options. *See* NYSE American Options Fee Schedule, Key Terms and Definitions.

[22] For the purposes of the Sliding Scale transaction charges, all eligible volume that does not remove liquidity will be considered ''non-take volume''; whereas all volume that removes liquidity will be considered ''take volume.'' *See* NYSE American Options Fee Schedule, Section I.C. NYSE American Options Market Maker Sliding Scale—Electronic, page 9–10.

[23] *See id.*

[24] *See* Fee Schedule, Section 1)a)iii), page 5.

[25] The term ''MIAX Select Symbols'' means options overlying AAL, AAPL, AMAT, AMD, AMZN, BA, BABA, BB, BIDU, BP, C, CAT, CLF, CVX, DAL, EBAY, EEM, FCX, GE, GILD, GLD, GM, GOOGL, GPRO, HAL, INTC, IWM, JNJ, JPM, KMI, KO, META, MO, MRK, NFLX, NOK, ORCL, PBR, PFE, PG, QCOM, QQQ, RIG, SPY, T, TSLA, USO, VALE, WBA, WFC, WMB, X, XHB, XLE, XLF, XLP, XOM and XOP. *See* Fee Schedule, Section 1)a)iii), note 14.

[26] *See* Fee Schedule, Section 1)a)iii), cPRIME Agency Order Break-up Table.

[27] *See* Fee Schedule, Section 1)a)iii), notes ◈ and ▪.

[28] *See id.*

Customer) as a percentage of TCADV.[29] The ACE Program provides similar volume thresholds as the PCRP, which are as follows: (i) less than 0.40% in the Base tier; (ii) 0.40% to 0.75% in tier 1; (iii) above 0.75% to 1.00% in tier 2; (iv) above 1.00% to 1.25% in tier 3; (v) above 1.25% to 1.75% in tier 4; and (vi) above 1.75% in tier 5.[30]

Implementation

The proposed changes are immediately effective.

2. Statutory Basis

The Exchange believes that its proposed changes to the Fee Schedule are consistent with Section 6(b) of the Act[31] in general, and furthers the objectives of Section 6(b)(4) of the Act,[32] in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange Members and issuers and other persons using its facilities, and 6(b)(5) of the Act,[33] in that it is 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 facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes 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.''[34] There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange had more than 12.93% of the market share of executed volume of multiply-listed equity and exchange-traded fund (''ETF'') options trades for the month of February 2023.[35] Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, the Exchange had a market share of 6.82% of executed volume of multiply-listed equity and ETF options for the month of February 2023.[36]

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).[37] 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 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.

The Exchange believes its proposal to modify the volume thresholds for the volume criteria in all Market Maker Sliding Scale tiers and in tiers 2, 3 and 4 for Priority Customer orders in the PCRP 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 volume thresholds at meaningful low levels. The Exchange now believes that it is appropriate to adjust these volume thresholds so that they are more reflective of the current operating conditions and the current type and amount of volume (Market Maker and Priority Customer orders) executed on the Exchange. The Exchange believes that the proposed volume thresholds will still allow the Exchange to remain highly competitive such that the thresholds should enable the Exchange to continue to attract order flow and maintain market share.

The Exchange believes its proposal to modify the volume thresholds for the volume criteria in all Market Maker Sliding Scale tiers and in tiers 2, 3 and 4 for Priority Customer orders in the PCRP is reasonable, equitable and not unfairly discriminatory because all similarly situated market participants in the same origin type are subject to the same volume thresholds, as proposed. With the proposed changes, Market Makers will have to increase their volume as a percentage threshold in order to achieve the lower fees afforded by the higher tiers of the Sliding Scale for both Market Maker transaction fee tables in simple and complex orders, as applicable. The Exchange cannot predict with certainty how many Market Makers with volume applicable to either table of the Sliding Scale will be impacted by the proposed higher volume thresholds; however, the Exchange notes that all Market Makers will be subject to the proposed thresholds, but based on volume in recent months, up to six Market Makers may be impacted by the proposed higher threshold volume requirements of the Sliding Scale to achieve lower transaction fees in simple (Penny and non-Penny Classes) and complex orders. However, even with the proposed volume threshold changes, the Exchange believes its volume thresholds will still allow the Exchange to remain highly competitive such that the thresholds should enable the Exchange to continue to attract order flow and maintain market share. As the amount and type of volume that is executed on the Exchange has shifted since it first established the Market Maker Sliding Scale, provided that the Market Maker and its Affiliates are in tier 3 of higher of the PCRP or not, the Exchange has determined to level-set the volume criteria threshold amounts so that they are more reflective of the current operating conditions and the current type and amount of volume executed on the Exchange.

Similarly, with the proposed changes, market participants will need increased volume as a percentage threshold of Priority Customer orders in the PCRP in order to achieve the higher rebates afforded by the higher tiers of the PCRP in simple and complex orders and PRIME and cPRIME Agency orders, as applicable. The Exchange cannot

[29] *See* NYSE American Options Fee Schedule, Section I.E.

[30] *See id.*

[31] 15 U.S.C. 78f(b).

[32] 15 U.S.C. 78f(b)(4).

[33] 15 U.S.C. 78f(b)(1) and (b)(5).

[34] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[35] *See* ''The Market at a Glance,'' *available at https://www.miaxoptions.com/* (last visited March 9, 2023).

[36] *See id.*

[37] *See* Securities Exchange Act Release No. 85304 (March 13, 2019), 84 FR 10144 (March 19, 2019) (SR–PEARL–2019–07).

predict with certainty how many market participants will be impacted by the proposed higher volume thresholds of the PCRP. However, even with the proposed volume threshold changes, the Exchange believes its volume thresholds will still allow the Exchange to remain highly competitive such that the thresholds should enable the Exchange to continue to attract order flow and maintain market share. As the amount and type of volume that is executed on the Exchange has shifted since it first established the PCRP, the Exchange has determined to level-set the volume criteria threshold amounts so that they are more reflective of the current operating conditions and the current type and amount of volume executed on the Exchange.

The Exchange believes it is equitable and not unfairly discriminatory to modify the volume thresholds for the volume criteria in all Market Maker Sliding Scale tiers and in tiers 2, 3 and 4 for Priority Customer orders in the PCRP for business and competitive reasons because the Exchange initially set its volume thresholds so that they were meaningfully lower than other options exchanges. The Exchange now believes that it is appropriate to adjust the volume thresholds so that they are more in line with other exchanges,[38] but will still remain highly competitive such that it should enable the Exchange to continue to attract order flow and maintain market share. The Exchange cannot predict with certainty, but the Exchange notes that even with the proposed increase to the volume thresholds for the volume criteria in tiers 2, 3 and 4 for Priority Customer orders in the PCRP, no Affiliated Market Makers will be affected (with the determining factor being Market Makers in PCRP tier 3 or higher or not being in PCRP tier 3 or higher). Stated another way, with the proposed changes to the PCRP volume threshold criteria, Market Makers with Affiliates in PCRP tier 3 or higher will continue to remain the same respective Market Maker Sliding Scale table. Likewise, Market Makers with Affiliates not in PCRP tier 3 or higher will continue to remain in the same respective Market Maker Sliding Scale table. The Market Makers that were not in PCRP tier 3 or higher prior to the proposed changes will continue to remain in the same respective Market Maker Sliding Scale table. Accordingly, the Exchange believes the proposed changes are reasonable and not unfairly discriminatory because the proposed changes to the PCRP volume criteria thresholds will impact all Market Makers equally when determining which transaction fee table they are assessed for the Market Maker Sliding Scale.

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

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

The Exchange believes its proposal will not impose any burden on intra-market competition because the Exchange believes that its proposal will not place any category of Exchange market participant at a competitive disadvantage because the changes would apply equally among market participants that have Priority Customer orders receive credits pursuant to the PCRP. As the amount and type of volume that is executed on the Exchange has shifted since it first established the PCRP and Market Maker Sliding Scale, the Exchange has determined to level-set the volume criteria threshold amounts so that they are more reflective of the current operating conditions and the current type and amount of volume executed on the Exchange. The proposal to modify the volume thresholds is intended to improve market quality. The Exchange believes that its proposal will continue to encourage additional Market Maker and Priority Customer volume to be executed on the Exchange, which will attract further liquidity to the Exchange and benefit all market participants. Accordingly, the Exchange believes that the proposed changes will continue to attract order flow to the Exchange, thereby encouraging additional volume and liquidity to the benefit of all market participants.

The Exchange believes its proposal will not impose any burden on inter-market competition because the Exchange notes that it 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, or rebate opportunities available at other venues to be more favorable. There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange had more than 12.93% of the market share of executed volume of multiply-listed equity and ETF options trades for the month of February 2023.[39] Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, the Exchange had a market share of 6.82% of executed volume of multiply-listed equity and ETF options for the month of February 2023.[40] In such an environment, the Exchange must continually adjust its fees and tiers to remain competitive with other options exchanges. Because competitors are free to modify their own fees and tiers in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. 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 continue to provide liquidity and to send order flow to the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[41] and Rule 19b–4(f)(2)[42] 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:

[38] *See* supra notes 22 and 29.

[39] *See supra* note 35.

[40] *See id.*

[41] 15 U.S.C. 78s(b)(3)(A)(ii).

[42] 17 CFR 240.19b–4(f)(2).

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.* Please include File Number SR–MIAX–2023–12 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–2023–12. 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 such 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–2023–12 and should be submitted on or before April 14, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[43]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–06055 Filed 3–23–23; 8:45 am]

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[43] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97170; File No. SR–NYSE–2023–18]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Price List

March 20, 2023.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on March 13, 2023, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 proposes to amend its Price List to amend the charges for transactions that remove liquidity from the Exchange. The Exchange proposes to implement the fee changes effective March 13, 2023. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, 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 self-regulatory organization 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 those 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 parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

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

1. Purpose

The Exchange proposes to amend it Price List to amend the charges for transactions that remove liquidity from the Exchange.

The proposed changes respond to the current competitive environment where order flow providers have a choice of where to direct liquidity-removing orders by offering further incentives for member organizations to send additional liquidity to the Exchange.

The Exchange proposes to implement the fee changes effective March 13, 2023.[4]

Competitive Environment

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.''[5]

While Regulation NMS has enhanced competition, it has also fostered a ''fragmented'' market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that ''such competition can lead to the fragmentation of order flow in that stock.''[6] Indeed, cash equity trading is currently dispersed across 16 exchanges,[7] numerous alternative trading systems,[8] and broker-dealer

[4] The Exchange originally filed to amend the Price List on March 1, 2023 (SR–NYSE–2023–16). SR–NYSE–2023–16 was withdrawn on March 13, 2023 and replaced by this filing.

[5] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (File No. S7–10–04) (Final Rule) (''Regulation NMS'').

[6] *See* Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7–02–10) (Concept Release on Equity Market Structure).

[7] *See* Cboe U.S Equities Market Volume Summary, available at *https://markets.cboe.com/us/equities/market_share. See generally https://www.sec.gov/fast-answers/divisionsmarketregmr exchangesshtml.html.*

[8] *See* FINRA ATS Transparency Data, *available at https://otctransparency.finra.org/otctransparency/*

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