

any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed amendments would simply require listed companies to pay fees to the Exchange that were already due and payable under applicable Exchange rules and the issuer's listing agreement. Specifically, the Exchange believes it is fair to require listed companies to pay all outstanding listing and annual fees before the Exchange approves a Plan or required periodic review of a Plan, as listed companies are already required by Exchange rules (as set forth in Section 902.00 *et seq.*) and their listing agreements to pay these fees when due and the Exchange has the authority under Section 802.01D to delist companies for violations of their agreements with the Exchange, including their listing agreements. In addition, the Exchange notes that the Plan acceptance and periodic review process requires significant incremental work on the part of Exchange staff.

As the proposal would not result in any change in the cost of a listing on the Exchange, the Exchange does not believe that it imposes any additional burden on competition.

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

No written comments were solicited or received with respect to the proposed rule change.

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

Within 45 days of the date of publication of this notice in the **Federal Register** 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 will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be 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 (<https://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-NYSE-2024-44 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-NYSE-2024-44. 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 (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSE-2024-44 and should be submitted on or before November 6, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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**BILLING CODE 8011-01-P**

<sup>8</sup> 17 CFR 200.30-3(a)(12).

#### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-101289; File No. SR-MIAX-2024-39]

#### **Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule and Extend the SPIKES Options Market Maker Incentive Program**

October 9, 2024.

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 27, 2024, 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 and II 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") to (i) amend and extend the SPIKES options Market Maker Incentive Program (the "Incentive Program") until January 31, 2025; and (ii) remove waivers for certain non-transaction fees applicable to Market Makers<sup>3</sup> that trade solely in Proprietary Products.<sup>4</sup>

The text of the proposed rule change is available on the Exchange's website at <https://www.miaxglobal.com/markets/us-options/all-options-exchanges/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

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

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

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

<sup>4</sup> The term "Proprietary Product" means a class of options that is listed exclusively on the Exchange. See Exchange Rule 100.

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) amend and extend the SPIKES options Market Maker Incentive Program (the "Incentive Program") until January 31, 2025; and (ii) remove waivers for certain non-transaction fees applicable to Market Makers that trade solely in Proprietary Products.

Background

On October 12, 2018, the Exchange received approval from the U.S. Securities and Exchange Commission ("Commission") to list and trade on the Exchange options on the SPIKES® Index, a new index that measures expected 30-day volatility of the SPDR S&P 500 ETF Trust (commonly known and referred to by its ticker symbol, "SPY").<sup>5</sup> The Exchange adopted its initial SPIKES options transaction fees on February 15, 2019 and adopted a new section of the Fee Schedule for those fees.<sup>6</sup> Options on the SPIKES Index began trading on the Exchange on February 19, 2019.

On May 31, 2019, the Exchange filed its first proposal in a series of proposals with the Commission to amend the Fee Schedule to waive certain non-transaction fees applicable to Market Makers that trade solely in Proprietary Products (including options on the SPIKES Index) beginning June 1, 2019, through September 30, 2024.<sup>7</sup> In

<sup>5</sup> See Securities Exchange Act Release No. 84417 (October 12, 2018), 83 FR 52865 (October 18, 2018) (SR-MIAX-2018-14) (Order Granting Approval of a Proposed Rule Change by Miami International Securities Exchange, LLC to List and Trade on the Exchange Options on the SPIKES® Index).

<sup>6</sup> See Securities Exchange Release No. 85283 (March 11, 2019), 84 FR 9567 (March 15, 2019) (SR-MIAX-2019-11). The Exchange initially filed the proposal on February 15, 2019 (SR-MIAX-2019-04). That filing was withdrawn and replaced with SR-MIAX-2019-11. On September 30, 2020, the Exchange filed its proposal to, among other things, reorganize the Fee Schedule to adopt new Section (1)(b), Proprietary Products Exchange Fees, and moved the fees and rebates for SPIKES options into new Section (1)(b)(i). See Securities Exchange Act Release Nos. 90146 (October 9, 2020), 85 FR 65443 (October 15, 2020) (SR-MIAX-2020-32); 90814 (December 29, 2020), 86 FR 327 (January 5, 2021) (SR-MIAX-2020-39).

<sup>7</sup> See Securities Exchange Act Release Nos. 86109 (June 14, 2019), 84 FR 28860 (June 20, 2019) (SR-MIAX-2019-28); 87282 (October 10, 2019), 84 FR

particular, the Exchange adopted fee waivers for Membership Application fees, monthly Market Maker Trading Permit fees, Application Programming Interface ("API") Testing and Certification fees for Members,<sup>8</sup> and monthly MIAX Express Interface ("MEI") Port<sup>9</sup> fees assessed to Market Makers that trade solely in Proprietary Products (including options on SPIKES) throughout the entire period of June 1, 2019 through September 30, 2024.

On September 30, 2021, the Exchange filed its initial proposal (SR-MIAX-2021-45) to implement the Incentive Program for SPIKES options to incentivize Market Makers to improve liquidity, available volume, and the quote spread width of SPIKES options beginning October 1, 2021, and ending December 31, 2021.<sup>10</sup> Technical details regarding the Incentive Program were published in a Regulatory Circular on September 30, 2021.<sup>11</sup> On October 12, 2021, the Exchange withdrew SR-MIAX-2021-45 and refiled its proposal to implement the Incentive Program to provide additional details.<sup>12</sup> In that filing, the Exchange specifically noted that the Incentive Program would expire at the end of the period (December 31, 2021) unless the Exchange filed another

55658 (October 17, 2019) (SR-MIAX-2019-43); 87897 (January 6, 2020), 85 FR 1346 (January 10, 2020) (SR-MIAX-2019-53); 89289 (July 10, 2020), 85 FR 43279 (July 16, 2020) (SR-MIAX-2020-22); 90146 (October 9, 2020), 85 FR 65443 (October 15, 2020) (SR-MIAX-2020-32); 90814 (December 29, 2020), 86 FR 327 (January 5, 2021) (SR-MIAX-2020-39); 91498 (April 7, 2021), 86 FR 19293 (April 13, 2021) (SR-MIAX-2021-06); 93881 (December 30, 2021), 87 FR 517 (January 5, 2022) (SR-MIAX-2021-63); 95259 (July 12, 2022), 87 FR 42754 (July 17, 2022) (SR-MIAX-2022-24); 96007 (October 7, 2022), 87 FR 62151 (October 13, 2022) (SR-MIAX-2022-32); 96588 (December 28, 2022), 88 FR 381 (January 4, 2023) (SR-MIAX-2022-47); 97887 (July 12, 2023), 88 FR 45936 (July 18, 2023) (SR-MIAX-2023-28); 99047 (November 30, 2023), 88 FR 84861 (December 6, 2023) (SR-MIAX-2023-46); and 100468 (July 9, 2024), 89 FR 57445 (July 15, 2024) (SR-MIAX-2024-26).

<sup>8</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>9</sup> Full Service MEI Ports provide Market Makers with the ability to send Market Maker simple and complex quotes, eQuotes, and quote purge messages to the MIAX System. Full Service MEI Ports are also capable of receiving administrative information. Market Makers are limited to two Full Service MEI Ports per matching engine. See Fee Schedule, Section 5(d)(ii), footnote 28.

<sup>10</sup> See SR-MIAX-2021-45.

<sup>11</sup> See MIAX Options Regulatory Circular 2021-56, SPIKES Options Market Maker Incentive Program (September 30, 2021) available at [https://www.miaxglobal.com/sites/default/files/circular-files/MIAX\\_Options\\_RC\\_2021\\_56.pdf](https://www.miaxglobal.com/sites/default/files/circular-files/MIAX_Options_RC_2021_56.pdf).

<sup>12</sup> See Securities Exchange Act Release No. 93424 (October 26, 2021), 86 FR 60322 (November 1, 2021) (SR-MIAX-2021-49).

19b-4 Filing to amend the fees (or extend the Incentive Program).<sup>13</sup>

Between December 23, 2021, and June 28, 2024, the Exchange filed several proposals to extend the Incentive Program, with the last extension period ending September 30, 2024.<sup>14</sup> In each of those filings, the Exchange specifically noted that the Incentive Program would expire at the end of the then-current period unless the Exchange filed another 19b-4 Filing to amend the fees (or extend the Incentive Program).<sup>15</sup>

Proposal To Amend and Extend the Incentive Program

The Exchange now proposes to amend and extend the Incentive Program for SPIKES options to continue to incentivize Market Makers to improve liquidity and available volume in SPIKES options by amending the quotes spread width requirements and the amounts of the incentive compensation pools.

Currently, to be eligible to participate in the Incentive Program, a Market Maker must meet certain minimum requirements related to quote spread width in certain in-the-money (ITM) and out-of-the-money (OTM) options as determined by the Exchange and communicated to Members via Regulatory Circular.<sup>16</sup> The Exchange has devised a methodology where each qualifying Market Maker's ITM/OTM market width for eligible Incentive Program options is calculated. Eligible ITM options require a maximum quote spread width of 150 basis points ("bps") and each eligible OTM option requires a maximum quote spread width of 100 bps.<sup>17</sup> Market Makers must also satisfy a minimum time in the market in the front 2 expiry months of 70%, and have an average quote size of 25 contracts. The Exchange established two separate incentive compensation pools that are used to compensate Market Makers that

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

<sup>14</sup> See Securities Exchange Act Release Nos. 93881 (December 30, 2021), 87 FR 517 (January 5, 2022) (SR-MIAX-2021-63); 94574 (April 1, 2022), 87 FR 20492 (April 7, 2022) (SR-MIAX-2022-12); 95259 (July 12, 2022), 87 FR 42754 (July 17, 2022) (SR-MIAX-2022-24); 96007 (October 7, 2022), 87 FR 62151 (October 13, 2022) (SR-MIAX-2022-32); 96588 (December 28, 2022), 88 FR 381 (January 4, 2023) (SR-MIAX-2022-47); 97239 (April 3, 2023), 88 FR 20930 (April 7, 2023) (SR-MIAX-2023-13); 97883 (July 12, 2023), 88 FR 45941 (July 18, 2023) (SR-MIAX-2023-26); 99040 (November 29, 2023), 88 FR 84374 (December 5, 2023) (SR-MIAX-2023-47); 99902 (April 3, 2024), 89 FR 24883 (April 9, 2024) (SR-MIAX-2024-17); and 100468 (July 9, 2024), 89 FR 57445 (July 15, 2024) (SR-MIAX-2024-26).

<sup>15</sup> See *id.*

<sup>16</sup> See *supra* note 11.

<sup>17</sup> Calculation of bps is described in Regulatory Circular 2021-56. See *supra* note 11.

satisfy and/or exceed the criteria pursuant to the Incentive Program.

The Exchange now proposes to double the maximum quote spread width parameters for both ITM options and OTM options. Specifically, the Exchange proposes to increase the maximum quote spread width from 150 bps to 300 bps for a Market Maker quoting ITM options to be eligible to participate in the Incentive Program. The Exchange also proposes to increase the maximum quote spread width from 100 bps to 200 bps for a Market Maker quoting OTM options to be eligible to participate in the Incentive Program. The Exchange will communicate the new requirements of the Incentive Program to Members via Regulatory Circular.<sup>18</sup>

Currently, the first pool (Incentive 1) is capped at \$40,000 per month, which is allocated to Market Makers that meet the minimum requirements of the Incentive Program. Market Makers are required to meet minimum spread width requirements in a select number of ITM and OTM SPIKES option contracts as determined by the Exchange and communicated to Members via Regulatory Circular.<sup>19</sup> A complete description of how the Exchange calculates the minimum spread width requirements in ITM and OTM SPIKES options can be found in the published Regulatory Circular.<sup>20</sup> Market Makers are also required to maintain the minimum spread width, described above, for at least 70% of the time in the front two (2) SPIKES options contract expiry months and maintain an average quote size of at least 25 contracts.<sup>21</sup> The amount available to each individual Market Maker is capped at \$10,000 per month for satisfying the minimum requirements of the Incentive Program. In the event that more than four Market Makers meet the requirements of the Incentive Program, each qualifying Market Maker is entitled to receive a pro-rated share of the \$40,000 monthly compensation pool dependent upon the number of qualifying Market Makers in that particular month.

The Exchange now proposes to amend the terms of Incentive 1. Specifically, the Exchange proposes to reduce the

total compensation pool of Incentive 1 from \$40,000 per month to \$10,000 per month. The Exchange also proposes to reduce the maximum amount available to each individual Market Maker for satisfying the minimum requirements of the Incentive Program from \$10,000 per month to \$5,000 per month. The Exchange proposes that, in the event that more than two Market Makers meet the requirements of Incentive 1, each qualifying Market Maker is entitled to receive a pro-rated share of the \$10,000 monthly compensation pool dependent upon the number of qualifying Market Makers in that particular month.

Currently, the second pool (Incentive 2) is capped at a total amount of \$100,000 per month which is used during the Incentive Program to further incentivize Market Makers who meet or exceed the requirements of Incentive 1 (“qualifying Market Makers”) to provide tighter quote width spreads with the total compensation pool amount based on qualifying Market Makers’ improvement value over the minimum requirement score. The Exchange ranks each qualifying Market Maker’s quote width spread relative to each other qualifying Market Maker’s quote width spread. Market Makers with tighter spreads in certain strikes, as determined by the Exchange and communicated to Members via Regulatory Circular,<sup>22</sup> are eligible to receive a pro-rated share of the compensation pool not to exceed \$25,000 per Member per month. Qualifying Market Makers are ranked relative to each other based on the quality of their spread width (*i.e.*, tighter spreads are ranked higher than wider spreads) and the Market Maker with the best quality spread width receives the highest rebate, while other eligible qualifying Market Makers receive a rebate relative to their quality spread width.

The Exchange now proposes to amend the terms of Incentive 2. Specifically, the Exchange proposes to reduce the total compensation pool of Incentive 2 from a maximum of \$100,000 per month to a maximum of \$25,000 per month. The Exchange also proposes to reduce the maximum amount available to each individual Market Maker for satisfying the requirements of Incentive 2 from \$25,000 per month to \$12,500 per month.

The purpose of the proposed changes is for business reasons. The Exchange proposes to lower the quoting requirements because the Exchange is no longer listing new expiration months

in SPIKES options. The Exchange anticipates that there will be no expiration months available for trading following the expiration of the January 2025 SPIKES options. The Exchange believes that it is appropriate to lower the threshold of the quoting standards for the Incentive Program to further encourage more SPIKES Market Makers to participate in the Incentive Program. The Exchange also proposes to reduce the compensation pools and the maximum amount available to each individual Market Maker for satisfying and/or exceeding the minimum requirements of the Incentive Program because the Exchange proposes to lower the quoting requirements for the Incentive Program.

In addition, the Exchange proposes to extend the Incentive Program until January 31, 2025. The purpose of this extension is to continue to incentivize Market Makers to provide quotes in SPIKES options and to improve liquidity and available volume.

The Exchange will announce the amendment and extension of the Incentive Program to all Members via a Regulatory Circular.<sup>23</sup>

Proposal To Remove the Fee Waivers for Market Markets That Trade Solely in Proprietary Products (Including SPIKES Options)

Currently, the Exchange offers fee waivers for (i) Membership Application fees, (ii) monthly Market Maker Trading Permit fees, (iii) Member API Testing and Certification fees, and (iv) monthly MEI Port fees, to Market Makers that trade solely in Proprietary Products (including options on SPIKES). The fee waivers for the aforementioned fees will end on September 30, 2024. The Exchange now proposes to remove the aforementioned fee waivers from the Fee Schedule once they expire on September 30, 2024.

Membership Application Fees

The Exchange currently assesses a one-time Membership Application fee for applications of potential Members. The Exchange assesses a one-time Membership Application fee on the earlier of (i) the date the applicant is certified in the membership system, or (ii) once an application for MIAx membership is finally denied. The one-time application fee is based upon the

<sup>23</sup> See *supra* note 18. The Exchange notes that at the end of the extension period, the Incentive Program will expire unless the Exchange files another 19b-4 Filing to amend the terms or extend the Incentive Program.

<sup>18</sup> See MIAx Options Exchange Regulatory Circular 2024-54, Updated SPIKES Options Market Maker Incentive Program (September 26, 2024), available at <https://www.miaxglobal.com/markets/us-options/miax-options/regulatory-circulars>.

<sup>19</sup> See *supra* note 11.

<sup>20</sup> See *id.*

<sup>21</sup> In the event there is only one monthly expiration listed, the requirements are only applicable to that single month.

<sup>22</sup> See *supra* note 11.

applicant’s status as either a Market Maker or an Electronic Exchange Member (“EEM”).<sup>24</sup> A Market Maker is assessed a one-time Membership Application fee of \$3,000. However, the Exchange currently offers a waiver of the Membership Application fee for Market Makers that will trade solely in Proprietary Products. This waiver is set to expire on September 30, 2024.

The Exchange now proposes to remove the waiver for the one-time Membership Application fee of \$3,000 for Market Makers that trade solely in Proprietary Products (including options on SPIKES) once it expires on September 30, 2024. The Exchange notes that the only Proprietary Product offered by the Exchange is SPIKES options. The Exchange initially waived the Membership Application fee for

Market Makers that trade solely in Proprietary Products in order to attract new market participants to trade SPIKES options. Since the Exchange is no longer listing new expiration months in SPIKES options, and the Exchange anticipates that there will be no expiration months available for trading following the expiration of the January 2025 SPIKES options, the Exchange will no longer waive the Membership Application fee to attract market participants to trade SPIKES options.

**Trading Permit Fees**

The Exchange issues Trading Permits that confer the ability to transact on the Exchange. MIAX Trading Permits are issued to Market Makers and EEMs. Members receiving Trading Permits during a particular calendar month are assessed monthly Trading Permit fees as

set forth in the Fee Schedule. As it relates to Market Makers, the Exchange currently assesses a monthly Trading Permit fee in any month the Market Maker is certified in the membership system, is credentialed to use one or more MIAX MEI Ports in the production environment and is assigned to quote in one or more classes. The Exchange assesses the monthly Market Maker Trading Permit fee for its Market Makers based on the greatest number of classes listed on the Exchange that the Market Maker was assigned to quote in on any given day within a calendar month and the applicable fee rate is the lesser of either the per class basis or percentage of total national average daily volume measurements. A Market Maker is assessed a monthly Trading Permit fee according to the following table:<sup>25</sup>

Type of trading permit	Monthly MIAX trading permit fee	Market Maker assignments (the lesser of the applicable measurements below) <sup>Ω</sup>	
		Per class	% of national average daily volume
Market Maker (includes RMM, LMM, PLMM).	\$7,000.00	Up to 10 Classes .....	Up to 20% of Classes by volume.
	12,000.00	Up to 40 Classes .....	Up to 35% of Classes by volume.
	* 17,000.00	Up to 100 Classes .....	Up to 50% of Classes by volume.
	* 22,000.00	Over 100 Classes .....	Over 50% of Classes by volume up to all Classes listed on MIAX.

<sup>Ω</sup> Excludes Proprietary Products.

\* For these Monthly MIAX Trading Permit Fee levels, if the Market Maker’s total monthly executed volume during the relevant month is less than 0.060% of the total monthly executed volume reported by OCC in the market maker account type for MIAX-listed option classes for that month, then the fee will be \$15,500 instead of the fee otherwise applicable to such level.

However, the Exchange currently offers a waiver of the Trading Permit fee for Market Makers that will trade solely in Proprietary Products. This waiver is set to expire on September 30, 2024.

The Exchange now proposes to remove the waiver for the monthly Trading Permit fee for Market Makers that trade solely in Proprietary Products (including options on SPIKES) once it expires on September 30, 2024. The Exchange notes that the only Proprietary Products offered by the Exchange is SPIKES options. The Exchange initially waived the monthly Trading Permit fee for Market Makers that trade solely in Proprietary Products in order to attract new market participants to trade SPIKES options. Since the Exchange is no longer listing new expiration months

in SPIKES options, and the Exchange anticipates that there will be no expiration months available for trading following the expiration of the January 2025 SPIKES options, the Exchange will no longer waive the monthly Trading Permit fee to attract market participants to trade SPIKES options. The Exchange also notes that there are no Market Makers trading solely in SPIKES options, thus the Exchange believes that removing the waiver for the monthly Trading Permit fee for Market Makers that trade solely in Proprietary Products (including options on SPIKES) would have no impact on Members or the public.

**API Testing and Certification Fees**

The Exchange assesses an API Testing and Certification fee to all Members

depending upon Membership type. An API makes it possible for Members’ software to communicate with MIAX software applications, and is subject to Members testing with, and certification by, MIAX. The Exchange offers four types of interfaces: (i) the Financial Information Exchange Port (“FIX Port”),<sup>26</sup> which enables the FIX Port user (typically an EEM or a Market Maker) to submit simple and complex orders electronically to MIAX; (ii) the MEI Port, which enables Market Makers to submit simple and complex electronic quotes to MIAX; (iii) the Clearing Trade Drop Port (“CTD Port”),<sup>27</sup> which provides real-time trade clearing information to the participants to a trade on MIAX and to the participants’ respective clearing firms;

<sup>24</sup> The term “Electronic Exchange Member” or “EEM” means the holder of a Trading Permit who is not a Market Maker. Electronic Exchange Members are deemed “members” under the Exchange Act. See Exchange Rule 100.

<sup>25</sup> See Fee Schedule, Section (3)(b).

<sup>26</sup> A FIX Port is an interface with MIAX systems that enables the Port user (typically an Electronic Exchange Member or a Market Maker) to submit

simple and complex orders electronically to MIAX. See Fee Schedule, Section 5)d)i).

<sup>27</sup> Clearing Trade Drop (“CTD”) provides Exchange members with real-time clearing trade updates. The updates include the Member’s clearing trade messages on a low latency, real-time basis. The trade messages are routed to a Member’s connection containing certain information. The information includes, among other things, the following: (i) trade date and time; (ii) symbol information; (iii) trade price/size information; (iv)

Member type (for example, and without limitation, Market Maker, Electronic Exchange Member, Broker-Dealer); (v) Exchange Member Participant Identifier (“MPID”) for each side of the transaction, including Clearing Member MPID; and (vi) strategy specific information for complex transactions. CTD Port Fees will be assessed in any month the Member is credentialed to use the CTD Port in the production environment. See Fee Schedule, Section 5)d)iii).

and (iv) the FIX Drop Copy Port (“FXD Port”),<sup>28</sup> which provides a copy of real-time trade execution, correction and cancellation information through a FIX Port to any number of FIX Ports designated by an EEM to receive such messages.

API Testing and Certification fees for Market Makers are assessed (i) initially per API for CTD and MEI ports in the month the Market Maker has been credentialed to use one or more ports in the production environment for the tested API and the Market Maker has been assigned to quote in one or more classes, and (ii) each time a Market Maker initiates a change to its system that requires testing and certification. API Testing and Certification fees will not be assessed in situations where the Exchange initiates a mandatory change to the Exchange’s system that requires testing and certification. The Exchange currently assesses a Market Maker an API Testing and Certification fee of \$2,500. The API Testing and Certification fees represent costs incurred by the Exchange as it works with each Member for testing and certifying that the Member’s software systems communicate properly with the Exchange’s interfaces. However, the Exchange currently offers a waiver of the API Testing and Certification Fee for Market Makers that will trade solely in Proprietary Products. This waiver is set to expire on September 30, 2024.

The Exchange now proposes to remove the waiver of the API Testing and Certification fee for Market Makers that trade solely in Proprietary Products (including options on SPIKES) from the Fee Schedule once it expires on September 30, 2024. The Exchange notes that the only Proprietary Products offered by the Exchange is SPIKES options. The Exchange initially waived the API Testing and Certification fee for Market Makers that trade solely in Proprietary Products in order to attract new market participants to trade SPIKES options. Since the Exchange is no longer listing new expiration months in SPIKES options, and the Exchange anticipates that there will be no expiration months available for trading following the expiration of the January 2025 SPIKES options, the Exchange will no longer waive the API Testing and Certification fee to attract market participants to trade SPIKES options. The Exchange also notes that there is no Market Makers trading solely in SPIKES options, thus the Exchange believes that removing the waiver for the API Testing and Certification fee for Market Makers that trade solely in Proprietary Products (including options on SPIKES) would have no impact on Members or the public.

**MEI Port Fees**

The Exchange assesses monthly MEI Port fees to Market Makers in each month the Member has been

credentialed to use the MEI Port in the production environment and has been assigned to quote in at least one class. The amount of the monthly MEI Port fee is based upon the number of classes in which the Market Maker was assigned to quote on any given day within the calendar month, and upon the class volume percentages set forth in the Fee Schedule. The class volume percentage is based on the total national average daily volume in classes listed on the Exchange in the prior calendar quarter. Newly listed option classes are excluded from the calculation of the monthly MEI Port fee until the calendar quarter following their listing, at which time the newly listed option classes will be included in both the per class count and the percentage of total national average daily volume. The Exchange assesses Market Makers the monthly MEI Port fee based on the greatest number of classes listed on the Exchange that the Market Maker was assigned to quote in on any given day within a calendar month and the applicable fee rate that is the lesser of either the per class basis or percentage of total national average daily volume measurement. The Exchange assesses MEI Port fees on Market Makers according to the following table:<sup>29</sup> However, the Exchange currently offers a waiver of the MEI Port Fee for Market Makers that trade solely in Proprietary Products. This waiver is set to expire on September 30, 2024.

Monthly MIAX MEI fees	Market maker assignments (the lesser of the applicable measurements below) <sup>Ω</sup>	
	Per class	% of national average daily volume
\$5,000.00 .....	Up to 5 Classes .....	Up to 10% of Classes by volume.
10,000.00 .....	Up to 10 Classes .....	Up to 20% of Classes by volume.
14,000.00 .....	Up to 40 Classes .....	Up to 35% of Classes by volume.
17,500.00 * .....	Up to 100 Classes .....	Up to 50% of Classes by volume.
20,500.00 * .....	Over 100 Classes .....	Over 50% of Classes by volume up to all Classes listed on MIAX.

<sup>Ω</sup> Excludes Proprietary Products.

\* For these Monthly MIAX MEI Fees levels, if the Market Maker’s total monthly executed volume during the relevant month is less than 0.060% of the total monthly executed volume reported by OCC in the market maker account type for MIAX-listed option classes for that month, then the fee will be \$14,500 instead of the fee otherwise applicable to such level.

The Exchange now proposes to remove the waiver of the monthly MEI Port fee for Market Makers that trade solely in Proprietary Products (including options on SPIKES) once it expires on September 30, 2024. The Exchange notes that the only Proprietary Product offered by the Exchange is SPIKES options. The Exchange initially

waived the monthly MEI Port fee for Market Makers that trade solely in Proprietary Products in order to attract new market participants to trade SPIKES options. Since the Exchange is no longer listing new expiration months in SPIKES options, and the Exchange anticipates that there will be no expiration months available for trading

following the expiration of the January 2025 SPIKES options, the Exchange will no longer waive the monthly MEI Port fee to attract market participants to trade SPIKES options. The Exchange also notes that there is no Market Makers trading solely in SPIKES options, thus the Exchange believes that removing the waiver for the monthly MEI Port fee for

<sup>28</sup> The FIX Drop Copy Port (“FXD”) is a messaging interface that will provide a copy of real-time trade execution, trade correction and trade cancellation information for simple and complex orders to FIX Drop Copy Port users who subscribe

to the service. FIX Drop Copy Port users are those users who are designated by an EEM to receive the information and the information is restricted for use by the EEM only. FXD Port Fees will be assessed in any month the Member is credentialed to use the

FXD Port in the production environment. See Fee Schedule, Section 5)d)iv).

<sup>29</sup> See Fee Schedule 5)d)ii).

Market Makers that trade solely in Proprietary Products (including options on SPIKES) would have no impact on Members or the public.

#### Implementation

The proposed fee changes are effective beginning October 1, 2024.

#### 2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act<sup>30</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>31</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 it is reasonable, equitable, and not unfairly discriminatory to modify the Incentive Program for Market Makers in SPIKES options. The amendment to the Incentive Program is reasonably designed because the Exchange is no longer listing new expiration months in SPIKES options. The Exchange anticipates that there will be no expiration months available for trading following the expiration of the January 2025 SPIKES options. Lowering the quoting requirements for the Incentive Program would encourage more Market Makers to participate in the Incentive Program. Given that the Exchange proposes to lower the threshold of the quoting standards for the Incentive Program, accordingly the Exchange proposes to reduce the compensation pools and the maximum amount available to each individual Market Maker for satisfying and/or exceeding the minimum requirements of the Incentive Program. The Incentive Program is equitably allocated and not unfairly discriminatory because the amendment to the Incentive Program applies to all SPIKES Market Makers. Additionally, if a SPIKES Market Maker does not satisfy the requirements of Incentive 1 or 2, then that Market Maker simply will not receive the rebate

offered by the Incentive Program for that month.

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to extend the Incentive Program for Market Makers in SPIKES options until January 31, 2025. It will continue to benefit all market participants trading in SPIKES options. SPIKES options is a Proprietary Product on the Exchange and the continuation of the Incentive Program encourages SPIKES Market Makers to satisfy a heightened quoting standard, average quote size, and time in market. A continued increase in quoting activity and tight quotes may yield a corresponding increase in order flow from other market participants, which benefits all investors by deepening the Exchange's liquidity pool, potentially providing greater execution incentives and opportunities, while promoting market transparency and improving investor protection.

The Exchange believes that the Incentive Program is equitable and not unfairly discriminatory because it will continue to promote SPIKES options liquidity, which may increase trading opportunities to the benefit of all market participants. The Exchange believes it is reasonable to operate the Incentive Program for a continued limited period of time to strengthen market quality for all market participants. The resulting increased volume and liquidity will benefit those Members who are eligible to participate in the Incentive Program and will also continue to benefit those Members who are not eligible to participate in the Incentive Program by providing more trading opportunities and tighter spreads.

Additionally, the Exchange believes that the proposal to remove the fee waivers for certain non-transaction fees for Market Makers that trade solely in Proprietary Products is reasonable. The Exchange initially waived certain non-transaction fees for Market Makers that trade solely in Proprietary Products in order to attract new market participants to trade SPIKES options. Since the Exchange is no longer listing new expiration months in SPIKES options, and the Exchange anticipates that there will be no expiration months available for trading following the expiration of the January 2025 SPIKES options, the Exchange will no longer waive these non-transaction fees to attract market participants to trade SPIKES options. The Exchange also notes that there is no Market Makers trading solely in SPIKES options, thus the Exchange believes that removing the fee waivers for certain non-transaction fees for Market Makers that trade solely in Proprietary Products

(including options on SPIKES) would have no impact on Members or the public. The Exchange believes the proposed removal of the fee waivers is fair and equitable and not unreasonably discriminatory because it applies to all current and future market participants on the Exchange.

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

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

#### Intra-Market Competition

The Exchange believes that the proposed modification and extension of the Incentive Program to January 31, 2025, would continue to increase intra-market competition by incentivizing Market Makers to quote SPIKES options, which will continue to enhance the quality of quoting and increase the volume of contracts available to trade in SPIKES options. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market liquidity for SPIKES options. Enhanced market quality and increased transaction volume in SPIKES options that results from the anticipated increase in Market Maker activity on the Exchange will benefit all market participants and improve competition on the Exchange.

Additionally, the Exchange believes that the proposal to remove certain of the non-transaction fee waivers for Market Makers that trade solely in Proprietary Products would have no impact on intra-market competition because it applies to all new potential Market Makers to quote in Proprietary Products. The Exchange also notes that there are no Market Makers trading solely in SPIKES options, thus the Exchange believes that removing the waiver for the monthly MEI Port fee for Market Makers that trade solely in Proprietary Products (including options on SPIKES) would have no impact on intra-market competition.

The Exchange does not believe that the proposed rule changes will impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes for each separate type of market participant (new Market Makers and existing Market Makers) will be assessed equally to all such market participants.

#### Inter-Market Competition

The Exchange does not believe that the proposed rule changes will impose

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

<sup>31</sup> 15 U.S.C. 78f(b)(4) and (5).

any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed modification and extension of the Incentive Program applies only to the Market Makers in SPIKES options, which are traded exclusively on the Exchange.

Additionally, the Exchange does not believe that the proposed rule changes will impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed removal of the fee waivers applies only to the Exchange's Proprietary Products (including options on SPIKES), which are traded exclusively on the Exchange.

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

Written comments were neither solicited nor received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>32</sup> and Rule 19b-4(f)(2)<sup>33</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 change 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 (<https://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-2024-39 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-2024-39. 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 (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-MIAX-2024-39 and should be submitted on or before November 6, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>34</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2024-23802 Filed 10-15-24; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-101294; File No. SR-MEMX-2024-39]

**Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Exchange's Fee Schedule Concerning Equities Transaction Pricing**

October 9, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on October 2, 2024, MEMX LLC ("MEMX" 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 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 with the Commission a proposed rule change to amend the Exchange's fee schedule applicable to Members<sup>3</sup> (the "Fee Schedule") pursuant to Exchange Rules 15.1(a) and (c). The Exchange proposes to implement the changes to the Fee Schedule pursuant to this proposal immediately. The text of the proposed rule change is provided in Exhibit 5.

**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.

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

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

<sup>3</sup> See Exchange Rule 1.5(p).

<sup>32</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>33</sup> 17 CFR 240.19b-4(f)(2).

<sup>34</sup> 17 CFR 200.30-3(a)(12).