

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-90811; File No. SR-MIAX-2020-41)

December 29, 2020

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Its Fee Schedule to Increase the Number of Additional Limited Service MIAX Express Interface Ports Available to Market Makers

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 21, 2020, Miami International Securities Exchange, LLC (“MIAX Options” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange is filing a proposal to increase the number of additional Limited Service MIAX Express Interface (“MEI”) Ports available to Market Makers.<sup>3</sup> The Exchange does not propose to amend the fees for additional Limited Service MEI Ports.

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.

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<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 (“LMMs”), Primary Lead Market Makers (“PLMMs”), and Registered Market Makers (“RMMs”) collectively. See Exchange Rule 100.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to amend the Fee Schedule to offer two (2) additional Limited Service MEI Ports to Market Makers. The Exchange does not propose to amend the fees charged for the additional Limited Service MEI Ports.

The Exchange initially filed the proposal to increase the number of Limited Service MEI Ports available to Market Makers on June 30, 2020, with no change to the actual fee amounts being charged.<sup>4</sup> The First Proposed Rule Change was published for comment in the Federal Register on July 20, 2020.<sup>5</sup> The Exchange notes that the First Proposed Rule Change did not receive any comment letters. Nonetheless, the Exchange withdrew the First Proposed Rule Change on August 24, 2020.<sup>6</sup> On August 25, 2020, the Exchange refiled its proposal to increase the number of Limited Service MEI Ports available to Market Makers (without increasing the

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<sup>4</sup> See Securities Exchange Act Release No. 89317 (July 14, 2020), 85 FR 43918 (July 20, 2020) (SR-MIAX-2020-23) (the “First Proposed Rule Change”).

<sup>5</sup> Id.

<sup>6</sup> See Comment Letter from Christopher Solgan, VP, Senior Counsel, the Exchange, dated August 24, 2020, notifying the Commission that the Exchange would withdraw the First Proposed Rule Change.

actual fee amounts) to provide further clarification regarding the Exchange’s annual cost for providing additional Limited Service MEI Ports.<sup>7</sup> The Second Proposed Rule Change was published for comment in the Federal Register on September 11, 2020.<sup>8</sup> Like the First Proposed Rule Change, the Second Proposed Rule Change did not receive any comment letters. Nonetheless, the Exchange withdrew the Second Proposed Rule Change on October 23, 2020.<sup>9</sup>

On October 23, 2020, the Exchange refiled its proposal to increase the number of Limited Service MEI Ports available to Market Makers (without increasing the actual fee amounts) to provide further clarification regarding the Exchange’s revenues, costs, and profitability for the two additional Limited Service MEI Ports (including information regarding the Exchange’s methodology for determining the costs and revenues for the two additional Limited Service MEI Ports).<sup>10</sup> The Third Proposed Rule Change was published for comment in the Federal Register on November 12, 2020.<sup>11</sup> Like the First and Second Proposed Rule Changes, the Third Proposed Rule Change did not receive any comment letters. Nonetheless, the Exchange withdrew the Third Proposed Rule Change on December 21, 2020.<sup>12</sup>

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<sup>7</sup> See Securities Exchange Act Release No. 89769 (September 4, 2020), 85 FR 55905 (September 10, 2020) (SR-MIAX-2020-29) (the “Second Proposed Rule Change”).

<sup>8</sup> Id.

<sup>9</sup> See Comment Letter from Christopher Solgan, VP, Senior Counsel, the Exchange, dated October 19, 2020, notifying the Commission that the Exchange would withdraw the Second Proposed Rule Change.

<sup>10</sup> See Securities Exchange Act Release No. 90354 (November 5, 2020), 85 FR 71958 (November 12, 2020) (SR-MIAX-2020-34) (the “Third Proposed Rule Change”).

<sup>11</sup> Id.

<sup>12</sup> See Comment Letter from Christopher Solgan, VP, Senior Counsel, the Exchange, dated December 18, 2020, notifying the Commission that the Exchange would withdraw the Third Proposed Rule Change.

The Exchange now submits this proposed rule change to increase the number of additional Limited Service MEI Ports available to Market Makers (without increasing the actual fee amounts) to provide additional information regarding the Exchange’s cost analysis for the two additional Limited Service MEI Ports.

Currently, MIAX assesses monthly MEI Port Fees on Market Makers based upon the number of MIAX matching engines<sup>13</sup> used by the Market Maker. Market Makers are allocated two (2) Full Service MEI Ports<sup>14</sup> and two (2) Limited Service MEI Ports<sup>15</sup> per matching engine to which they connect. The Full Service MEI Ports, Limited Service MEI Ports, and the additional Limited Service MEI Ports all include access to MIAX’s primary and secondary data centers and its disaster recovery center. Market Makers may request additional Limited Service MEI Ports for which they will be assessed the existing \$100 monthly fee for each additional port they request. This fee has been unchanged since 2016.<sup>16</sup>

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<sup>13</sup> A “matching engine” is a part of the MIAX electronic system that processes options quotes and trades on a symbol-by-symbol basis. Some matching engines will process option classes with multiple root symbols, and other matching engines will be dedicated to one single option root symbol (for example, options on SPY will be processed by one single matching engine that is dedicated only to SPY). A particular root symbol may only be assigned to a single designated matching engine. A particular root symbol may not be assigned to multiple matching engines. See Fee Schedule, Section 5)d)ii), note 29.

<sup>14</sup> Full Service MEI Ports provide Market Makers with the ability to send Market Maker 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), note 27.

<sup>15</sup> Limited Service MEI Ports provide Market Makers with the ability to send eQuotes and quote purge messages only, but not Market Maker Quotes, to the MIAX System. Limited Service MEI Ports are also capable of receiving administrative information. Market Makers initially receive two Limited Service MEI Ports per matching engine. See Fee Schedule, Section 5)d)ii), note 28.

<sup>16</sup> See Securities Exchange Act Release No. 79666 (December 22, 2016), 81 FR 96133 (December 29, 2016) (SR-MIAX-2016-47).

The Exchange originally added the Limited Service MEI Ports to enhance the MEI Port connectivity made available to Market Makers, and has subsequently made additional Limited Service MEI Ports available to Market Makers.<sup>17</sup> Limited Service MEI Ports have been well received by Market Makers since their addition. The Exchange now proposes to offer to Market Makers the ability to purchase an additional two (2) Limited Service MEI Ports per matching engine over and above the current six (6) additional Limited Service MEI Ports per matching engine that are available for purchase by Market Makers. The Exchange proposes making a corresponding change to footnote 30 of the Exchange's Fee Schedule to specify that Market Makers will now be limited to purchasing eight (8) additional Limited Service MEI Ports per matching engine, for a total of ten (10) per matching engine. All fees related to MEI Ports shall remain unchanged and Market Makers that voluntarily purchase the additional Limited Service MEI Ports will remain subject to the existing \$100 monthly fee per port.

The Exchange is increasing the number of additional Limited Service MEI Ports because the Exchange is expanding its network. This network expansion is necessary due to increased customer demand and increased volatility in the marketplace, both of which have translated into increased message traffic rates across the network. Consequently, this network expansion, which increases the number of switches supporting customer facing systems, is necessary in order to provide sufficient access to new and existing Members,<sup>18</sup> to maintain a sufficient amount of

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<sup>17</sup> See Securities Exchange Act Release Nos. 70137 (August 8, 2013), 78 FR 49586 (August 14, 2013) (SR-MIAX-2013-39); 70903 (November 20, 2013), 78 FR 70615 (November 26, 2013) (SR-MIAX-2013-52); 78950 (September 27, 2016), 81 FR 68084 (October 3, 2016) (SR-MIAX-2016-33); and 79198 (October 31, 2016), 81 FR 76988 (November 4, 2016) (SR-MIAX-2016-37).

<sup>18</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.

network capacity head-room, and to continue to provide the same level of service across the Exchange's low-latency, high-throughput technology environment.

Currently, the Exchange has 8 network switches that support the entire customer base of MIAX. The Exchange plans to increase this to 10 switches, which will increase the number of available customer ports by 25%. This increase in the number of available customer ports will enable the Exchange to continue to provide sufficient and equal access to MIAX Systems to all Members. Absent the proposed increase in available MEI Ports, the Exchange projects that its current inventory will be depleted and it will lack sufficient capacity to continue to meet Members' access needs.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act<sup>19</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>20</sup> in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes that its proposal is consistent with the objectives of Section 6(b)(5) of the Act<sup>21</sup> because the proposed additional Limited Service MEI Ports will be available to all Market Makers and the current fees for the additional Limited Service MEI Ports apply equally to all Market Makers regardless of type, and access to the Exchange is offered on terms

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

<sup>20</sup> 15 U.S.C. 78f(b)(5).

<sup>21</sup> 15 U.S.C. 78f(b)(5).

that are not unfairly discriminatory. The Exchange is proposing to increase the number of available Limited Service MEI Ports because the Exchange is expanding its network. This network expansion is necessary due to increased customer demand and increased volatility in the marketplace, both of which have translated into increased message traffic rates across the network. Consequently, this network expansion, which increases the number of switches supporting customer facing systems, is necessary in order to provide sufficient and equal access to new and existing Members, to maintain a sufficient amount of network capacity head-room, and to continue to provide the same level of service across the Exchange's low-latency, high-throughput technology environment.

Currently, the Exchange has 8 network switches that support the entire customer base of MIAX. The Exchange plans to increase this to 10 switches, which will increase the number of available customer ports by 25%. This increase in the number of available customer ports will enable the Exchange to continue to provide sufficient and equal access to MIAX Systems for all Members. Absent the proposed increase in available MEI Ports, the Exchange projects that its current inventory will be depleted and it will lack sufficient capacity to continue to meet Members' access needs. Further, the Exchange notes the decision of whether to purchase two additional Limited Service MEI Ports is completely optional and it is a business decision for each Market Maker to determine whether the additional Limited Service MEI Ports are necessary to meet their business requirements.

The Exchange further believes that the availability of the additional Limited Service MEI Ports is equitable and not unfairly discriminatory because it will enable Market Makers to maintain uninterrupted access to the MIAX System and consequently enhance the marketplace

by helping Market Makers to better manage risk, thus preserving the integrity of the MIAX markets, all to the benefit of and protection of investors and the public as a whole.

The Exchange also believes that its proposal is consistent with Section 6(b)(4) of the Act because only Market Makers that voluntarily purchase the two additional Limited Service MEI Ports will be charged the existing \$100 monthly fee per port, which has been unchanged since 2016.<sup>22</sup> The Exchange does not propose to amend the fees applicable to additional Limited Service MEI Ports which have been previously filed with the Commission and become effective after notice and public comment.<sup>23</sup> As stated above, the Exchange proposes to expand its network by making available two additional Limit Service MEI Ports due to increased customer demand and increased volatility in the marketplace, both of which have translated into increased message traffic rates across the network. The cost to expand the network in this manner is greater than the revenue the Exchange anticipates the additional Limited Service MEI Ports will generate. Specifically, the Exchange estimates it will incur a one-time cost of approximately \$175,000 in capital expenditures (“CapEx”) on hardware, software, and other items to expand the network to make available the two additional Limited Service MEI Ports. This estimated cost also includes expense associated with providing the necessary engineering and support personnel to transition those Market Makers who wish to acquire the two additional Limited Service MEI Ports.

The Exchange projects that approximately six to seven Market Makers will purchase the additional Limited Service MEI Ports, which will be subject to the existing monthly fee of \$100 per port. Accordingly, the Exchange projects that the annualized revenue from the two

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<sup>22</sup> See supra note 16.

<sup>23</sup> See supra notes 16 and 17.

additional Limited Service MEI Ports will be approximately \$16,800 (assuming seven Market Makers purchase the two additional Limited Service MEI Ports). Therefore, the Exchange's upfront cost in expanding its network to provide its Members with the two additional Limited Service MEI Ports – approximately \$175,000 – is significant relative to the anticipated annualized revenue the Exchange expects to bring in from the two additional Limited Service MEI Ports – approximately \$16,800. Further, the Exchange anticipates it will incur approximately \$100,371 in annualized ongoing operating expense (“OpEx”) in order to support the expanded network and the two additional Limited Service MEI Ports. Thus, even excluding the upfront CapEx of \$175,000, the Exchange is not generating a supra-competitive profit from the provision of these two additional Limited Service MEI Ports. In fact, even excluding the one-time CapEx cost of \$175,000, the Exchange anticipates generating an annual loss from the provision of these two additional Limited Service MEI Ports of (\$83,571) – that is, \$16,800 in revenue minus \$100,371 in expense equates to a loss of (\$83,571) to support the additional ports annually.

The Exchange conducted an extensive cost review in which the Exchange analyzed every expense item in the Exchange's general expense ledger (this includes over 150 separate and distinct expense items) to determine whether each such expense relates to the additional Limited Service MEI Ports, and, if such expense did so relate, what portion (or percentage) of such expense actually supports the additional Limited Service MEI Ports, and thus bears a relationship that is, “in nature and closeness,” directly related to those services. The sum of all such portions of expenses represents the total cost of the Exchange to provide services associated with the two additional Limited Service MEI Ports. For the avoidance of doubt, none of the expenses included herein relating to the services associated with providing the two additional Limited

Service MEI Ports also relate to the provision of any other services offered by the Exchange. Stated differently, no expense amount of the Exchange is allocated twice. The Exchange notes that it made certain representations in a previous filing<sup>24</sup> regarding its expense allocation for the provision of network connectivity services. The Exchange represents that none of the expenses allocated to the provision of network connectivity services are also allocated to the provision of ports – that is, there is no overlap of any such expenses that are included in the costs associated with services the Exchange provides for connectivity and for the services the Exchange provides for ports.

Specifically, utilizing 2019 expense figures, total third-party expense, relating to fees paid by the Exchange to third-parties for certain products and services for the Exchange to be able to provide the two additional Limited Service MEI Ports, was approximately \$12,393. This includes, but is not limited to, a portion of the fees paid to: (1) Equinix, for data center services, for the primary, secondary, and disaster recovery locations of the Exchange’s trading system infrastructure; (2) Zayo Group Holdings, Inc. (“Zayo”) for network services (fiber and bandwidth products and services) linking the Exchange’s office locations in Princeton, NJ and Miami, FL to all data center locations; (3) Secure Financial Transaction Infrastructure (“SFTI”)<sup>25</sup>, which supports network feeds for the entire U.S. options industry; (4) various other services providers (including Thompson Reuters, NYSE, Nasdaq, and Internap), which provide

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<sup>24</sup> See Securities Exchange Act Release No. 87875 (December 31, 2019), 85 FR 770 (January 7, 2020) (SR-MIAX-2019-51).

<sup>25</sup> In fact, on October 22, 2019, the Exchange was notified by SFTI that it is again raising its fees charged to the Exchange by approximately 11%, without having to show that such fee change complies with the Act by being reasonable, equitably allocated, and not unfairly discriminatory. It is unfathomable to the Exchange that, given the critical nature of the infrastructure services provided by SFTI, that its fees are not required to be rule-filed with the Commission pursuant to Section 19(b)(1) of the Act and Rule 19b-4 thereunder. See 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b-4, respectively.

content, network services, and infrastructure services for critical components of options network services; and (5) various other hardware and software providers (including Dell and Cisco, which support the production environment in which Members and non-Members connect to the network to trade, receive market data, etc.).

For clarity, only a portion of all fees paid to such third-parties is included in the third-party expense herein, and no expense amount is allocated twice. Accordingly, the Exchange does not allocate its entire information technology and communication costs to the services associated with providing the two additional Limited Service MEI Ports.

The Exchange believes it is reasonable to allocate such third-party expense described above towards the total cost to the Exchange to provide the services associated with the two additional Limited Service MEI Ports. In particular, the Exchange believes it is reasonable to allocate the identified portion of the Equinix expense because Equinix operates the data centers (primary, secondary, and disaster recovery) that host the Exchange's network infrastructure. This includes, among other things, the necessary storage space, which continues to expand and increase in cost, power to operate the network infrastructure, and cooling apparatuses to ensure the Exchange's network infrastructure maintains stability. Without these services from Equinix, the Exchange would not be able to operate and support the network and provide the services associated with the two additional Limited Service MEI Ports to its Members and non-Members and their customers. The Exchange did not allocate all of the Equinix expense toward the cost of providing the services associated with the two additional Limited Service MEI Ports, only that portion which the Exchange identified as being specifically mapped to providing the services associated with the two additional Limited Service MEI Ports, approximately 0.5% of the total Equinix expense. The Exchange believes this allocation is reasonable because it represents the

Exchange's actual cost to provide the services associated with the two additional Limited Service MEI Ports, and not any other service, as supported by its cost review.

The Exchange believes it is reasonable to allocate the identified portion of the Zayo expense because Zayo provides the internet, fiber and bandwidth connections with respect to the network, linking the Exchange with its affiliates, MIAX PEARL and MIAX Emerald, as well as the data center and disaster recovery locations. As such, all of the trade data, including the billions of messages each day per exchange, flow through Zayo's infrastructure over the Exchange's network. Without these services from Zayo, the Exchange would not be able to operate and support the network and provide the services associated with the two additional Limited Service MEI Ports. The Exchange did not allocate all of the Zayo expense toward the cost of providing the services associated with the two additional Limited Service MEI Ports, only the portion which the Exchange identified as being specifically mapped to providing the two additional Limited Service MEI Ports, approximately 0.4% of the total Zayo expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the services associated with the two additional Limited Service MEI Ports, and not any other service, as supported by its cost review.

The Exchange believes it is reasonable to allocate the identified portions of the SFTI expense and various other service providers' (including Thompson Reuters, NYSE, Nasdaq, and Internap) expense because those entities provide connectivity and feeds for the entire U.S. options industry, as well as the content, network services, and infrastructure services for critical components of the network. Without these services from SFTI and various other service providers, the Exchange would not be able to operate and support the network and provide access to its Members and non-Members and their customers. The Exchange did not allocate all

of the SFTI and other service providers' expense toward the cost of providing the services associated with the two additional Limited Service MEI Ports, only the portions which the Exchange identified as being specifically mapped to providing the services associated with the two additional Limited Service MEI Ports, approximately 0.5% of the total SFTI and other service providers' expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the services associated with the two additional Limited Service MEI Ports.

The Exchange believes it is reasonable to allocate the identified portion of the other hardware and software provider expense because this includes costs for dedicated hardware licenses for switches and servers, as well as dedicated software licenses for security monitoring and reporting across the network. Without this hardware and software, the Exchange would not be able to operate and support the network and provide access to its Members and non-Members and their customers. The Exchange did not allocate all of the hardware and software provider expense toward the cost of providing the services associated with the two additional Limited Service MEI Ports, only the portions which the Exchange identified as being specifically mapped to providing the services associated with the two additional Limited Service MEI Ports, approximately 0.3% of the total hardware and software provider expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the services associated with the two additional Limited Service MEI Ports.

For 2019, total internal expense, relating to the internal costs of the Exchange to provide the services associated with the two additional Limited Service MEI Ports was \$87,978. This includes, but is not limited to, costs associated with: (1) employee compensation and benefits for full-time employees that support the services associated with providing the two additional

Limited Service MEI Ports, including staff in network operations, trading operations, development, system operations, business, as well as staff in general corporate departments (such as legal, regulatory, and finance) that support those employees and functions (including an increase as a result of the higher determinism project); (2) depreciation and amortization of hardware and software used to provide the services associated with the two additional Limited Service MEI Ports, including equipment, servers, cabling, purchased software and internally developed software used in the production environment to support the network for trading; and (3) occupancy costs for leased office space for staff that provide the services associated with the two additional Limited Service MEI Ports. The breakdown of these costs is more fully-described below. For clarity, only a portion of all such internal expenses are included in the internal expense herein, and no expense amount is allocated twice. Accordingly, the Exchange does not allocate its entire costs contained in those items to the services associated with providing the two additional Limited Service MEI Ports.

The Exchange believes it is reasonable to allocate such internal expense described above towards the total cost to the Exchange to provide the services associated with the two additional Limited Service MEI Ports. In particular, the Exchange's employee compensation and benefits expense relating to providing the services associated with the two additional Limited Service MEI Ports was approximately \$58,870, which is only a portion of the \$9,811,685 total expense for employee compensation and benefits. The Exchange believes it is reasonable to allocate the identified portion of such expense because this includes the time spent by employees of several departments, including Technology, Back Office, Systems Operations, Networking, Business Strategy Development (who create the business requirement documents that the Technology staff use to develop network features and enhancements), Trade Operations, Finance (who provide

billing and accounting services relating to the network), and Legal (who provide legal services relating to the network, such as rule filings and various license agreements and other contracts). As part of the extensive cost review conducted by the Exchange, the Exchange reviewed the amount of time spent by each employee on matters relating to the provision of services associated with the two additional Limited Service MEI Ports. Without these employees, the Exchange would not be able to provide the services associated with the two additional Limited Service MEI Ports to its Members and non-Members and their customers. The Exchange did not allocate all of the employee compensation and benefits expense toward the cost of the services associated with providing the two additional Limited Service MEI Ports, only the portions which the Exchange identified as being specifically mapped to providing the services associated with the two additional Limited Service MEI Ports, approximately 0.6% of the total employee compensation and benefits expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the services associated with the two additional Limited Service MEI Ports, and not any other service, as supported by its cost review.

The Exchange's depreciation and amortization expense relating to providing the services associated with the two additional Limited Service MEI Ports was \$26,362, which is only a portion of the \$5,272,469 total expense for depreciation and amortization. The Exchange believes it is reasonable to allocate the identified portion of such expense because such expense includes the actual cost of the computer equipment, such as dedicated servers, computers, laptops, monitors, information security appliances and storage, and network switching infrastructure equipment, including switches and taps that were purchased to operate and support the network and provide the services associated with the two additional Limited Service MEI Ports. Without this equipment, the Exchange would not be able to operate the network and

provide the services associated with the two additional Limited Service MEI Ports to its Members and non-Members and their customers. The Exchange did not allocate all of the depreciation and amortization expense toward the cost of providing the services associated with the two additional Limited Service MEI Ports, only the portion which the Exchange identified as being specifically mapped to providing the services associated with the two additional Limited Service MEI Ports, approximately 0.5% of the total depreciation and amortization expense, as these services would not be possible without relying on such equipment. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the services associated with the two additional Limited Service MEI Ports, and not any other service, as supported by its cost review.

The Exchange's occupancy expense relating to providing the services associated with providing the two additional Limited Service MEI Ports was approximately \$2,746, which is only a portion of the \$686,437 total expense for occupancy. The Exchange believes it is reasonable to allocate the identified portion of such expense because such expense represents the portion of the Exchange's cost to rent and maintain a physical location for the Exchange's staff who operate and support the network, including providing the services associated with the two additional Limited Service MEI Ports. This amount consists primarily of rent for the Exchange's Princeton, NJ office, as well as various related costs, such as physical security, property management fees, property taxes, and utilities. The Exchange operates its Network Operations Center ("NOC") and Security Operations Center ("SOC") from its Princeton, New Jersey office location. A centralized office space is required to house the staff that operates and supports the network. The Exchange currently has approximately 160 employees. Approximately two-thirds of the Exchange's staff are in the Technology department, and the majority of those staff have

some role in the operation and performance of the services associated with providing the two additional Limited Service MEI Ports. Without this office space, the Exchange would not be able to operate and support the network and provide the services associated with the two additional Limited Service MEI Ports to its Members and non-Members and their customers. Accordingly, the Exchange believes it is reasonable to allocate the identified portion of its occupancy expense because such amount represents the Exchange's actual cost to house the equipment and personnel who operate and support the Exchange's network infrastructure and the services associated with the two additional Limited Service MEI Ports. The Exchange did not allocate all of the occupancy expense toward the cost of providing the services associated with the two additional Limited Service MEI Ports, only the portion which the Exchange identified as being specifically mapped to operating and supporting the network, approximately 0.4% of the total occupancy expense. The Exchange believes this allocation is reasonable because it represents the Exchange's cost to provide the services associated with the two additional Limited Service MEI Ports, and not any other service, as supported by its cost review

Accordingly, based on the facts and circumstances presented, the Exchange believes that its provision of the services associated with the two additional Limited Service MEI Ports will not result in excessive pricing or supra-competitive profit.

The Exchange believes it is reasonable, equitable and not unfairly discriminatory to allocate the respective percentages of each expense category described above towards the total cost to the Exchange of operating and supporting the network, including providing the services associated with the two additional Limited Service MEI Ports because the Exchange performed a line-by-line item analysis of all the expenses of the Exchange, and has determined the expenses that directly relate to operation and support of the network. Further, the Exchange notes that,

without the specific third-party and internal items listed above, the Exchange would not be able to operate and support the network, including providing the services associated with the two additional Limited Service MEI Ports to its Members and non-Members and their customers. Each of these expense items, including physical hardware, software, employee compensation and benefits, occupancy costs, and the depreciation and amortization of equipment, have been identified through a line-by-line item analysis to be integral to the operation and support of the network. Providing the two additional Limited Service MEI Ports at the existing rates is intended to recover the Exchange's costs of operating and supporting the network.

Accordingly, the Exchange believes that providing the two additional Limited Service MEI Ports at the existing rate is fair and reasonable because it does not result in excessive pricing or supra-competitive profit, when comparing the actual network operation and support costs to the Exchange versus the projected annual revenue from providing the two additional Limited Service MEI Ports.

Further, subjecting the two additional Limited Service MEI Ports to the existing \$100 monthly fee per port is also designed to encourage Market Makers to be efficient with their port usage, thereby resulting in a corresponding increase in the efficiency that the Exchange would be able to realize in managing its aggregate costs for providing the two additional ports. There is no requirement that any Market Maker maintain a specific number of Limited Service MEI Ports and a Market Maker may choose to maintain as many or as few of such ports as each Market Maker deems appropriate.

Finally, subjecting the two additional Limited Service MEI Ports to the existing \$100 monthly fee will help to encourage Limited Service MEI Port usage in a way that aligns with the Exchange's regulatory obligations. As a national securities exchange, the Exchange is subject to

Regulation Systems Compliance and Integrity (“Reg. SCI”).<sup>26</sup> Reg. SCI Rule 1001(a) requires that the Exchange establish, maintain, and enforce written policies and procedures reasonably designed to ensure (among other things) that its Reg. SCI systems have levels of capacity adequate to maintain the Exchange’s operational capability and promote the maintenance of fair and orderly markets.<sup>27</sup> By encouraging Members to be efficient with their usage of Limited MEI Ports, the current fee that will continue to apply to the proposed two (2) additional Limited Service MEI Ports will support the Exchange’s Reg. SCI obligations in this regard by ensuring that unused ports are available to be allocated based on individual Members needs and as the Exchange’s overall order and trade volumes increase.

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

MIAX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The proposed rule change will not impose a burden on competition but will benefit competition by enhancing the Exchange’s ability to compete by providing additional services to market participants. It is not intended to address a competitive issue. Rather, the proposed increase in the number of additional Limited Service MEI Ports available per Market Maker is intended to allow the Exchange to increase its inventory of MEI Ports to meet increased Member demand. The Exchange is increasing the number of available additional Limited Service MEI Ports in response to Market Maker demand for increased connectivity to the MIAX System. The Exchange’s current inventory may soon be insufficient to meet those needs. Again, the Exchange is not proposing to amend the fees for MEI Ports, just to increase the number of MEI

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<sup>26</sup> 17 CFR 242.1000-1007.

<sup>27</sup> 17 CFR 242.1001(a).

Ports available per Market Maker. The Exchange also does not believe that the proposed rule change will impose a burden on intramarket competition because the two additional Limited Service MEI Ports will be available to all Market Makers on an equal basis. It is a business decision of each Market Maker whether to pay for the additional Limited Service MEI Ports.

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>28</sup> and Rule 19b-4(f)(2)<sup>29</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

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<sup>28</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>29</sup> 17 CFR 240.19b-4(f)(2).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MIAX-2020-41 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-2020-41. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to

make available publicly. All submissions should refer to File Number SR-MIAX-2020-41, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>30</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>30</sup> 17 CFR 200.30-3(a)(12).