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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. * SR 2022 - * 35

Amendment No. (req. for Amendments *)

Filing by Miami International Securities Exchange, LLC.

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

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

<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)
<input checked="" type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)
<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010
Section 806(e)(1) *

Section 806(e)(2) *

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 3C(b)(2) *

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Amend Exchange Fee Schedule

Contact Information

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

First Name * Greg Last Name * Ziegler

Title * Senior Counsel

E-mail * gziegler@miaxoptions.com

Telephone * (609) 897-1483 Fax

Signature

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

Date 10/04/2022

(Title *)

By Gregory P. Ziegler

Senior Counsel

(Name *)

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

Gregory Ziegler Date: 2022.10.04 11:38:30 -04'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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SR-MIAX-2022-35 - 19b-4.docx

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

Exhibit 1 - Notice of Proposed Rule Change *

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SR-MIAX-2022-35 - Exhibit 1.docx

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

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

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

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

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

Exhibit Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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

Exhibit Sent As Paper Document

Exhibit 4 - Marked Copies

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

Exhibit 5 - Proposed Rule Text

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SR-MIAX-2022-35 - Exhibit 5.docx

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

Partial Amendment

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

1. Text of the Proposed Rule Change

(a) Miami International Securities Exchange, LLC (“MIAX” or “Exchange”), pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² proposes to amend the MIAX Fee Schedule (the “Fee Schedule”).

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

(b) Inapplicable.

(c) Inapplicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Chief Executive Officer of the Exchange or duly appointed designee pursuant to authority delegated by the MIAX Board of Directors on June 16, 2022. Exchange staff will advise the Board of Directors of any action taken pursuant to delegated authority. No other action by the Exchange is necessary for the filing of the proposed rule changes.

Questions and comments on the proposed rule changes may be directed to Gregory P. Ziegler, Senior Counsel, (609) 897-1483.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

a. Purpose

The Exchange proposes to amend the Fee Schedule to (i) amend the Other Market Participant Transaction Fees table³ to amend the fee applicable to the option component of a stock-option order; and (ii) modify the Priority Customer Rebate Program (“PCRP”)⁴ as it pertains to per contract credits for PRIME Agency Orders submitted by Priority Customers.⁵ The Exchange initially filed this proposal on September 1, 2022 as SR-MIAX-2022-28. On September 20, 2022, the Exchange withdrew SR-MIAX-2022-28 and resubmitted the proposal as SR-MIAX-2022-31. On September 28, 2022, the Exchange withdrew SR-MIAX-2022-31 and resubmitted the proposal as SR-MIAX-2022-33. On October 4, 2022, the Exchange withdrew SR-MIAX-2022-33 and resubmitted the proposal as SR-MIAX-2022-35. The proposed changes are immediately effective.

Background

³ See Section 1)a)ii) of the Exchange’s Fee Schedule.

⁴ Under the PCRP, MIAX Options credits each Member the per contract amount resulting from each Priority Customer order transmitted by that Member which is executed electronically on the Exchange in all multiply-listed option classes (excluding, in simple or complex as applicable, QCC and cQCC Orders, mini-options, Priority Customer-to-Priority Customer Orders, C2C and cC2C Orders, PRIME and cPRIME AOC Responses, PRIME and cPRIME Contra-side Orders, PRIME and cPRIME Orders for which both the Agency and Contra-side Order are Priority Customers, and executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in Exchange Rule 1400), provided the Member meets certain percentage thresholds in a month as described in the Priority Customer Rebate Program table. See Fee Schedule, Section 1)a)iii.

⁵ The term “Priority Customer” means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). See Exchange Rule 100.

Stock-Option Orders

A “complex order” is any order involving the concurrent purchase and/or sale of two or more different options in the same underlying security (the “legs” or “components” of the complex order), for the same account, in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purposes of executing a particular investment strategy. Mini-options may only be part of a complex order that includes other mini-options. Only those complex orders in the classes designated by the Exchange and communicated to Members via Regulatory Circular with no more than the applicable number of legs, as determined by the Exchange on a class-by-class basis and communicated to Members via Regulatory Circular, are eligible for processing.

A complex order can also be a “stock-option order” as described further, and subject to the limitations set forth, in Interpretations and Policies .01 of Exchange Rule 518. A stock-option order is an order to buy or sell a stated number of units of an underlying security (stock or Exchange Traded Fund Share (“ETF”)) or a security convertible into the underlying stock (“convertible security”) coupled with the purchase or sale of options contract(s) on the opposite side of the market representing either (i) the same number of units of the underlying security or convertible security, or (ii) the number of units of the underlying stock necessary to create a delta neutral position, but in no case in a ratio greater than eight-to-one (8.00), where the ratio represents the total number of units of the underlying security or convertible security in the option leg to the total number of units of the underlying security or convertible security in the stock leg. Only those stock-option orders in the classes designated by the Exchange and communicated to Members via Regulatory Circular with no more than the applicable number of

legs as determined by the Exchange on a class-by-class basis and communicated to Members via Regulatory Circular, are eligible for processing.⁶

Currently, under the Other Market Participant Transaction Fees table, the Exchange charges Public Customers that are not Priority Customers a fee of \$0.47 per contract for executions of simple and complex orders in Penny Classes and \$0.75 per contract for executions of simple and complex orders in Non-Penny Classes, and assesses a \$0.12 per contract surcharge for trading against a Priority Customer complex order in Penny and Non-Penny Classes.

The Exchange now proposes to adopt new note “!!” which will be applicable to the option component of a stock-option order and which will provide that, any Member whose Affiliate qualifies for Priority Customer Rebate Program volume tier 4 in the relevant month will be assessed a total of \$0.10 per contract on the option component of a stock-option order for executions in Penny or Non-Penny Classes, and the per contract surcharge for trading against a Priority Customer complex order will not apply.⁷ Therefore, a qualifying Member will be charged \$0.10 per contract for executions in Penny or Non-Penny Classes, and the \$0.12 per contract surcharge for trading against a Priority Customer Order in Penny or Non-Penny Classes will not be assessed.

PRIME Agency Orders

⁶ See Exchange Rule 518(a)(5).

⁷ The Exchange charges a stock-handling fee of \$0.0010 per share (capped at \$50 per order, per day) for the stock leg of stock-option orders (including stock-option eQuotes) executed against other stock-option orders in the complex order book, which the Exchange must route to an outside venue. In addition, the Exchange will pass through to the Member any fees assess by the routing broker-dealer utilized by the Exchange with respect to the execution of the stock leg of any such order (with such fees to be passed through at cost). The Exchange notes that this fee is not changing under this proposal. See the Exchange’s Fee Schedule, Section 1)a)x) on its public website (available at <https://www.miaxoptions.com/fees>).

PRIME is a process by which a Member may electronically submit for execution (“Auction”) an order it represents as agent (“Agency Order”) against principal interest, and/or an Agency Order against solicited interest.⁸ The Member that submits the Agency Order (“Initiating Member”) agrees to guarantee the execution of the Agency Order by submitting a contra-side order representing principal interest or solicited interest.⁹ Currently, the Exchange provides a per contract credit for PRIME Agency Orders of \$0.10 for Priority Customer Agency Orders in Tier 1, and a per contract credit of \$0.11 for Priority Customer Agency Orders in Tiers 2 through 4.¹⁰

Proposal

The Exchange proposes to adopt a new table under the PCRCP for PRIME Agency Orders for Priority Customers Origins that will provide an adjustment to the credit provided for PRIME Agency Orders to Priority Customers in a tiered structure dependent upon the break-up percentage of the order. The Exchange proposes to adopt new note “!!!” to state that, for Priority Customer PRIME Agency Orders the Exchange will apply the per contract adjustment to the PRIME Agency rebate provided under the Priority Customer Rebate Program dependent upon the order break-up percentage as described in the table above, (the Per Contract Adjustment for PRIME Agency Order table).

The proposed Per Contract Adjustment for PRIME Agency Order table will provide that if the PRIME Agency Order has a break-up percentage of 0-20% the per contract credit provided for PRIME Agency Orders will be reduced by \$0.02. If the PRIME Agency Order has a break-

⁸ See Exchange Rule 515A(a).

⁹ See Exchange Rule 51A(a)(ii).

¹⁰ See the Exchange’s Fee Schedule, Section 1)a)iii), on its public website (available at <https://www.miaxoptions.com/fees>).

up percentage greater than 20% and up to 40% the per contract credit provided for PRIME Agency Orders will be reduced by \$0.01. If the PRIME Agency Order has a break-up percentage greater than 40% and up to 60% no adjustment will be applied to the per contract credit provided for PRIME Agency Orders. If the PRIME Agency Order has a break-up percentage greater than 60% and up to 80% the per contract credit provided for PRIME Agency Orders will be increased by \$0.01. If the PRIME Agency Order has a break-up percentage greater than 80% and up to 100% the per contract credit provided for PRIME Agency Orders will be increased by \$0.02. Current break-up and other credits remain unchanged and will continue to apply.

The Exchange currently provides a PRIME Break-up credit of \$0.25 per contract in Penny Classes and \$0.60 per contract in Non-Penny Classes. Additionally, the Exchange provides an enhanced PRIME break-up credit of \$0.69 per contract to the EEM that submitted a PRIME Order in a Non-Penny Class that trades with PRIME AOC Responses and/or PRIME participating quotes or orders, if the PRIME Order experiences a break-up of greater than 40%, which is not changing under this proposal.¹¹

The following examples are provided to illustrate how the base agency (unchanged under this proposal), proposed adjustment, and break-up credits (unchanged under this proposal), will apply. For example, as proposed if an Electronic Exchange Member (“EEM”)¹² in Tier 1 submits a Priority Customer PRIME Agency Order in a Penny Class that trades 100% with the contra side order, the EEM will receive the Agency Rebate of \$0.10 with the appropriate \$0.02

¹¹ See the Exchange’s Fee schedule, footnote “*” of Section 1)a)v), on its public website (available at <https://www.miaxoptions.com/fees>).

¹² The term “Electronic Exchange Member” or “EEM” means the holder of Trading Permit who is not a Market Maker. Electronic Exchange Members are deemed “members” under the Exchange Act. See Exchange Rule 100.

adjustment applied (\$0.02 credit reduction) for a net credit of \$0.08. If an EEM in Tier 1 submits a Priority Customer PRIME Agency Order in a Penny Class that is 100% broken up, the EEM will receive the Agency Rebate of \$0.10 with the appropriate \$0.02 adjustment applied (\$0.02 additional credit) for a net credit of \$0.12, in addition to a break-up credit of \$0.25 (which is not changing under this proposal)¹³ for a total credit of \$0.37. Similarly if the order had been 70% broken up, the EEM would receive the Agency Rebate of \$0.10 with the appropriate \$0.01 adjustment applied (\$0.01 additional credit) for a net credit of \$0.11, in addition to a break-up credit of \$0.25 for a total credit of \$0.36. If the order had been 30% broken up, the EEM would receive the Agency Rebate of \$0.10 with the appropriate \$0.01 adjustment applied (\$0.01 credit reduction) for a net credit of \$0.09, in addition to a break-up credit of \$0.25 for a total credit of \$0.34. The break-up credit and its application remains unchanged under the Exchange's proposal.

The Exchange is making the proposed change for business and competitive reasons, as the Exchange believes that adjusting its rebates will allow the Exchange to remain competitive and will continue to incentivize EEMs to submit Priority Customer PRIME Agency Orders to the Exchange.

b. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act¹⁴ in general, and furthers the objectives of Section 6(b)(4) of the Act¹⁵ in

¹³ See the Exchange's Fee Schedule, Section 1)a)v), on its public website (available at <https://www.miaxoptions.com/fees>).

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(4).

particular, in that it is an equitable allocation of reasonable dues, 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 Act¹⁶ 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 its proposal provides for the equitable allocation of reasonable dues and fees and is not unfairly discriminatory for the following reasons. The Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is one of 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than approximately 12% of the market share of executed volume of multiply-listed equity and exchange-traded fund (“ETF”) options trades as of August 29, 2022, for the month of August 2022.¹⁷ Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, as of August 29, 2022, the Exchange has a total market share of 5.67% of all equity options volume, for the month of August 2022.¹⁸

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ See MIAX’s “The market at a glance/MTD AVERAGE”, available at <https://www.miaxoptions.com/> (last visited August 29, 2022).

¹⁸ See *id.*

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue use of certain categories of products, in response to fee changes. For example, on March 1, 2019, the Exchange filed with the Commission an immediately effective filing to decrease certain credits assessable to Members pursuant to the PCRCP.¹⁹ The Exchange experienced a decrease in total market share between the months of February and March of 2019. Accordingly, the Exchange believes that the March 1, 2019, fee change may have contributed to the decrease in the Exchange's market share and, as such, the Exchange believes competitive forces constrain options exchange transaction and non-transaction fees.

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

The Exchange believes that its proposal to modify the Other Market Participant Transaction Fees table to provide for a total per contract fee of \$0.10 on the option component of a stock-option order for qualifying participants is consistent with Section 6(b)(4) of the Act²⁰ because it is equitable and not unfairly discriminatory as the fee is assessed uniformly to all

¹⁹ See Securities Exchange Act Release No. 85301 (March 13, 2019), 84 FR 10166 (March 19, 2019) (SR-MIAX-2019-09).

²⁰ 15 U.S.C. 78f(b)(4).

Public Customers that are not Priority Customers that have an Affiliate in Tier 4 of the PCRCP for the relevant month, that execute stock-option orders on the Exchange.

The Exchange also believes that this proposal is consistent with Section 6(b)(5) of the Act²¹ because it perfects the mechanisms of a free and open market and a national market system and protects investors and the public interest because it provides an additional incentive for Members to increase Priority Customer order flow to the Exchange in order to obtain the highest volume threshold, which benefits all market participants by providing more trading opportunities and tighter spreads. Additionally, the proposed discount encourages Members to submit Priority Customer Orders to the Exchange which will continue to result in increased volume which benefits all Exchange participants by providing more trading opportunities.

The Exchange believes that its proposal to adopt a tiered adjustment table for per contract credits applied to PRIME Agency Orders based upon break-up percentage is consistent with Section 6(b)(4) of the Act²² in that the proposal is reasonable, equitable and not unfairly discriminatory as it applies uniformly to all similarly situated Members.

The Exchange believes that the proposed incentive structure is fair, equitable and not unreasonably discriminatory. The PCRCP is reasonably designed because it will continue to provide an incentive to providers of Priority Customer order flow to send that Priority Customer order flow to the Exchange to receive a credit in a manner that enables the Exchange to improve its overall competitiveness and strengthen its market quality for all participants.

The Exchange believes that its proposed Per Contract Adjustment for PRIME Agency Order table will continue to incentivize EEMs to submit Priority Customer PRIME Agency

²¹ 15 U.S.C. 78f(b)(1) and (b)(5).

²² Id.

Orders to the Exchange, and that the reduction of the rebate when the break-up percentage is less than 40%, is not so significant that it will disincentivize EEMs from submitting Priority Customer PRIME Agency Orders to the Exchange. The Exchange believes that adjusting its rebates and providing an additional credit of \$0.01 (when the order break-up percentage is greater than 60%) and an additional credit of \$0.02 (when the order break-up percentage is greater than 80%) will both incentivize EEMs to submit Priority Customer PRIME Agency Orders to the Exchange and will also contribute to more robust PRIME Auctions and potentially lead to greater liquidity and price improvement for orders submitted to the Exchange's PRIME. The decision to implement the Per Contract Adjustment for PRIME Agency Order table is based on an analysis of current revenue and volume levels and is designed to encourage Priority Customer order flow to PRIME Auctions.

In addition, The Exchange believes that its proposal is consistent with Section 6(b)(5) of the Act²³ because it perfects the mechanisms of a free and open market and a national market system and protects investors and the public interest because Priority Customer order flow will bring greater volume and liquidity to the Exchange, which benefits all market participants by providing more trading opportunities and tighter spreads. To the extent Priority Customer order flow is increased by this proposal, market participants will increasingly compete for the opportunity to trade on the Exchange including sending more orders and provided narrower and larger-sized quotations in the effort to trade with such Priority Customer order flow.

The Exchange believes that the proposed Per Contract Adjustment for PRIME Agency Order table that provides a tiered incentive structure for Priority Customer PRIME Agency Orders based upon order break-up percentage is equitable and not unfairly discriminatory

²³ 15 U.S.C. 78f(b)(4).

because the proposed incentive table will apply equally to all similarly situated EEMs that submit Priority Customer PRIME Agency Orders to the Exchange.

The Exchange believes that providing an adjustment to the rebate provided to EEMs that submit Priority Customer PRIME Agency Orders that are broken-up by a certain percentage is equitable and not unfairly discriminatory because the proposed Per Contract Adjustment for PRIME Agency Order table will apply equally to all Priority Customer PRIME Agency Orders. The Exchange does not believe the reduction of the rebate will serve to disincentivize EEMs from submitting Priority Customer PRIME Agency Orders to the Exchange, and believes that the enhanced rebate may further incentivize EEMs to submit Priority Customer PRIME Agency Orders to the Exchange. Further, the Exchange believes that the application of the Per Contract Adjustment for PRIME Agency Order table is equitable and not unfairly discriminatory because Priority Customer order flow enhances liquidity on the Exchange, in turn providing more trading opportunities and attracting other market participants, thus improving liquidity and facilitating tighter spreads, to the benefit of all market participants.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and self-regulatory organization (“SRO”) revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”²⁴

²⁴ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

The Exchange believes that the ever-shifting market shares among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue or reduce use of certain categories of products, in response to transaction and non-transaction fee changes. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. The Exchange believes the proposal reflects a reasonable and competitive pricing structure which will continue to incentivize market participants to direct liquidity adding orders to the Exchange, which the Exchange believes would enhance liquidity and market quality on the exchange to the benefit of all Members.

For the reasons discussed above, the Exchange submits that the proposal satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act²⁵ in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to unfairly discriminate between customers, issuers, brokers, or dealers.

4. 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. The Exchange does not believe that the proposed change in connection with stock-option orders or Priority Customer PRIME Agency Orders will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the changes apply uniformly to all similarly situated Members in a uniform manner.

²⁵ 15 U.S.C. 78f(b)(4) and (5).

The Exchange believes that its proposal to modify the Other Market Participant Transaction Fees table to provide for a total per contract fee of \$0.10 on the option component of a stock-option order for qualifying participants provides an additional incentive for Members to increase Priority Customer order flow to the Exchange in order to obtain the highest volume threshold, which benefits all market participants by providing more trading opportunities and tighter spreads. Additionally, the proposed discount encourages Members to submit Priority Customer Orders to the Exchange which will continue to result in increased volume on the Exchange which benefits all Exchange participants by providing more trading opportunities.

The Exchange believes that its proposal to adopt a tiered adjustment table for per contract credits applied to PRIME Agency Orders based upon break-up percentage will not impose a burden on competition as it applies uniformly to all similarly situated Members. Similarly, the Exchange believes the proposed Per Contract Adjustment for PRIME Agency Order table should continue to incentivize EEMs to submit Priority Customer PRIME Agency Orders to the Exchange, and that the reduction of the rebate when the break-up percentage is less than 40%, is not so significant that it will disincentivize EEMs from submitting Priority Customer PRIME Agency Orders to the Exchange.

These proposed changes should enable the Exchange to continue to attract liquidity to the Exchange and compete for order flow with other exchanges. However, this competition does not create an undue burden on competition but rather offers all market participants the opportunity to receive the benefit of competitive pricing. The proposed changes are intended to keep the Exchange's fees and rebates highly competitive with those of other exchanges, and to encourage liquidity on the Exchange. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a

particular venue to be excessive. In such an environment, the Exchange must continually adjust its rebates and fees to remain competitive with other exchanges and to attract order flow. The Exchange believes that the proposed rule changes reflect this competitive environment because the proposal modifies the Exchange's fees and rebates in a manner that encourages market participants to continue to provide liquidity and to send order flow to the Exchange.

Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."²⁶ The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: "[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers' . . .".²⁷ Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

²⁶ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 47396, 37499 (June 29, 2005).

²⁷ *NetCoalition v SEC*, 615 F.3d 525, 539 (D.C. Cir 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

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

No written comments were either solicited or received.

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

Not applicable.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,²⁸ and Rule 19b-4(f)(2) thereunder²⁹ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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

The proposed rule change is not based on the rules of another exchange or of the Commission.

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

Not applicable.

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

Not applicable.

11. **Exhibits**

1. Completed notice of proposed rule change for publication in the Federal Register.
5. Copy of the applicable section of the Fee Schedule.

²⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁹ 17 CFR 240.19b-4.

EXHIBIT 1SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-MIAX-2022-35)

October _____, 2022

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

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 4, 2022, Miami International Securities Exchange LLC (“MIAX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule (the “Fee Schedule”).

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

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 the Other Market Participant Transaction Fees table³ to amend the fee applicable to the option component of a stock-option order; and (ii) modify the Priority Customer Rebate Program (“PCRP”)⁴ as it pertains to per contract credits for PRIME Agency Orders submitted by Priority Customers.⁵ The Exchange initially filed this proposal on September 1, 2022 as SR-MIAX-2022-28. On September 20, 2022, the Exchange withdrew SR-MIAX-2022-28 and resubmitted the proposal as SR-MIAX-2022-31. On September 28, 2022, the Exchange withdrew SR-MIAX-2022-31 and resubmitted the proposal as SR-MIAX-2022-33. On October 4, 2022, the Exchange withdrew SR-MIAX-2022-33 and resubmitted the proposal as SR-MIAX-2022-35. The proposed changes are immediately effective.

³ See Section 1)a)ii) of the Exchange’s Fee Schedule.

⁴ Under the PCRP, MIAX Options credits each Member the per contract amount resulting from each Priority Customer order transmitted by that Member which is executed electronically on the Exchange in all multiply-listed option classes (excluding, in simple or complex as applicable, QCC and cQCC Orders, mini-options, Priority Customer-to-Priority Customer Orders, C2C and cC2C Orders, PRIME and cPRIME AOC Responses, PRIME and cPRIME Contra-side Orders, PRIME and cPRIME Orders for which both the Agency and Contra-side Order are Priority Customers, and executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in Exchange Rule 1400), provided the Member meets certain percentage thresholds in a month as described in the Priority Customer Rebate Program table. See Fee Schedule, Section 1)a)iii.

⁵ The term “Priority Customer” means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). See Exchange Rule 100.

Background

Stock-Option Orders

A “complex order” is any order involving the concurrent purchase and/or sale of two or more different options in the same underlying security (the “legs” or “components” of the complex order), for the same account, in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purposes of executing a particular investment strategy. Mini-options may only be part of a complex order that includes other mini-options. Only those complex orders in the classes designated by the Exchange and communicated to Members via Regulatory Circular with no more than the applicable number of legs, as determined by the Exchange on a class-by-class basis and communicated to Members via Regulatory Circular, are eligible for processing.

A complex order can also be a “stock-option order” as described further, and subject to the limitations set forth, in Interpretations and Policies .01 of Exchange Rule 518. A stock-option order is an order to buy or sell a stated number of units of an underlying security (stock or Exchange Traded Fund Share (“ETF”)) or a security convertible into the underlying stock (“convertible security”) coupled with the purchase or sale of options contract(s) on the opposite side of the market representing either (i) the same number of units of the underlying security or convertible security, or (ii) the number of units of the underlying stock necessary to create a delta neutral position, but in no case in a ratio greater than eight-to-one (8.00), where the ratio represents the total number of units of the underlying security or convertible security in the option leg to the total number of units of the underlying security or convertible security in the stock leg. Only those stock-option orders in the classes designated by the Exchange and communicated to Members via Regulatory Circular with no more than the applicable number of

legs as determined by the Exchange on a class-by-class basis and communicated to Members via Regulatory Circular, are eligible for processing.⁶

Currently, under the Other Market Participant Transaction Fees table, the Exchange charges Public Customers that are not Priority Customers a fee of \$0.47 per contract for executions of simple and complex orders in Penny Classes and \$0.75 per contract for executions of simple and complex orders in Non-Penny Classes, and assesses a \$0.12 per contract surcharge for trading against a Priority Customer complex order in Penny and Non-Penny Classes.

The Exchange now proposes to adopt new note “!!” which will be applicable to the option component of a stock-option order and which will provide that, any Member whose Affiliate qualifies for Priority Customer Rebate Program volume tier 4 in the relevant month will be assessed a total of \$0.10 per contract on the option component of a stock-option order for executions in Penny or Non-Penny Classes, and the per contract surcharge for trading against a Priority Customer complex order will not apply.⁷ Therefore, a qualifying Member will be charged \$0.10 per contract for executions in Penny or Non-Penny Classes, and the \$0.12 per contract surcharge for trading against a Priority Customer Order in Penny or Non-Penny Classes will not be assessed.

PRIME Agency Orders

⁶ See Exchange Rule 518(a)(5).

⁷ The Exchange charges a stock-handling fee of \$0.0010 per share (capped at \$50 per order, per day) for the stock leg of stock-option orders (including stock-option eQuotes) executed against other stock-option orders in the complex order book, which the Exchange must route to an outside venue. In addition, the Exchange will pass through to the Member any fees assessed by the routing broker-dealer utilized by the Exchange with respect to the execution of the stock leg of any such order (with such fees to be passed through at cost). The Exchange notes that this fee is not changing under this proposal. See the Exchange’s Fee Schedule, Section 1)a)x) on its public website (available at <https://www.miaxoptions.com/fees>).

PRIME is a process by which a Member may electronically submit for execution (“Auction”) an order it represents as agent (“Agency Order”) against principal interest, and/or an Agency Order against solicited interest.⁸ The Member that submits the Agency Order (“Initiating Member”) agrees to guarantee the execution of the Agency Order by submitting a contra-side order representing principal interest or solicited interest.⁹ Currently, the Exchange provides a per contract credit for PRIME Agency Orders of \$0.10 for Priority Customer Agency Orders in Tier 1, and a per contract credit of \$0.11 for Priority Customer Agency Orders in Tiers 2 through 4.¹⁰

Proposal

The Exchange proposes to adopt a new table under the PCRCP for PRIME Agency Orders for Priority Customers Origins that will provide an adjustment to the credit provided for PRIME Agency Orders to Priority Customers in a tiered structure dependent upon the break-up percentage of the order. The Exchange proposes to adopt new note “!!!” to state that, for Priority Customer PRIME Agency Orders the Exchange will apply the per contract adjustment to the PRIME Agency rebate provided under the Priority Customer Rebate Program dependent upon the order break-up percentage as described in the table above, (the Per Contract Adjustment for PRIME Agency Order table).

The proposed Per Contract Adjustment for PRIME Agency Order table will provide that if the PRIME Agency Order has a break-up percentage of 0-20% the per contract credit provided for PRIME Agency Orders will be reduced by \$0.02. If the PRIME Agency Order has a break-

⁸ See Exchange Rule 515A(a).

⁹ See Exchange Rule 51A(a)(ii).

¹⁰ See the Exchange’s Fee Schedule, Section 1)a)iii), on its public website (available at <https://www.miaxoptions.com/fees>).

up percentage greater than 20% and up to 40% the per contract credit provided for PRIME Agency Orders will be reduced by \$0.01. If the PRIME Agency Order has a break-up percentage greater than 40% and up to 60% no adjustment will be applied to the per contract credit provided for PRIME Agency Orders. If the PRIME Agency Order has a break-up percentage greater than 60% and up to 80% the per contract credit provided for PRIME Agency Orders will be increased by \$0.01. If the PRIME Agency Order has a break-up percentage greater than 80% and up to 100% the per contract credit provided for PRIME Agency Orders will be increased by \$0.02. Current break-up and other credits remain unchanged and will continue to apply.

The Exchange currently provides a PRIME Break-up credit of \$0.25 per contract in Penny Classes and \$0.60 per contract in Non-Penny Classes. Additionally, the Exchange provides an enhanced PRIME break-up credit of \$0.69 per contract to the EEM that submitted a PRIME Order in a Non-Penny Class that trades with PRIME AOC Responses and/or PRIME participating quotes or orders, if the PRIME Order experiences a break-up of greater than 40%, which is not changing under this proposal.¹¹

The following examples are provided to illustrate how the base agency (unchanged under this proposal), proposed adjustment, and break-up credits (unchanged under this proposal), will apply. For example, as proposed if an Electronic Exchange Member (“EEM”)¹² in Tier 1 submits a Priority Customer PRIME Agency Order in a Penny Class that trades 100% with the contra side order, the EEM will receive the Agency Rebate of \$0.10 with the appropriate \$0.02

¹¹ See the Exchange’s Fee schedule, footnote “*” of Section 1)a)v), on its public website (available at <https://www.miaxoptions.com/fees>).

¹² The term “Electronic Exchange Member” or “EEM” means the holder of Trading Permit who is not a Market Maker. Electronic Exchange Members are deemed “members” under the Exchange Act. See Exchange Rule 100.

adjustment applied (\$0.02 credit reduction) for a net credit of \$0.08. If an EEM in Tier 1 submits a Priority Customer PRIME Agency Order in a Penny Class that is 100% broken up, the EEM will receive the Agency Rebate of \$0.10 with the appropriate \$0.02 adjustment applied (\$0.02 additional credit) for a net credit of \$0.12, in addition to a break-up credit of \$0.25 (which is not changing under this proposal)¹³ for a total credit of \$0.37. Similarly if the order had been 70% broken up, the EEM would receive the Agency Rebate of \$0.10 with the appropriate \$0.01 adjustment applied (\$0.01 additional credit) for a net credit of \$0.11, in addition to a break-up credit of \$0.25 for a total credit of \$0.36. If the order had been 30% broken up, the EEM would receive the Agency Rebate of \$0.10 with the appropriate \$0.01 adjustment applied (\$0.01 credit reduction) for a net credit of \$0.09, in addition to a break-up credit of \$0.25 for a total credit of \$0.34. The break-up credit and its application remains unchanged under the Exchange's proposal.

The Exchange is making the proposed change for business and competitive reasons, as the Exchange believes that adjusting its rebates will allow the Exchange to remain competitive and will continue to incentivize EEMs to submit Priority Customer PRIME Agency Orders to the Exchange.

b. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act¹⁴ in general, and furthers the objectives of Section 6(b)(4) of the Act¹⁵ in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among

¹³ See the Exchange's Fee Schedule, Section 1(a)v), on its public website (available at <https://www.miaxoptions.com/fees>).

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(4).

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 Act¹⁶ 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 its proposal provides for the equitable allocation of reasonable dues and fees and is not unfairly discriminatory for the following reasons. The Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is one of 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than approximately 12% of the market share of executed volume of multiply-listed equity and exchange-traded fund (“ETF”) options trades as of August 29, 2022, for the month of August 2022.¹⁷ Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, as of August 29, 2022, the Exchange has a total market share of 5.67% of all equity options volume, for the month of August 2022.¹⁸

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue use of

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ See MIAX’s “The market at a glance/MTD AVERAGE”, available at <https://www.miaxoptions.com/> (last visited August 29, 2022).

¹⁸ See *id.*

certain categories of products, in response to fee changes. For example, on March 1, 2019, the Exchange filed with the Commission an immediately effective filing to decrease certain credits assessable to Members pursuant to the PCRCP.¹⁹ The Exchange experienced a decrease in total market share between the months of February and March of 2019. Accordingly, the Exchange believes that the March 1, 2019, fee change may have contributed to the decrease in the Exchange's market share and, as such, the Exchange believes competitive forces constrain options exchange transaction and non-transaction fees.

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

The Exchange believes that its proposal to modify the Other Market Participant Transaction Fees table to provide for a total per contract fee of \$0.10 on the option component of a stock-option order for qualifying participants is consistent with Section 6(b)(4) of the Act²⁰ because it is equitable and not unfairly discriminatory as the fee is assessed uniformly to all Public Customers that are not Priority Customers that have an Affiliate in Tier 4 of the PCRCP for the relevant month, that execute stock-option orders on the Exchange.

¹⁹ See Securities Exchange Act Release No. 85301 (March 13, 2019), 84 FR 10166 (March 19, 2019) (SR-MIAX-2019-09).

²⁰ 15 U.S.C. 78f(b)(4).

The Exchange also believes that this proposal is consistent with Section 6(b)(5) of the Act²¹ because it perfects the mechanisms of a free and open market and a national market system and protects investors and the public interest because it provides an additional incentive for Members to increase Priority Customer order flow to the Exchange in order to obtain the highest volume threshold, which benefits all market participants by providing more trading opportunities and tighter spreads. Additionally, the proposed discount encourages Members to submit Priority Customer Orders to the Exchange which will continue to result in increased volume which benefits all Exchange participants by providing more trading opportunities.

The Exchange believes that its proposal to adopt a tiered adjustment table for per contract credits applied to PRIME Agency Orders based upon break-up percentage is consistent with Section 6(b)(4) of the Act²² in that the proposal is reasonable, equitable and not unfairly discriminatory as it applies uniformly to all similarly situated Members.

The Exchange believes that the proposed incentive structure is fair, equitable and not unreasonably discriminatory. The PCRPs are reasonably designed because they will continue to provide an incentive to providers of Priority Customer order flow to send that Priority Customer order flow to the Exchange to receive a credit in a manner that enables the Exchange to improve its overall competitiveness and strengthen its market quality for all participants.

The Exchange believes that its proposed Per Contract Adjustment for PRIME Agency Order table will continue to incentivize EEMs to submit Priority Customer PRIME Agency Orders to the Exchange, and that the reduction of the rebate when the break-up percentage is less than 40%, is not so significant that it will disincentivize EEMs from submitting Priority Customer PRIME Agency Orders to the Exchange. The Exchange believes that adjusting its

²¹ 15 U.S.C. 78f(b)(1) and (b)(5).

²² Id.

rebates and providing an additional credit of \$0.01 (when the order break-up percentage is greater than 60%) and an additional credit of \$0.02 (when the order break-up percentage is greater than 80%) will both incentivize EEMs to submit Priority Customer PRIME Agency Orders to the Exchange and will also contribute to more robust PRIME Auctions and potentially lead to greater liquidity and price improvement for orders submitted to the Exchange's PRIME. The decision to implement the Per Contract Adjustment for PRIME Agency Order table is based on an analysis of current revenue and volume levels and is designed to encourage Priority Customer order flow to PRIME Auctions.

In addition, The Exchange believes that its proposal is consistent with Section 6(b)(5) of the Act²³ because it perfects the mechanisms of a free and open market and a national market system and protects investors and the public interest because Priority Customer order flow will bring greater volume and liquidity to the Exchange, which benefits all market participants by providing more trading opportunities and tighter spreads. To the extent Priority Customer order flow is increased by this proposal, market participants will increasingly compete for the opportunity to trade on the Exchange including sending more orders and provided narrower and larger-sized quotations in the effort to trade with such Priority Customer order flow.

The Exchange believes that the proposed Per Contract Adjustment for PRIME Agency Order table that provides a tiered incentive structure for Priority Customer PRIME Agency Orders based upon order break-up percentage is equitable and not unfairly discriminatory because the proposed incentive table will apply equally to all similarly situated EEMs that submit Priority Customer PRIME Agency Orders to the Exchange.

²³ 15 U.S.C. 78f(b)(4).

The Exchange believes that providing an adjustment to the rebate provided to EEMs that submit Priority Customer PRIME Agency Orders that are broken-up by a certain percentage is equitable and not unfairly discriminatory because the proposed Per Contract Adjustment for PRIME Agency Order table will apply equally to all Priority Customer PRIME Agency Orders. The Exchange does not believe the reduction of the rebate will serve to disincentivize EEMs from submitting Priority Customer PRIME Agency Orders to the Exchange, and believes that the enhanced rebate may further incentivize EEMs to submit Priority Customer PRIME Agency Orders to the Exchange. Further, the Exchange believes that the application of the Per Contract Adjustment for PRIME Agency Order table is equitable and not unfairly discriminatory because Priority Customer order flow enhances liquidity on the Exchange, in turn providing more trading opportunities and attracting other market participants, thus improving liquidity and facilitating tighter spreads, to the benefit of all market participants.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and self-regulatory organization (“SRO”) revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”²⁴

The Exchange believes that the ever-shifting market shares among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue or reduce use of certain categories of products, in response to transaction and non-transaction fee changes. Accordingly, competitive forces constrain the Exchange’s transaction fees and rebates,

²⁴ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. The Exchange believes the proposal reflects a reasonable and competitive pricing structure which will continue to incentivize market participants to direct liquidity adding orders to the Exchange, which the Exchange believes would enhance liquidity and market quality on the exchange to the benefit of all Members.

For the reasons discussed above, the Exchange submits that the proposal satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act²⁵ in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to unfairly discriminate between customers, issuers, brokers, or dealers.

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. The Exchange does not believe that the proposed change in connection with stock-option orders or Priority Customer PRIME Agency Orders will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the changes apply uniformly to all similarly situated Members in a uniform manner.

The Exchange believes that its proposal to modify the Other Market Participant Transaction Fees table to provide for a total per contract fee of \$0.10 on the option component of a stock-option order for qualifying participants provides an additional incentive for Members to increase Priority Customer order flow to the Exchange in order to obtain the highest volume threshold, which benefits all market participants by providing more trading opportunities and

²⁵ 15 U.S.C. 78f(b)(4) and (5).

tighter spreads. Additionally, the proposed discount encourages Members to submit Priority Customer Orders to the Exchange which will continue to result in increased volume on the Exchange which benefits all Exchange participants by providing more trading opportunities.

The Exchange believes that its proposal to adopt a tiered adjustment table for per contract credits applied to PRIME Agency Orders based upon break-up percentage will not impose a burden on competition as it applies uniformly to all similarly situated Members. Similarly, the Exchange believes the proposed Per Contract Adjustment for PRIME Agency Order table should continue to incentivize EEMs to submit Priority Customer PRIME Agency Orders to the Exchange, and that the reduction of the rebate when the break-up percentage is less than 40%, is not so significant that it will disincentivize EEMs from submitting Priority Customer PRIME Agency Orders to the Exchange.

These proposed changes should enable the Exchange to continue to attract liquidity to the Exchange and compete for order flow with other exchanges. However, this competition does not create an undue burden on competition but rather offers all market participants the opportunity to receive the benefit of competitive pricing. The proposed changes are intended to keep the Exchange's fees and rebates highly competitive with those of other exchanges, and to encourage liquidity on the Exchange. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its rebates and fees to remain competitive with other exchanges and to attract order flow. The Exchange believes that the proposed rule changes reflect this competitive environment because the proposal modifies the Exchange's fees and rebates in a manner that encourages market participants to continue to provide liquidity and to send order flow to the Exchange.

Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”²⁶ The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”²⁷ Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Written comments were neither solicited nor received.

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

²⁶ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 47396, 37499 (June 29, 2005).

²⁷ *NetCoalition v SEC*, 615 F.3d 525, 539 (D.C. Cir 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,²⁸ and Rule 19b-4(f)(2)²⁹ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>);
- or
- Send an e-mail [to rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MIAX-2022-35 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-MIAX-2022-35. This file number should be included on the subject line if e-mail is used. To help the Commission process and

²⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁹ 17 CFR 240.19b-4(f)(2).

review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-MIAX-2022-35 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.³⁰

Vanessa Countryman
Secretary

³⁰ 17 CFR 200.30-3(a)(12).

.....**Exhibit 5**

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

MIAX Options Exchange Fee Schedule

- 1) Transaction Fees
 - a) Multiply-Listed Options Exchange Fees
 - (i) No change.
 - (ii) Other Market Participant Transaction Fees

Types of Other Market Participants	Standard Options Transaction Fee for Simple and Complex Orders (per executed contract)		Per Contract Surcharge for Trading Against a Priority Customer Complex Order for Penny and Non-Penny Classes	Mini Options Transaction Fee (per executed contract)		These fees will apply to all option classes traded on MIAX
	Penny Classes	Non-Penny Classes		Penny Classes	Non-Penny Classes	
<i>Priority Customer</i> ³	\$0.00	\$0.00	\$0.00	\$0.000	\$0.000	There is no fee assessed to an Electronic Exchange Member (an "EEM," as defined in MIAX Rule 100) that enters an order that is executed for the account of a Priority Customer.
<i>Public Customer that is Not a Priority Customer</i>	\$0.47 ^{4,¶}	\$0.75 ^{5,¶}	\$0.12 [¶]	\$0.05	\$0.07	This fee is assessed to an EEM that enters an order that is executed for the account of a Public Customer ⁶ that does not meet the criteria for designation as a Priority Customer. This fee will also be charged to an EEM that enters an order for the account of a Public Customer that has elected to be treated as a Voluntary Professional. ⁷
<i>Non-MIAX Market Maker</i>	\$0.47 ⁸	\$0.75 ⁹	\$0.12	\$0.045	\$0.07	This fee is assessed to an EEM that enters an order that is executed for the account of a non-MIAX market maker. A non-MIAX market maker is a market maker registered as

						such on another options exchange.
<i>Non-Member Broker-Dealer</i>	\$0.47 ¹⁰	\$0.75 ¹¹	\$0.12	\$0.045	\$0.07	This fee is assessed to an EEM that enters an order that (i) is executed for the account of a non-Member Broker-Dealer, and (ii) is identified by the EEM for clearing in the Options Clearing Corporation (“OCC”) “customer” range. A non-Member Broker-Dealer is a broker-dealer that is not a member of the OCC, and that is not registered as a Member at MIAX or another options exchange.
<i>Firm</i>	\$0.47 ¹²	\$0.75 ¹³	\$0.12	\$0.04	\$0.07	This fee is assessed to an EEM that enters an order that is executed for an account identified by the EEM for clearing in the OCC “Firm” range.

!! Any Member whose Affiliate qualifies for Priority Customer Rebate Program volume tier 4 in the relevant month will be assessed \$0.10 per contract on the option component of a stock-option order for executions in Penny or Non-Penny Classes, and the per contract surcharge for trading against a Priority Customer complex order will not apply.

iii) Priority Customer Rebate Program

Origin	Tier	Percentage Thresholds of National Customer Volume in Multiply-Listed Options Classes Listed on MIAX (Monthly)	Per Contract Credit for Simple Orders in non-MIAX Select Symbols ³	Per Contract Credit for Simple Orders in MIAX Select Symbols	Per Contract Credit for PRIME Agency Order!!!	Per Contract Credit for cPRIME Agency Order*	Per Contract Credit for Complex Orders
<i>Priority Customer</i>	1	0.00% - 0.50%	\$0.00	\$0.00	\$0.10	\$0.10	\$0.20
	2	Above 0.50% - 1.20%	\$0.10	\$0.10	\$0.11	\$0.10	\$0.21
	3	Above 1.20% - 1.75%	\$0.15	\$0.20	\$0.11	\$0.10	\$0.26 [◇] /\$0.27 [■]
	4	Above 1.75%	\$0.21	\$0.24	\$0.11	\$0.10 ^{**}	\$0.27 [◇] /\$0.28 [■]

Per Contract Adjustment for PRIME Agency Order !!!

<u>Origin</u>	<u>Order Break-up %</u>	<u>Per Contract Adjustment of Credit</u>
<i>Priority Customer</i>	<u>0-20%</u>	<u>\$0.02 (reduction of credit)</u>
	<u>>20% - 40%</u>	<u>\$0.01 (reduction of credit)</u>
	<u>>40% - 60%</u>	<u>\$0.00</u>
	<u>>60% - 80%</u>	<u>(\$0.01) (additional credit)</u>
	<u>>80% -100%</u>	<u>(\$0.02) (additional credit)</u>

!!! For Priority Customer PRIME Agency Orders the Exchange will apply the per contract adjustment to the PRIME Agency rebate provided under the Priority Customer Rebate Program dependent upon the order break-up percentage as described in the table above.
