

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 29

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

File No. * SR 2022 - * 38

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"/>	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) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 3C(b)(2) * <input type="checkbox"/>
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Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description

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

Update 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 * Last Name *

Title *

E-mail *

Telephone * Fax

Signature

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

Date (Title *)

By

(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: 2022.10.19 16:15:13 -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 EFFS website.

Form 19b-4 Information *

Add Remove View

SR-MIAX-2022-38 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-2022-38- 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

Add Remove View

SR-MIAX-2022-38 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

Add Remove View

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 amend footnote “*” of the MIAX Price Improvement Mechanism (“PRIME”) Fees table³ to increase the enhanced PRIME Break-up credit of \$0.69 to \$0.73 for EEMs that submit a Priority Customer PRIME Order in Non-Penny Classes that is submitted to the PRIME Auction that trades with PRIME AOC Responses and/or PRIME Participating Quotes or Orders, if the PRIME Order experiences a break-up of greater than forty percent (40%). The Exchange initially filed this proposal on September 30, 2022 (SR-MIAX-2022-34). On October 12, 2022, the Exchange withdrew SR-MIAX-2022-34 and resubmitted this proposal (SR-MIAX-2022-36). The proposed changes are immediately effective.

Background

The MIAX Price Improvement Mechanism (“PRIME”) is a process by which a Member⁴ may electronically submit for execution an order it represents as agent (an “Agency Order”) against principal interest and/or solicited interest. The Member that submits the Agency Order (“Initiating Member”) agrees to guarantee the execution of the Agency Order by submitting a contra-side order representing principal interest or solicited interest (“Contra-Side Order”).⁵ When the Exchange receives a properly designated Agency Order for Auction processing, a

³ See Section 1(a)(v) of the Exchange’s Fee Schedule on its public website (available at www.miaxoptions.com/fees).

⁴ 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.

⁵ See Exchange Rule 515A(a).

request for response (“RFR”) detailing the option, side, size and initiating price is broadcasted to MIAX participants up to an optional designated limit price.⁶ Members may submit responses to the RFR, which can be either an Auction or Cancel (“AOC”) order⁷ or an AOC eQuote.⁸ The PRIME mechanism is used for orders on the Exchange’s Simple Order Book.⁹

The Exchange provides a PRIME Break-up credit of \$0.60 per contract for Non-Penny Classes in a PRIME Auction.¹⁰ The Exchange subsequently adopted an enhanced PRIME Break-up credit of \$0.69 per contract for Priority Customer PRIME Orders in Non-Penny Classes when the order break-up percentage was greater than 40%.¹¹ The enhanced PRIME Break-up credit of \$0.69 per contract is applied to the EEM that submitted a PRIME Order in Non-Penny classes that is submitted to a PRIME Auction that trades with PRIME AOC

⁶ See Exchange Rule 515A(a)(2)(B).

⁷ An Auction-or-Cancel or “AOC” order is a limit order used to provide liquidity during a specific Exchange process (such as the Opening Imbalance process described in Rule 503) with a time in force that corresponds with that event. AOC orders are not displayed to any market participant, are not included in the MBBO and therefore are not eligible for trading outside of the event, may not be routed, and may not trade at a price inferior to the away markets. See Exchange Rule 516(b)(4).

⁸ AOC eQuote An Auction or Cancel or “AOC” eQuote is a quote submitted by a Market Maker to provide liquidity in a specific Exchange process (such as the Opening Imbalance Process described in Rule 503) with a time in force that corresponds with the duration of that event and will automatically expire at the end of that event. AOC eQuotes are not displayed to any market participant, are not included in the MBBO and therefore are not eligible for trading outside of the event. An AOC eQuote does not automatically cancel or replace the Market Maker’s previous Standard quote or eQuote. See Exchange Rule 517(a)(2)(ii).

⁹ The “Simple Order Book” is the Exchange’s regular electronic book of orders and quotes. See Exchange Rule 518(a)(15).

¹⁰ See Section 1)a)v) of the Exchange’s Fee Schedule on its public website (available at www.miaxoptions.com/fees).

¹¹ See Securities Exchange Act Release No. 93306 (October 13, 2021), 86 FR 57869 (October 19, 2021) (SR-MIAX-2021-42).

Responses and/or PRIME Participating Quotes or Orders, if the PRIME Order experiences a break-up of greater than forty percent (40%). The Exchange now proposes to increase the per contract credit from \$0.69 to \$0.73. The decision to increase the enhanced Priority Customer Break-up credit is based on an analysis of current revenue and volume levels and is designed to continue to encourage Priority Customer order flow to PRIME Auctions.

b. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act¹² in general, and furthers the objectives of Section 6(b)(4) of the Act¹³ in 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 Act¹⁴ 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 decision to increase the enhanced Priority Customer Break-up credit is based on an analysis of current revenue and volume levels and is designed to continue to encourage Priority Customer order flow to PRIME Auctions. The Exchange operates in a highly competitive market in which

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(4).

¹⁴ 15 U.S.C. 78f(b)(5).

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 11% of the market share of executed volume of multiply-listed equity and exchange-traded fund (“ETF”) options trades as of September 26, 2022, for the month of September 2022.¹⁵ Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, as of September 26, 2022, the Exchange has a total market share of 5.23% of all equity options volume, for the month of September 2022.¹⁶

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.¹⁷ 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.

¹⁵ See MIAX’s “The market at a glance/MTD AVERAGE”, available at <https://www.miaxoptions.com/> (Data as of 9/1/2022 – 9/26/2022).

¹⁶ See *id.*

¹⁷ See Securities Exchange Act Release No. 85301 (March 13, 2019), 84 FR 10166 (March 19, 2019) (SR-MIAX-2019-09).

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

The Exchange believes its proposal to increase the enhanced PRIME Break-up Credit for Non-Penny Classes for Priority Customers is reasonable, equitably allocated and not unfairly discriminatory because this change is for business and competitive reasons. In order to attract order flow the Exchange initially set its rebates and fees for its PRIME Auctions so that they were meaningfully higher/lower than other options exchanges that provide comparable price improvement mechanisms.¹⁸ The Exchange now believes that it is appropriate to further adjust these fees so that they are competitive with other Exchanges that offer similar price improvement functionality and maintain a similar credit methodology. Specifically, the Cboe Exchange provides a Break-up Credit of \$0.60 in Non-Penny Classes¹⁹ and the BOX Exchange provides a Break-up Credit of \$0.81 in Non-Penny Classes,²⁰ therefore the Exchange's proposed enhanced Break-up credit of \$0.73 in Non-Penny Classes is in line with Break-up credits in Non-Penny Classes currently available on other exchanges. The Exchange believes its proposed enhanced Break-up credit in Non-Penny Classes will allow the Exchange to remain competitive and should

¹⁸ See Cboe Exchange Rule 5.73 and 5.74; See also BOX Exchange Rule 7150 and 7245.

¹⁹ See Cboe Exchange Fee Schedule, "Break-Up Credits," on its public website (available at https://cdn.cboe.com/resources/membership/Cboe_FeeSchedule.pdf).

²⁰ See Section IV. Electronic Transaction Fees, B. PIP and COPIP Transactions, of the BOX Options Exchange Fee Schedule on its public website (available at <https://boxoptions.com/fee-schedule/>).

enable the Exchange to continue to attract order flow to PRIME Auctions and to also maintain market share.

The Exchange believes that its proposal will continue to encourage Priority Customer order flow to PRIME Auctions. Increased Priority Customer order flow benefits all market participants because it continues to attract liquidity to the Exchange by providing more trading opportunities. This attracts Market Makers and other liquidity providers, thus, facilitating price improvement in the auction process, signaling additional corresponding increase in order flow from other market participants, and, as a result, increasing liquidity on the Exchange.

As noted above, the Exchange operates in a highly competitive market. The Exchange is only one of several options venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. The Exchange believes that the proposed fees are reasonable, equitable, and not unfairly discriminatory in that at least one competing options exchange offers similar fees and credits in connection with similar price improvement auctions.²¹

The Exchange also believes that this proposal is consistent with Section 6(b)(5) of the Act²² 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.

²¹ See supra note 20.

²² 15 U.S.C. 78f(b)(1) and (b)(5).

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 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, 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

²³ 15 U.S.C. 78f(b)(4).

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

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

In accordance with Section 6(b)(8) of the Act,²⁶ the Exchange does not believe that the proposed rule change will impose any burden on intra-market or inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes its proposal to increase its enhanced PRIME Break-up Credit for Non-Penny Classes for Priority Customers is reasonable, equitably allocated and not unfairly discriminatory as the credit will be applied equally to all Members eligible to receive the credit. The Exchange believes that its proposal will continue to encourage Priority Customer order flow to PRIME Auctions. Increased Priority Customer order flow benefits all market participants because it continues to attract liquidity to the Exchange by providing more trading opportunities and tighter spreads.

The Exchange does not believe that its proposal will impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because, as noted above, at least one other competing options exchange currently has similar

²⁵ 15 U.S.C. 78f(b)(4) and (5).

²⁶ 15 U.S.C. 78f(b)(8).

rebates in place in connection with similar price improvement auctions.²⁷ Additionally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. In such an environment, the Exchange must continually adjust its fees and incentives to remain competitive with other exchanges and to attract order flow to the Exchange. The Exchange is one of 16 options exchanges competing for order flow. Based on publicly available information, and excluding index-based options, no single options exchange has more than approximately 11% of the market share of executed multiply-listed equity and ETF options as of September 26, 2022, for the month of September 2022.²⁸ Market participants can readily choose to send their orders to other exchanges if they deem fee levels or incentives at those other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and incentives to remain competitive with other exchanges and to attract order flow. The Exchange believes that the proposed rule change reflects this competitive environment.

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.”²⁹ The fact that this market is

²⁷ See supra note 20.

²⁸ See supra note 15.

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

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’ . . .”.³⁰ 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.

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,³¹ and Rule 19b-4(f)(2) thereunder³² 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.

³⁰ *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)).

³¹ 15 U.S.C. 78s(b)(3)(A)(ii).

³² 17 CFR 240.19b-4.

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.

EXHIBIT 1SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-MIAX-2022-38)

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 12, 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 amend footnote “*” of the MIAX Price Improvement Mechanism (“PRIME”) Fees table³ to increase the enhanced PRIME Break-up credit of \$0.69 to \$0.73 for EEMs that submit a Priority Customer PRIME Order in Non-Penny Classes that is submitted to the PRIME Auction that trades with PRIME AOC Responses and/or PRIME Participating Quotes or Orders, if the PRIME Order experiences a break-up of greater than forty percent (40%). The Exchange initially filed this proposal on September 30, 2022 (SR-MIAX-2022-34). On October 12, 2022, the Exchange withdrew SR-MIAX-2022-34 and resubmitted the proposal (SR-MIAX-2022-36). On October 19, 2022, the Exchange withdrew SR-MIAX-2022-36 and resubmitted this proposal (SR-MIAX-2022-38)

The proposed changes are immediately effective.

Background

The MIAX Price Improvement Mechanism (“PRIME”) is a process by which a Member⁴ may electronically submit for execution an order it represents as agent (an “Agency Order”) against principal interest and/or solicited interest. The Member that submits the Agency Order (“Initiating Member”) agrees to guarantee the execution of the Agency Order by submitting a

³ See Section 1(a)(v) of the Exchange’s Fee Schedule on its public website (available at www.miaxoptions.com/fees).

⁴ 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.

contra-side order representing principal interest or solicited interest (“Contra-Side Order”).⁵

When the Exchange receives a properly designated Agency Order for Auction processing, a request for response (“RFR”) detailing the option, side, size and initiating price is broadcasted to MIAX participants up to an optional designated limit price.⁶ Members may submit responses to the RFR, which can be either an Auction or Cancel (“AOC”) order⁷ or an AOC eQuote.⁸ The PRIME mechanism is used for orders on the Exchange’s Simple Order Book.⁹

The Exchange provides a PRIME Break-up credit of \$0.60 per contract for Non-Penny Classes in a PRIME Auction.¹⁰ The Exchange subsequently adopted an enhanced PRIME Break-up credit of \$0.69 per contract for Priority Customer PRIME Orders in Non-Penny Classes when the order break-up percentage was greater than 40%.¹¹ The enhanced PRIME

⁵ See Exchange Rule 515A(a).

⁶ See Exchange Rule 515A(a)(2)(B).

⁷ An Auction-or-Cancel or “AOC” order is a limit order used to provide liquidity during a specific Exchange process (such as the Opening Imbalance process described in Rule 503) with a time in force that corresponds with that event. AOC orders are not displayed to any market participant, are not included in the MBBO and therefore are not eligible for trading outside of the event, may not be routed, and may not trade at a price inferior to the away markets. See Exchange Rule 516(b)(4).

⁸ AOC eQuote An Auction or Cancel or “AOC” eQuote is a quote submitted by a Market Maker to provide liquidity in a specific Exchange process (such as the Opening Imbalance Process described in Rule 503) with a time in force that corresponds with the duration of that event and will automatically expire at the end of that event. AOC eQuotes are not displayed to any market participant, are not included in the MBBO and therefore are not eligible for trading outside of the event. An AOC eQuote does not automatically cancel or replace the Market Maker’s previous Standard quote or eQuote. See Exchange Rule 517(a)(2)(ii).

⁹ The “Simple Order Book” is the Exchange’s regular electronic book of orders and quotes. See Exchange Rule 518(a)(15).

¹⁰ See Section 1)a)v) of the Exchange’s Fee Schedule on its public website (available at www.miaxoptions.com/fees).

¹¹ See Securities Exchange Act Release No. 93306 (October 13, 2021), 86 FR 57869 (October 19, 2021) (SR-MIAX-2021-42).

Break-up credit of \$0.69 per contract is applied to the EEM that submitted a PRIME Order in Non-Penny classes that is submitted to a PRIME Auction that trades with PRIME AOC Responses and/or PRIME Participating Quotes or Orders, if the PRIME Order experiences a break-up of greater than forty percent (40%). The Exchange now proposes to increase the per contract credit from \$0.69 to \$0.73. The decision to increase the enhanced Priority Customer Break-up credit is based on an analysis of current revenue and volume levels and is designed to continue to encourage Priority Customer order flow to PRIME Auctions.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act¹² in general, and furthers the objectives of Section 6(b)(4) of the Act¹³ in 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 Act¹⁴ 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 decision to increase the enhanced Priority Customer Break-up credit is based on an analysis of current revenue and volume levels and is designed to continue to encourage Priority Customer order

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(4).

¹⁴ 15 U.S.C. 78f(b)(5).

flow to PRIME Auctions. 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 11% of the market share of executed volume of multiply-listed equity and exchange-traded fund (“ETF”) options trades as of September 26, 2022, for the month of September 2022.¹⁵ Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, as of September 26, 2022, the Exchange has a total market share of 5.23% of all equity options volume, for the month of September 2022.¹⁶

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 PCR. ¹⁷ 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.

¹⁵ See MIAX’s “The market at a glance/MTD AVERAGE”, available at <https://www.miaxoptions.com/> (Data as of 9/1/2022 – 9/26/2022).

¹⁶ See *id.*

¹⁷ See Securities Exchange Act Release No. 85301 (March 13, 2019), 84 FR 10166 (March 19, 2019) (SR-MIAX-2019-09).

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

The Exchange believes its proposal to increase the enhanced PRIME Break-up Credit for Non-Penny Classes for Priority Customers is reasonable, equitably allocated and not unfairly discriminatory because this change is for business and competitive reasons. In order to attract order flow the Exchange initially set its rebates and fees for its PRIME Auctions so that they were meaningfully higher/lower than other options exchanges that provide comparable price improvement mechanisms.¹⁸ The Exchange now believes that it is appropriate to further adjust these fees so that they are competitive with other Exchanges that offer similar price improvement functionality and maintain a similar credit methodology. Specifically, the Cboe Exchange provides a Break-up Credit of \$0.60 in Non-Penny Classes¹⁹ and the BOX Exchange provides a Break-up Credit of \$0.81 in Non-Penny Classes,²⁰ therefore the Exchange's proposed enhanced Break-up credit of \$0.73 in Non-Penny Classes is in line with Break-up credits in Non-Penny Classes currently available on other exchanges. The Exchange believes its proposed enhanced Break-up credit in Non-Penny Classes will allow the Exchange to remain competitive and should

¹⁸ See Cboe Exchange Rule 5.73 and 5.74; See also BOX Exchange Rule 7150 and 7245.

¹⁹ See Cboe Exchange Fee Schedule, "Break-Up Credits," on its public website (available at https://cdn.cboe.com/resources/membership/Cboe_FeeSchedule.pdf).

²⁰ See Section IV. Electronic Transaction Fees, B. PIP and COPIP Transactions, of the BOX Options Exchange Fee Schedule on its public website (available at <https://boxoptions.com/fee-schedule/>).

enable the Exchange to continue to attract order flow to PRIME Auctions and to also maintain market share.

The Exchange believes that its proposal will continue to encourage Priority Customer order flow to PRIME Auctions. Increased Priority Customer order flow benefits all market participants because it continues to attract liquidity to the Exchange by providing more trading opportunities. This attracts Market Makers and other liquidity providers, thus, facilitating price improvement in the auction process, signaling additional corresponding increase in order flow from other market participants, and, as a result, increasing liquidity on the Exchange.

As noted above, the Exchange operates in a highly competitive market. The Exchange is only one of several options venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. The Exchange believes that the proposed fees are reasonable, equitable, and not unfairly discriminatory in that at least one competing options exchange offers similar fees and credits in connection with similar price improvement auctions.²¹

The Exchange also believes that this proposal is consistent with Section 6(b)(5) of the Act²² 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.

²¹ See supra note 20.

²² 15 U.S.C. 78f(b)(1) and (b)(5).

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 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, 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

²³ 15 U.S.C. 78f(b)(4).

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

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

In accordance with Section 6(b)(8) of the Act,²⁶ the Exchange does not believe that the proposed rule change will impose any burden on intra-market or inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes its proposal to increase its enhanced PRIME Break-up Credit for Non-Penny Classes for Priority Customers is reasonable, equitably allocated and not unfairly discriminatory as the credit will be applied equally to all Members eligible to receive the credit. The Exchange believes that its proposal will continue to encourage Priority Customer order flow to PRIME Auctions. Increased Priority Customer order flow benefits all market participants because it continues to attract liquidity to the Exchange by providing more trading opportunities and tighter spreads.

The Exchange does not believe that its proposal will impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because, as noted above, at least one other competing options exchange currently has similar rebates in place in connection with similar price improvement auctions.²⁷ Additionally, the

²⁵ 15 U.S.C. 78f(b)(4) and (5).

²⁶ 15 U.S.C. 78f(b)(8).

²⁷ See supra note 20.

Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. In such an environment, the Exchange must continually adjust its fees and incentives to remain competitive with other exchanges and to attract order flow to the Exchange. The Exchange is one of 16 options exchanges competing for order flow. Based on publicly available information, and excluding index-based options, no single options exchange has more than approximately 11% of the market share of executed multiply-listed equity and ETF options as of September 26, 2022, for the month of September 2022.²⁸ Market participants can readily choose to send their orders to other exchanges if they deem fee levels or incentives at those other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and incentives to remain competitive with other exchanges and to attract order flow. The Exchange believes that the proposed rule change reflects this competitive environment.

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.”²⁹ 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

²⁸ See supra note 15.

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

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’”³⁰ 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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,³¹ and Rule 19b-4(f)(2)³² 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

³⁰ 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)).

³¹ 15 U.S.C. 78s(b)(3)(A)(ii).

³² 17 CFR 240.19b-4(f)(2).

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:to-rule-comments@sec.gov). Please include File Number SR-MIAX-2022-38 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-2022-38. 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 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-2022-38 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.³³

Vanessa Countryman
Secretary

³³ 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) – (iv) No change.

v) MIAX Price Improvement Mechanism (“PRIME”) Fees

Types of Market Participants	PRIME Order Fee		Responder to PRIME Auction Fee		PRIME Break-up Credit	
	Per Contract Fee for Agency Order	Per Contract Fee for Contra-side Order	Per Contract Fee for Penny Classes	Per Contract Fee for Non-Penny Classes	Per Contract Credit for Penny Classes	Per Contract Credit for Non-Penny Classes
<i>Priority Customer</i>	\$0.00	\$0.00	\$0.50	\$1.10	\$0.25	\$0.60 / \$[0.69]0.73*
<i>Public Customer that is Not a Priority Customer</i>	\$0.30	\$0.05	\$0.50	\$1.10	\$0.25	\$0.60
<i>MIAX Market Maker</i>	\$0.30	\$0.05	\$0.50	\$1.10	\$0.25	\$0.60
<i>Non-MIAX Market Maker</i>	\$0.30	\$0.05	\$0.50	\$1.10	\$0.25	\$0.60
<i>Non-Member Broker-Dealer</i>	\$0.30	\$0.05	\$0.50	\$1.10	\$0.25	\$0.60
<i>Firm</i>	\$0.30	\$0.05	\$0.50	\$1.10	\$0.25	\$0.60

MIAX will assess the Responder to PRIME Auction Fee to: (i) a PRIME AOC Response that executes against a PRIME Order, and (ii) a PRIME Participating Quote or Order that executes against a PRIME Order. MIAX will apply the PRIME Break-up credit to the EEM that submitted the PRIME Order for agency contracts that are submitted to the PRIME Auction that trade with a PRIME AOC Response or a PRIME Participating Quote or Order that trades with the PRIME Order. Transaction fees in mini-options will be 1/10th of the standard per contract fee or rebate described in the table above for the PRIME Auction. MIAX will assess the standard transaction fees to a PRIME AOC Response if it executes against unrelated orders.

- * MIAX will apply an enhanced PRIME Break-up credit of \$[0.69]0.73 per contract to the EEM that submitted a PRIME Order in Non-Penny Classes that is submitted to the PRIME Auction that trades with PRIME AOC Responses and/or PRIME Participating Quotes or Orders, if the PRIME Order experiences a break-up of greater than forty percent (40%).
