

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-70069; File No. SR-MIAX-2013-36]

### Self-Regulatory Organizations: Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX Fee Schedule

July 30, 2013.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) <sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 22, 2013, 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 its Fee Schedule.

The text of the proposed rule change is available on the Exchange’s Web site at [http://www.miaxoptions.com/filter/wotitle/rule\\_filing](http://www.miaxoptions.com/filter/wotitle/rule_filing), at MIAX’s principal office, and at the Commission’s Public Reference Room.

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

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

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

###### 1. Purpose

The Exchange proposes to extend its current waiver of all transaction fees in Section 1(a)(i) of the MIAX Options Fee

Schedule (the “fee waiver”) that apply to Market Makers<sup>3</sup> registered on the Exchange until August 31, 2013.<sup>4</sup> The fee waiver currently applies to the period beginning June 3, 2013 and ending July 31, 2013.<sup>5</sup> Specifically, during this period, the Exchange will continue to waive the following transaction fees: (i) RMMs \$0.23 per contract for standard options or \$0.023 for Mini Options; (ii) LMMs \$0.20 per contract for standard options or \$0.020 for Mini Options; (iii) DLMMs and PLMMs \$0.18 per contract for standard options or \$0.018 for Mini Options; and (iv) DPLMMs \$0.16 per contract for standard options or \$0.016 for Mini Options.<sup>6</sup>

The fee waiver is designed both to enhance the Exchange’s competitiveness with other option exchanges and to strengthen its market quality. The Exchange believes that the fee waiver increases both intermarket and intramarket competition by incenting market participants and market makers on other exchanges to register as Market Makers on the Exchange. In addition, the Exchange believes that waiving transaction fees for Market Makers registered on the Exchange promotes tighter bid-ask spreads by Market Makers, and increases the volume of transactions in order to allow the Exchange to compete more effectively with other options exchanges for such transactions. The Exchange notes that the Exchange’s daily percentage of the total market volume in MIAX listed options has increased since the beginning of the fee waiver—indicating that the fee waiver has enabled the

Exchange to compete more effectively with other options exchanges for such transactions.

The Exchange notes that, while the proposal is not based on that of another exchange, that fee waivers are often used by exchanges to increase their competitiveness.<sup>7</sup>

###### 2. Statutory Basis

The Exchange believes that its proposal to amend its fee schedule is consistent with Section 6(b) of the Act<sup>8</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>9</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

The Exchange believes that the fee waiver is fair, equitable and not unreasonably discriminatory. The fee waiver is reasonable because it waives transaction fees for a limited period in order to enable the Exchange to improve its overall competitiveness and strengthen its market quality for all market participants. The proposed fee waiver is fair and equitable and not unreasonably discriminatory because it will apply equally to all Market Makers. All similarly situated Market Makers are subject to the same fee waiver, and access to the Exchange is offered on terms that are not unfairly discriminatory. The registration as an Exchange Market Maker is equally available to all market participants and Electronic Exchange Members (“EEMs”) that satisfy the requirements of Rule 600. Any market participant may choose to satisfy the additional requirements and obligations of being a Market Maker in order to qualify for the transaction fee waiver.

The fee waiver for Market Makers, and no other market participants, is equitable and not unfairly discriminatory because Market Makers on the Exchange have enhanced quoting obligations measured in both quantity (% time) and quality (minimum bid-ask differentials) that other market participants do not have.<sup>10</sup> The proposal is reasonably designed to enhance the quality of quoting and volume transactions by limiting the proposal to those market participants that have these enhanced obligations to deliver quality markets. Waiving fees during

<sup>3</sup> Market Makers may be registered as a Lead Market Maker or as a Registered Market Maker. See Exchange Rule 600(b). Market Makers registered on the Exchange for purposes of the transaction fee waiver and Section 1(a)(i) of the Fee Schedule include: (i) Registered Market Maker (“RMM”); (ii) Lead Market Maker (“LMM”); (iii) Directed Order Lead Market Maker (“DLMM”); (iv) Primary Lead Market Maker (“PLMM”); and (v) Directed Order Primary Lead Market Maker (“DPLMM”). See MIAX Options Fee Schedule, Section 1(a)(i)—Market Maker Transaction Fees.

<sup>4</sup> See Securities Exchange Act Release No. 69710 (June 6, 2013), 78 FR 35349 (June 12, 2013) (SR-MIAX-2013-26). The fee waiver only applies to Market Maker transaction fees in Section 1(a)(i) of the MIAX Options Fee Schedule. See MIAX Options Fee Schedule, Section 1(a)(i)—Market Maker Transaction Fees. The Exchange notes that the fee waiver has no effect on other fees and dues that may apply to Market Makers including marketing fees, Options Regulatory Fees, market data, and membership application fees. At the end of the period, Market Maker Transaction Fees will return to the prior fee rates unless the Exchange files another 19b-4 Rule Filing to amend its fees.

<sup>5</sup> See Securities Exchange Act Release No. 69710 (June 6, 2013), 78 FR 35349 (June 12, 2013) (SR-MIAX-2013-26).

<sup>6</sup> See MIAX Options Fee Schedule, Section 1(a)(i)—Market Maker Transaction Fees.

<sup>7</sup> See e.g., Securities Exchange Act Release Nos. 66427 (February 21, 2012), 77 FR 11608 (February 27, 2012) (SR-BATS-2012-011); 65007 (August 2, 2011), 76 FR 48190 (August 8, 2011) (SR-CBOE-2011-071); 56862 (November 29, 2007), 72 FR 68918 (December 6, 2007) (SR-CBOE-2007-135); 55833 (May 31, 2007), 72 FR 31358 (June 6, 2007) (SR-ISE-2007-28).

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(4).

<sup>10</sup> See MIAX Rules 603, 604, 605.

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

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

this period should incent market participants and market makers on other exchanges to register as Market Makers on the Exchange, which will enhance the quality of quoting and increase the volume of contracts traded in options listed on MIAX. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market liquidity. Enhanced market quality and increased transaction volume that results from the increase in Market Maker activity on the Exchange will benefit all market participants and improve competition on the Exchange.

The Exchange believes that an increase in the number of Market Makers, and an increase in the execution volume from Market Makers, will result in increased revenue from other fees and dues that may apply to Market Makers that may potentially offset a portion of the fee waiver.<sup>11</sup> While the Exchange believes that an increase in the number of Market Makers, and an increase in the execution volume from Market Makers, may potentially result in increased trading activity of other market participants, the Exchange does not believe that the fee waiver will result in other market participants subsidizing the activity of Market Makers during the fee waiver period since the Exchange is not proposing any changes to increase the existing fees of other market participants in order to compensate for the temporary transaction fee waiver.

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

MIAX 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 believes that the fee waiver increases both intermarket and intramarket competition by incenting market participants and market makers on other exchanges to register as Market Makers on the Exchange, which will enhance the quality of quoting and increase the volume of contracts traded on MIAX. To the extent that there is an additional competitive burden on non-Market Makers, the Exchange believes that this is appropriate because Market Makers registered on the Exchange have enhanced quoting obligations measured in both quantity (% time) and quality (minimum bid-ask differentials) that other market participants do not have.

<sup>11</sup> The Exchange notes that the fee waiver has no effect on other fees and dues that may apply to Market Makers including marketing fees, Options Regulatory Fees, market data, and membership application fees.

Waiving fees during this period should incent market participants and market makers on other exchanges to register as Market Makers on the Exchange, which will enhance the quality of quoting and increase the volume of contracts traded here. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market liquidity. Enhanced market quality and increased transaction volume that results from the anticipated increase in Market Maker activity on the Exchange will benefit all market participants and improve competition 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 fees to remain competitive with other exchanges and to attract order flow. The Exchange believes that the fee waiver reflects this competitive environment because it reduces the Exchange's fees in a manner that encourages market participants to register as Market Makers, to provide liquidity, and to attract order flow to the Exchange. Given the robust competition for volume among options markets, many of which offer the same products, implementing a fee waiver program to attract Market Maker volume like the one being extended in this filing is consistent with the above-mentioned goals of the Act. This is especially true for the smaller options markets, such as MIAX, which is competing for volume with much larger exchanges that dominate the options trading industry. As a new exchange, MIAX has a nominal percentage of the average daily trading volume in options, so it is unlikely that the fee waiver could cause any competitive harm to the options market or to market participants. Rather, the fee waiver is a modest attempt by a small options market to attract order volume away from larger competitors by adopting an innovative pricing strategy. The Exchange notes that if the extension of the fee waiver results in a modest percentage increase in the average daily trading volume in options executing on MIAX, while such percentage would represent a large volume increase for MIAX, it would represent a minimal reduction in volume of its larger competitors in the industry. The Exchange believes that the proposal will help further competition, because market participants will have yet another additional alternative in determining where to execute orders

and post liquidity if they factor the benefits of Market Maker transaction fees into the determination.

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

Written comments were neither solicited nor received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>12</sup> 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include SR-MIAX-2013-36 on the subject line.

##### *Paper Comments*

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

All submissions should refer to File Number SR-MIAX-2013-36. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet 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

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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 Web site 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-2013-36 and should be submitted on or before August 26, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Kevin M. O'Neill,**  
*Deputy Secretary.*

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**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-70061; File No. SR-NASDAQ-2013-095]

**Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Chapter V, Section 6, Obvious Errors, of the Rules of the NASDAQ Options Market ("NOM")**

July 30, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on July 19, 2013, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Chapter V, Section 6, Obvious Errors, of the Rules of the NASDAQ Options Market ("NOM").

The text of the proposed rule change is below; proposed new language is italicized; proposed deletions are in brackets.

\* \* \* \* \*

**NASDAQ Stock Market Rules**

\* \* \* \* \*

**Options Rules**

\* \* \* \* \*

**Chapter V Regulation of Trading on NOM**

\* \* \* \* \*

**Sec. 6 Obvious and Catastrophic Errors**

- (a)-(e) No change.
- (f) *Catastrophic Errors*
- (i)-(ii) No change.

(iii) *Adjust or Bust.* A Nasdaq Official will determine whether there was a Catastrophic Error as defined above. If it is determined that a Catastrophic Error has occurred, whether or not each party to the transaction is an Options Participant, MarketWatch shall adjust the execution price of the transaction, unless both parties agree to adjust the transaction to a different price, to the theoretical price (i) plus the adjustment value provided below for erroneous buy transactions, and (ii) minus the adjustment value provided for erroneous sell transactions, pursuant to the following chart; provided that the adjusted price would not exceed the limit price of a Public Customer's limit order, in which case the Public Customer would have 20 minutes from notification of the proposed adjusted price to accept it or else the trade will be nullified:

Theoretical price	Minimum amount
Below \$2 .....	\$1
\$2 to \$5 .....	2
Above \$5 to \$10 .....	3
Above \$10 to \$50 .....	5
Above \$50 to \$100 .....	7
Above \$100 .....	10

Upon taking final action, MarketWatch shall promptly notify both parties to the trade electronically or via telephone.

- (g) No change.
- \* \* \* \* \*

- (b) Not applicable.
- (c) Not applicable.

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

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

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

**1. Purpose**

The purpose of the proposal is to help market participants better manage their risk by addressing the situation where, under current rules, a trade can be adjusted to a price outside of a Public Customer's limit. Specifically, the Exchange proposes to amend Chapter V, Section 6(f) to enable a Public Customer who is the contra-side to a trade that is deemed to be a catastrophic error to have the trade nullified in instances where the adjusted price would violate the Public Customer's limit price. Only if the Public Customer, or his agent, affirms the customer's willingness to accept the adjusted price through the customer's limit price within 20 minutes of notification of the catastrophic error ruling would the trade be adjusted; otherwise it would be nullified. Today, all catastrophic error trades are adjusted, not nullified, on all of the options exchanges, except on NASDAQ OMX PHLX LLC ("PHLX"), on whose provision this proposal is modeled.<sup>3</sup>

**Background**

Currently, Chapter V, Section 6 governs obvious and catastrophic errors. Obvious errors are calculated under the rule by determining a theoretical price and determining, based on objective standards, whether the trade should be nullified or adjusted. The rule also contains a process for requesting an obvious error review. Certain more substantial errors may fall under the category of a catastrophic error, for which a longer time period is permitted to request a review and for which trades can only be adjusted (not nullified).

<sup>3</sup> See PHLX Rule 1092(f)(ii). Securities Exchange Act Release No. 69304 (April 4, 2013), 78 FR 21482 (April 10, 2013) (SR-Phlx-2013-05).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

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

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