

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-70346; File No. SR-MIAX-2013-41]

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

September 9, 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 August 28, 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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to establish a \$0.05 transaction fee for executions in standard option contracts and \$0.005

transaction fee for Mini Option contracts for Market Makers <sup>3</sup> registered on the Exchange.

The transaction fees for Market Makers are: (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>4</sup> These transaction fees are currently subject to a fee waiver until August 31, 2013.<sup>5</sup>

The Exchange proposes to implement the new transaction fees beginning September 3, 2013, after the current fee waiver expires. The proposed transaction fees are designed both to enhance the Exchange’s competitiveness with other option exchanges and to strengthen its market quality. The Exchange believes that the new fees will increase 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 the reduced transaction fees for Market Makers registered on the Exchange promote tighter bid-ask spreads by Market Makers, and increase the volume of transactions in order to allow the Exchange to compete more effectively with other options exchanges for such transactions.

###### 2. Statutory Basis

The Exchange believes that its proposal to amend its fee schedule is consistent with Section 6(b) of the Act <sup>6</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act <sup>7</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

The Exchange believes that the proposal is fair, equitable and not

<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 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 MIAX Options Fee Schedule, Section 1(a)(i)—Market Maker Transaction Fees.

<sup>5</sup> See Securities Exchange Act Release Nos. 70069 (July 30, 2013), 78 FR 47457 (August 5, 2013) (SR-MIAX-2013-36); 69710 (June 6, 2013), 78 FR 35349 (June 12, 2013) (SR-MIAX-2013-26).

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(4).

unreasonably discriminatory. The proposal is reasonable because it results in a decrease in Market Maker transactions fees for all Market Makers on the Exchange in order to enable the Exchange to improve its overall competitiveness and strengthen its market quality for all market participants. The proposed fees are fair and equitable and not unreasonably discriminatory because they will apply equally to all Market Makers regardless of type. All Market Makers will be subject to the same transaction fee, 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.

The decrease in transaction fees 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>8</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. Decreasing transaction fees 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 lower transaction

<sup>8</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.

fees.<sup>9</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 proposed fee will result in other market participants subsidizing the activity of Market Makers since the Exchange is not proposing any changes to increase the existing fees of other market participants in order to compensate for the proposed fee.

#### *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 believes that the proposal 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. Decreasing transaction fees 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 proposal 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, proposals to implement lower transaction fees to attract Market Maker volume like 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 lowering transaction fees could cause any competitive harm to the options market or to market participants. Rather, the proposal 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 proposal 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>10</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 File Number SR-MIAX-2013-41 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-2013-41. 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 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-2013-41, and should be submitted on or before October 4, 2013.

<sup>9</sup> The Exchange notes that the proposal 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.

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

Kevin M. O'Neill,

Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-70347; File No. SR-NYSEArca-2013-85]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Changes to the Means of Achieving the Investment Objective Applicable to the AdvisorShares QAM Equity Hedge ETF

September 9, 2013.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 ("Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on August 27, 2013, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to reflect changes to the means of achieving the investment objective applicable to the AdvisorShares QAM Equity Hedge ETF ("Fund"). The Fund is currently listed and traded on the Exchange under NYSE Arca Equities Rule 8.600. The text of the proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, 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 self-regulatory organization 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 those 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 parts of such statements.

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

##### 1. Purpose

The Commission has approved listing and trading on the Exchange of shares ("Shares") of the AdvisorShares QAM Equity Hedge ETF, a series of AdvisorShares Trust ("Trust"),<sup>4</sup> under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares. The Fund is currently listed and traded on the Exchange under NYSE Arca Equities Rule 8.600.

The Shares are offered by the Trust, a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.<sup>5</sup> The investment advisor to the Fund is AdvisorShares Investments, LLC ("Adviser"). Commerce Asset Management is the sub-advisor ("Sub-Adviser") to the Fund and provides day-to-day portfolio management of the Fund.

In this proposed rule change, the Exchange proposes to reflect changes to the description of the measures the Sub-Adviser will utilize to implement the Fund's investment objective.<sup>6</sup>

<sup>4</sup> See Securities Exchange Act Release No. 67559 (August 1, 2012), 77 FR 47482 (August 8, 2012) (SR-NYSEArca-2012-57) ("Prior Order"). See also Securities Exchange Act Release No. 67196 (June 13, 2012), 77 FR 36591 (June 19, 2012) (SR-NYSEArca-2012-57) ("Prior Notice," and together with the Prior Order, the "Prior Release"). The Fund and the Shares are currently in compliance with the listing standards and other rules of the Exchange and the requirements set forth in the Prior Release.

<sup>5</sup> The Trust is registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1) ("1940 Act"). On September 16, 2011, the Trust filed with the Commission an amendment to its registration statement on Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a) ("Securities Act") and under the 1940 Act relating to the Fund (File Nos. 333-157876 and 811-22110) ("Registration Statement"). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 28822 (July 20, 2009) (File No. 812-13488) ("Exemptive Order").

<sup>6</sup> The changes described herein will be effective upon filing with the Commission of another amendment to the Trust's Registration Statement. See note 5, *supra*. The Adviser represents that the Adviser and Sub-Adviser have managed and will continue to manage the Fund in the manner described in the Prior Release, and will not

As stated in the Prior Release, in managing the Fund's portfolio, among other proprietary analytics, the Sub-Adviser utilizes Markov Processes International, LLC's ("MPI") Dynamic Style Analysis ("DSA") patented hedge fund analysis software to help select the Fund's investments and determine the allocation among such investments. The Sub-Adviser identifies approximately 50 market factors that track the aggregated exposure and approximate the returns of the selected universe of long/short equity hedge funds. The Sub-Adviser uses DSA and other proprietary analytics to define and track the various market factors and relative exposures and to adjust the Fund's portfolio as necessary. As stated in the Prior Release, the Fund's portfolio typically consists of up to 50 Underlying ETPs and other securities.

Going forward, the Fund proposes to implement the following changes from the representations made in the Prior Release. First, in managing the Fund's portfolio, the Fund will no longer utilize the MPI DSA software. Instead, the Sub-Adviser will utilize, among other proprietary analytics, its own quantitative techniques, including time dependent factor approximations, to help select the Fund's investments and determine the allocation among such investments. The Sub-Adviser will use quantitative analysis including other proprietary analytics to define and track the various market factors and relative exposures and to adjust the Fund's portfolio as necessary. Second, the Sub-Adviser will identify approximately 100, instead of approximately 50, market factors that track the aggregated exposure and approximate the returns of the selected universe of long/short equity hedge funds.<sup>7</sup> Third, the Fund's portfolio typically will consist of between 40 and 80, instead of up to 50, Underlying ETPs and other securities, as described in the Prior Release.

The Adviser represents that the purpose of this change is, first, to provide additional flexibility to the Sub-Adviser to meet the Fund's investment objective by substantially increasing the number of market factors that track the aggregated exposure and approximate the returns of the selected universe of long/short equity hedge funds. Such an

implement the changes described herein until the instant proposed rule change is operative.

<sup>7</sup> As stated in the Prior Release, at any given time, such market factors may include country exposure, sector exposure, industry exposure, and currency exposure. In seeking to achieve its investment objective, the Fund seeks to remain invested at all times in securities or derivatives (as described in the Prior Release) that provide the desired exposures to market factors.

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.