

commenter would be faced with a choice of absorbing the fee and raising its operating costs, or passing the fee through to its customers, forcing its prices to become less competitive.<sup>22</sup>

#### IV. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act<sup>23</sup> to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to comment on the proposed rule change, and provide the Commission with arguments to support the Commission's analysis as to whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,<sup>24</sup> the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of, and input from a commenter with respect to, the proposed rule change's consistency with Section 17A of the Act,<sup>25</sup> and the rules thereunder, including the following provisions: (i) Section 17A(b)(3)(F) of the Act,<sup>26</sup> which requires, among other things, that the rules of a clearing agency must be designed to promote the prompt and accurate clearance and settlement of securities transactions; and (ii) Section 17A(b)(3)(I) of the Act,<sup>27</sup> which requires that the rules of a clearing agency do not impose any burden on competition not necessary or appropriate in furtherance of the purpose of the Act.

#### V. Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposed rule change. In particular, the Commission invites the written views of interested persons concerning whether

the proposed rule change is consistent with Sections 17A(b)(3)(F) and (I) of the Act, cited above, or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4(g) under the Act,<sup>28</sup> any request for an opportunity to make an oral presentation.<sup>29</sup>

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by April 5, 2019. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by April 15, 2019. 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-DTC-2018-010 on the subject line.

##### Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to File Number SR-DTC-2018-010. 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 website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be

<sup>28</sup> 17 CFR 240.19b-4(g).

<sup>29</sup> Section 19(b)(2) of the Act grants to the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

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 such filings also will be available for inspection and copying at the principal office of DTC and on DTCC's website (<http://dtcc.com/legal/sec-rule-filings.aspx>). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-DTC-2018-010 and should be submitted on or before April 5, 2019. Rebuttal comments should be submitted by April 15, 2019.

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

**Eduardo A. Aleman,**

*Deputy Secretary.*

[FR Doc. 2019-04809 Filed 3-14-19; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85283; File No. SR-MIAX-2019-11]

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

March 11, 2019.

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 February 28, 2019, Miami International Securities Exchange, LLC ("MIAX Options" 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.

<sup>30</sup> 17 CFR 200.30-3(a)(57).

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

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

<sup>22</sup> See *id.*

<sup>23</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>24</sup> *Id.*

<sup>25</sup> 15 U.S.C. 78q-1.

<sup>26</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>27</sup> 15 U.S.C. 78q-1(b)(3)(I).

## 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") to adopt transaction fees and rebates for SPIKES index option orders and quotes (collectively "orders"), and for transactions involving SPY options on SPIKES settlement day, as described below. The Exchange also proposes to make a technical clarification to its Fee Schedule.

The Exchange initially filed the proposal on February 15, 2019 (SR-MIAX-2019-04). That filing has been withdrawn and replaced with the current filing (SR-MIAX-2019-11).

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 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 adopt transaction fees and rebates for SPIKES index options orders, and for transactions involving SPY options on SPIKES settlement day, as described below. The Exchange also proposes to make a technical clarification to its Fee Schedule. The Exchange notes, by way of background, that on June 28, 2018, the Exchange filed with the Commission a proposal to list and trade on the Exchange, options on the SPIKES™ Index, a new index that measures expected 30-day volatility of the SPDR S&P 500 ETF Trust (commonly known and referred to by its ticker symbol, "SPY").<sup>3</sup> Accordingly,

<sup>3</sup> See Securities Exchange Act Release No. 84417 (October 12, 2018), 83 FR 52865 (October 18, 2018)

the Exchange is proposing to adopt transaction fees and rebates that will apply to Exchange Members<sup>4</sup> for transactions involving SPIKES index options, and for transactions involving SPY options on SPIKES settlement day. All order fees will be charged on a per contract per side basis.

The Exchange proposes to exclude SPIKES index options volume from a variety of fee and rebate programs and their calculation, in the Fee Schedule. Specifically, SPIKES index options volume will not count towards: the Priority Customer Rebate Program, the Market Maker Transaction Fees Sliding Scale of fees and rebates, or the Professional Rebate Program. The Exchange notes the reason a proprietary product would often be included in or excluded from certain programs is because the Exchange has expended considerable resources to develop and maintain a proprietary product, such as SPIKES. Thus, the Exchange proposes to make technical clarifications to existing fee and rebate programs to exclude SPIKES index options volume from such programs. Lastly, the Exchange proposes to adopt new Section 1(a)(xi), SPIKES, on the Fee Schedule to establish transaction fees and rebates that the Exchange will assess for transactions in SPIKES index options.

#### Simple and Complex Fees

The Exchange is proposing to adopt new Section 1(a)(xi), SPIKES, on the Fee Schedule to establish transaction fees and rebates for executions in SPIKES index options for different Origin types. More specifically, the Exchange is proposing both Maker and Taker fees for Simple orders, and fees for Simple Opening orders. Market participants that place resting liquidity, *i.e.*, quotes or orders on the MIAX Options System,<sup>5</sup> are assessed the "maker" fee (each a "Maker"). Market participants that execute against (remove) resting liquidity are assessed a higher "taker" fee (each a "Taker"). This is distinguished from traditional maker-taker models where makers typically receive a rebate and takers are assessed a fee; the Exchange instead assesses lower transaction fees to its Makers as compared to its Takers, similar to the

(SR-MIAX-2018-14) (Order Granting Approval of a Proposed Rule Change by Miami International Securities Exchange, LLC to List and Trade on the Exchange Options on the SPIKES™ Index).

<sup>4</sup> The term "Member" means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed "members" under the Exchange Act. See Exchange Rule 100.

<sup>5</sup> The term "System" means the automated trading system used by the Exchange for the trading of securities. See Exchange Rule 100.

manner implemented at other exchanges.<sup>6</sup> As an incentive for market participants to provide liquidity on the Exchange, the Exchange's Maker fees are lower than its Taker fees.

With respect to Simple Maker fees, the Exchange proposes that Priority Customers,<sup>7</sup> Market Makers, and Firm Proprietary orders will be charged a \$0.00 fee; and that Non-MIAX Market Makers, Broker-Dealers, and Public Customers that are not Priority Customers be charged a \$0.10 fee. With respect to Simple Taker fees, the Exchange proposes that Priority Customers will be charged a \$0.00 fee; Non-MIAX Market Makers, Broker-Dealers, and Public Customers that are not Priority Customers be charged a \$0.25 fee; and Market Makers and Firm Proprietary orders be charged a \$0.20 fee. Additionally, the Exchange proposes that Taker fees for options with a premium price of \$0.10 or less will be charged \$0.05 per contract, with respect to Market Makers and Firm Proprietary orders, which is similar to the pricing model used by the Cboe Exchange, Inc. ("Cboe").<sup>8</sup> Furthermore, for Simple Opening orders, the Exchange proposes that Priority Customers be charged a \$0.00 fee; and Market Makers, Non-MIAX Market Makers, Broker-Dealers, Firm Proprietary orders, and Public Customers that are not Priority Customers be charged a \$0.15 fee. Additionally, the Exchange proposes to charge a per contract, per leg fee for complex orders which will be \$0.01 for Market Makers, Non-MIAX Market Makers, Broker-Dealers, Firm Proprietary orders, and Public Customers that are not Priority Customers. The Exchange proposes to charge a \$0.00 fee for Priority Customer complex orders. The Exchange is not proposing a different Maker and Taker fee for each Origin type. Instead, the Exchange will assess one per contract, per leg fee of \$0.01 for complex orders.

Finally, with respect to Simple and Complex fees, the Exchange proposes a Simple/Complex Large Trade Discount. An order/quote that exceeds the size threshold, tied to a Single Order/Quote ID, will have the relevant fees apply to the contracts at and below the size threshold for Simple and Complex

<sup>6</sup> The Exchange notes that similar maker-taker pricing is implemented at Nasdaq ISE Options 7, Section 3, Regular Order Fees and Rebates.

<sup>7</sup> A "Priority Customer" means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial accounts(s). A "Priority Customer Order" means an order for the account of a Priority Customer.

<sup>8</sup> See Cboe Exchange, Inc. Fee Schedule, Pg.2.

volume; no fees shall apply to the number of contracts executed above the threshold, with certain exceptions. For example, the Large Trade Discount does not apply to volume from Priority Customer orders, Maker orders, SPIKES Opening orders, and the Surcharge. Specifically, the Exchange proposes that, for any single order/quote, no fee shall apply to the number of contracts executed above the first 175,000

contracts for Market Makers, Non-MIAX Market Makers, Broker-Dealers, Firm Proprietary orders, and Public Customers that are not Priority Customers. The Exchange does not propose that such a discount apply to Priority Customer orders because, as proposed, the Exchange is currently charging Priority Customers a \$0.00 fee for these volume segments.

The Exchange believes that the proposed transaction fees for Simple and Complex orders on SPIKES index options are reasonable, and have been set at an initial level that is favorable to market participants and are designed to encourage market participants to provide liquidity for SPIKES index options on the Exchange. As proposed, the SPIKES Simple and Complex transaction fee table will be as follows:

**SIMPLE AND COMPLEX FEES**

Origin	Simple maker	Simple taker	Simple opening	Complex~	Simple/complex large trade discount threshold +
<i>Priority Customer</i> .....	\$0.00	\$0.00	\$0.00	\$0.00	0.
<i>Market Maker</i> .....	0.00	* 0.20	0.15	0.01	First 175,000 contracts.
<i>Non-MIAX Market Maker</i> .....	0.10	0.25	0.15	0.01	First 175,000 contracts.
<i>Broker-Dealer</i> .....	0.10	0.25	0.15	0.01	First 175,000 contracts.
<i>Firm Proprietary</i> .....	0.00	* 0.20	0.15	0.01	First 175,000 contracts.
<i>Public Customer that is Not a Priority Customer.</i>	0.10	0.25	0.15	0.01	First 175,000 contracts.

\* Taker fees for options with a premium price of \$0.10 or less will be charged \$0.05 per contract.

~ All fees are per contract per leg.

+ Tied to Single Order/Quote ID. For any single order/quote, no fee shall apply to the number of contracts executed above the Simple/Complex Large Trade Discount Threshold. This discount does not apply to Priority Customer orders, Maker orders, SPIKES Opening orders, and the Surcharge.

**PRIME and cPRIME Fees**

As part of the Exchange’s proposal to adopt new Section (1)(a)(xi), the Exchange further proposes to establish transaction fees related to PRIME and cPRIME orders in SPIKES. Specifically, the Exchange proposes to establish a fee for initiating orders in the amount of

\$0.10 for Market Makers, Non-MIAX Market Makers, Broker-Dealers, Firm Proprietary orders, and Public Customers that are not Priority Customers. The Exchange proposes to charge Priority Customers a fee of \$0.00 for initiating orders. Further, the Exchange proposes to establish a fee for contra-side orders for all Origin types in

the amount of \$0.20 and a fee for responder-side orders in the amount of \$0.25. Finally, the Exchange proposes to establish a break-up credit for all Origin types in the amount of \$0.15. With all of the proposals, the SPIKES PRIME and cPRIME transaction fee table will be as follows:

**PRIME AND cPRIME FEES**

Origin	Initiating	Contra	Responder	Break-up
<i>Priority Customer</i> .....	\$0.00	\$0.20	\$0.25	(\$0.15)
<i>Market Maker</i> .....	0.10	0.20	0.25	(0.15)
<i>Non-MIAX Market Maker</i> .....	0.10	0.20	0.25	(0.15)
<i>Broker-Dealer</i> .....	0.10	0.20	0.25	(0.15)
<i>Firm Proprietary</i> .....	0.10	0.20	0.25	(0.15)
<i>Public Customer that is Not a Priority Customer</i> .....	0.10	0.20	0.25	(0.15)

**Surcharge**

The Exchange further proposes to establish an Index License Surcharge (“Surcharge”) of \$0.075. The Surcharge will apply to any contract that is executed by an Origin except Priority Customer in Simple, Complex, PRIME and cPRIME, and will apply per contract side, per leg in order to recoup the costs associated with listing this proprietary product. Other exchanges charge a similar fee for proprietary index options.<sup>9</sup> The Exchange notes,

however, that the Surcharge will be waived for the “Waiver Period.” The Exchange proposes to define “Waiver Period” to mean, for purposes of Section (1)(a)(xi) of the Fee Schedule, the period of time from the launch of trading of SPIKES options until such time that the Exchange submits a filing to terminate the Waiver Period. The Exchange will issue a Regulatory Circular announcing the end of the Waiver Period at least fifteen (15) days prior to the termination of the Waiver Period and effective date of such Surcharge.

**SPIKES Settlement Day SPY Opening Auction Fees in SPY Options**

The Exchange further proposes to adopt fees for the Opening Process in SPY options that will only be applicable on SPIKES settlement day. Specifically, these fees will be charged to each side of all trades occurring in the SPY Opening in the expiration month used to determine SPIKES settlement on settlement day only; in lieu of any other fees in the Fee Schedule. To be clear, volume in settlement day SPY Opening options, as they are still multiply-listed, will continue to count towards the volume calculation of the variety of fee and rebate programs as noted above.

<sup>9</sup> See Choe Exchange, Inc Fee Schedule, Specified Proprietary Index Options Rate Table—Underlying Symbol List A and Sector Indexes; see also Nasdaq ISE Options 7, Section 5 C.

The purpose for adopting lower, separate fees for these SPY transactions is to encourage Market Makers and other market participants that need to unwind a SPIKES hedge to participate in the Opening Auction, by making the pricing more attractive. Specifically, market participants holding short, hedged SPIKES options could liquidate that hedge by selling their SPY options series, while traders holding long, hedged SPIKES options could liquidate their hedge by buying SPY option series. These market participants may liquidate their hedges by submitting SPIKES strategy orders in the appropriate SPY option series during the SPIKES Special Settlement Auction<sup>10</sup> on the SPIKES expiration/final settlement date. The fees will be assessed as follows:

**SPIKES SETTLEMENT DAY SPY  
OPENING AUCTION FEES**

Origin	SPY opening orders <sup>α</sup>
Priority Customer .....	\$0.00
Market Maker .....	0.03
Non-MIAX Market Maker .....	0.06
Broker-Dealer .....	0.06
Firm Proprietary .....	0.03
Public Customer that is Not a Priority Customer .....	0.06

<sup>α</sup>These fees will be charged to each side of all trades occurring in the SPY opening in the expiration month used to determine SPIKES settlement on settlement day only; in lieu of any other fees in the Fee Schedule.

**Technical Clarification**

The Exchange also proposes to make a technical clarification to the explanatory paragraph below the Market Maker Transaction Fees, Market Maker Sliding Scale, Members and Their Affiliates Not In Priority Customer Rebate Program Volume Tier 3 or Higher fee table, located in Section (1)(a)(i) of the Fee Schedule. Currently, the first sentence of the explanatory paragraph provides that “[v]olume thresholds are based on the total national Market Maker volume of any options classes with traded volume on MIAX during the month in simple and complex orders (excluding QCC and cQCC Orders, PRIME and cPRIME AOC Responses, and unrelated MIAX Market Maker quotes or unrelated MIAX Market Maker orders that are received during the Response Time Interval and executed against the PRIME Order (“PRIME Participating Quotes or Orders”) and unrelated MIAX Market Maker complex orders that are received during

the Response Time Interval and executed against a cPRIME Order (“cPRIME Participating Quote or Order”).” In order to clarify that this explanatory paragraph would not apply to singly-listed options on the SPIKES Index, the Exchange proposes to modify this sentence as follows: “[v]olume thresholds are based on the total national Market Maker volume of any multiply-listed options classes with traded volume on MIAX during the month in simple and complex orders (excluding QCC and cQCC Orders, PRIME and cPRIME AOC Responses, and unrelated MIAX Market Maker quotes or unrelated MIAX Market Maker orders that are received during the Response Time Interval and executed against the PRIME Order (“PRIME Participating Quotes or Orders”) and unrelated MIAX Market Maker complex orders that are received during the Response Time Interval and executed against a cPRIME Order (“cPRIME Participating Quote or Order”),” by adding the words “multiply-listed.” The Exchange believes that by adding this additional wording, it will be clear that the volume in singly-listed options is not counted towards reaching the Market Maker Sliding Scale Tier thresholds of both tables.

Further, the Exchange notes that Section 2 of the Fee Schedule, Regulatory Fees, generally applies to transactions in options. However, Section (2)(a), Sales Value Fee, will not be assessed to transactions in SPIKES index options because pursuant to 17 CFR 240.31, “[a]ny sale of an option on a security index (including both a narrow-based security index and a non-narrow-based security),” is an exempt sale, and therefore, not subject to the Sales Value Fee.

Finally, the fees found in Section 3, Membership Fees, Section 4, Testing and Certification Fees, Section 5, System Connectivity Fees, and Section 6, Market Data Fees, will all be applicable to transactions in SPIKES index options and will be treated like any other class of options.

**2. Statutory Basis**

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act<sup>11</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>12</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Exchange

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 Act<sup>13</sup> in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customer, issuers, brokers and dealers.

The Exchange believes that the proposed fee structure for transactions in SPIKES index options is consistent with Section 6(b)(4) of the Act in that it is reasonable, equitable and not unfairly discriminatory. The proposed fee structure is reasonably designed because it is intended to incentivize market participants to transact in SPIKES index options on the Exchange, which enables the Exchange to improve its overall competitiveness and strengthen its market quality for all market participants. The Exchange believes that the proposed maker-taker model is an important competitive tool for exchanges and, directly or indirectly, can provide better prices for investors. The Exchange will assess lower transaction fees to its Makers as compared to its Takers as an incentive for market participants to provide liquidity on the Exchange. The Exchange believes this will encourage greater order flow from all market participants, which will in turn bring greater volume and liquidity to the Exchange, which benefits all market participants by providing more trading opportunities and tighter spreads. SPIKES index option transaction fees are also reasonably designed because the proposed fees and rebates are similar to the ones the Exchange assesses for multiply-listed options, and are within the range of fees and rebates assessed by other exchanges employing similar fee structures for singly-listed options.<sup>14</sup> Other competing exchanges offer different fees and rebates for transactions in singly-listed options in a manner similar to this proposal.<sup>15</sup>

The fee and rebate structure is reasonable, equitable, and not unfairly discriminatory because it will apply equally to Priority Customer orders, Market Maker orders, Non-MIAX Market Maker orders, Broker Dealer orders, Firm Proprietary orders, and Public Customers that are not Priority Customers orders, in each respective category of SPIKES index option orders;

<sup>10</sup> See Exchange Rule 503, Interpretations and Policies .03.

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(4).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> See *supra* notes 6, 8 and 9.

<sup>15</sup> See *id.*

for both Simple and Complex orders, and PRIME and cPRIME orders, and for transactions involving SPY options on SPIKES settlement day. All similarly situated categories of participants are subject to the same transaction fee and rebate schedule, and access to the Exchange is offered on terms that are not unfairly discriminatory.

The Exchange believes that it is equitable and not unfairly discriminatory to adopt fees for the Opening Process in SPY options that will only be applicable on SPIKES settlement day to encourage Market Makers and other market participants that need to unwind a SPIKES hedge to participate in the Opening Auction, by making the pricing more attractive. Specifically, market participants holding short, hedged SPIKES options could liquidate that hedge by selling their SPY options series, while traders holding long, hedged SPIKES options could liquidate their hedge by buying SPY option series. These market participants may liquidate their hedges by submitting SPIKES strategy orders in the appropriate SPY option series during the SPIKES Special Settlement Auction on the SPIKES expiration/final settlement date.

The exchanges in general have historically aimed to improve markets for investors and develop various features within market structure for customer benefit. The Exchange assesses Priority Customers lower or no transaction fees because Priority Customer order flow enhances liquidity on the Exchange for the benefit of all market participants. Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

The Exchange believes that it is equitable and not unfairly discriminatory that Firm Proprietary orders are assessed lower Maker and Taker fees for Simple orders, and for transactions involving SPY options on SPIKES settlement day, than other Origin types because the Exchange believes that Firm Proprietary order flow enhances liquidity on the Exchange for the benefit of all market participants. Specifically, Firm Proprietary order flow liquidity benefits all market participants by providing more robust trading opportunities, which attract Market Makers. An increase in the activity of those market participants in turn facilitates tighter

spreads, which may cause an additional corresponding increase in order flow from other market participants. The Maker and Taker fees offered to Firm Proprietary orders are intended to attract more Firm Proprietary order volume to the Exchange. Moreover, all fee amounts listed as applying to Firm Proprietary orders will be applied equally to all Firm Proprietary Orders.

The Exchange further believes that it is equitable and not unfairly discriminatory to assess lower Maker and Taker fees to Market Makers for Simple orders, and for transactions involving SPY options on SPIKES settlement day, as compared to other market participants because Market Makers, unlike other market participants, take on a number of obligations, including quoting obligations that other market participants do not have. Further, Market Makers have added market making and regulatory requirements, which normally do not apply to other market participants. For example, Market Makers have obligations to maintain continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and to not make bids or offers or enter into transactions that are inconsistent with a course of dealing. Further, these lower Maker and Taker fees offered to Market Makers are intended to incent Market Makers to quote and trade more on the Exchange, thereby providing more liquidity and trading opportunities for all market participants. Additionally, the proposed Maker and Taker fees for Market Makers will be applied equally to all Market Makers. It should also be noted that all fee amounts described herein are intended to attract greater order flow to the Exchange in SPIKES options, which should therefore serve to benefit all Exchange market participants.

The Exchange further believes that its proposal to charge a Surcharge of \$0.075, which applies to any contract that is executed by an Origin except Priority Customer in Simple, Complex, PRIME and cPRIME, is reasonable because it will help recoup costs associated with listing a proprietary product. Further, the Exchange believes the Surcharge is equitable and not unfairly discriminatory because the Exchange will apply the same Surcharge for all similarly situated Members in a similar manner. The Exchange also believes it is equitable and not unfairly discriminatory to not assess the Surcharge to Priority Customer orders in SPIKES options because Priority Customer orders bring valuable liquidity

to the market, which in turn benefits other market participants. Other exchanges charge a similar fee for proprietary index options.<sup>16</sup> The Exchange believes that establishing a Waiver Period for application of the Surcharge is reasonable, equitable, and not unfairly discriminatory because it provides an incentive for Members to send orders to the Exchange, as the Surcharge fee will not apply during the Waiver Period. All similarly situated categories of participants are subject to the same Waiver Period, and access to the Exchange is offered on terms that are not unfairly discriminatory.

Moreover, the Exchange believes that assessing all other market participants that are not Priority Customers a higher transaction fee than Priority Customers for orders in SPIKES index options is reasonable, equitable, and not unfairly discriminatory because these types of market participants are more sophisticated and have higher levels of order flow activity and system usage. This level of trading activity draws on a greater amount of system resources than that of Priority Customers. Further, the Exchange believes it is equitable and not unfairly discriminatory to assess all other market participants that are not Priority Customers, Market Makers, or Firm Proprietary orders a higher Simple Maker fee for orders in SPIKES options because Priority Customers, Market Makers, and Firm Proprietary orders bring valuable liquidity to the market. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants, which in turn benefits the market as a whole.

The Exchange believes that excluding singly-listed transactions from the number of options contracts executed on the Exchange by any Member for purposes of the volume thresholds in multiply-listed options transactions is reasonable, equitable, and not unfairly discriminatory because participating Members could otherwise collect the rebates offered and meet volume thresholds for the programs that did not contemplate singly-listed volume at the time of creation, and which have different transaction fees charged on the Exchange.

The Exchange believes that the proposed technical changes are consistent with Section 6(b)(5) of the Act because they are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and

<sup>16</sup> See *supra* note 9.

open market and a national market system and, in general to protect investors and the public interest. The Exchange believes it is appropriate to make the proposed technical changes to its Fee Schedule so that Exchange Members have a clear and accurate understanding of the meaning and application of the Exchange's Fee Schedule.

The Exchange believes that charging lower Taker fees to Market Makers and Firm Proprietary orders for options that have a premium price of \$0.10 or less (such options are charged \$0.05 per contract, versus \$0.20 per contract) is reasonable, equitable, and not unfairly discriminatory because otherwise such fees could be greater than the option premium itself. The Exchange believes that it is equitable and not unfairly discriminatory to assess lower Taker fees to Market Makers as compared to Non-MIAX Market Makers and Broker-Dealers because Market Makers, unlike other market participants, take on a number of obligations, including quoting obligations that other market participants do not have. Further, Market Makers have added market making and regulatory requirements, which normally do not apply to other market participants. For example, Market Makers have obligations to maintain continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and to not make bids or offers or enter into transactions that are inconsistent with a course of dealing. Non-MIAX Market Makers and Broker-Dealers tend to be takers of liquidity, as opposed to providers of liquidity.

Additionally, the Exchange believes that it is equitable and not unfairly discriminatory to assess lower Taker fees to Firm Proprietary orders for options that have a premium price of \$0.10 or less (such options are charged \$0.05 per contract, versus \$0.20 per contract), as compared to Non-MIAX Market Makers and Broker-Dealers because Firm Proprietary order flow enhances liquidity on the Exchange for the benefit of all market participants. Specifically, Firm Proprietary order flow liquidity benefits all market participants (as Firm Proprietary orders are generally providers of liquidity) by providing more robust trading opportunities, which attract Market Makers and Priority Customers. An increase in the activity of those market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. The lower Taker fees offered to Firm

Proprietary orders are intended to attract more Firm Proprietary order volume to the Exchange. Non-MIAX Market Makers and Broker-Dealers tend to be takers of liquidity, as opposed to providers of liquidity. The Exchange notes that Cboe also has similar pricing in place for its VIX options where it does not provide a discount to non-market makers and broker-dealers.<sup>17</sup>

The Exchange believes that offering Members a Large Trade Discount is reasonable, equitable, and not unfairly discriminatory because it provides an incentive for Members to submit large sized liquidity to the Exchange, which will benefit all market participants. All similarly situated categories of participants are subject to the same discount (except for Priority Customers which are not charged a transaction fee otherwise, so no discount is necessary), and access to the Exchange is offered on terms that are not unfairly discriminatory.

The PRIME and cPRIME fee and rebate structure is reasonable, equitable, and not unfairly discriminatory because it will apply equally to Priority Customer orders, Market Maker orders, Non-MIAX Market Maker orders, Broker Dealer orders, Firm Proprietary orders, and Public Customers that are not Priority Customers orders, in each respective category of PRIME and cPRIME orders. All similarly situated categories of participants are subject to the same transaction fee and rebate schedule, and access to the Exchange is offered on terms that are not unfairly discriminatory. The PRIME and cPRIME fee and rebate structure is reasonably designed because it is intended to incentivize market participants to send complex orders in SPIKES options to the Exchange in order to participate in the price improvement mechanism in a manner that enables the Exchange to improve its overall competitiveness and strengthen its market quality for all market participants.

The fee and rebate structure for transactions involving SPY Opening orders for options that are used in the calculation of the SPIKES Index on final settlement day is reasonable, equitable, and not unfairly discriminatory because it will apply equally to Priority Customer orders, Market Maker orders, Non-MIAX Market Maker orders, Broker Dealer orders, Firm Proprietary orders, and Public Customers that are not Priority Customers orders, in each respective category of such orders. All similarly situated categories of

participants are subject to the same transaction fee and rebate schedule, and access to the Exchange is offered on terms that are not unfairly discriminatory.

The Exchange believes that it is equitable and not unfairly discriminatory to adopt fees for the Opening Process in SPY options that will only be applicable on SPIKES settlement day to encourage Market Makers and other market participants that need to unwind a SPIKES hedge to participate in the Opening Auction, by making the pricing more attractive. Specifically, market participants holding short, hedged SPIKES options could liquidate that hedge by selling their SPY options series, while traders holding long, hedged SPIKES options could liquidate their hedge by buying SPY option series. These market participants may liquidate their hedges by submitting SPIKES strategy orders in the appropriate SPY option series during the SPIKES Special Settlement Auction on the SPIKES expiration/final settlement date.

#### *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 proposed change will enhance the competitiveness of the Exchange relative to other exchanges that offer their own singly-listed products. The Exchange believes that the proposed fees and rebates for transactions in SPIKES index options, and for transactions involving SPY options on SPIKES settlement day, are not going to have an impact on intra-market competition based on the total cost for participants to transact in such order types versus the cost for participants to transact in other order types available for trading on the Exchange. As noted above, the Exchange believes that the proposed pricing for transactions in SPIKES index options, and for transactions involving SPY options on SPIKES settlement day, is comparable to and within the range of fees and rebates charged by the Exchange's competitors offering singly-listed products.<sup>18</sup>

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

<sup>17</sup> See Cboe Fees Schedule, p. 2, Specified Proprietary Options Rate Table—Underlying Symbol List A and Sector Indexes.

<sup>18</sup> See *supra* notes 6, 8 and 9.

fees to remain competitive with other exchanges and to attract order flow to the Exchange. The Exchange believes that the proposed rule change reflects this competitive environment because it establishes a fee structure in a manner that encourages market participants to direct their order flow, to provide liquidity, and to attract additional transaction volume to the Exchange.

*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>19</sup> and Rule 19b-4(f)(2)<sup>20</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

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

*Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MIAX-2019-11 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to File Number SR-MIAX-2019-11. 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 website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MIAX-2019-11 and should be submitted on or before April 5, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>21</sup>

**Eduardo A. Aleman,**  
*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-85282; File No. SR-FINRA-2018-040]

**Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change Relating to FINRA Rule 4512 (Customer Account Information)**

March 11, 2019.

**I. Introduction**

On November 28, 2018, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission"), 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> a proposed rule change to revise FINRA Rule 4512 (Customer Account Information) to permit the use of electronic signatures and to also clarify the scope of the rule.

The proposed rule change was published for comment in the **Federal Register** on December 17, 2018.<sup>3</sup> The Commission received two comment letters regarding the proposed rule change, both supporting the proposed rule change.<sup>4</sup> On January 30, 2019 the Commission extended the time to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change to March 17, 2019.<sup>5</sup> For the reasons discussed below, the Commission is approving the proposed rule change.

**II. Description of the Proposed Rule Change<sup>6</sup>**

FINRA proposed to amend paragraph (a)(3) of FINRA Rule 4512 (Customer Account Information) to permit the use of electronic signatures and to clarify the scope of the rule.

With respect to a discretionary customer account maintained by a member, FINRA Rule 4512(a)(3) currently requires a member to obtain a manual dated signature of each named, natural person authorized to exercise discretion in the account. FINRA stated that because the rule only applies to discretionary accounts maintained by a member, the named natural person would inevitably be an associated person of the firm.<sup>7</sup> Consequently, to

<sup>2</sup> 17 U.S.C. 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 84788 (Dec. 11, 2018), 83 FR 64609 (Dec. 17, 2018) (File No. SR-FINRA-2018-040) ("Notice").

<sup>4</sup> See Letters from Paul J. Tolley, Senior Vice President, Chief Compliance Officer, Commonwealth Financial Network, dated December 31, 2018 ("Commonwealth Letter"); and Kevin Zambrowicz, Associate General Counsel & Managing Director, SIFMA, dated January 7, 2019 ("SIFMA Letter").

<sup>5</sup> See Securities Exchange Act Release No. 85003 (Jan. 30, 2019), 84 FR 1809 (Feb. 5, 2019) (File No. SR-FINRA-2018-040) ("Extension").

<sup>6</sup> The subsequent description of the proposed rule change is substantially excerpted from FINRA's description in the Notice. See Notice, 83 FR 64609-10.

<sup>7</sup> There is a corresponding requirement under NASD Rule 2510 (Discretionary Accounts) prohibiting members and their registered representatives from exercising any discretionary power in a customer's account unless the customer has given prior written authorization to a stated individual or individuals, and the account has been accepted by the firm as evidenced in writing by the firm or a designated partner, officer or manager of the firm. These signatures need not be manual. In addition, SEA Rule 17a-3(a)(17)(ii) requires that, for discretionary accounts with a natural person, broker-dealers maintain a record containing the dated signature of each natural person to whom

<sup>19</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>20</sup> 17 CFR 240.19b-4(f)(2).

<sup>21</sup> 17 CFR 200.30-3(a)(12).

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