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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)13 of the Act and upon filing pursuant to Section 19(b)(2)(B)15 of the Act to become effective without delay after notice and opportunity for public comment.

The Commission has determined that it is not necessary or appropriate in the public interest to delay the proposed rule change.

The Exchange has filed with the Commission this application and notices to the public of the filing in accordance with the Exchange Act.16

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.16

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Adopt Fees for a New Data Product Known as the Liquidity Taker Event Report

June 17, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),14 and Rule 19b–4 thereunder,2 notice is hereby given that on June 7, 2021, 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.

A. 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 fees for a new data product to be known as the Liquidity Taker Event Report.3

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. Purpose

The Exchange recently adopted a new data product known as the Liquidity Taker Event Report (the “Report”), which will be available for purchase to Exchange Members* on a voluntary basis. The Exchange now proposes to adopt fees for the Report. The Report was recently approved by the Securities and Exchange Commission (“Commission”) and is described under Exchange Rule 531(a). The Report is an optional product available to Members.

By way of background, the Report is a daily report that provides a Member (“Recipient Member”) with its liquidity response time details for executions of

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19 See, generally, Exchange Rule 531(a).
20 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.
an order resting on the Book,6 where
that Recipient Member attempted to execute against the resting order7
within a certain timeframe. It is important to note that the content of the
Report is specific to the Recipient Member and the Report will not include
any information related to any Member other than the Recipient Member.

The following information is included in the Report regarding the resting
order: (A) The time the resting order was received by the Exchange [B]
symbol; (C) order reference number, which is a unique reference number
assigned to a new order at the time of receipt; (D) whether the Recipient
Member is an Affiliate8 of the Member that entered the resting order;9 (E)
origin type (e.g., Priority Customer,10 Market Maker 11); (F) side (buy or sell);
and (G) displayed price and size of the resting order.12

The following information is included in the Report regarding the execution
of the resting order: (A) The MBBO 13 at the time of execution;14 (B) the ABBO 15
at the time of execution;16 (C) the time first response that executes against
the resting order was received by the Exchange and the size of the execution
and type of the response; 17 (D) the time difference between the time the resting
order was received by the Exchange and the time the first response that executes
against the resting order was received by the Exchange;18 and (E) whether the
response was entered by the Recipient Member. If the resting order executes
against multiple contra-side responses, only the MBBO and ABBO at the time
of the execution against the first response will be included.

The following information is included in the Report regarding response(s) sent
by the Recipient Member: (A) Recipient Member identifier; (B) the time
response was received by the Exchange and the time of each response
sent by the Recipient Member, regardless of whether it executed or not;19 (C) size and type of each response
submitted by Recipient Member; and (D) response reference number, which is a
unique reference number attached to the response by the Recipient Member.

The Report includes the data set for executions and contra-side responses
that occurred within 200 microseconds of the time the resting order was
received by the Exchange. The Report contains historical data from the prior
trading day and will be available after the end of the trading day, generally on
a T+1 basis. The Report does not include real-time data.

The Exchange believes the additional data points from the matching engine
outlined above may help Members gain a better understanding about their own
interactions with the Exchange. The Exchange believes the Report will
provide Members with an opportunity to learn more about better opportunities
to access liquidity and receive better execution rates. The Report will
increase transparency and democratize information so that all firms that
subscribe to the Report have access to the same information on an equal basis,
execution firms that do not have the appropriate resources to generate a
similar report regarding interactions with the Exchange.

Members generally would use a liquidity accessing order if there is a
high probability that it will execute against an order resting on the
Exchange’s Book. The Report identifies by how much time an order that may
have been marketable missed an execution. The Report will provide
greater visibility into the missed trading execution, which will allow Members
to optimize their models and trading patterns to yield better execution
results.

The Report will be a Member-specific report and will help Members to better
understand by how much time a particular order missed executing against a specific resting order, thus
allowing that Member to determine whether it wants to invest in the
necessary resources and technology to mitigate missed executions against
certain resting orders on the Exchange’s Book.

The Exchange proposes to provide the Report in response to Member demand
for data concerning the timeliness of their incoming orders and executions
against resting orders. Members have periodically requested from the
Exchange’s trading operations personnel information concerning the timeliness
of their incoming orders and efficacy of

their attempts to execute against resting
liquidity on the Exchange’s Book. The
purpose of the Report is to provide
Members the necessary data in a
standardized format on a T+1 basis to
those that subscribe to the Report on an
equal basis.

The product is offered to Members on
a completely voluntary basis in that the
Exchange is not required by any rule or
regulation to make this data available
and potential subscribers may purchase the
Report only if they voluntarily
choose to do so. It is a business decision
decision of each Member whether to subscribe to
the Report or not.

The Exchange proposes to adopt new
Section 7), Reports, in its Fee Schedule,
which will provide that Members may purchase the Report on a monthly or annual (12-month) basis. The Exchange proposes to assess a monthly fee of $4,000 per month and a fee of $24,000 per year for a 12-month subscription for the Report. Members may cancel their subscription at any time. The Exchange also proposes to specify that for mid-month subscriptions, new subscribers will be charged for the full calendar month for which they subscribe and will be provided Report data for each trading day of the calendar month prior to the day on which they subscribed.

The Exchange intends to begin to offer the Report and charge the proposed fees on June 7, 2021.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act, in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, 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 to protect investors and the public interest, and that it is not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange also believes that its proposal to adopt fees for the Report is consistent with Section 6(b) of the Act in general, and furthers the objectives of Section 6(b)(4) of the Act in particular, in that it is an equitable allocation of dues, fees and other charges among its Members and other recipients of Exchange data.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (“SROs”) and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. The Exchange believes that the Report broadens the availability of U.S. option market data to investors consistent with the principles of Regulation NMS. The Report also promotes increased transparency through the dissemination of the Report. Particularly, the Report will benefit investors by facilitating their prompt access to the value added information that is included in the Report. The Report will allow Members to access information regarding their trading activity that they may utilize to evaluate their own trading behavior and order interactions.

The Exchange operates in a highly competitive environment. Indeed, there are currently 16 registered options exchanges that trade options. Based on publicly available information, no single options exchange has more than 15% of the market share and currently the Exchange represents only approximately 6.45% of the market share. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its breadth and diversity.” 24 Making similar data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supra-competitive fees. In the event that a market participant views one exchange’s data product as more attractive than the competition, that market participant can, and often does, switch between similar products. The proposed fees are a result of the competitive environment of the U.S. options industry as the Exchange seeks to adopt fees to attract purchasers of the recently introduced Report.

The Exchange believes the proposed fees are reasonable as the proposed fees are both modest and similar to fees assessed by other exchanges that trade options. Based on the current regulation of the market system may offer similar data points, albeit based on that other market’s trading activity.

The Exchange also believes providing an annual subscription for an overall lower fee than a monthly subscription is equitable and reasonable because it would enable the Exchange to gauge long-term interest in the Report. A lower annual subscription fee would also incentivize Members to subscribe to the Report on a long-term basis, thereby improving the efficiency by which the Exchange may deliver the Report by doing so on a regular basis over a prolonged and set period of time. The Exchange notes that other exchanges provide annual subscriptions for reports concerning their data product offerings.

The Exchange also believes the proposed fees are reasonable as they would support the introduction of a new market data product to Members that are interested in gaining insight into latency in connection with orders that failed to execute against an order resting on the Exchange’s Book. The Report accomplishes this by providing those Members data to analyze by how much time their order may have missed an execution against a contra-side order resting on the Book. Members may use this data to optimize their models and trading patterns in an effort to yield better execution results by calculating how much time their order may have missed an execution.

Selling market data, such as the Report, is also a means by which exchanges compete to attract business. To the extent that the Exchange is successful in attracting subscribers for the Report, it may earn trading revenues

27 Cboe Exchange, Inc. (“Cboe”) assesses a $24,000 annual fee for an intra-day subscription to Open-Close Data. See https://datashop.cboe.com/options-summary-subscription.
and further enhance the value of its data products. If the market deems the proposed fees to be unfair or inequitable, firms can diminish or discontinue their use of the data and/or avail themselves of similar products offered by other exchanges.\footnote{See supra note 26.} The Exchange therefore believes that the proposed fees for the Report reflect the competitive environment and would be properly assessed on Member users. The Exchange also believes the proposed fees are equitable and not unfairly discriminatory as the fees would apply equally to all users who choose to purchase such data. It is a business decision of each Member that chooses to purchase the Report. The Exchange’s proposed fees would not differentiate between subscribers that purchase the Report and are set at a modest level that would allow any interested Member to purchase such data based on their business needs.

The Exchange reiterates that the decision as to whether or not to purchase the Report is entirely optional for all potential subscribers. Indeed, no market participant is required to purchase the Report, and the Exchange is not required to make the Report available to all investors. It is entirely a business decision of each Member to subscribe to the Report. The Exchange offers the Report as a convenience to Members to provide them with additional information regarding trading activity on the Exchange on a delayed basis after the close of regular trading hours. A Member that chooses to subscribe to the Report may discontinue receiving the Report at any time if that Member determines that the information contained in the Report is no longer useful.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange made the Report available in order to keep pace with changes in the industry and evolving customer needs and demands, and believes the data product will contribute to robust competition among national securities exchanges. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

The Exchange also does not believe the proposed fees would cause any unnecessary or inappropriate burden on intermarket competition as other exchanges are free to introduce their own comparable data product with lower prices to better compete with the Exchange’s offering. The Exchange operates in a highly competitive environment, and its ability to price the Report is constrained by competition among exchanges who choose to adopt a similar product. The Exchange must consider this in its pricing discipline in order to compete for the market data. For example, proposing fees that are excessively higher than fees for potentially similar data products would simply serve to reduce demand for the Exchange’s data product, which as discussed, market participants are under no obligation to utilize. In this competitive environment, potential purchasers are free to choose which, if any, similar product to purchase to satisfy their need for market information. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

The Exchange does not believe the proposed rule change would cause any unnecessary or inappropriate burden on intramarket competition. Particularly, the proposed product and fees apply uniformly to any purchaser in that the Exchange does not differentiate between subscribers that purchase the Report. The proposed fees are set at a modest level that would allow any interested Member to purchase such data based on their business needs.

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,\footnote{15 U.S.C. 78t(b)(3)(A)(ii).} and Rule 19b–4(f)(2)\footnote{17 CFR 240.19b–4(f)(2).} 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. Please include File Number SR–MIAX–2021–25 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–2021–25. 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 reformat 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–2021–25 and should be submitted on or before July 15, 2021.
SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule Relating to the Sale of Historical Intraday Open-Close Volume Data

June 14, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),1 and Rule 19b–4 thereunder,2 notice is hereby given that on June 1, 2021, Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) filed with the Securities and Exchange Commission (the “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

Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) proposes to amend its Fees Schedule relating to the sale of historical Intraday Open-Close volume data. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange’s website (http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx), at the Exchange’s Office of the Secretary, 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 its Fees Schedule to offer a free trial during the months of June and July 2021 for an ad-hoc request of three (3) historical months of Intraday Open-Close historical data to all Cboe Options Trading Permit Holders (“TPHs”) and non-TPHs who have never before subscribed to the Intraday Open-Close historical files.

By way of background, the Exchange historically offered Open-Close Data, which is an end-of-day volume summary of trading activity on the Exchange at the option level by origin (customer, professional customer, broker-dealer, and market maker), side of the market (buy or sell), price, and transaction type (opening or closing). The customer and professional customer volume is further broken down into trade size buckets (less than 100 contracts, 100–199 contracts, greater than 199 contracts). The Open-Close Data is proprietary Cboe Options trade data and does not include trade data from any other exchange. It is also a historical data product and not a real-time data feed. The recently adopted Intraday Open-Close Data provides similar information to that of Open-Close Data but is produced and updated every 10 minutes during the trading day. Data is captured in “snapshots,” taken every 10 minutes throughout the trading day and is available to subscribers within five minutes of the conclusion of each 10-minute period.3 The Intraday Open-Close Data provides a volume summary of trading activity on the Exchange at the option level by origin (customer, professional customer, broker-dealer, and market maker), side of the market (buy or sell), and transaction type (opening or closing). The customer and professional customer volume are further broken down into trade size buckets (less than 100 contracts, 100–199 contracts, greater than 199 contracts). The Intraday Open-Close Data is also proprietary Cboe Options trade data and does not include trade data from any other exchange. Cboe LiveVol, LLC (“LiveVol”), a wholly owned subsidiary of the Exchange’s parent company, Cboe Global Markets, Inc., makes the Intraday Open-Close Data available for purchase to TPHs and non-TPHs on the LiveVol DataShop website (datashop.cboe.com). Customers may currently purchase Intraday Open-Close Data on a subscription basis (monthly or annually) or by ad hoc request for a specified month (e.g., request for Intraday Open-Close Data for month of January 2021). The Exchange seeks only to adopt a free trial for historical ad hoc requests for Intraday Open-Close Data for new purchasers. Currently, ad hoc requests for historical Intraday Open-Close Data are available to all customers at the same price and in the same manner. The current charge for this historical Intraday Open-Close Data covering all of the Exchange’s securities (Equities, Indexes & ETF’s) is $1,000 per month. The Exchange now proposes to adopt a free trial available during the months of June and July 2021 to provide up to three (3) historical months of Intraday Open-Close Data to any TPH or non-TPH that has not previously subscribed to this offering.4 The Exchange believes the proposed trial will serve as an incentive for new users to start purchasing Intraday Open-Close historical data. Particularly, the Exchange believes it will give potential subscribers the ability to use and test the data offering before signing up for additional months. The Exchange also notes another exchange offers a free trial for new subscribers of a similar data product.5 Lastly, the purchase of Intraday Open-Close historical data is discretionary and not compulsory.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with...