AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92725; File No. SR–MIAX–2021–38]

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 Adjust the Options Regulatory Fee

August 23, 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 August 12, 2021, Miami International Securities Exchange LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule (the ''Fee Schedule'') to adjust the Options Regulatory Fee (''ORF'').

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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

1. Purpose

Currently, the Exchange assesses ORF in the amount of $0.0029 per contract side. The Exchange proposes to reduce the amount of ORF from $0.0029 per contract side to $0.0019 per contract side in order to help ensure that revenue collected from the ORF, in combination with other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. The Exchange's proposed change to the ORF should balance the Exchange's regulatory revenue against the anticipated regulatory costs. The Exchange initially filed this proposal on July 30, 2021 (SR–MIAX–2021–36) and withdrew such filing on August 12, 2021. The Exchange proposes to implement the fee change effective August 12, 2021.

Collection of ORF

Currently, the Exchange assesses the per-contract ORF to each Member[3] for all options transactions, including Mini Options, cleared or ultimately cleared by the Member, which are cleared by the Options Clearing Corporation (''OCC'') in the ''customer'' range,[4] regardless of the exchange on which the transaction occurs. The ORF is collected by OCC on behalf of the Exchange from either: (1) A Member that was the ultimate clearing firm for the transaction; or (2) a non-Member that was the ultimate clearing firm where a Member was the executing clearing firm for the transaction. The Exchange uses reports from OCC to determine the identity of the executing clearing firm and ultimate clearing firm.

To illustrate how the Exchange assesses and collects ORF, the Exchange provides the following set of examples. For a transaction that is executed on the Exchange and the ORF is assessed, if there is no change to the clearing account of the original transaction, then the ORF is collected from the Member that is the executing clearing firm for the transaction (the Exchange notes that, for purposes of the Fee Schedule, when there is no change to the clearing account of the original transaction, the executing clearing firm is deemed to be the ultimate clearing firm). If there is a change to the clearing account of the original transaction (*i.e.,* the executing clearing firm ''gives-up'' or ''CMTAs''[5] the transaction to another clearing firm), then the ORF is collected from the clearing firm that ultimately clears the transaction—the ''ultimate clearing firm.'' The ultimate clearing firm may be either a Member or non-Member of the Exchange. If the transaction is executed on an away exchange and the ORF is assessed, then the ORF is collected from the ultimate clearing firm for the transaction. Again, the ultimate clearing firm may be either a Member or non-Member of the Exchange. The Exchange notes, however, that when the transaction is executed on an away exchange, the Exchange does not assess the ORF when neither the executing clearing firm nor the ultimate clearing firm is a Member (even if a Member is ''given-up'' or ''CMTAed'' and then such Member subsequently ''gives-up'' or ''CMTAs'' the transaction to another non-Member via a CMTA reversal). Finally, the Exchange does not assess the ORF on outbound linkage trades, whether executed at the Exchange or an away exchange. ''Linkage trades'' are tagged in the Exchange's system, so the Exchange can readily tell them apart from other trades. A customer order routed to another exchange results in two customer trades, one from the originating exchange and one from the recipient exchange. Charging ORF on both trades could result in double-billing of ORF for a single customer order; thus, the Exchange does not assess ORF on outbound linkage trades in a linkage scenario. This assessment practice is identical to the assessment practice currently utilized by the Exchange's affiliates, MIAX PEARL, LLC (''MIAX Pearl'') and MIAX Emerald, LLC (''MIAX Emerald'').[6]

As a practical matter, when a transaction that is subject to the ORF is not executed on the Exchange, the Exchange lacks the information necessary to identify the order-entering member for that transaction. There are a multitude of order-entering market participants throughout the industry, and such participants can make changes to the market centers to which they connect, including dropping their connection to one market center and establishing themselves as participants

[3] 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.

[4] Exchange participants must record the appropriate account origin code on all orders at the time of entry in order. The Exchange represents that it has surveillances in place to verify that Members mark orders with the correct account origin code.

[5] ''CMTA'' or Clearing Member Trade Assignment is a form of ''give-up'' whereby the position will be assigned to a specific clearing firm at OCC.

[6] *See* Securities Exchange Act Release Nos. 85163 (February 15, 2019), 84 FR 5798 (February 22, 2019) (SR–PEARL–2019–01); 85251 (March 6, 2019), 84 FR 8931 (March 12, 2019) (SR–EMERALD–2019–01).

on another. For these reasons, it is not possible for the Exchange to identify, and thus assess fees such as ORF, on order-entering participants on away markets on a given trading day. Clearing members, however, are distinguished from order-entering participants because they remain identified to the Exchange on information the Exchange receives from OCC regardless of the identity of the order-entering participant, their location, and the market center on which they execute transactions. Therefore, the Exchange believes it is more efficient for the operation of the Exchange and for the marketplace as a whole to collect the ORF from clearing members.

ORF Revenue and Monitoring of ORF

The Exchange monitors the amount of revenue collected from the ORF to ensure that it, in combination with other regulatory fees and fines, does not exceed regulatory costs. In determining whether an expense is considered a regulatory cost, the Exchange reviews all costs and makes determinations if there is a nexus between the expense and a regulatory function. The Exchange notes that fines collected by the Exchange in connection with a disciplinary matter offset ORF.

As discussed below, the Exchange believes it is appropriate to charge the ORF only to transactions that clear as customer at the OCC. The Exchange believes that its broad regulatory responsibilities with respect to a Member's activities supports applying the ORF to transactions cleared but not executed by a Member. The Exchange's regulatory responsibilities are the same regardless of whether a Member enters a transaction or clears a transaction executed on its behalf. The Exchange regularly reviews all such activities, including performing surveillance for position limit violations, manipulation, front-running, contrary exercise advice violations and insider trading. These activities span across multiple exchanges.

Revenue generated from ORF, when combined with all of the Exchange's other regulatory fees and fines, is designed to recover a material portion of the regulatory costs to the Exchange of the supervision and regulation of Members' customer options business including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. Regulatory costs include direct regulatory expenses and certain indirect expenses in support of the regulatory function. The direct expenses include in-house and third party service provider costs to support the day-to-day regulatory work such as surveillances, investigations and examinations. The indirect expenses include support from such areas as the Office of the General Counsel, technology, and internal audit. Indirect expenses are estimated to be approximately 48% of the total regulatory costs for 2021. Thus, direct expenses are estimated to be approximately 52% of total regulatory costs for 2021. The Exchange notes that its estimated direct and indirect expense percentages are in the range and similar to those at other options exchanges.[7]

The ORF is designed to recover a material portion of the costs to the Exchange of the supervision and regulation of its members, including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities.

Proposal

Based on the Exchange's most recent review, the Exchange proposes to reduce the amount of ORF that will be collected by the Exchange from $0.0029 per contract side to $0.0019 per contract side. The Exchange issued an Options Regulatory Fee Announcement on July 2, 2021, indicating the proposed rate change for August 1, 2021.[8]

The proposed decrease is based on recent options volumes, which included an increase in retail investors. With respect to options volume, the Exchange, and the options industry as a whole, experienced a significant increase between 2020 and 2021. For example, total options contract volumes in April, May and June 2021 were 29.7%, 32.7% and 25.6% higher than the total options contract volumes in April, May and June 2020, respectively.[9]

There can be no assurance that the Exchange's final costs for 2021 will not differ materially from these expectations, nor can the Exchange predict with certainty whether options volume will remain at the current level going forward. The Exchange notes however, that when combined with regulatory fees and fines, the revenue being generated utilizing the current ORF rate may result in revenue that will run in excess of the Exchange's estimated regulatory costs for the year.[10] Particularly, as noted above, the options market has seen a substantial increase in volume throughout 2020 and 2021, due in large part to the extreme volatility in the marketplace as a result of the COVID–19 pandemic. This unprecedented spike in volatility resulted in significantly higher volume than was originally projected by the Exchange (thereby resulting in substantially higher ORF revenue than projected). The Exchange therefore proposes to decrease the ORF in order to ensure it does not exceed its regulatory costs for the year. Particularly, the Exchange believes that decreasing the ORF when combined with all of the Exchange's other regulatory fees and fines, would allow the Exchange to continue covering a material portion of its regulatory costs, while lessening the potential for generating excess revenue that may otherwise occur using the current rate.[11]

The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. The Exchange will continue to monitor MIAX regulatory costs and revenues at a minimum on a semi-annual basis. If the Exchange determines regulatory revenues exceed or are insufficient to cover a material portion of its regulatory costs, the Exchange will adjust the ORF by submitting a fee change filing to the Commission. The Exchange will notify Members of adjustments to the ORF via regulatory circular at least 30 days prior to the effective date of the change.

In connection with this filing, the Exchange notes that its affiliates, MIAX Pearl and MIAX Emerald, will also be adjusting the ORF fees that each of those exchanges charge.

[7] *See* Securities Exchange Act Release Nos. 91418 (March 26, 2021), 86 FR 17254 (April 1, 2021) (SR–Phlx–2021–16) (reducing the Nasdaq PHLX LLC ORF and estimating direct expenses at 58% and indirect expenses at 42%); 91420 (March 26, 2021), 86 FR 17223 (April 1, 2021) (SR–ISE–2021–04) (reducing the Nasdaq ISE, LLC ORF and estimating direct expenses at 58% and indirect expenses at 42%).

[8] *See https://www.miaxoptions.com/sites/default/files/circular-files/MIAX_Options_RC_2021_36.pdf.*

[9] *See* data from OCC at: *https://www.businesswire.com/news/home/20210504005178/en/OCC-April-2021-Total-Volume-Up-29.7-Percent-from-a-Year-Ago, https://www.businesswire.com/news/home/20210602005174/en/OCC-May-2021-Total-Volume-Up-32.7-Percent-from-a-Year-Ago, and https://apnews.com/press-release/business-wire/778385e696f4407590cc6ff9cb64db03.*

[10] The Exchange notes that notwithstanding the potential excess ORF revenue the Exchange anticipates it would collect utilizing the current rate, it would not use such revenue for non-regulatory purposes.

[11] The Exchange notes that its regulatory responsibilities with respect to Member compliance with options sales practice rules have been allocated to the Financial Industry Regulatory Authority (''FINRA'') under a 17d–2 Agreement. The ORF is not designed to cover the cost of options sales practice regulation.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [12] in general, and furthers the objectives of Section 6(b)(4) of the Act [13] in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act [14] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes the proposed fee change is reasonable because customer transactions will be subject to a lower ORF fee than the current rate. Moreover, the proposed reduction is necessary in order for the Exchange to not collect revenue in excess of its anticipated regulatory costs, in combination with other regulatory fees and fines, which is consistent with the Exchange's practices.

The ORF is designed to recover a material portion of the costs of supervising and regulating Members' customer options business including performing routine surveillances and investigations, as well as policy, rulemaking, interpretive and enforcement activities. The Exchange will monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. The Exchange has designed the ORF to generate revenues that, when combined with all of the Exchange's other regulatory fees, will be less than or equal to the Exchange's regulatory costs, which is consistent with the Commission's view that regulatory fees be used for regulatory purposes and not to support the Exchange's business side. In this regard, the Exchange believes that the proposed decrease to the fee is reasonable.

The Exchange believes that continuing to limit changes to the ORF to twice a year on specific dates with advance notice is reasonable because it gives participants certainty on the timing of changes, if any, and better enables them to properly account for ORF charges among their customers. The Exchange believes that continuing to limit changes to the ORF to twice a year on specific dates is equitable and not unfairly discriminatory because it will apply in the same manner to all Members that are subject to the ORF and provide them with additional advance notice of changes to that fee.

The Exchange believes that collecting the ORF from non-Members when such non-Members ultimately clear the transaction (that is, when the non-Member is the ''ultimate clearing firm'' for a transaction in which a Member was assessed the ORF) is an equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The Exchange notes that there is a material distinction between ''assessing'' the ORF and ''collecting'' the ORF. The ORF is only assessed to a Member with respect to a particular transaction in which it is either the executing clearing firm or ultimate clearing firm. The Exchange does not assess the ORF to non-Members. Once, however, the ORF is assessed to a Member for a particular transaction, the ORF may be collected from the Member or a non-Member, depending on how the transaction is cleared at OCC. If there was no change to the clearing account of the original transaction, the ORF would be collected from the Member. If there was a change to the clearing account of the original transaction and a non-Member becomes the ultimate clearing firm for that transaction, then the ORF will be collected from that non-Member. The Exchange believes that this collection practice continues to be reasonable and appropriate, and was originally instituted for the benefit of clearing firms that desired to have the ORF be collected from the clearing firm that ultimately clears the transaction.

The Exchange designed the ORF so that revenue generated from the ORF, in combination with its other regulatory fees and fines, does not exceed regulatory costs, which is consistent with the view of the Commission that regulatory fees be used for regulatory purposes and not to support the Exchange's business operations. As discussed above, however, after review of its regulatory costs and regulatory revenues, which includes revenues from ORF and other regulatory fees and fines, the Exchange determined that absent a reduction in ORF, it may be collecting revenue in excess of its regulatory costs. Indeed, the Exchange notes that when taking into account the recent options volume, which included an increase in customer options transactions, it estimates the ORF will generate revenues that may cover more than the approximated Exchange's projected regulatory costs. Moreover, when coupled with the Exchange's other regulatory fees and revenues, the Exchange estimates ORF to generate over 100% of the Exchange's projected regulatory costs. As such, the Exchange believes it is reasonable and appropriate to decrease the ORF amount from $0.0029 to $0.0019 per contract side.

The Exchange also believes the proposed fee change is equitable and not unfairly discriminatory in that it is charged to all Members on all their transactions that clear in the customer range at the OCC,[15] with an exception.[16] The Exchange believes the ORF ensures fairness by assessing higher fees to those members that require more Exchange regulatory services based on the amount of customer options business they conduct. Regulating customer trading activity is much more labor intensive and requires greater expenditure of human and technical resources than regulating non-customer trading activity, which tends to be more automated and less labor-intensive. For example, there are costs associated with main office and branch office examinations (*e.g.,* staff expenses), as well as investigations into customer complaints and the terminations of registered persons. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (*e.g.,* member proprietary transactions) of its regulatory program. Moreover, the Exchange notes that it has broad regulatory responsibilities with respect to activities of its Members, irrespective of where their transactions take place. Many of the Exchange's surveillance programs for customer trading activity may require the Exchange to look at activity across all markets, such as reviews related to position limit violations and manipulation. Indeed,

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4).

[14] 15 U.S.C. 78f(b)(5).

[15] If the OCC clearing member is an Exchange Member, ORF is assessed and collected on all cleared customer contracts (after adjustment for CMTA); and if the OCC clearing member is not an Exchange Member, ORF is collected only on the cleared customer contracts executed at the Exchange, taking into account any CMTA instructions which may result in collecting the ORF from a non-Member.

[16] When a transaction is executed on an away exchange, the Exchange does not assess the ORF when neither the executing clearing firm nor the ultimate clearing firm is a Member (even if a Member is ''given-up'' or ''CMTAed'' and then such Member subsequently ''gives-up'' or ''CMTAs'' the transaction to another non-Member via a CMTA reversal).

the Exchange cannot effectively review for such conduct without looking at and evaluating activity regardless of where it transpires. In addition to its own surveillance programs, the Exchange also works with other SROs and exchanges on intermarket surveillance related issues. Through its participation in the Intermarket Surveillance Group (''ISG'') [17] the Exchange shares information and coordinates inquiries and investigations with other exchanges designed to address potential intermarket manipulation and trading abuses. Accordingly, there is a strong nexus between the ORF and the Exchange's regulatory activities with respect to customer trading activity of its Members.

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. This proposal does not create an unnecessary or inappropriate intra-market burden on competition because the ORF applies to all customer activity, thereby raising regulatory revenue to offset regulatory expenses. It also supplements the regulatory revenue derived from non-customer activity. The Exchange notes, however, the proposed change is not designed to address any competitive issues. Indeed, this proposal does not create an unnecessary or inappropriate inter-market burden on competition because it is a regulatory fee that supports regulation in furtherance of the purposes of the Act. The Exchange is obligated to ensure that the amount of regulatory revenue collected from the ORF, in combination with its other regulatory fees and fines, does not exceed regulatory costs.

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,[18] and Rule 19b–4(f)(2) [19] 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 No. SR–MIAX–2021–38 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 No. SR–MIAX–2021–38. 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 No. SR–MIAX–2021–38, and should be submitted on or before September 17, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2021–18461 Filed 8–26–21; 8:45 am]

BILLING CODE 8011–01–P

[17] ISG is an industry organization formed in 1983 to coordinate intermarket surveillance among the SROs by cooperatively sharing regulatory information pursuant to a written agreement between the parties. The goal of the ISG's information sharing is to coordinate regulatory efforts to address potential intermarket trading abuses and manipulations.

[18] 15 U.S.C. 78s(b)(3)(A)(ii).

[19] 17 CFR 240.19b–4(f)(2).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92729; File No. SR–CBOE–2021–047]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Amend Rule 5.33

August 23, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 10, 2021, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') 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 Exchange filed the proposal pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] 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 Rule 5.33. The text of the proposed rule change is provided in Exhibit 5.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).