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

April 10, 2017.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") \(^{1}\) and Rule 19b–4 \(^{2}\) thereunder, notice is hereby given that on April 6, 2017, 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 substantially 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").


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

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

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

1. Purpose

The Exchange proposes to amend its Fee Schedule to permit Exchange Market Makers \(^{3}\) to appoint Electronic Exchange Members \(^{4}\) ("EEMs"), and vice versa, as "Affiliates," solely for purposes of calculating transaction volume in order to qualify for certain transaction rebates and fee incentives under the Fee Schedule. The Exchange notes that this concept of appointment between market makers and order flow providers currently exists at a number of other exchanges, including Bats BZX Exchange, Inc. ("BATS"), Bats EDGX Exchange, Inc. ("EDGX"), Chicago Board Options Exchange, Incorporated ("CBOE"), NYSE Amex Options LLC ("Amex Options"), and NASDAQ PHLX LLC ("PHLX"), as more fully discussed below.

In order for the Exchange to implement this concept of appointment, the Exchange proposes to amend the definition of "Affiliate" contained in Section 1(a)(ii), footnote 1, of the Fee Schedule. Footnote 1 currently reads:

"For purposes of the MIAX Options Fee Schedule, the term "Affiliate" means an affiliate of a Member of at least 75% common ownership between the firms as reflected on each firm’s Form BD, Schedule A ("Affiliate")."

\(^{3}\) The term "Market Makers" refers to Lead Market Makers ("LMMs"), Primary Lead Market Makers ("PLMMs"), and Registered Market Makers ("RMMs") collectively. See Exchange Rule 100. A Directed Order Lead Market Maker ("DLMM") and Directed Primary Lead Market Maker ("DPLMM") is a party to a transaction being allocated to the LMM or PLMM and is the result of an order that has been directed to the LMM or PLMM. See Footnote 2 to the Fee Schedule.

\(^{4}\) The term “EEM” refers to the holder of a Trading Permit who is not a Market Maker. See Exchange Rule 100.
The Exchange proposes to amend footnote 1 so that it instead reads:

“For purposes of the MIAX Options Fee Schedule, the term “Affiliate” means (i) an affiliate of a MIAX Market Maker (who does not otherwise have a corporate affiliation based upon common ownership with an EEM) that has been appointed by a MIAX Market Maker, pursuant to the following process. A MIAX Market Maker appoints an EEM and an EEM appoints a MIAX Market Maker, for the purposes of the Fee Schedule, by each completing and sending an executed Volume Aggregation Request Form by email to membership@miaxios.com no later than 2 business days prior to the first business day of the month in which the designation is to become effective. A validly completed and executed form to the Exchange along with an executed form to the Exchange along with the Exchange’s acknowledgement of the effective designation to each of the Market Maker and EEM will be viewed as acceptance of the appointment. The Exchange will only recognize one designation per Member. A designee may make a designation not more than once every 12 months (from the date of its most recent designation), which designation shall remain in effect unless or until the Exchange receives written notice submitted 2 business days prior to the first business day of the month from either Member indicating that the appointment has been terminated. Designations will become operative on the first business day of the effective month and may not be terminated prior to the end of the month. Execution data and reports will be provided to both parties.”

The purpose of the proposed rule change is to increase opportunities for EEMs and Market Makers, who do not otherwise have a corporate affiliation based upon common ownership with a MIAX Market Maker or EEM, as the case may be, to potentially qualify for tiered pricing incentives on the Exchange. Specifically, the Exchange proposes to allow a MIAX Market Maker to designate an EEM as its “Appointed EEM” and for an EEM to designate a MIAX Market Maker as its “Appointed Market Maker” for purposes of Sections 1(a)(i) through 1(a)(v) of the Fee Schedule. Members of the Exchange would effectuate such designation by completing and sending an executed Volume Aggregation Request Form by email to the Exchange no later than 2 business days prior to the first business day of the month in which the designation is to become effective. As specified in the proposed Fee Schedule, the Exchange would view the transmittal of the validly completed and executed form along with the Exchange’s acknowledgement of the effective designation as acceptance of such an appointment. The proposed new concepts would be applicable to all tiered pricing offered by the Exchange in Sections 1(a)(i) through 1(a)(v) of the Fee Schedule, and are designed to increase opportunities for Members to qualify for such tiers.

The Exchange currently offers tiers of credits and fees as described in Sections 1(a)(i) through 1(a)(v) of the Fee Schedule. Under the current tiers, Members that achieve certain volume criteria may qualify for reduced fees or enhanced credits for various executions, including executions of Priority Customer and Market Maker orders. In connection with such tiers, the Exchange calculates on a monthly basis a Member’s volume in the applicable category (e.g., Priority Customer orders or Market Maker orders), as specified in the Fee Schedule for each applicable transaction. For example, upon reaching a volume threshold that qualifies a Member for a specified tier under the Priority Customer Rebate Program, a Member receives the enhanced credit or reduced fee associated with the highest tier achieved for each eligible contract executed on the Exchange. Upon reaching a volume threshold that qualifies a Member for a specified tier under the MIAX Market Maker Sliding Scale, however, a Member receives the enhanced credit or reduced fee associated with the tier achieved for each eligible contract executed within that tier on the Exchange. Further, upon reaching a volume threshold that qualifies a Member for a specified tier under the Professional Rebate Program, a Member receives the enhanced credit for each eligible contract executed within that tier based upon that percentage tier only, and will not receive a rebate applicable to any other tier for such contracts.

Under the Exchange’s current Fee Schedule, a Member is permitted to aggregate volume with a Member’s “Affiliates”, which are defined as firms that have at least 75% common ownership with the Member as reflected on each firm’s Form BD, Schedule A. Thus, Members that act as EEMs with affiliated broker-dealers that are Market Makers on the Exchange, and vice-versa, may be able to potentially qualify for certain pricing incentives offered by the Exchange based on such affiliation and aggregation.

The Exchange proposes that all MIAX Market Makers who do not otherwise have a corporate affiliation based upon common ownership with an EEM (whether in the same broker-dealer or in a separate broker-dealer) would be able to appoint an EEM to aggregate its volume for purposes of reaching tiered thresholds under the Fee Schedule, and conversely, all EEMs who do otherwise have a corporate affiliation based upon common ownership with a MIAX Market Maker (whether in the same broker-dealer or in a separate broker-dealer) could appoint a MIAX Market Maker for the same purposes.
The proposal would be available to all MIAX Market Makers and EEMs, except for those MIAX Market Makers who otherwise have a corporate affiliation based upon common ownership with an EEM (and vice versa). The proposed change would enable a MIAX Market Maker without an affiliated EEM to enter into a relationship with an Appointed EEM. By virtue of designating an Appointed Market Maker, an EEM benefits by establishing an execution relationship with a MIAX Market Maker that may potentially provide greater liquidity to trade with its own Priority Customer volume. To be clear, the Exchange notes that an EEM that has a corporate affiliation based upon common ownership with a MIAX Market Maker may only aggregate volumes with its corporate-affiliated MIAX Market Maker, and not with any other MIAX Market Maker. Further, MIAX Market Makers that have multiple Market Maker memberships which are already aggregated by the Exchange for purposes of qualifying the Member for tiered pricing incentives will be treated as a single entity.

Thus, the proposed changes would enable Members that may not currently qualify for tiered pricing incentives to potentially avail themselves of such incentives, as well as to assist Members to potentially achieve a higher tier, thus qualifying for higher credits or reduced transaction fees. The Exchange believes these proposed changes would incentivize Members to direct their order flow to the Exchange to the benefit of all market participants. Further, the Exchange notes that the proposed changes would encourage MIAX Market Makers to increase their participation on the Exchange, which would increase capital commitment and liquidity on the Exchange to the benefit of all market participants.

As proposed, the Exchange will only recognize one such designation for each party once every 12 months (from the date of its most recent designation), which designation would remain in effect unless or until the parties informed the Exchange of its effect unless or until the parties entered into a relationship with an Appointed EEM. By virtue of designating an Appointed Market Maker, the EEM participates based on the fact that it enables parties to rely upon each other’s transaction volumes executed on the Exchange, and potentially increase such volumes, which is beneficial to all Exchange participants. Other exchanges have adopted similar concepts and permit their market makers and order flow providers to appoint one another for purposes of volume aggregation to reach higher volume tier thresholds.

2. Statutory Basis

The Exchange believes that its proposal to amend its fee schedule is consistent with Section 6(b) of the Act in general, and furthers the objectives of Sections 6(b)(4) of the Act, 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 and Section 6(b)(5) of the Act, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed fees and rebates are reasonable, fair and equitable, and non-discriminatory for the following reasons. First, the proposal would be available to all MIAX Market Makers and EEMs (except for those MIAX Market Makers who otherwise have a corporate affiliation based upon common ownership with an EEM (and vice versa)), and the decision to be designated as an “Appointed EEM” or “Appointed Market Maker” is completely voluntary and Members may elect to accept this appointment or not. Excluding Members that have a corporate affiliation by common ownership from also appointing other Members as “Affiliates” is equitable and not unfairly discriminatory because those Members are already eligible to aggregate volume and thus potentially qualify for tiered pricing incentives. In addition, the proposed changes would enable Members that are not able to achieve tiered pricing incentives to potentially avail themselves of such pricing as well as to assist Members that are currently able to achieve such tiers to potentially achieve a higher tier, thus qualifying for higher rebates or lower fees. The Exchange believes these proposed changes would incentivize Members to direct their order flow to the Exchange. Specifically, the proposed changes would enable any MIAX Market Maker (except for those MIAX Market Makers who otherwise have a corporate affiliation based upon common ownership with an EEM) to qualify its Appointed EEM for purposes of potential tiered pricing incentives. Moreover, the proposed change would allow any EEM (except for those EEMs who otherwise have a corporate affiliation based upon common ownership with a MIAX Market Maker), by virtue of designating an Appointed Market Maker, to establish an execution relationship with a MIAX Market Maker that may potentially provide greater liquidity to trade with its own volume, including Priority Customer volume.

The Exchange believes these proposed changes would incentivize Appointed EEMs with an Appointed Market Maker to direct their order flow to the Exchange, which would result in an increase in orders routed to the Exchange which in turn would benefit all market participants by expanding liquidity and providing more trading opportunities on the Exchange. Similarly, the Exchange believes these proposed changes would incentivize Appointed Market Makers with an Appointed EEM to increase their participation on the Exchange, which would increase capital commitment and liquidity and decrease spreads on the Exchange to the benefit of all market participants. The Exchange believes that, similar to volume-based tiers offered by the Exchange, the benefits of the proposal extend to all market participants based on the increased quality of liquidity on the Exchange, including those market participants that opt not to become an Appointed EEM or Appointed Market Maker.

Further, the Exchange believes that the proposal is reasonable and equitably allocated because it is beneficial to all Exchange participants based on the fact that it enables parties to rely upon each other’s transaction volumes executed on the Exchange, and potentially increase such volumes. In turn, as above, the potential increase in order flow, capital commitment and resulting liquidity on the Exchange would benefit all market participants by expanding liquidity, providing more trading opportunities and tighter spreads. The proposal is also reasonable, equitable and not unfairly discriminatory because the Exchange would only recognize one such designation for each party once every 12 months (from the date of its most recent designation), which requirement would impose a measure of exclusivity while
allowing both parties to rely upon each other’s transaction volumes executed on the Exchange, and potentially increase such volumes, again, to the benefit of all market participants. Finally, the Exchange believes the proposal is reasonable, equitable and not unfairly discriminatory and facilitates trading as it may encourage an increase in orders routed to the Exchange, which would expand liquidity and provide more trading opportunities and tighter spreads to the benefit of all market participants, even to those market participants that are either currently affiliated by virtue of their common ownership or that opt not to become an Appointed EEM or Appointed Market Maker under this proposal. Other exchanges have adopted similar concepts.18

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

The Exchange does not believe that the proposed amendments to its fee schedule will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed changes are pro-competitive as they would increase opportunities for MIAX Market Makers and EEMs (who do not otherwise have a corporate affiliation based upon common ownership with an EEM, and MIAX Market Maker, respectively) to potentially qualify for tiered pricing incentives on the Exchange, which may increase intermarket and intramarket competition by incentivizing participants to direct their orders to the Exchange thereby increasing the volume of contracts traded on the Exchange. Enhanced market quality and increased transaction volume that results from the anticipated increase in order flow directed to the Exchange would benefit all market participants and improve competition on the Exchange. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and rebates to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment

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,19 and Rule 19b–4(f)(2)20 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–2017–15 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–2017–15, and should be submitted on or before May 5, 2017.

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

Eduardo A. Aleman, Assistant Secretary.[FR Doc. 2017–07529 Filed 4–13–17; 8:45 am]

SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Amending the Certificate of Incorporation and Bylaws of Its Ultimate Parent Company, Intercontinental Exchange, Inc.

April 10, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)2 and Rule 19b–4 thereunder,3 notice is hereby given that, on March 28, 2017, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) 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 self-regulatory organization. On April 6, 2017, the Exchange filed Amendment No. 1 to the proposal.4 The Commission

18 See supra note 14.
4 Amendment No. 1 clarifies that ICE is a public company listed on the NYSE and that the word
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