

This will allow the Commission, the Exchange, and other interested parties to evaluate the quality of the options markets during Limit States and Straddle States and to assess whether the additional protections noted by the Exchange are sufficient safeguards against the submission of erroneous trades, and whether the Exchange's proposal appropriately balances the protection afforded to an erroneous order sender against the potential hazards associated with providing market participants additional time to review trades submitted during a Limit State or Straddle State.

In addition, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act<sup>25</sup> for approving the proposed rule change on an accelerated basis. This proposal is related to the Plan, which will become operative on April 8, 2013. Without accelerated approval, the proposed rule change would take effect after the Plan's implementation date. Accordingly, the Commission finds that good cause exists for approving the proposed rule change, as modified by Amendments Nos. 1 and 2, on an accelerated basis.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act<sup>26</sup> that the proposed rule change (SR-ISE-2013-22), as modified by Amendments Nos. 1 and 2, is approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>27</sup>

**Kevin M. O'Neill,**  
Deputy Secretary.

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variable for whether those options outlined above have a price change exceeding 30% during the underlying stock's Limit State or Straddle State compared to the last available option price as reported by OPRA before the start of the Limit or Straddle state (1 if observe 30% and 0 otherwise), and another indicator variable for whether the option price within five minutes of the underlying stock leaving the Limit State or Straddle State (or halt if applicable) is 30% away from the price before the start of the Limit State or Straddle State. See ISE Letter, *supra* note 7.

<sup>25</sup> 15 U.S.C. 78s(b)(2).

<sup>26</sup> 15 U.S.C. 78f(b)(2).

<sup>27</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69320; File No. SR-MIAX-2013-13]

### Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish an Administrative Information Subscriber (AIS) and AIS Port Fees

April 5, 2013.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 25, 2013, Miami International Securities Exchange LLC ("MIAX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule (the "Fee Schedule") to add a new category of MIAX participant, an Administrative Information Subscriber, as defined below, and to establish testing and AIS Port Fees for such new participants who wish to receive administrative information (described more fully below) via connectivity with the MIAX System. The Exchange also proposes technical amendments to the Fee Schedule as described below.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on April 1, 2013.

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 Web site at [http://www.miaxoptions.com/filter/wotitle/rule\\_filing](http://www.miaxoptions.com/filter/wotitle/rule_filing), at MIAX's principal office, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange included statements

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

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

##### 1. Purpose

The purpose of the proposed rule change is to amend the MIAX Options Fee Schedule (the "Fee Schedule") to add a new category of MIAX participant, an Administrative Information Subscriber ("AIS"), as defined below, and to establish testing and AIS Port Fees for such new participants who wish to receive administrative information (described more fully below) via connectivity with the MIAX System.

Concurrently with the instant proposal, the Exchange filed a proposed rule change to establish fees for distributors of the MIAX Top of Market data product ("ToM").<sup>3</sup> ToM provides distributors with a direct data feed that includes the Exchange's best bid and offer, with aggregate size, and last sale information, based on displayable order and quoting interest on the Exchange.

In addition to MIAX's best bid and offer, with aggregate size and last sale information, distributors that subscribe to ToM also receive: opening imbalance condition information; opening routing information; Expanded Quote Range<sup>4</sup> information, as provided in MIAX Rule 503(f)(5); Post-Halt Notification,<sup>5</sup> as provided in MIAX Rule 504(d); and Liquidity Refresh<sup>6</sup> condition

<sup>3</sup> See SR-MIAX-2013-14.

<sup>4</sup> Where there is an imbalance at the price at which the maximum number of contracts can trade that is also at or within the highest valid width quote bid and lowest valid width quote offer, the System will calculate an Expanded Quote Range ("EQR"). The EQR will be recalculated any time a Route Timer or Imbalance Timer expires if material conditions of the market (imbalance size, ABBO price or size, liquidity price or size, etc.) have changed during the timer. Once calculated, the EQR will represent the limits of the range in which transactions may occur during the opening process. See Exchange Rule 503(f)(5).

<sup>5</sup> After the Exchange has determined to end a trading system halt, the System will broadcast to subscribers of the Exchange's data feeds, a Post-Halt Notification. See Exchange Rule 504(d).

<sup>6</sup> If a Market Maker quote was all or part of the MIAX Best Bid or Offer ("MBBO") and the Market Maker's quote was exhausted by the partial execution of the initiating order, the System will

information, as provided in MIAx Rule 515(c)(1)(iii)(A). This additional information (the “administrative information”) is included in the ToM feed and is not top of market information. The administrative information is also currently available to MIAx Market Makers via connectivity with the MIAx Express Interface (“MEI”),<sup>7</sup> for which they are assessed connectivity fees.

In order to accommodate those who wish to receive the administrative information but who do not wish to subscribe to the ToM product or register as a MIAx Market Maker, the Exchange will make the administrative information available to any participant via connectivity with an AIS Port, as described below.

#### AIS

An AIS is a market participant that connects with the MIAx System for purposes of receiving the administrative information described above. Thus, an AIS that elects not to receive the top of market data through a subscription to ToM or act as a MIAx Market Maker will be able receive [sic] the administrative information via connectivity to the MIAx System through an AIS Port.<sup>8</sup>

#### API Testing and Certification Fee

An AIS, whether a MIAx Member or non-Member, will be assessed a one-time Application Programming Interface (“API”) Testing and Certification fee of \$1,000.00. An API makes it possible for Member or non-Member software to communicate with Exchange software applications, and is subject to Member testing with, and certification by, the Exchange. The fee represents costs incurred by the Exchange as it works with each Member while testing and certifying that the Member’s software systems communicate properly with MIAx.

The Exchange proposes a lower API Testing and Certification Fee for an AIS than that which is already in place for other participants such as Third Party Vendors and Market Makers who are subscribers of MIAx’s market and other data feeds. The higher fee charged to such participants reflects the greater amount of time spent by MIAx

employees testing and certifying them due to the additional testing complexity of those feeds or configurations. Also, because third party vendors are redistributing data and reselling services to other market participants, the number and types of scenarios that need to be tested are more numerous and complex than those tested and certified for an AIS. Therefore, the Exchange believes that the proposed \$1,000 API Testing and Certification Fee for an AIS is reasonable and not unfairly discriminatory.

#### Monthly System Connectivity Fees

MIAx will assess a monthly Network Connectivity Fee of \$1,000.00 for a one Gigabit connection, and \$5,000.00 for a ten Gigabit connection to an AIS, whether such AIS is a MIAx Member or non-Member. Respecting Members, the Exchange charges the same monthly Network Connectivity Fee to all individual firms, which would include an AIS. Respecting non-Members, the Exchange charges Service Bureaus<sup>9</sup> and Extranet Providers a higher fee of \$2,000.00 for a one Gigabit connection, and \$10,000.00 for a ten Gigabit connection.

MIAx proposes to assess a lower fee to an AIS than to non-Member Service Bureaus and Extranet Providers to reflect the fact that Service Bureaus and Extranet Providers serve as conduits to MIAx Members that do not have their own proprietary systems or do not directly connect to MIAx. The Service Bureaus and Extranet Providers recover the cost of the MIAx Network Connectivity fee from their customers, resulting in a lower overall fee to an AIS.

The Member Network Connectivity fee will be pro-rated for a new AIS Member or non-Member connecting to the MIAx System based on the number of trading days on which the AIS received administrative information by way of connectivity with MIAx, divided by the total number of trading days in such month, multiplied by the monthly rate.

#### Port Fees

The Exchange will assess monthly AIS Port Fees for the use of AIS Ports, which provide an AIS with the connectivity necessary to receive the administrative information from the MIAx System.

The Exchange will assess monthly AIS Port fees based upon the number of

Exchange matching engines<sup>10</sup> to which an AIS connects. An AIS will be allocated two AIS ports for each matching engine they use. For example, an AIS that wishes to receive administrative information in just one symbol would require the two AIS ports in a single matching engine; an AIS wishing to receive the administrative information in all symbols traded on the Exchange would require the two AIS Ports in each of the Exchange’s matching engines.

The Exchange will assess a monthly AIS Port fee of \$1,000.00 to an AIS for the first matching engine on which an AIS has the two ports, \$250.00 each for the second through fifth matching engines on which the AIS has the two ports, and \$125.00 each for the sixth matching engine and any additional matching engines on which the AIS has the two ports.

The Exchange proposes to assess lower AIS Port Fees than it assesses for Market Maker MEI Port Fees because Market Makers will use the MEI connectivity to submit quotes, whereas an AIS will not. The higher charge for MEI Port Fees reflects the greater amount of Exchange infrastructure that will be used by Market Makers in submitting quotes as compared to the infrastructure needed by an AIS (who will not submit quotes), and the greater amount of time spent by MIAx employees engaged in support, maintenance, quality control and other services on behalf of Market Makers.

#### Technical Amendments to the Fee Schedule

The Exchange also proposes a technical amendment to the Fee Schedule by deleting obsolete provisions stating that monthly FIX, MEI, fees and MIAx Member Participant Identifier (“MPID”) fees will be in effect beginning January 1, 2013, and stating that Clearing Trade Drop Port Fees will be Effective February 1, 2013. The Exchange also proposes to delete language from the Fee Schedule that states that MEI Port fees will be capped at \$1,000 per month per Market Maker until the first full calendar month during which the Exchange lists and trades options overlying at least 100

pause the market for a time period not to exceed one second to allow additional orders or quotes refreshing the liquidity at the MBBO to be received (“liquidity refresh pause”). See Exchange Rule 515(c)(1)(iii)(A).

<sup>7</sup> An MEI Port provides a Market Maker with the connectivity necessary to submit electronic quotes to the MIAx System.

<sup>8</sup> An AIS Port provides an AIS with the connectivity necessary to receive the administrative information from the MIAx System.

<sup>9</sup> A Service Bureau is a technology provider that offers and supplies technology and technology services to a trading firm that does not have its own proprietary system.

<sup>10</sup> A “matching engine” is a part of the MIAx electronic system that processes options quotes and trades on a symbol-by-symbol basis. Some matching engines process option classes with multiple root symbols, and other matching engines are dedicated to one single option root symbol (for example, options on SPY are processed by one single matching engine that is dedicated only to SPY options). A particular root symbol may only be assigned to a single designated matching engine. A particular root symbol may not be assigned to multiple matching engines.

underlying securities. The January 1, 2013 and February 1, 2013 effective dates are no longer relevant, and the Exchange currently lists and trades options overlying more than 100 underlying securities, thus obviating the need for this provision.

## 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) and 6(b)(5) of the Act<sup>12</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges.

An AIS may access the same administrative information as any other participant that connects with the MIAX System. Currently, MIAX assesses monthly MEI Port Fees on Market Makers as set forth in the Fee Schedule. An MEI Port provides a Market Maker with necessary connectivity to submit quotes. The Exchange believes that the proposed testing, connectivity and AIS Port fees to AIS' is reasonable and not unfairly discriminatory because an AIS will still require connectivity in order to receive the administrative information, necessitating Exchange expense for servers, configuration, testing, power, maintenance, and quality control, among other things, that is incurred for anyone connecting to the MIAX System.

The Exchange further believes that the proposed lower monthly AIS Port Fees are equitable and not unfairly discriminatory because of the reduced Exchange expense for servers, configuration, testing, power, maintenance, and quality control that is required for an AIS connecting to an AIS Port vis-à-vis Market Makers connecting with the MIAX System through the MEI Port.

### *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. On the contrary, because an AIS will only receive administrative information via the AIS Port, and will not submit competing quotes with MIAX Market Makers or other market participants, the Exchange believes that the proposed rule change will have no effect on competition in the markets.

### *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>13</sup> At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

## IV. Solicitation of Comments

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

### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MIAX-2013-13 on the subject line.

### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-MIAX-2013-13. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MIAX-2013-13 and should be submitted on or before May 2, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

Kevin M. O'Neill,

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69308; File No. SR-NASDAQ-2013-057]

### **Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 7018 To Establish Fees and Rebates in Connection With NASDAQ's Retail Price Improvement ("RPI") Program**

April 4, 2013.

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

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

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

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

<sup>12</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)(ii).