

(f) <sup>27</sup> of Rule 19b-4 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.

#### 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-NSCC-2022-017 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.
- All submissions should refer to File Number SR-NSCC-2022-017. 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 NSCC and on DTCC's website (<https://dtcc.com/legal/sec-rule-filings.aspx>). 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-NSCC-2022-017 and should be submitted on or before January 25, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>28</sup>

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-96588; File No. SR-MIAX-2022-47]

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

December 28, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 20, 2022, 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: (1) extend the waiver period for certain non-transaction fees applicable to Market Makers<sup>3</sup> that trade solely in Proprietary Products<sup>4</sup> until June 30, 2023; and (2) extend the SPIKES Options Market Maker Incentive Program (the "Incentive Program") until March 31, 2023.

<sup>28</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>3</sup> The term "Market Makers" refers to "Lead Market Makers", "Primary Lead Market Makers" and "Registered Market Makers" collectively. See Exchange Rule 100.

<sup>4</sup> The term "Proprietary Product" means a class of options that is listed exclusively on the Exchange. See Exchange Rule 100.

The text of the proposed rule change is available on the Exchange's website at <http://www.miaxoptions.com/rule-filings>, at MIAX's principal office, and at the Commission's Public Reference Room.

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

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

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

###### 1. Purpose

The Exchange proposes to amend the Fee Schedule to: (1) extend the waiver period for certain non-transaction fees applicable to Market Makers that trade solely in Proprietary Products until June 30, 2023; and (2) extend the Incentive Program until March 31, 2023.

###### Background

On October 12, 2018, the Exchange received approval from the Commission to list and trade on the Exchange options on the SPIKES<sup>®</sup> Index, a new index that measures expected 30-day volatility of the SPDR S&P 500 ETF Trust (commonly known and referred to by its ticker symbol, "SPY").<sup>5</sup> The Exchange adopted its initial SPIKES options transaction fees on February 15, 2019 and adopted a new section of the Fee Schedule—Section (1)(a)(xi), SPIKES—for those fees.<sup>6</sup> Options on the

<sup>5</sup> See Securities Exchange Act Release No. 84417 (October 12, 2018), 83 FR 52865 (October 18, 2018) (SR-MIAX-2018-14) (Order Granting Approval of a Proposed Rule Change by Miami International Securities Exchange, LLC to List and Trade on the Exchange Options on the SPIKES<sup>®</sup> Index).

<sup>6</sup> See Securities Exchange Release No. 85283 (March 11, 2019), 84 FR 9567 (March 15, 2019) (SR-MIAX-2019-11). The Exchange initially filed the proposal on February 15, 2019 (SR-MIAX-2019-04). That filing was withdrawn and replaced with SR-MIAX-2019-11. On September 30, 2020, the Exchange filed its proposal to, among other things, reorganize the Fee Schedule to adopt new Section (1)(b), Proprietary Products Exchange Fees, and moved the fees and rebates for SPIKES options into new Section (1)(b)(i). See Securities Exchange Act Release Nos. 90146 (October 9, 2020), 85 FR 65443 (October 15, 2020) (SR-MIAX-2020-32) and 90814

Continued

<sup>27</sup> 17 CFR 240.19b-4(f).

SPIKES Index began trading on the Exchange on February 19, 2019.

On May 31, 2019, the Exchange filed its first proposal in a series of proposals with the Commission to amend the Fee Schedule to waive certain non-transaction fees applicable to Market Makers that trade solely in Proprietary Products (including options on the SPIKES Index) beginning September 30, 2019, through December 31, 2022.<sup>7</sup> In particular, the Exchange adopted fee waivers for Membership Application fees, monthly Market Maker Trading Permit fees, Application Programming Interface (“API”) Testing and Certification fees for Members,<sup>8</sup> and monthly MIAX Express Interface (“MEI”) Port<sup>9</sup> fees assessed to Market Makers that trade solely in Proprietary Products (including options on SPIKES) throughout the entire period of September 30, 2019 through December 31, 2022. The Exchange now proposes to extend the waiver period for the same non-transaction fees applicable to Market Makers that trade solely in Proprietary Products (including options on SPIKES) until June 30, 2023. In particular, the Exchange proposes to waive Membership Application fees, monthly Market Maker Trading Permit fees, Member API Testing and Certification fees, and monthly MEI Port fees assessed to Market Makers that

trade solely in Proprietary Products (including options on SPIKES) until June 30, 2023.

**Membership Application Fees**

The Exchange currently assesses a one-time Membership Application fee for applications of potential Members. The Exchange assesses a one-time Membership Application fee on the earlier of (i) the date the applicant is certified in the membership system, or (ii) once an application for MIAX membership is finally denied. The one-time application fee is based upon the applicant’s status as either a Market Maker or an Electronic Exchange Member (“EEM”).<sup>10</sup> A Market Maker is assessed a one-time Membership Application fee of \$3,000.

The Exchange proposes that the waiver for the one-time Membership Application fee of \$3,000 for Market Makers that trade solely in Proprietary Products (including options on SPIKES) will be extended from December 31, 2022 until June 30, 2023, which the Exchange proposes to state in the Fee Schedule. The purpose of this proposed change is to continue to provide an incentive for potential Market Makers to submit membership applications, which should result in an increase of potential liquidity in Proprietary Products, including options on SPIKES. Even though the Exchange proposes to extend

the waiver of this particular fee, the overall structure of the fee is outlined in the Fee Schedule so that there is general awareness that the Exchange intends to assess such a fee after June 30, 2023.

**Trading Permit Fees**

The Exchange issues Trading Permits that confer the ability to transact on the Exchange. MIAX Trading Permits are issued to Market Makers and EEMs. Members receiving Trading Permits during a particular calendar month are assessed monthly Trading Permit fees as set forth in the Fee Schedule. As it relates to Market Makers, MIAX currently assesses a monthly Trading Permit fee in any month the Market Maker is certified in the membership system, is credentialed to use one or more MIAX MEI Ports in the production environment and is assigned to quote in one or more classes. MIAX assesses the monthly Market Maker Trading Permit fee for its Market Makers based on the greatest number of classes listed on MIAX that the MIAX Market Maker was assigned to quote in on any given day within a calendar month and the applicable fee rate is the lesser of either the per class basis or percentage of total national average daily volume measurements. A MIAX Market Maker is assessed a monthly Trading Permit fee according to the following table:<sup>11</sup>

Type of trading permit	Monthly MIAX trading permit fee	Market Maker assignments (the lesser of the applicable measurements below) <sup>Ω</sup>	
		Per class	% of National average daily volume
Market Maker (includes RMM, LMM, PLMM) ..	\$7,000.00 12,000.00 * 17,000.00 * 22,000.00	Up to 10 Classes ..... Up to 40 Classes ..... Up to 100 Classes ..... Over 100 Classes .....	Up to 20% of Classes by volume. Up to 35% of Classes by volume. Up to 50% of Classes by volume. Over 50% of Classes by volume up to all Classes listed on MIAX.

<sup>Ω</sup>Excludes Proprietary Products.

\* For these Monthly MIAX Trading Permit Fee levels, if the Market Maker’s total monthly executed volume during the relevant month is less than 0.060% of the total monthly executed volume reported by OCC in the market maker account type for MIAX-listed option classes for that month, then the fee will be \$15,500 instead of the fee otherwise applicable to such level.

MIAX proposes that the waiver for the monthly Trading Permit fee for Market Makers that trade solely in Proprietary Products (including options on SPIKES) will be extended from December 31, 2022, to June 30, 2023, which the Exchange proposes to state in the Fee Schedule. The purpose of this proposed

change is to continue to provide an incentive for Market Makers to provide liquidity in Proprietary Products on the Exchange, which should result in increasing potential order flow and volume in Proprietary Products, including options on SPIKES. Even though the Exchange proposes to extend

the waiver of this particular fee, the overall structure of the fee is outlined in the Fee Schedule so that there is general awareness to potential Members seeking a Trading Permit that the Exchange intends to assess such a fee after June 30, 2023.

(December 29, 2020), 86 FR 327 (January 5, 2021) (SR–MIAX–2020–39).

<sup>7</sup> See Securities Exchange Act Release Nos. 86109 (June 14, 2019), 84 FR 28860 (June 20, 2019) (SR–MIAX–2019–28); 87282 (October 10, 2019), 84 FR 55658 (October 17, 2019) (SR–MIAX–2019–43); 87897 (January 6, 2020), 85 FR 1346 (January 10, 2020) (SR–MIAX–2019–53); 89289 (July 10, 2020), 85 FR 43279 (July 16, 2020) (SR–MIAX–2020–22); 90146 (October 9, 2020), 85 FR 65443 (October 15, 2020) (SR–MIAX–2020–32); 90814 (December 29, 2020), 86 FR 327 (January 5, 2021) (SR–MIAX–2020–39); 91498 (April 7, 2021), 86 FR 19293 (April

13, 2021) (SR–MIAX–2021–06); 93881 (December 30, 2021), 87 FR 517 (January 5, 2022) (SR–MIAX–2021–63); 95259 (July 12, 2022), 87 FR 42754 (July 17, 2022) (SR–MIAX–2022–24); and 96007 (October 7, 2022), 87 FR 62151 (October 13, 2022) (SR–MIAX–2022–32).

<sup>8</sup>The term “Member” means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed “members” under the Exchange Act. See Exchange Rule 100.

<sup>9</sup> Full Service MEI Ports provide Market Makers with the ability to send Market Maker simple and

complex quotes, eQuotes, and quote purge messages to the MIAX System. Full Service MEI Ports are also capable of receiving administrative information. Market Makers are limited to two Full Service MEI Ports per matching engine. See Fee Schedule, note 15.

<sup>10</sup>The term “Electronic Exchange Member” or “EEM” means the holder of a Trading Permit who is not a Market Maker. Electronic Exchange Members are deemed “members” under the Exchange Act. See Exchange Rule 100.

<sup>11</sup> See Fee Schedule, Section (3)(b).

The Exchange also proposes that Market Makers who trade Proprietary Products (including options on SPIKES) along with multi-listed classes will continue to not have Proprietary Products (including SPIKES) counted toward those Market Makers' class assignment count or percentage of total national average daily volume. This exclusion is noted with the symbol "Ω" following the table that shows the monthly Trading Permit fees currently assessed to Market Makers in Section (3)(b) of the Fee Schedule.

**API Testing and Certification Fee**

The Exchange assesses an API Testing and Certification fee to all Members depending upon Membership type. An API makes it possible for Members' software to communicate with MIA X software applications, and is subject to Members testing with, and certification by, MIA X. The Exchange offers four types of interfaces: (i) the Financial Information Exchange Port ("FIX Port"),<sup>12</sup> which enables the FIX Port user (typically an EEM or a Market Maker) to submit simple and complex orders electronically to MIA X; (ii) the MEI Port, which enables Market Makers to submit simple and complex electronic quotes to MIA X; (iii) the Clearing Trade Drop Port ("CTD Port"),<sup>13</sup> which provides real-time trade clearing information to the participants to a trade on MIA X and to the participants' respective clearing firms; and (iv) the FIX Drop Copy Port ("FXD Port"),<sup>14</sup> which provides a copy of real-time trade execution, correction and cancellation information through a FIX

Port to any number of FIX Ports designated by an EEM to receive such messages.

API Testing and Certification fees for Market Makers are assessed (i) initially per API for CTD and MEI ports in the month the Market Maker has been credentialed to use one or more ports in the production environment for the tested API and the Market Maker has been assigned to quote in one or more classes, and (ii) each time a Market Maker initiates a change to its system that requires testing and certification. API Testing and Certification fees will not be assessed in situations where the Exchange initiates a mandatory change to the Exchange's system that requires testing and certification. The Exchange currently assesses a Market Maker an API Testing and Certification fee of \$2,500. The API Testing and Certification fees represent costs incurred by the Exchange as it works with each Member for testing and certifying that the Member's software systems communicate properly with MIA X's interfaces.

MIA X proposes to extend the waiver of the API Testing and Certification fee for Market Makers that trade solely in Proprietary Products (including options on SPIKES) from December 31, 2022 until June 30, 2023, which the Exchange proposes to state in the Fee Schedule. The purpose of this proposed change is to continue to provide an incentive for potential Market Makers to develop software applications to trade in Proprietary Products, including options on SPIKES. Even though the Exchange proposes to extend the waiver of this

particular fee, the overall structure of the fee is outlined in the Fee Schedule so that there is general awareness that the Exchange intends to assess such a fee after June 30, 2023.

**MEI Port Fees**

MIA X assesses monthly MEI Port fees to Market Makers in each month the Member has been credentialed to use the MEI Port in the production environment and has been assigned to quote in at least one class. The amount of the monthly MEI Port fee is based upon the number of classes in which the Market Maker was assigned to quote on any given day within the calendar month, and upon the class volume percentages set forth in the Fee Schedule. The class volume percentage is based on the total national average daily volume in classes listed on MIA X in the prior calendar quarter. Newly listed option classes are excluded from the calculation of the monthly MEI Port fee until the calendar quarter following their listing, at which time the newly listed option classes will be included in both the per class count and the percentage of total national average daily volume. The Exchange assesses MIA X Market Makers the monthly MEI Port fee based on the greatest number of classes listed on MIA X that the MIA X Market Maker was assigned to quote in on any given day within a calendar month and the applicable fee rate that is the lesser of either the per class basis or percentage of total national average daily volume measurement. MIA X assesses MEI Port fees on Market Makers according to the following table:<sup>15</sup>

Monthly MIA X MEI fees	Market Maker assignments (the lesser of the applicable measurements below) Ω	
	Per class	% of National average daily volume
\$5,000.00 .....	Up to 5 Classes .....	Up to 10% of Classes by volume.
\$10,000.00 .....	Up to 10 Classes .....	Up to 20% of Classes by volume.
\$14,000.00 .....	Up to 40 Classes .....	Up to 35% of Classes by volume.
\$17,500.00 * .....	Up to 100 Classes .....	Up to 50% of Classes by volume.
\$20,500.00 * .....	Over 100 Classes .....	Over 50% of Classes by volume up to all Classes listed on MIA X.

Ω Excludes Proprietary Products.

\* For these Monthly MIA X MEI Fees levels, if the Market Maker's total monthly executed volume during the relevant month is less than 0.060% of the total monthly executed volume reported by OCC in the market maker account type for MIA X-listed option classes for that month, then the fee will be \$14,500 instead of the fee otherwise applicable to such level.

<sup>12</sup> A FIX Port is an interface with MIA X systems that enables the Port user (typically an Electronic Exchange Member or a Market Maker) to submit simple and complex orders electronically to MIA X. See Fee Schedule, Section (5)(d)(i).

<sup>13</sup> Clearing Trade Drop ("CTD") provides Exchange members with real-time clearing trade updates. The updates include the Member's clearing trade messages on a low latency, real-time basis. The trade messages are routed to a Member's connection containing certain information. The information includes, among other things, the following: (i) trade date and time; (ii) symbol

information; (iii) trade price/size information; (iv) Member type (for example, and without limitation, Market Maker, Electronic Exchange Member, Broker-Dealer); (v) Exchange Member Participant Identifier ("MPID") for each side of the transaction, including Clearing Member MPID; and (vi) strategy specific information for complex transactions. CTD Port Fees will be assessed in any month the Member is credentialed to use the CTD Port in the production environment. See Fee Schedule, Section (5)(d)iii.

<sup>14</sup> The FIX Drop Copy Port ("FXD") is a messaging interface that will provide a copy of real-

time trade execution, trade correction and trade cancellation information for simple and complex orders to FIX Drop Copy Port users who subscribe to the service. FIX Drop Copy Port users are those users who are designated by an EEM to receive the information and the information is restricted for use by the EEM only. FXD Port Fees will be assessed in any month the Member is credentialed to use the FXD Port in the production environment. See Fee Schedule, Section (5)(d)iv.

<sup>15</sup> See Fee Schedule (5)(d)(ii).

MIAX proposes to extend the waiver of the monthly MEI Port fee for Market Makers that trade solely in Proprietary Products (including options on SPIKES) from December 31, 2022 until June 30, 2023, which the Exchange proposes to state in the Fee Schedule. The purpose of this proposal is to continue to provide an incentive to Market Makers to connect to MIAX through the MEI Port such that they will be able to trade in MIAX Proprietary Products. Even though the Exchange proposes to extend the waiver of this particular fee, the overall structure of the fee is outlined in the Fee Schedule so that there is general awareness that the Exchange intends to assess such a fee after June 30, 2023.

The Exchange notes that for the purposes of this proposed change, other Market Makers who trade MIAX Proprietary Products (including options on SPIKES) along with multi-listed classes will continue to not have Proprietary Products (including SPIKES) counted toward those Market Makers' class assignment count or percentage of total national average daily volume. This exclusion is noted by the symbol "Ω" following the table that shows the monthly MEI Port Fees currently assessed for Market Makers in Section 5(d)(ii) of the Fee Schedule.

The proposed extension of the fee waivers are targeted at market participants, particularly market makers, who are not currently members of MIAX, who may be interested in being a Market Maker in Proprietary Products on the Exchange. The Exchange estimates that there are fewer than ten (10) such market participants that could benefit from the extension of these fee waivers. The proposed extension of the fee waivers does not apply differently to different sizes of market participants, however the fee waivers do only apply to Market Makers (and not EEMs).

Market Makers, unlike other market participants, take on a number of obligations, including quoting obligations that other market participants do not have. Further, Market Makers have added market making and regulatory requirements, which normally do not apply to other market participants. For example, Market Makers have obligations to maintain continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and to not make bids or offers or enter into transactions that are inconsistent with a course of dealing. Accordingly, the Exchange believes it is reasonable and not unfairly discriminatory to continue to offer the

fee waivers to Market Makers because the Exchange is seeking additional liquidity providers for Proprietary Products, in order to enhance liquidity and spreads in Proprietary Products, which is traditionally provided by Market Makers, as opposed to EEMs.

#### Incentive Program Extension

On September 30, 2021, the Exchange filed its initial proposal to implement a SPIKES Options Market Maker Incentive Program for SPIKES options to incentivize Market Makers to improve liquidity, available volume, and the quote spread width of SPIKES options beginning October 1, 2021, and ending December 31, 2021.<sup>16</sup> Technical details regarding the Incentive Program were published in a Regulatory Circular on September 30, 2021.<sup>17</sup> On October 12, 2021, the Exchange withdrew SR-MIAX-2021-45 and refiled its proposal to implement the Incentive Program to provide additional details.<sup>18</sup> In that filing, the Exchange specifically noted that the Incentive Program would expire at the end of the period (December 31, 2021) unless the Exchange filed another 19b-4 Filing to amend the fees (or extend the Incentive Program).<sup>19</sup>

On December 23, 2021, the Exchange filed its proposal to extend the Incentive Program until March 31, 2022.<sup>20</sup> In that filing, the Exchange specifically noted that the Incentive Program would expire at the end of the period (March 31, 2022) unless the Exchange filed another 19b-4 Filing to amend the fees (or extend the Incentive Program).<sup>21</sup> On March 23, 2022, the Exchange filed its proposal to extend the Incentive Program until June 30, 2022.<sup>22</sup> In that filing, the Exchange specifically noted that the Incentive Program would expire at the end of the period (June 30, 2022) unless the Exchange filed another 19b-4 Filing to amend the fees (or extend the Incentive Program).<sup>23</sup> On June 29, 2022, the Exchange filed its proposal to extend the Incentive Program until

September 30, 2022.<sup>24</sup> In that filing, the Exchange specifically noted that the Incentive Program would expire at the end of the period (September 30, 2022) unless the Exchange filed another 19b-4 Filing to amend the fees (or extend the Incentive Program).<sup>25</sup> On September 30, 2022, the Exchange filed its proposal to extend the Incentive Program until December 31, 2022.<sup>26</sup> In that filing, the Exchange specifically noted that the Incentive Program would expire at the end of the period (December 31, 2022) unless the Exchange filed another 19b-4 Filing to amend the fees (or extend the Incentive Program).<sup>27</sup> The Exchange now proposes to extend the Incentive Program until March 31, 2023.<sup>28</sup>

The Exchange proposes to extend the Incentive Program for SPIKES options to continue to incentivize Market Makers to improve liquidity, available volume, and the quote spread width of SPIKES options. Currently, to be eligible to participate in the Incentive Program, a Market Maker must meet certain minimum requirements related to quote spread width in certain in-the-money (ITM) and out-of-the-money (OTM) options as determined by the Exchange and communicated to Members via Regulatory Circular.<sup>29</sup> Market Makers must also satisfy a minimum time in the market in the front 2 expiry months of 70%, and have an average quote size of 25 contracts. The Exchange established two separate incentive compensation pools that are used to compensate Market Makers that satisfy the criteria pursuant to the Incentive Program.

The first pool (Incentive 1) has a total amount of \$40,000 per month, which is allocated to Market Makers that meet the minimum requirements of the Incentive Program. Market Makers are required to meet minimum spread width requirements in a select number of ITM and OTM SPIKES option contracts as determined by the Exchange and communicated to Members via Regulatory Circular.<sup>30</sup> A complete description of how the Exchange calculates the minimum spread width requirements in ITM and OTM SPIKES options can be found in

<sup>16</sup> See SR-MIAX-2021-45.

<sup>17</sup> See MIAX Options Regulatory Circular 2021-56, SPIKES Options Market Maker Incentive Program (September 30, 2021) available at [https://www.miaxoptions.com/sites/default/files/circularfiles/MIAX\\_Options\\_RC\\_2021\\_56.pdf](https://www.miaxoptions.com/sites/default/files/circularfiles/MIAX_Options_RC_2021_56.pdf).

<sup>18</sup> See Securities Exchange Act Release No. 93424 (October 26, 2021), 86 FR 60322 (November 1, 2021) (SR-MIAX-2021-49).

<sup>19</sup> See *id.*

<sup>20</sup> See Securities Exchange Act Release No. 93881 (December 30, 2021), 87 FR 517 (January 5, 2022) (SR-MIAX-2021-63).

<sup>21</sup> See *id.*

<sup>22</sup> See Securities Exchange Act Release No. 94574 (April 1, 2022), 87 FR 20492 (April 7, 2022) (SR-MIAX-2022-12).

<sup>23</sup> See *id.*

<sup>24</sup> See Securities Exchange Act Release No. 95259 (July 12, 2022), 87 FR 42754 (July 17, 2022) (SR-MIAX-2022-24).

<sup>25</sup> See *id.*

<sup>26</sup> See Securities Exchange Act Release No. 96007 (October 7, 2022), 87 FR 62151 (October 13, 2022) (SR-MIAX-2022-32).

<sup>27</sup> See *id.*

<sup>28</sup> The Exchange notes that at the end of the extension period, the Incentive Program will expire unless the Exchange files another 19b-4 Filing to amend the terms or extend the Incentive Program.

<sup>29</sup> See *supra* note 17.

<sup>30</sup> See *id.*

the published Regulatory Circular.<sup>31</sup> Market Makers are also required to maintain the minimum spread width, described above, for at least 70% of the time in the front two (2) SPIKES options contract expiry months and maintain an average quote size of at least 25 SPIKES options contracts. The amount available to each individual Market Maker is capped at \$10,000 per month for satisfying the minimum requirements of the Incentive Program. In the event that more than four Market Makers meet the requirements of the Incentive Program, each qualifying Market Maker is entitled to receive a pro-rated share of the \$40,000 monthly compensation pool dependent upon the number of qualifying Market Makers in that particular month.

The second pool (Incentive 2 Pool) is capped at a total amount of \$100,000 per month which is used during the Incentive Program to further incentivize Market Makers who meet or exceed the requirements of Incentive 1 (“qualifying Market Makers”) to provide tighter quote width spreads. The Exchange ranks each qualifying Market Maker’s quote width spread relative to each other qualifying Market Maker’s quote width spread. Market Makers with tighter spreads in certain strikes, as determined by the Exchange and communicated to Members via Regulatory Circular,<sup>32</sup> are eligible to receive a pro-rated share of the compensation pool as calculated by the Exchange and communicated to Members via Regulatory Circular,<sup>33</sup> not to exceed \$25,000 per Member per month. Qualifying Market Makers are ranked relative to each other based on the quality of their spread width (*i.e.*, tighter spreads are ranked higher than wider spreads) and the Market Maker with the best quality spread width receives the highest rebate, while other eligible qualifying Market Makers receive a rebate relative to their quality spread width.

The Exchange proposes to extend the Incentive Program until June 30, 2023 [sic]. The Exchange does not propose to make any amendments to how it calculates any of the incentives provided for in Incentive Pools 1 or 2. The details of the Incentive Program can continue to be found in the Regulatory Circular that was published on September 30, 2021 to all Exchange Members.<sup>34</sup> The purpose of this extension is to continue to incentivize Market Makers to improve liquidity,

available volume, and the quote spread width of SPIKES options. The Exchange will announce the extension of the Incentive Program to all Members via a Regulatory Circular.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act<sup>35</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>36</sup> in particular, in that it is an equitable allocation of reasonable 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 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 that the proposal to extend the fee waiver period for certain non-transaction fees for Market Makers that trade solely in Proprietary Products is an equitable allocation of reasonable fees because the proposal continues to waive non-transaction fees for a limited period of time in order to enable the Exchange to improve its overall competitiveness and strengthen its market quality for all market participants in MIAX’s Proprietary Products, including options on SPIKES. The Exchange believe the proposed extension of the fee waivers is fair and equitable and not unreasonably discriminatory because it applies to all market participants not currently registered as Market Makers at the Exchange. Any market participant may choose to satisfy the additional requirements and obligations of being a Market Maker and trade solely in Proprietary Products in order to qualify for the fee waivers.

The Exchange believes that the proposed extension of the fee waivers is equitable and not unfairly discriminatory for Market Makers as compared to EEMs because Market Makers, unlike other market participants, take on a number of obligations, including quoting obligations that other market participants do not have. Further, Market Makers have added market making and regulatory requirements, which normally do not apply to other

market participants. For example, Market Makers have obligations to maintain continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and to not make bids or offers or enter into transactions that are inconsistent with a course of dealing.

The Exchange believes it is reasonable and equitable to continue to waive the one-time Membership Application Fee, monthly Trading Permit Fee, API Testing and Certification Fee, and monthly MEI Port Fee for Market Makers that trade solely in Proprietary Products (including options on SPIKES) until June 30, 2023, since the waiver of such fees provides incentives to interested market participants to trade in Proprietary Products. This should result in increasing potential order flow and liquidity in MIAX Proprietary Products, including options on SPIKES.

The Exchange believes it is reasonable and equitable to continue to waive the API Testing and Certification fee assessable to Market Makers that trade solely in Proprietary Products (including options on SPIKES) until June 30, 2023, since the waiver of such fees provides incentives to interested Members to develop and test their APIs sooner. Determining system operability with the Exchange’s system will in turn provide MIAX with potential order flow and liquidity providers in Proprietary Products.

The Exchange believes it is reasonable, equitable and not unfairly discriminatory that Market Makers who trade in Proprietary Products along with multi-listed classes will continue to not have Proprietary Products counted toward those Market Makers’ class assignment count or percentage of total national average daily volume for monthly Trading Permit Fees and monthly MEI Port Fees in order to incentivize existing Market Makers who currently trade in multi-listed classes to also trade in Proprietary Products, without incurring certain additional fees.

The Exchange believes that the proposed extension of the fee waivers constitutes an equitable allocation of reasonable fees and other charges among its Members and issuers and other persons using its facilities. The proposed extension of the fee waivers means that all prospective market makers that wish to become Market Maker Members of the Exchange and quote solely in Proprietary Products may do so and have the above-mentioned fees waived until June 30, 2023. The proposed extension of the fee waivers will continue to not apply to

<sup>31</sup> See *id.*

<sup>32</sup> See *id.*

<sup>33</sup> See *id.*

<sup>34</sup> See *id.*

<sup>35</sup> 15 U.S.C. 78f(b).

<sup>36</sup> 15 U.S.C. 78f(b)(4) and (5).

potential EEMs because the Exchange is seeking to enhance the quality of its markets in Proprietary Products through introducing more competition among Market Makers in Proprietary Products. In order to increase the competition, the Exchange believes that it must continue to waive entry type fees for such Market Makers. EEMs do not provide the benefit of enhanced liquidity which is provided by Market Makers, therefore the Exchange believes it is reasonable and not unfairly discriminatory to continue to only offer the proposed fee waivers to Market Makers (and not EEMs). Further, the Exchange believes it is reasonable and not unfairly discriminatory to continue to exclude Proprietary Products from an existing Market Maker's permit fees and port fees, in order to incentivize such Market Makers to quote in Proprietary Products. The amount of a Market Maker's permit and port fee is determined by the number of classes quoted and volume of the Market Maker. By excluding Proprietary Products from such fees, the Exchange is able to incentivize Market Makers to quote in Proprietary Products. EEMs do not pay permit and port fees based on the classes traded or volume, so the Exchange believes it is reasonable, equitable, and not unfairly discriminatory to only offer the exclusion to Market Makers (and not EEMs).

The Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to extend the Incentive Program for Market Makers in SPIKES options until March 31, 2023. The Incentive Program is reasonably designed because it will continue to incentivize Market Makers to provide quotes and increased liquidity in select SPIKES options contracts. The Incentive Program is reasonable, equitably allocated and not unfairly discriminatory because all Market Makers in SPIKES options may continue to qualify for Incentive 1 and Incentive 2, dependent upon each Market Maker's quoting in SPIKES options in a particular month. Additionally, if a SPIKES Market Maker does not satisfy the requirements of Incentive Pool 1 or 2, then it simply will not receive the rebate offered by the Incentive Program for that month.

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to continue to offer this financial incentive to SPIKES Market Makers because it will continue to benefit all market participants trading in SPIKES options. SPIKES options is a Proprietary Product on the Exchange and the continuation of the Incentive Program encourages SPIKES Market

Makers to satisfy a heightened quoting standard, average quote size, and time in market. A continued increase in quoting activity and tighter quotes may yield a corresponding increase in order flow from other market participants, which benefits all investors by deepening the Exchange's liquidity pool, potentially providing greater execution incentives and opportunities, while promoting market transparency and improving investor protection.

The Exchange believes that the Incentive Program is equitable and not unfairly discriminatory because it will continue to promote an increase in SPIKES options liquidity, which may facilitate tighter spreads and an increase in trading opportunities to the benefit of all market participants. The Exchange believes it is reasonable to operate the Incentive Program for a continued limited period of time to strengthen market quality for all market participants. The resulting increased volume and liquidity will benefit those Members who are eligible to participate in the Incentive Program and will also continue to benefit those Members who are not eligible to participate in the Incentive Program by providing more trading opportunities and tighter spreads.

#### *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.

#### *Intra-Market Competition*

The Exchange believes that the proposal to extend certain of the non-transaction fee waivers until June 30, 2023 for Market Makers that trade solely in Proprietary Products would increase intra-market competition by incentivizing new potential Market Makers to quote in Proprietary Products, which will enhance the quality of quoting and increase the volume of contracts in Proprietary Products traded on MIAX, including options on SPIKES. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market liquidity for the Exchange's Proprietary Products. Enhanced market quality and increased transaction volume in Proprietary Products that results from the anticipated increase in Market Maker activity on the Exchange will benefit all market participants and improve competition on the Exchange.

The Exchange does not believe that the proposed rule change will impose

any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes for each separate type of market participant (new Market Makers and existing Market Makers) will be assessed equally to all such market participants. While different fees are assessed to different market participants in some circumstances, these different market participants have different obligations and different circumstances as discussed above. For example, Market Makers have quoting obligations that other market participants (such as EEMs) do not have.

The Exchange believes that the proposed extension of the Incentive Program to March 31, 2023 would continue to increase intra-market competition by incentivizing Market Makers to quote SPIKES options, which will continue to enhance the quality of quoting and increase the volume of contracts available to trade in SPIKES options. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market liquidity for SPIKES options. Enhanced market quality and increased transaction volume in SPIKES options that results from the anticipated increase in Market Maker activity on the Exchange will benefit all market participants and improve competition on the Exchange.

#### *Inter-Market Competition*

The Exchange does not believe that the proposed rule changes will impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed extension of the fee waivers and the extension of the Incentive Program apply only to the Exchange's Proprietary Products (including options on SPIKES), which are traded exclusively on the Exchange.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>37</sup> and Rule 19b-4(f)(2)<sup>38</sup> thereunder. At any time within 60 days of the filing of the

<sup>37</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>38</sup> 17 CFR 240.19b-4(f)(2).

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-2022-47 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-2022-47. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from

comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MIAX-2022-47 and should be submitted on or before January 25, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>39</sup>

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 96587; File No. SR-ISE-2022-29]

### Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend ISE Options 7, Section 4

December 28, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 13, 2022, Nasdaq ISE, LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "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

The Exchange proposes to amend ISE's Pricing Schedule at Options 7, Section 4.<sup>3</sup>

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/ise/rules>, at the principal office of the Exchange, 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 ISE's Pricing Schedule at Options 7, Section 4, Complex Order Fees and Rebates. The Exchange proposes to: (1) increase Complex Order Priority Customer<sup>4</sup> Rebates for Select Symbols<sup>5</sup> and Non-Select Symbols;<sup>6</sup> (2) increase Complex Order Taker Fees for Non-Select Symbols; and (3) amend notes 3 and 8 of Options 7, Section 4 related to Complex Orders. Each change will be described below.

##### Complex Order Priority Customer Rebates

The Exchange proposes to amend Tiers 6 through 10 of the Complex Order Priority Customer Rebates for Select Symbols and Non-Select Symbols. The Exchange currently offers Members Complex Order Priority Customer Rebates based on a percentage of Total Affiliated Member or Affiliated Entity Complex Order Volume (excluding Crossing Orders<sup>7</sup> and Responses to Crossing Orders<sup>8</sup>) Calculated as a Percentage of Customer Total Consolidated Volume. The Exchange

<sup>4</sup> A "Priority Customer" is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), as defined in ISE Options 1, Section 1(a)(37). Unless otherwise noted, the term "Priority Customer" includes "Retail." See Options 7, Section 1(c).

<sup>5</sup> "Select Symbols" are options overlying all symbols listed on the Nasdaq ISE that are in the Penny Interval Program. See Options 7, Section 1(c).

<sup>6</sup> "Non-Select Symbols" are options overlying all symbols excluding Select Symbols. See Options 7, Section 1(c).

<sup>7</sup> A "Crossing Order" is an order executed in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Price Improvement Mechanism (PIM) or submitted as a Qualified Contingent Cross order. For purposes of this Pricing Schedule, orders executed in the Block Order Mechanism are also considered Crossing Orders. See Options 7, Section 1(c).

<sup>8</sup> "Responses to Crossing Order" is any contra-side interest submitted after the commencement of an auction in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Block Order Mechanism or PIM. See Options 7, Section 1(c).

<sup>39</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>3</sup> The Exchange originally filed SR-ISE-2022-27 on December 1, 2022. On December 13, 2022, the Exchange withdrew SR-ISE-2022-27 and submitted this rule change.