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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. * SR 2022 - * 21

Amendment No. (req. for Amendments *)

Filing by MIAX PEARL, LLC

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

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|--|---|--|--|--|---|
| Initial * <input checked="" type="checkbox"/> | Amendment * <input type="checkbox"/> | Withdrawal <input type="checkbox"/> | Section 19(b)(2) * <input type="checkbox"/> | Section 19(b)(3)(A) * <input checked="" type="checkbox"/> | Section 19(b)(3)(B) * <input type="checkbox"/> |
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| Pilot <input type="checkbox"/> | Extension of Time Period for Commission Action * <input type="checkbox"/> | Date Expires * <input type="text"/> |
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Rule

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| <input type="checkbox"/> 19b-4(f)(1) | <input type="checkbox"/> 19b-4(f)(4) |
| <input checked="" type="checkbox"/> 19b-4(f)(2) | <input type="checkbox"/> 19b-4(f)(5) |
| <input type="checkbox"/> 19b-4(f)(3) | <input type="checkbox"/> 19b-4(f)(6) |

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010
Section 806(e)(1) *

Section 806(e)(2) *

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 3C(b)(2) *

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Replace SR-PEARL-2022-17

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Greg Last Name * Ziegler

Title * Senior Counsel

E-mail * gziegler@miaxoptions.com

Telephone * (609) 897-1483 Fax

Signature

Pursuant to the requirements of the Securities Exchange of 1934, MIAX PEARL, LLC has duty caused this filing to be signed on its behalf by the undersigned thereunto duty authorized.

Date 05/12/2022

(Title *)

By Gregory P. Ziegler

Senior Counsel

(Name *)

NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Gregory Ziegler Date: 2022.05.12 10:06:00 -04'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EDFS website.

Form 19b-4 Information *

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SR-PEARL-2022-21 19b4 20220511.c

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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SR-PEARL-2022-21-Exhibit 1.docx

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2- Notices, Written Comments, Transcripts, Other Communications

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit Sent As Paper Document

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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SR-PEARL-2022-21 - Exhibit 5 20220

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. **Text of the Proposed Rule Change**

(a) MIAX PEARL, LLC (“MIAX Pearl” or “Exchange”), pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² proposes to amend the fee schedule (the “Fee Schedule”) applicable to MIAX Pearl Equities, an equities trading facility of the Exchange.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1, and a copy of the applicable section of the Fee Schedule is attached hereto as Exhibit 5.

(b) Inapplicable.

(c) Inapplicable.

2. **Procedures of the Self-Regulatory Organization**

The proposed rule change was approved by the Chief Executive Officer of the Exchange or duly appointed designee pursuant to authority delegated by the MIAX Pearl Board of Directors on January 28, 2021. Exchange staff will advise the Board of Directors of any action taken pursuant to delegated authority. No other action by the Exchange is necessary for the filing of the proposed rule change.

Questions and comments on the proposed rule changes may be directed to Greg Ziegler, VP and Senior Counsel, at (609) 897-1483.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

a. Purpose

The purpose of the proposed rule change is to amend the Exchange's Fee Schedule to adopt a new tiered pricing structure, "Market Quality Tiers" or "MQ Tiers," designed to improve market quality on the Exchange in certain specific securities, the "Market Quality Securities" or "MQ Securities," and more generally in the form of an enhanced rebate for executions of displayed orders in securities priced at or above \$1.00 per share that add liquidity to the Exchange (such orders, "Added Displayed Volume") for Members that meet certain minimum quoting requirements across a specified number of securities, as further described below. The Exchange originally filed this proposal on April 29, 2022 (SR-PEARL-2022-17). On May 12, 2022, the Exchange withdrew SR-PEARL-2022-17 and resubmitted this proposal.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues, to which market participants may direct their order flow. Based on publicly available information, no single registered equities exchange currently has more than approximately 17% of the total market share of executed volume of equities trading, and the Exchange currently represents approximately 1% of the overall market share.³

³ See MIAX's "The Market at a Glance", available at <https://www.miaxoptions.com/> (last visited April 27, 2022).

Additionally, in response to the competitive environment, the Exchange also offers tiered pricing, which provides Equity Members⁴ (“Members”) with opportunities to qualify for higher rebates or lower fees when certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

Adoption of Market Quality Tiers

The Exchange proposes to adopt a new tiered pricing incentive, referred to by the Exchange as the “Market Quality Tiers” (or “MQ Tiers”), in the form of an enhanced rebate for executions of Added Displayed Volume for Members that qualify for the incentive by meeting certain minimum quoting requirements across a specified number of securities, as further described below. The proposed MQ Tiers are designed to encourage Members to improve market quality by quoting at the NBBO⁵ for a significant portion of the day (as defined below) on the Exchange in certain specific securities, referred to by the Exchange as MQ Securities and in all securities more generally.⁶ By analyzing volume statistics and time at the NBBO the Exchange has identified a number of securities for which it intends to improve these metrics (the MQ Securities). The list of MQ Securities is published on the Exchange’s website. The Exchange believes the MQ Tiers will benefit the Exchange and investors by providing improved

⁴ The term “Equity Member” is a Member authorized by the Exchange to transact business on MIAX Pearl Equities. See Exchange Rule 1901.

⁵ With respect to the trading of equity securities, the term “NBB” shall mean the national best bid, the term “NBO” shall mean the national best offer, and the term “NBBO” shall mean the national best bid and offer. See Exchange Rule 1901.

⁶ The Exchange notes that it will aggregate each Member’s MPIDs and view quotes by Member Firm to determine the number of securities in which the Member meets the quoting requirements for that day.

trading conditions for all market participants through narrower bid-ask spreads and increased depth of liquidity available at the NBBO in a broad base of securities, including the MQ Securities.

The Exchange currently provides a standard rebate of \$0.0029 per share for executions of Added Displayed Volume.⁷ The Exchange now proposes to introduce a tiered pricing structure in which it will provide an enhanced rebate for executions of Added Displayed Volume to Members that meet certain quoting requirements. Specifically, the Exchange proposes to provide an enhanced rebate of \$0.0032 in Tier 1 of the Market Quality Tiers for executions of Added Displayed Volume⁸ if the Member's Percent Time at NBBO⁹ is at least 25% in an average of at least 250 securities, at least 50 of which must be MQ Securities, per trading day during the month. Similarly, the Exchange proposes to provide an enhanced rebate of \$0.0034 in Tier 2 of the Market Quality Tiers for executions of Added Displayed Volume if the Member's Percent Time at NBBO is at least 25% in an average of at least 1,000 securities, at least 100 of which must be MQ Securities, per trading day during the month.

As noted above, to qualify for the incentive provided for in Tier 1 of the Market Quality Tiers, a Member must meet the quoting requirement in an average of at least 250 securities

⁷ The Exchange notes that the standard rebate of \$0.0029 per share for executions of Added Displayed Volume in securities priced at or above \$1.00, applicable to Liquidity Indicator Codes AA, AB, and AC, is not changing under this proposal.

⁸ The incentives provided for in the Market Quality Tiers will be applicable to the following Liquidity Indicator Codes: AA, AB, and AC. See section 1)b) Liquidity Indicator Codes and Associated Fees of the Exchange's Fee Schedule available on its public website (available at https://www.miaxoptions.com/sites/default/files/fee_schedule-files/MIAX_Pearl_Equities_Fee_Schedule_04012022_b.pdf).

⁹ As proposed, the term "Percent Time at NBBO" means the aggregate of the percentage of time during regular trading hours where a Member has a displayed order of at least one round lot at the national best bid ("NBB") or the national best offer ("NBO").

traded on the Exchange (the “Tier 1 Securities Requirement”), at least 50 of which must be MQ Securities (the “Tier 1 MQ Securities Requirement”), per trading day during the month. To qualify for the incentive provided for in Tier 2 of the Market Quality Tiers, a Member must meet the quoting requirement in an average of at least 1,000 securities traded on the Exchange (the “Tier 2 Securities Requirement”), at least 100 of which must be MQ Securities (the “Tier 2 MQ Securities Requirement”), per trading day during the month. The Tier 1 Securities Requirement and the Tier 2 Securities Requirement, collectively the “Securities Requirement” and the Tier 1 MQ Securities Requirement and Tier 2 MQ Securities Requirement, collectively the “MQ Securities Requirement” is referred to under this proposal as the “Incentive Criteria.” The proposed MQ Tiers are designed to enhance market quality both in a broad manner with respect to all securities traded on the Exchange, through the Securities Requirement, and in a targeted manner with respect to certain designated securities in which the Exchange specifically seeks to inject additional quoting competition (i.e., the MQ Securities), through the MQ Securities Requirement. The number of MQ Securities in which a Member meets the quoting requirement will be counted toward both the Securities Requirement and the MQ Securities Requirement. In order to determine whether a Member meets the applicable Securities Requirements during a month, the average number of securities in which such a Member meets the quoting requirement per trading day during the month will be calculated by summing the number of securities in which the Member met the quoting requirement for each trading day during the month then dividing the resulting sum by the total number of trading days in the month.¹⁰

¹⁰ As an example, in a month with 20 trading days, if a Member satisfied the quoting requirement in 125 securities (of which 25 were MQ Securities) for ten of the trading days in the month, and satisfied the quoting requirement in 375 securities (of which 75 were MQ Securities) for the other ten trading days in the month, such Member would meet the quoting requirement in an average of 250 securities (i.e., $((125 \times 10) + (375 \times$

In addition, for the purposes of determining qualification for the MQ Tiers, the Exchange will exclude: (1) any trading day that the Exchange's system experiences a disruption that lasts for more than 60 minutes during Regular Trading Hours; (2) any day with a scheduled early market close; and (3) the "Russell Reconstitution Day" (typically the last Friday in June). The Exchange will exclude any trading day that the Exchange's system experiences a disruption that lasts for more than 60 minutes during Regular Trading Hours, any day with a scheduled early market close, and the Russell Reconstitution Day when determining both the numerator (i.e., the number of securities in which a Member has met the quoting requirement for each trading day during the month) and the denominator (i.e., the total number of trading days in the month) for purposes of calculating the average number of securities in which such Member meets the quoting requirement per trading day during the month.

As further detail regarding such proposed exclusions, an Exchange system disruption may occur, for example, where a certain group of securities traded on the Exchange is unavailable for trading due to an Exchange system issue. Similarly, the Exchange may be able to perform certain functions with respect to accepting and processing orders, but may have a failure to another significant process, such as routing to other market centers, that would lead Members that rely on such process to avoid utilizing the Exchange until the Exchange's entire system was operational. The Exchange believes that these types of Exchange system disruptions could preclude Members from participating on the Exchange to the extent that they might have otherwise participated on such days, and thus, the Exchange believes it is appropriate to exclude

10)) / 20), inclusive of an average of 50 MQ Securities (i.e., $((25 \times 10) + (75 \times 10)) / 20$), per trading day during the month. Therefore, such Member would meet the applicable Securities Requirements during the month and would qualify for the Tier 1 incentive for that month under this proposal.

such days when determining whether a Member meets the applicable Securities Requirements during a month to avoid penalizing Members that might otherwise have met such requirements. Additionally, the Exchange believes that scheduled early market closures, which typically are the day before, or the day after, a holiday, may preclude some Members from participating on the Exchange at the same level that they might otherwise. For similar reasons, the Exchange believes it is appropriate to exclude the Russell Reconstitution Day in the same manner, as the Exchange believes that the Russell Reconstitution Day typically has extraordinarily high, and abnormally distributed, trading volumes and the Exchange believes this change to normal activity may affect a Member's ability to meet the quoting requirement across various securities on that day. The Exchange notes that the exclusion of any day during which the Exchange's system experiences a disruption that lasts for more than 60 minutes during Regular Trading Hours, any day with a scheduled early market close, and the Russell Reconstitution Day is consistent with the methodologies used by other exchanges when calculating certain Member trading and other volume metrics for purposes of determining whether Members qualify for certain pricing incentives, and the Exchange believes application of this methodology is similarly appropriate for the proposed MQ Tiers pricing incentive.¹¹

A Member that qualifies for the enhanced rebate under MQ Tier 1 by meeting the requirements described above during a particular month will receive an enhanced rebate of

¹¹ See e.g., the CBOE BZX Exchange, Inc. ("Cboe BZX") equities trading fee schedule on its public website (available at https://www.cboe.com/us/equities/membership/fee_schedule/bzx/); the Cboe EDGX Exchange, Inc. ("Cboe EDGX") equities trading fee schedule available on its public website (available at https://www.cboe.com/us/equities/membership/fee_schedule/edgx/); and the MEMX LLC, ("MEMX") equities trading fee schedule on its public website (available at <https://info.memxtrading.com/fee-schedule/>).

\$0.0032 per share for all executions of Added Displayed Volume (unless a higher rebate applies)¹² during that month. This proposed rebate is \$0.0003 higher than the standard rebate (\$0.0029) that would otherwise be applicable to such executions. Similarly, a Member that qualifies for the enhanced rebate under MQ Tier 2 by meeting the requirements described above during a particular month will receive an enhanced rebate of \$0.0034 per share for all executions of Added Displayed Volume (unless a higher rebate applies) during that month. This proposed rebate is \$0.0005 higher than the standard rebate (\$0.0029) that would otherwise be applicable to such executions. The Exchange notes that the proposed enhanced rebate will only apply to executions in securities priced at or above \$1.00 per share; executions of a qualifying Member's displayed orders that add liquidity to the Exchange in securities priced below \$1.00 per share will continue to receive the standard rebate applicable to executions of such orders on the Exchange (i.e., 0.05% of the total value of the transaction).

The Exchange is proposing to provide the enhanced rebate for executions of Added Displayed Volume for qualifying Members as a means of recognizing the value of market participants that consistently quote at the NBBO in a large number of securities generally, and in the MQ Securities in particular. Given the proposed Incentive Criteria for the Market Quality Tiers a Member must make a significant contribution to market quality by providing liquidity at the NBBO in a large number of securities, including certain designated securities in which the Exchange specifically seeks to inject additional quoting competition (i.e., the MQ Securities), for

¹² The Exchange currently provides on its Fee Schedule that, "to the extent a Pearl Equity Member qualifies for higher rebates and/or lower fees than those provided by a tier for which such a Member qualifies, the higher rebate and/or lower fees shall apply." See the Exchange's Fee Schedule, General Notes section, on its public website (available at https://www.miaxoptions.com/sites/default/files/fee_schedule-files/MIAX_Pearl_Equities_Fee_Schedule_04012022_b.pdf).

a significant portion of the day. Through the proposed enhanced rebate for qualifying Members, the Exchange hopes to provide improved trading conditions for all market participants through narrower bid-ask spreads and increased depth of liquidity available at the NBBO for a large number of securities generally, including the MQ Securities in particular.

The Exchange notes that the proposed MQ Tiers are similar in structure and purpose to pricing programs at other exchanges that are designed to enhance market quality by incentivizing Members to achieve minimum quoting standards, including minimum quoting at the NBBO in a large number of securities generally, or certain designated securities in particular.¹³ The

¹³ See e.g., the Nasdaq equities trading fee schedule on its public website, (available at <http://www.nasdaqtrader.com/trader.aspx?id=pricelisttrading2>) and Nasdaq Rule Equity 7, Section 114(d) describing Nasdaq's Qualified Market Maker Program, which provides for an additional rebate (ranging from \$0.0001 to \$0.0002 per share) for executions of liquidity-providing displayed orders (other than designated retail orders) in securities across all tapes priced at or above \$1.00 per share for members that, in addition to executing transactions that represent a specified percentage of consolidated volume and avoiding inefficient order entry practices that place excessive burdens on Nasdaq's systems, quote at the NBBO at least 25% of the time during regular market hours in an average of at least 1,000 securities per day during the month; see also the Cboe BZX equities trading fee schedule on its public website, (available at https://www.cboe.com/us/equities/membership/fee_schedule/bzx/), which provides for an additional rebate (ranging from \$0.0001 to \$0.0002 per share) under Cboe BZX's Liquidity Management Program for executions of liquidity-providing displayed orders in Tape B securities priced at or above \$1.00 per share for members that, in addition to adding a specified percentage of total consolidated volume in Tape B securities and meeting certain other quoting requirements with respect to a specified number of securities designated as "LMP Securities" on a list determined by Cboe BZX, quote at the NBBO at least 15% of the time during regular trading hours in a specified number of such designated LMP Securities (or achieve an alternative NBBO quoting standard involving a size-setting element with respect to such designated LMP Securities.); see also MEMX equities trading fee schedule on its public website, (available at <https://info.memxtrading.com/fee-schedule/>), which provides for a rebate of \$0.0033 per share in Tier 1 under MEMX's Displayed Liquidity Incentive (DLI) Tiers for executions of liquidity providing displayed orders in securities priced at or above \$1.00 per share for members that have an NBBO Time of at least 25% in an average of at least 1,000 securities, at least 125 must be DLI Target Securities, per trading day during the month, and a rebate of \$0.0031 per share in Tier 2 for executions of liquidity providing displayed orders in securities priced at or above \$1.00 per share for members that have an NBBO

Exchange further notes that, like the proposed MQ Tiers, these programs include as an incentive the provision of an enhanced rebate for executions of liquidity-adding displayed orders for Members that meet the quoting and other requirements of those programs.¹⁴

In addition to the foregoing changes, the Exchange proposes to add to the Fee Schedule definitions of the terms, “Market Quality Securities,” and “Percent Time at NBBO,” that are consistent with the descriptions of those terms as set forth above, as such terms are used above describing the calculation methodology and criteria for determining whether a Members qualifies for a rebate under the MQ Tiers that the Exchange is proposing to add to the Fee Schedule, as described above. The Exchange also proposes to make a minor non-substantive edit to the definition of ADAV to remove the parenthetical “Exchange System Disruption” to avoid confusion as the Exchange has a pre-existing definition of Exchange System Disruption. The Exchange also proposes to adopt a new paragraph to the General Notes section to state that, “[f]or the purpose of determining qualification for the Market Quality Tiers the Exchange will exclude from its calculation: (1) any trading day that the Exchange’s system experiences a disruption that lasts for more than 60 minutes during regular trading hours; (2) any day with a scheduled early market close; and (3) the “Russell Reconstitution Day” (typically the last Friday in June).” The Exchange believes this adds additional clarity regarding the methodology used to determine qualification for the Market Quality Tiers.

Implementation

The proposed changes are immediately effective.

Time of at least 25% in an average of at least 250 securities, at least 75 of which must be DLI Target Securities, per trading day during the month.

¹⁴ Id.

b. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act¹⁵ in general, and furthers the objectives of Section 6(b)(4) of the Act¹⁶ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with the objectives of Section 6(b)(5)¹⁷ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, and to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange operates in a highly fragmented and competitive market in which market participants can readily direct their order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of sixteen registered equities exchanges, and there are a number of alternative trading systems and other off-exchange venues, to which market participants may direct their order flow. Based on publicly available information, no single registered equities exchange currently has more than approximately 17% of the total market share of executed volume of equities trading.¹⁸

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(4).

¹⁷ 15 U.S.C 78f(b)(5).

¹⁸ See supra note 3.

Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow, and the Exchange currently represents less than 1% of the overall market share. The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and also recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹⁹

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange’s transaction fees and rebates, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. The Exchange believes the proposal reflects a reasonable and competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance liquidity and market quality in both a broad manner and in a targeted manner with respect to the MQ Securities.

Market Quality Tiers

¹⁹ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37499 (June 29, 2005).

The proposed Market Quality Tiers are intended to encourage Members to promote price discovery and market quality by quoting at the NBBO for a significant portion of each day in a large number of securities generally, and in MQ Securities in particular, thereby benefiting the Exchange and other investors by providing improved trading conditions for all market participants through narrower bid-ask spreads and increasing the depth of liquidity available at the NBBO in a broad base of securities, including the MQ Securities. Additionally, the Exchange believes the proposed enhanced rebates for all executions of a qualifying Member's Added Displayed Volume will simultaneously incentivize such Member to direct additional displayed liquidity-providing orders to the Exchange in a more general manner to receive such enhanced rebate. Thus, the Exchange believes that the proposed Market Quality Tiers will promote price discovery and market quality in the MQ Securities and more generally on the Exchange, and, further, that the resulting tightened spreads and increased displayed liquidity will benefit all investors by deepening the Exchange's liquidity pool, supporting the quality of price discovery, enhancing quoting competition across all exchanges, and promoting market transparency.

The Exchange believes the proposed enhanced rebate of \$0.0032 per share provided to Members that qualify for Market Quality Tier 1 executions of Added Displayed Volume is reasonable, in that it does not reflect a disproportionate increase above the standard rebate of \$0.0029 per share provided to all Members with respect to the provision of Added Displayed Volume. Similarly, the Exchange believes the proposed enhanced rebate of \$0.0034 per share provided to Members that qualify for Market Quality Tier 2 executions of Added Displayed Volume is reasonable, in that it does not reflect a disproportionate increase above the enhanced rebate of \$0.0032 per share provided to qualifying Members in Tier 1 with respect to the

provision of Added Displayed Volume. Moreover, the Exchange believes the proposed enhanced rebate associated with Market Quality Tier 2 is a reasonable means to incentivize Members to increase their participation on the Exchange as it provides Members with an additional opportunity to qualify for an enhanced rebate for executions of Added Displayed Volume by satisfying more stringent criteria than Tier 1.

The Exchange further believes that the proposed criteria for Tier 1 and Tier 2 of the Market Quality Tiers, and the associated enhanced rebate for each is reasonable, in that the proposed criteria for Tier 2 is incrementally more difficult to achieve than that of Tier 1, and thus Tier 2 appropriately offers a higher rebate commensurate with the corresponding higher volume threshold. Therefore, the Exchange believes that the Market Quality Tiers, as proposed, are consistent with an equitable allocation of fees and rebates, as the more stringent criteria correlates with the corresponding tier's higher rebate.

In addition the Exchange believes that it is reasonable and consistent with an equitable allocation of fees to pay a higher rebate for executions of Added Displayed Volume to Members that qualify for one of the Market Quality Tiers with respect to the MQ Securities because of the additional commitment to market quality reflected in the associated quoting requirements. Such Members benefit all investors by promoting price discovery and increasing the depth of liquidity available at the NBBO and benefit the Exchange itself by enhancing its competitiveness as a market center that attracts actionable orders. Further, the Exchange notes that the proposed Market Quality Tiers offers a new incentive on the Exchange that would apply uniformly to all Members, and any Member may choose to qualify for one of the Market Quality Tiers by meeting the associated requirements in any month, regardless of the volume of transactions that it executes on the Exchange. The Exchange acknowledges that firms that do not post displayed

liquidity on the Exchange or do so on a smaller scale may not have the level of capital necessary to support meeting the proposed Incentive Criteria, however, the Exchange believes that the requirements are attainable for many market participants who do actively quote on the Exchange and are reasonably related to the enhanced market quality that the Market Quality Tiers are designed to promote. Additionally, the Exchange notes that Members that do not meet the proposed Incentive Criteria may still qualify for a rebate that is higher than the standard rebate for executions of Added Displayed Volume through the Add Volume Tiers Incentive, which does not require a Member to consistently quote at the NBBO across a broad range of securities. Accordingly, the Exchange believes that it is consistent with an equitable allocation of fees and is not unfairly discriminatory to pay a higher rebate in comparison with the rebate paid to other Members for executions of displayed liquidity providing orders in recognition of the benefits to the Exchange and market participants, particularly as the magnitude of the additional rebate is not unreasonably high, and is instead, reasonably related to such enhanced market quality.

The Exchange also believes that including in the proposed Market Quality Tiers criteria a quoting requirement for certain specified securities (i.e., the MQ Securities), in addition to the more general requirements of 250 securities in Tier 1 and 1,000 securities in Tier 2, is equitable and not unfairly discriminatory because the Exchange has identified the MQ Securities as securities in which it would like to inject additional quoting competition, which the Exchange believes will generally act to narrow spreads, increase size at the NBBO, and increase liquidity depth in such securities, thereby increasing the attractiveness of the Exchange as a destination venue with respect to such securities. Accordingly, the Exchange believes that this aspect of the proposal is reasonable, equitably allocated, and not unfairly discriminatory because it is consistent with the overall goals of enhancing market quality.

Furthermore, as noted above, the proposed Market Quality Tiers are similar in structure and purpose to pricing programs in place at other exchanges that are designed to enhance market quality.²⁰ Specifically, these programs, like the proposed Market Quality Tiers, provide a higher rebate for executions of liquidity-adding displayed orders for members that achieve minimum quoting standards, including minimum quoting at the NBBO in a large number of securities generally, or certain designated securities in particular.²¹ The Exchange also notes that the proposed Market Quality Tiers are not dissimilar from volume-based rebates and fees which have been widely adopted by exchanges²² and are equitable and not unfairly discriminatory because they are generally open to all members on an equal basis and provide higher rebates and/or lower fees that are reasonably related to the value of an exchange's market quality. Much like volume-based tiers are designed to incentivize higher levels of liquidity provision, the proposed Market Quality Tiers are designed to incentivize enhanced market quality on the Exchange through tighter spreads, greater size at the NBBO, and greater quoting depth in a large number of securities generally, and in MQ Securities specifically, through the provision of an enhanced rebate for all executions of a qualifying Member's Added Displayed Volume, where such rebate will in turn incentivize higher levels of displayed liquidity provision in a general manner. Accordingly, the Exchange believes that the proposed Market Quality Tiers would act

²⁰ See supra note 11.

²¹ Id.

²² See, e.g., the Cboe BZX equities trading fee schedule on its public website (available at https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/); the Cboe EDGX equities trading fee schedule on its public website (available at https://markets.cboe.com/us/equities/membership/fee_schedule/edgx/); and the MEMX equities trading fee schedule on its public website (available at <https://info.memxtrading.com/fee-schedule/>).

to enhance liquidity and competition across exchanges in the Market Quality Tiers and enhance liquidity provision in all securities on the Exchange more generally by providing a rebate reasonably related to such enhanced market quality to the benefit of all investors, thereby promoting the principles discussed in Sections 6(b)(4) and 6(b)(5) of the Act.²³

The Exchange also believes that the calculation methodology and criteria for determining whether a Member satisfies the requirements to qualify for the Market Quality Tiers, as well as the definitions of terms that are used, is reasonable, equitable, and non-discriminatory because the definitions are designed to ensure that the Fee Schedule is clear and as easily understandable as possible with respect to the requirements of the proposed Market Quality Tiers. Additionally, the Exchange believes that excluding (1) any trading day that the Exchange's system experiences a disruption that lasts for more than 60 minutes during Regular Trading Hours; (2) any day with a scheduled early market close; and (3) the Russell Reconstitution Day, when determining whether a Member qualifies for a proposed Market Tier during a month is reasonable, equitable, and non-discriminatory because, as explained above, the Exchange believes doing so would help to avoid penalizing Members that might otherwise have met the requirements to qualify for a proposed Market Quality Tier due to Exchange system disruptions, abbreviated trading days, and/or abnormal market conditions. For similar reasons, the Exchange believes it is appropriate to exclude the Russell Reconstitution Day, as the Exchange believes the change to normal trading activity as a result of the Russell Reconstitution may affect a Member's ability to meet the quoting requirement across various securities on that day. The Exchange notes that its proposed calculation methodology is consistent with the methodologies used by other exchanges

²³ 15 U.S.C. 78f(b)(4) and (5).

when calculating certain member trading and other volume metrics for purposes of determining whether members qualify for certain pricing incentives.²⁴

For the reasons discussed above, the Exchange submits that the proposal satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to unfairly discriminate between customers, issuers, brokers, or dealers. As described more fully below in the Exchange's statement regarding the burden on competition, the Exchange believes that its transaction pricing is subject to significant competitive forces, and that the proposed fees and rebates described herein are appropriate to address such forces.

4. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the proposal is intended to enhance market quality on the Exchange in a large number of securities generally, and in the MQ Securities specifically, and to encourage Members to maintain or increase their order flow on the Exchange, thereby promoting price discovery and contributing to a deeper and more liquid market to the benefit of all market participants. As a result, the Exchange believes the proposal would enhance its competitiveness as a market that attracts actionable orders, thereby making it a more desirable destination venue for its customers. For these reasons, the Exchange believes that the proposal furthers the Commission's goal in

²⁴ See supra note 13.

adopting Regulation NMS of fostering competition among orders, which promotes “more efficient pricing of individual stocks for all types of orders, large and small.”²⁵

Intramarket Competition

The Exchange believes that the proposal would incentivize Members to promote price discovery and market quality by quoting at the NBBO for a significant portion of each day in a large number of securities, including the MQ Securities, to maintain or increase their order flow on the Exchange, thereby contributing to a deeper and more liquid market to the benefit of all market participants and enhancing the attractiveness of the Exchange as a trading venue, which the Exchange believes, in turn, would continue to encourage market participants to direct additional order flow to the Exchange. Greater liquidity benefits all Members by providing more trading opportunities and encourages Members to send additional orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants. The opportunity to qualify for one of the Market Quality Tiers and thus receive the corresponding enhanced rebate for executions of Added Displayed Volume would be available to all Members that meet the associated requirements in any month. Further, as noted above, the Exchange believes that the proposed criteria for Tier 1 and Tier 2 (which has slightly more stringent criteria than Tier 1) of the Market Quality Tiers, are attainable for Members and that the respective enhanced rebates provided under each tier are reasonably related to the enhanced market quality that each tier is designed to promote. As such, the Exchange believes the proposed changes would not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

²⁵ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 47396 (June 29, 2005).

Intermarket Competition

The Exchange believes its proposal will benefit competition, and the Exchange notes that it operates in a highly competitive market. Members have numerous alternative venues they may participate on and direct their order flow to, including fifteen other equities exchanges and numerous alternative trading systems and other off-exchange venues. As noted above, no single registered equities exchange currently has more than 17% of the total market share of executed volume of equities trading.²⁶ Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. Moreover, the Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow in response to new or different pricing structures being introduced to the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates generally, including with respect to executions of Added Displayed Volume, and market participants can readily choose to send their orders to other exchanges and off-exchange venues if they deem fee levels at those other venues to be more favorable.

As described above, the proposal is designed to enhance market quality on the Exchange and to encourage additional order flow and quoting activity on the Exchange and to promote market quality through pricing incentives that are comparable to, and competitive with, pricing programs in place at other exchanges with respect to executions of Added Displayed Volume.²⁷ Accordingly, the Exchange believes the proposal would not be a burden on, but rather promote, intermarket competition by enabling the Exchange to better compete with other exchanges that

²⁶ See supra note 3.

²⁷ See supra note 13.

offer similar incentives to market participants that enhance market quality and/or achieve certain volume criteria and thresholds.

Additionally, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”²⁸

The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. circuit stated: “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possess a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’ . . .”²⁹

Accordingly, the Exchange does not believe its proposed pricing changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

5. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

²⁸ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

²⁹ *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSE-2006-21)).

6. **Extension of Time Period for Commission Action**

Not applicable.

7. **Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)**

Pursuant to Section 19(b)(3)(A)(ii) of the Act,³⁰ and Rule 19b-4(f)(2) thereunder³¹ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing. 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 under Section 19(b)(2)(B) of the Act to determine whether the proposed rule change should be approved or disapproved.³²

8. **Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

Not applicable.

9. **Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act**

Not applicable.

10. **Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act**

Not applicable.

³⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

³¹ 17 CFR 240.19b-4.

³² 15 U.S.C. 78s(b)(2)(B).

11. Exhibits

1. Completed notice of proposed rule change for publication in the Federal Register.
5. Copy of the applicable section of the Fee Schedule.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-PEARL-2022-21)

May ____, 2022

Self-Regulatory Organizations: Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by MIAX PEARL, LLC to Amend the MIAX Pearl Equities Fee Schedule

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 12, 2022, MIAX PEARL, LLC (“MIAX Pearl” 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 fee schedule (the “Fee Schedule”) applicable to MIAX Pearl Equities, an equities trading facility of the Exchange.

The text of the proposed rule change is available on the Exchange’s website at <http://www.miaxoptions.com/rule-filings/pearl> at MIAX Pearl’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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Exchange's Fee Schedule to adopt a new tiered pricing structure, "Market Quality Tiers" or "MQ Tiers," designed to improve market quality on the Exchange in certain specific securities, the "Market Quality Securities" or "MQ Securities," and more generally in the form of an enhanced rebate for executions of displayed orders in securities priced at or above \$1.00 per share that add liquidity to the Exchange (such orders, "Added Displayed Volume") for Members that meet certain minimum quoting requirements across a specified number of securities, as further described below. The Exchange originally filed this proposal on April 29, 2022 (SR-PEARL-2022-17). On May 12, 2022, the Exchange withdrew SR-PEARL-2022-17 and resubmitted this proposal.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues, to which market participants may direct their order flow. Based on publicly available information, no single registered equities exchange currently has more than approximately 17% of the total market share of executed volume of equities trading, and the Exchange currently represents approximately 1% of the overall market share.³

³ See MIAX's "The Market at a Glance", available at <https://www.miaxoptions.com/> (last visited April 27, 2022).

Additionally, in response to the competitive environment, the Exchange also offers tiered pricing, which provides Equity Members⁴ (“Members”) with opportunities to qualify for higher rebates or lower fees when certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

Adoption of Market Quality Tiers

The Exchange proposes to adopt a new tiered pricing incentive, referred to by the Exchange as the “Market Quality Tiers” (or “MQ Tiers”), in the form of an enhanced rebate for executions of Added Displayed Volume for Members that qualify for the incentive by meeting certain minimum quoting requirements across a specified number of securities, as further described below. The proposed MQ Tiers are designed to encourage Members to improve market quality by quoting at the NBBO⁵ for a significant portion of the day (as defined below) on the Exchange in certain specific securities, referred to by the Exchange as MQ Securities and in all securities more generally.⁶ By analyzing volume statistics and time at the NBBO the Exchange has identified a number of securities for which it intends to improve these metrics (the MQ Securities). The list of MQ Securities is published on the Exchange’s website. The Exchange believes the MQ Tiers will benefit the Exchange and investors by providing improved trading conditions for all market participants through narrower bid-ask spreads and increased

⁴ The term “Equity Member” is a Member authorized by the Exchange to transact business on MIAAX Pearl Equities. See Exchange Rule 1901.

⁵ With respect to the trading of equity securities, the term “NBB” shall mean the national best bid, the term “NBO” shall mean the national best offer, and the term “NBBO” shall mean the national best bid and offer. See Exchange Rule 1901.

⁶ The Exchange notes that it will aggregate each Member’s MPIDs and view quotes by Member Firm to determine the number of securities in which the Member meets the quoting requirements for that day.

depth of liquidity available at the NBBO in a broad base of securities, including the MQ Securities.

The Exchange currently provides a standard rebate of \$0.0029 per share for executions of Added Displayed Volume.⁷ The Exchange now proposes to introduce a tiered pricing structure in which it will provide an enhanced rebate for executions of Added Displayed Volume to Members that meet certain quoting requirements. Specifically, the Exchange proposes to provide an enhanced rebate of \$0.0032 in Tier 1 of the Market Quality Tiers for executions of Added Displayed Volume⁸ if the Member's Percent Time at NBBO⁹ is at least 25% in an average of at least 250 securities, at least 50 of which must be MQ Securities, per trading day during the month. Similarly, the Exchange proposes to provide an enhanced rebate of \$0.0034 in Tier 2 of the Market Quality Tiers for executions of Added Displayed Volume if the Member's Percent Time at NBBO is at least 25% in an average of at least 1,000 securities, at least 100 of which must be MQ Securities, per trading day during the month.

As noted above, to qualify for the incentive provided for in Tier 1 of the Market Quality Tiers, a Member must meet the quoting requirement in an average of at least 250 securities traded on the Exchange (the "Tier 1 Securities Requirement"), at least 50 of which must be MQ

⁷ The Exchange notes that the standard rebate of \$0.0029 per share for executions of Added Displayed Volume in securities priced at or above \$1.00, applicable to Liquidity Indicator Codes AA, AB, and AC, is not changing under this proposal.

⁸ The incentives provided for in the Market Quality Tiers will be applicable to the following Liquidity Indicator Codes: AA, AB, and AC. See section 1)b) Liquidity Indicator Codes and Associated Fees of the Exchange's Fee Schedule available on its public website (available at https://www.miaxoptions.com/sites/default/files/fee_schedule-files/MIAX_Pearl_Equities_Fee_Schedule_04012022_b.pdf).

⁹ As proposed, the term "Percent Time at NBBO" means the aggregate of the percentage of time during regular trading hours where a Member has a displayed order of at least one round lot at the national best bid ("NBB") or the national best offer ("NBO").

Securities (the “Tier 1 MQ Securities Requirement”), per trading day during the month. To qualify for the incentive provided for in Tier 2 of the Market Quality Tiers, a Member must meet the quoting requirement in an average of at least 1,000 securities traded on the Exchange (the “Tier 2 Securities Requirement”), at least 100 of which must be MQ Securities (the “Tier 2 MQ Securities Requirement”), per trading day during the month. The Tier 1 Securities Requirement and the Tier 2 Securities Requirement, collectively the “Securities Requirement” and the Tier 1 MQ Securities Requirement and Tier 2 MQ Securities Requirement, collectively the “MQ Securities Requirement” is referred to under this proposal as the “Incentive Criteria.” The proposed MQ Tiers are designed to enhance market quality both in a broad manner with respect to all securities traded on the Exchange, through the Securities Requirement, and in a targeted manner with respect to certain designated securities in which the Exchange specifically seeks to inject additional quoting competition (i.e., the MQ Securities), through the MQ Securities Requirement. The number of MQ Securities in which a Member meets the quoting requirement will be counted toward both the Securities Requirement and the MQ Securities Requirement. In order to determine whether a Member meets the applicable Securities Requirements during a month, the average number of securities in which such a Member meets the quoting requirement per trading day during the month will be calculated by summing the number of securities in which the Member met the quoting requirement for each trading day during the month then dividing the resulting sum by the total number of trading days in the month.¹⁰

¹⁰ As an example, in a month with 20 trading days, if a Member satisfied the quoting requirement in 125 securities (of which 25 were MQ Securities) for ten of the trading days in the month, and satisfied the quoting requirement in 375 securities (of which 75 were MQ Securities) for the other ten trading days in the month, such Member would meet the quoting requirement in an average of 250 securities (i.e., $((125 \times 10) + (375 \times 10)) / 20$), inclusive of an average of 50 MQ Securities (i.e., $((25 \times 10) + (75 \times 10)) / 20$), per trading day during the month. Therefore, such Member would meet the applicable

In addition, for the purposes of determining qualification for the MQ Tiers, the Exchange will exclude: (1) any trading day that the Exchange's system experiences a disruption that lasts for more than 60 minutes during Regular Trading Hours; (2) any day with a scheduled early market close; and (3) the "Russell Reconstitution Day" (typically the last Friday in June). The Exchange will exclude any trading day that the Exchange's system experiences a disruption that lasts for more than 60 minutes during Regular Trading Hours, any day with a scheduled early market close, and the Russell Reconstitution Day when determining both the numerator (i.e., the number of securities in which a Member has met the quoting requirement for each trading day during the month) and the denominator (i.e., the total number of trading days in the month) for purposes of calculating the average number of securities in which such Member meets the quoting requirement per trading day during the month.

As further detail regarding such proposed exclusions, an Exchange system disruption may occur, for example, where a certain group of securities traded on the Exchange is unavailable for trading due to an Exchange system issue. Similarly, the Exchange may be able to perform certain functions with respect to accepting and processing orders, but may have a failure to another significant process, such as routing to other market centers, that would lead Members that rely on such process to avoid utilizing the Exchange until the Exchange's entire system was operational. The Exchange believes that these types of Exchange system disruptions could preclude Members from participating on the Exchange to the extent that they might have otherwise participated on such days, and thus, the Exchange believes it is appropriate to exclude such days when determining whether a Member meets the applicable Securities Requirements during a month to avoid penalizing Members that might otherwise have met such requirements.

Securities Requirements during the month and would qualify for the Tier 1 incentive for that month under this proposal.

Additionally, the Exchange believes that scheduled early market closures, which typically are the day before, or the day after, a holiday, may preclude some Members from participating on the Exchange at the same level that they might otherwise. For similar reasons, the Exchange believes it is appropriate to exclude the Russell Reconstitution Day in the same manner, as the Exchange believes that the Russell Reconstitution Day typically has extraordinarily high, and abnormally distributed, trading volumes and the Exchange believes this change to normal activity may affect a Member's ability to meet the quoting requirement across various securities on that day. The Exchange notes that the exclusion of any day during which the Exchange's system experiences a disruption that lasts for more than 60 minutes during Regular Trading Hours, any day with a scheduled early market close, and the Russell Reconstitution Day is consistent with the methodologies used by other exchanges when calculating certain Member trading and other volume metrics for purposes of determining whether Members qualify for certain pricing incentives, and the Exchange believes application of this methodology is similarly appropriate for the proposed MQ Tiers pricing incentive.¹¹

A Member that qualifies for the enhanced rebate under MQ Tier 1 by meeting the requirements described above during a particular month will receive an enhanced rebate of \$0.0032 per share for all executions of Added Displayed Volume (unless a higher rebate applies)¹² during that month. This proposed rebate is \$0.0003 higher than the standard rebate

¹¹ See e.g., the CBOE BZX Exchange, Inc. ("Cboe BZX") equities trading fee schedule on its public website (available at https://www.cboe.com/us/equities/membership/fee_schedule/bzx/); the Cboe EDGX Exchange, Inc. ("Cboe EDGX") equities trading fee schedule available on its public website (available at https://www.cboe.com/us/equities/membership/fee_schedule/edgx/); and the MEMX LLC, ("MEMX") equities trading fee schedule on its public website (available at <https://info.memxtrading.com/fee-schedule/>).

¹² The Exchange currently provides on its Fee Schedule that, "to the extent a Pearl Equity Member qualifies for higher rebates and/or lower fees than those provided by a tier for which such a Member qualifies, the higher rebate and/or lower fees shall apply." See the

(\$0.0029) that would otherwise be applicable to such executions. Similarly, a Member that qualifies for the enhanced rebate under MQ Tier 2 by meeting the requirements described above during a particular month will receive an enhanced rebate of \$0.0034 per share for all executions of Added Displayed Volume (unless a higher rebate applies) during that month. This proposed rebate is \$0.0005 higher than the standard rebate (\$0.0029) that would otherwise be applicable to such executions. The Exchange notes that the proposed enhanced rebate will only apply to executions in securities priced at or above \$1.00 per share; executions of a qualifying Member's displayed orders that add liquidity to the Exchange in securities priced below \$1.00 per share will continue to receive the standard rebate applicable to executions of such orders on the Exchange (i.e., 0.05% of the total value of the transaction).

The Exchange is proposing to provide the enhanced rebate for executions of Added Displayed Volume for qualifying Members as a means of recognizing the value of market participants that consistently quote at the NBBO in a large number of securities generally, and in the MQ Securities in particular. Given the proposed Incentive Criteria for the Market Quality Tiers a Member must make a significant contribution to market quality by providing liquidity at the NBBO in a large number of securities, including certain designated securities in which the Exchange specifically seeks to inject additional quoting competition (i.e., the MQ Securities), for a significant portion of the day. Through the proposed enhanced rebate for qualifying Members, the Exchange hopes to provide improved trading conditions for all market participants through narrower bid-ask spreads and increased depth of liquidity available at the NBBO for a large number of securities generally, including the MQ Securities in particular.

Exchange's Fee Schedule, General Notes section, on its public website (available at https://www.miaxoptions.com/sites/default/files/fee_schedule-files/MIAX_Pearl_Equities_Fee_Schedule_04012022_b.pdf).

The Exchange notes that the proposed MQ Tiers are similar in structure and purpose to pricing programs at other exchanges that are designed to enhance market quality by incentivizing Members to achieve minimum quoting standards, including minimum quoting at the NBBO in a large number of securities generally, or certain designated securities in particular.¹³ The Exchange further notes that, like the proposed MQ Tiers, these programs include as an incentive the provision of an enhanced rebate for executions of liquidity-adding displayed orders for Members that meet the quoting and other requirements of those programs.¹⁴

¹³ See e.g., the Nasdaq equities trading fee schedule on its public website, (available at <http://www.nasdaqtrader.com/trader.aspx?id=pricelisttrading2>) and Nasdaq Rule Equity 7, Section 114(d) describing Nasdaq's Qualified Market Maker Program, which provides for an additional rebate (ranging from \$0.0001 to \$0.0002 per share) for executions of liquidity-providing displayed orders (other than designated retail orders) in securities across all tapes priced at or above \$1.00 per share for members that, in addition to executing transactions that represent a specified percentage of consolidated volume and avoiding inefficient order entry practices that place excessive burdens on Nasdaq's systems, quote at the NBBO at least 25% of the time during regular market hours in an average of at least 1,000 securities per day during the month; see also the Cboe BZX equities trading fee schedule on its public website, (available at https://www.cboe.com/us/equities/membership/fee_schedule/bzx/), which provides for an additional rebate (ranging from \$0.0001 to \$0.0002 per share) under Cboe BZX's Liquidity Management Program for executions of liquidity-providing displayed orders in Tape B securities priced at or above \$1.00 per share for members that, in addition to adding a specified percentage of total consolidated volume in Tape B securities and meeting certain other quoting requirements with respect to a specified number of securities designated as "LMP Securities" on a list determined by Cboe BZX, quote at the NBBO at least 15% of the time during regular trading hours in a specified number of such designated LMP Securities (or achieve an alternative NBBO quoting standard involving a size-setting element with respect to such designated LMP Securities.); see also MEMX equities trading fee schedule on its public website, (available at <https://info.memxtrading.com/fee-schedule/>), which provides for a rebate of \$0.0033 per share in Tier 1 under MEMX's Displayed Liquidity Incentive (DLI) Tiers for executions of liquidity providing displayed orders in securities priced at or above \$1.00 per share for members that have an NBBO Time of at least 25% in an average of at least 1,000 securities, at least 125 must be DLI Target Securities, per trading day during the month, and a rebate of \$0.0031 per share in Tier 2 for executions of liquidity providing displayed orders in securities priced at or above \$1.00 per share for members that have an NBBO Time of at least 25% in an average of at least 250 securities, at least 75 of which must be DLI Target Securities, per trading day during the month.

¹⁴ Id.

In addition to the foregoing changes, the Exchange proposes to add to the Fee Schedule definitions of the terms, “Market Quality Securities,” and “Percent Time at NBBO,” that are consistent with the descriptions of those terms as set forth above, as such terms are used above describing the calculation methodology and criteria for determining whether a Members qualifies for a rebate under the MQ Tiers that the Exchange is proposing to add to the Fee Schedule, as described above. The Exchange also proposes to make a minor non-substantive edit to the definition of ADAV to remove the parenthetical “Exchange System Disruption” to avoid confusion as the Exchange has a pre-existing definition of Exchange System Disruption. The Exchange also proposes to adopt a new paragraph to the General Notes section to state that, “[f]or the purpose of determining qualification for the Market Quality Tiers the Exchange will exclude from its calculation: (1) any trading day that the Exchange’s system experiences a disruption that lasts for more than 60 minutes during regular trading hours; (2) any day with a scheduled early market close; and (3) the “Russell Reconstitution Day” (typically the last Friday in June).” The Exchange believes this adds additional clarity regarding the methodology used to determine qualification for the Market Quality Tiers.

Implementation

The proposed changes are immediately effective.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act¹⁵ in general, and furthers the objectives of Section 6(b)(4) of the Act¹⁶ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and issuers and other persons using its facilities. The Exchange also

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(4).

believes that the proposed rule change is consistent with the objectives of Section 6(b)(5)¹⁷ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, and to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange operates in a highly fragmented and competitive market in which market participants can readily direct their order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of sixteen registered equities exchanges, and there are a number of alternative trading systems and other off-exchange venues, to which market participants may direct their order flow. Based on publicly available information, no single registered equities exchange currently has more than approximately 17% of the total market share of executed volume of equities trading.¹⁸ Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow, and the Exchange currently represents less than 1% of the overall market share. The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and also recognized that current regulation of the market system “has been remarkably successful in

¹⁷ 15 U.S.C 78f(b)(5).

¹⁸ See supra note 3.

promoting market competition in its broader forms that are most important to investors and listed companies.”¹⁹

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange’s transaction fees and rebates, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. The Exchange believes the proposal reflects a reasonable and competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance liquidity and market quality in both a broad manner and in a targeted manner with respect to the MQ Securities.

Market Quality Tiers

The proposed Market Quality Tiers are intended to encourage Members to promote price discovery and market quality by quoting at the NBBO for a significant portion of each day in a large number of securities generally, and in MQ Securities in particular, thereby benefiting the Exchange and other investors by providing improved trading conditions for all market participants through narrower bid-ask spreads and increasing the depth of liquidity available at the NBBO in a broad base of securities, including the MQ Securities. Additionally, the Exchange believes the proposed enhanced rebates for all executions of a qualifying Member’s Added Displayed Volume will simultaneously incentivize such Member to direct additional displayed liquidity-providing orders to the Exchange in a more general manner to receive such

¹⁹ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37499 (June 29, 2005).

enhanced rebate. Thus, the Exchange believes that the proposed Market Quality Tiers will promote price discovery and market quality in the MQ Securities and more generally on the Exchange, and, further, that the resulting tightened spreads and increased displayed liquidity will benefit all investors by deepening the Exchange's liquidity pool, supporting the quality of price discovery, enhancing quoting competition across all exchanges, and promoting market transparency.

The Exchange believes the proposed enhanced rebate of \$0.0032 per share provided to Members that qualify for Market Quality Tier 1 executions of Added Displayed Volume is reasonable, in that it does not reflect a disproportionate increase above the standard rebate of \$0.0029 per share provided to all Members with respect to the provision of Added Displayed Volume. Similarly, the Exchange believes the proposed enhanced rebate of \$0.0034 per share provided to Members that qualify for Market Quality Tier 2 executions of Added Displayed Volume is reasonable, in that it does not reflect a disproportionate increase above the enhanced rebate of \$0.0032 per share provided to qualifying Members in Tier 1 with respect to the provision of Added Displayed Volume. Moreover, the Exchange believes the proposed enhanced rebate associated with Market Quality Tier 2 is a reasonable means to incentivize Members to increase their participation on the Exchange as it provides Members with an additional opportunity to qualify for an enhanced rebate for executions of Added Displayed Volume by satisfying more stringent criteria than Tier 1.

The Exchange further believes that the proposed criteria for Tier 1 and Tier 2 of the Market Quality Tiers, and the associated enhanced rebate for each is reasonable, in that the proposed criteria for Tier 2 is incrementally more difficult to achieve than that of Tier 1, and thus Tier 2 appropriately offers a higher rebate commensurate with the corresponding higher volume threshold. Therefore, the Exchange believes that the Market Quality Tiers, as proposed, are

consistent with an equitable allocation of fees and rebates, as the more stringent criteria correlates with the corresponding tier's higher rebate.

In addition the Exchange believes that it is reasonable and consistent with an equitable allocation of fees to pay a higher rebate for executions of Added Displayed Volume to Members that qualify for one of the Market Quality Tiers with respect to the MQ Securities because of the additional commitment to market quality reflected in the associated quoting requirements. Such Members benefit all investors by promoting price discovery and increasing the depth of liquidity available at the NBBO and benefit the Exchange itself by enhancing its competitiveness as a market center that attracts actionable orders. Further, the Exchange notes that the proposed Market Quality Tiers offers a new incentive on the Exchange that would apply uniformly to all Members, and any Member may choose to qualify for one of the Market Quality Tiers by meeting the associated requirements in any month, regardless of the volume of transactions that it executes on the Exchange. The Exchange acknowledges that firms that do not post displayed liquidity on the Exchange or do so on a smaller scale may not have the level of capital necessary to support meeting the proposed Incentive Criteria, however, the Exchange believes that the requirements are attainable for many market participants who do actively quote on the Exchange and are reasonably related to the enhanced market quality that the Market Quality Tiers are designed to promote. Additionally, the Exchange notes that Members that do not meet the proposed Incentive Criteria may still qualify for a rebate that is higher than the standard rebate for executions of Added Displayed Volume through the Add Volume Tiers Incentive, which does not require a Member to consistently quote at the NBBO across a broad range of securities. Accordingly, the Exchange believes that it is consistent with an equitable allocation of fees and is not unfairly discriminatory to pay a higher rebate in comparison with the rebate paid to other Members for executions of displayed liquidity providing orders in recognition of the benefits to

the Exchange and market participants, particularly as the magnitude of the additional rebate is not unreasonably high, and is instead, reasonably related to such enhanced market quality.

The Exchange also believes that including in the proposed Market Quality Tiers criteria a quoting requirement for certain specified securities (i.e., the MQ Securities), in addition to the more general requirements of 250 securities in Tier 1 and 1,000 securities in Tier 2, is equitable and not unfairly discriminatory because the Exchange has identified the MQ Securities as securities in which it would like to inject additional quoting competition, which the Exchange believes will generally act to narrow spreads, increase size at the NBBO, and increase liquidity depth in such securities, thereby increasing the attractiveness of the Exchange as a destination venue with respect to such securities. Accordingly, the Exchange believes that this aspect of the proposal is reasonable, equitably allocated, and not unfairly discriminatory because it is consistent with the overall goals of enhancing market quality.

Furthermore, as noted above, the proposed Market Quality Tiers are similar in structure and purpose to pricing programs in place at other exchanges that are designed to enhance market quality.²⁰ Specifically, these programs, like the proposed Market Quality Tiers, provide a higher rebate for executions of liquidity-adding displayed orders for members that achieve minimum quoting standards, including minimum quoting at the NBBO in a large number of securities generally, or certain designated securities in particular.²¹ The Exchange also notes that the proposed Market Quality Tiers are not dissimilar from volume-based rebates and fees which have been widely adopted by exchanges²² and are equitable and not unfairly discriminatory

²⁰ See supra note 11.

²¹ Id.

²² See, e.g., the Cboe BZX equities trading fee schedule on its public website (available at https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/); the Cboe EDGX equities trading fee schedule on its public website (available at https://markets.cboe.com/us/equities/membership/fee_schedule/edgx/); and the MEMX

because they are generally open to all members on an equal basis and provide higher rebates and/or lower fees that are reasonably related to the value of an exchange's market quality. Much like volume-based tiers are designed to incentivize higher levels of liquidity provision, the proposed Market Quality Tiers are designed to incentivize enhanced market quality on the Exchange through tighter spreads, greater size at the NBBO, and greater quoting depth in a large number of securities generally, and in MQ Securities specifically, through the provision of an enhanced rebate for all executions of a qualifying Member's Added Displayed Volume, where such rebate will in turn incentivize higher levels of displayed liquidity provision in a general manner. Accordingly, the Exchange believes that the proposed Market Quality Tiers would act to enhance liquidity and competition across exchanges in the Market Quality Tiers and enhance liquidity provision in all securities on the Exchange more generally by providing a rebate reasonably related to such enhanced market quality to the benefit of all investors, thereby promoting the principles discussed in Sections 6(b)(4) and 6(b)(5) of the Act.²³

The Exchange also believes that the calculation methodology and criteria for determining whether a Member satisfies the requirements to qualify for the Market Quality Tiers, as well as the definitions of terms that are used, is reasonable, equitable, and non-discriminatory because the definitions are designed to ensure that the Fee Schedule is clear and as easily understandable as possible with respect to the requirements of the proposed Market Quality Tiers. Additionally, the Exchange believes that excluding (1) any trading day that the Exchange's system experiences a disruption that lasts for more than 60 minutes during Regular Trading Hours; (2) any day with a scheduled early market close; and (3) the Russell Reconstitution Day, when determining

equities trading fee schedule on its public website (available at <https://info.memxtrading.com/fee-schedule/>).

²³ 15 U.S.C. 78f(b)(4) and (5).

whether a Member qualifies for a proposed Market Tier during a month is reasonable, equitable, and non-discriminatory because, as explained above, the Exchange believes doing so would help to avoid penalizing Members that might otherwise have met the requirements to qualify for a proposed Market Quality Tier due to Exchange system disruptions, abbreviated trading days, and/or abnormal market conditions. For similar reasons, the Exchange believes it is appropriate to exclude the Russell Reconstitution Day, as the Exchange believes the change to normal trading activity as a result of the Russell Reconstitution may affect a Member's ability to meet the quoting requirement across various securities on that day. The Exchange notes that its proposed calculation methodology is consistent with the methodologies used by other exchanges when calculating certain member trading and other volume metrics for purposes of determining whether members qualify for certain pricing incentives.²⁴

For the reasons discussed above, the Exchange submits that the proposal satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to unfairly discriminate between customers, issuers, brokers, or dealers. As described more fully below in the Exchange's statement regarding the burden on competition, the Exchange believes that its transaction pricing is subject to significant competitive forces, and that the proposed fees and rebates described herein are appropriate to address such forces.

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

The Exchange does not believe that the proposed change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Instead, as

²⁴ See supra note 13.

discussed above, the proposal is intended to enhance market quality on the Exchange in a large number of securities generally, and in the MQ Securities specifically, and to encourage Members to maintain or increase their order flow on the Exchange, thereby promoting price discovery and contributing to a deeper and more liquid market to the benefit of all market participants. As a result, the Exchange believes the proposal would enhance its competitiveness as a market that attracts actionable orders, thereby making it a more desirable destination venue for its customers. For these reasons, the Exchange believes that the proposal furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."²⁵

Intramarket Competition

The Exchange believes that the proposal would incentivize Members to promote price discovery and market quality by quoting at the NBBO for a significant portion of each day in a large number of securities, including the MQ Securities, to maintain or increase their order flow on the Exchange, thereby contributing to a deeper and more liquid market to the benefit of all market participants and enhancing the attractiveness of the Exchange as a trading venue, which the Exchange believes, in turn, would continue to encourage market participants to direct additional order flow to the Exchange. Greater liquidity benefits all Members by providing more trading opportunities and encourages Members to send additional orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants. The opportunity to qualify for one of the Market Quality Tiers and thus receive the corresponding enhanced rebate for executions of Added Displayed Volume would be available to all Members that meet the associated requirements in any month. Further, as noted above, the Exchange

²⁵ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 47396 (June 29, 2005).

believes that the proposed criteria for Tier 1 and Tier 2 (which has slightly more stringent criteria than Tier 1) of the Market Quality Tiers, are attainable for Members and that the respective enhanced rebates provided under each tier are reasonably related to the enhanced market quality that each tier is designed to promote. As such, the Exchange believes the proposed changes would not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intermarket Competition

The Exchange believes its proposal will benefit competition, and the Exchange notes that it operates in a highly competitive market. Members have numerous alternative venues they may participate on and direct their order flow to, including fifteen other equities exchanges and numerous alternative trading systems and other off-exchange venues. As noted above, no single registered equities exchange currently has more than 17% of the total market share of executed volume of equities trading.²⁶ Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. Moreover, the Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow in response to new or different pricing structures being introduced to the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates generally, including with respect to executions of Added Displayed Volume, and market participants can readily choose to send their orders to other exchanges and off-exchange venues if they deem fee levels at those other venues to be more favorable.

²⁶ See supra note 3.

As described above, the proposal is designed to enhance market quality on the Exchange and to encourage additional order flow and quoting activity on the Exchange and to promote market quality through pricing incentives that are comparable to, and competitive with, pricing programs in place at other exchanges with respect to executions of Added Displayed Volume.²⁷ Accordingly, the Exchange believes the proposal would not be a burden on, but rather promote, intermarket competition by enabling the Exchange to better compete with other exchanges that offer similar incentives to market participants that enhance market quality and/or achieve certain volume criteria and thresholds.

Additionally, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”²⁸

The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. circuit stated: “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possess a

²⁷ See supra note 13.

²⁸ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

monopoly, regulatory or otherwise, in the execution of order flow from broker dealers' . . .".²⁹

Accordingly, the Exchange does not believe its proposed pricing changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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,³⁰ and Rule 19b-4(f)(2)³¹ 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:

²⁹ NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSE-2006-21)).

³⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

³¹ 17 CFR 240.19b-4(f)(2).

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>);
- or
- Send an e-mail [to rule-comments@sec.gov](mailto:to-rule-comments@sec.gov). Please include File Number SR-PEARL-2022-21 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-PEARL-2022-21. This file number should be included on the subject line if e-mail 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 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; 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-PEARL-2022-21 and should be submitted on or before [insert date 21 days from publication in the Federal Register]. For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³²

Vanessa Countryman
Secretary

³² 17 CFR 200.30-3(a)(12).

New text is underlined;
 Deleted text is in [brackets]

Exhibit 5

MIAX Pearl Equities Exchange

Fee Schedule

Definitions

“ADAV” means average daily added volume calculated as the number of shares added per day and “ADV” means average daily volume calculated as the number of shares added or removed, combined, per day. ADAV and ADV are calculated on a monthly basis.

- The Exchange excludes from its calculation of ADAV and ADV shares added or removed on any day that the Exchange’s system experiences a disruption that lasts for more than 60 minutes during regular trading hours [(“Exchange System Disruption”)], on any day with a scheduled early market close, and on the “Russell Reconstitution Day” (typically the last Friday in June).
- Routed shares are not included in the ADAV or ADV calculation.
- With prior notice to the Exchange, an Equity Member may aggregate ADAV or ADV with other Equity Members that control, are controlled by, or are under common control with such Equity Member (as evidenced on such Equity Member’s Form BD).

“FIX Drop Port” or “FXD” means a messaging interface that provides real-time order activities of firms’ MEO and FOI orders. MIAX Pearl Equities offers two types of FXD ports: (1) Standard FIX Drop; and (2) FIX Order by Order Drop. FXD Ports may be used by Equities Market Makers, Order Entry Firms and Clearing firms.

“Market Quality Securities” or “MQ Securities” shall mean a list of securities designated as such, that are used for the purposes of qualifying for the Market Quality Tiers. The universe of these securities will be determined by the Exchange and published on the Exchange’s website.

“MENI” means the MIAX Express Network Interconnect, which is a network infrastructure which provides Equity Members and non-Members network connectivity to the trading platforms, market data systems, test systems, and disaster recovery facilities of the Exchange. The MENI consists of the low latency and ultra - low latency (“ULL”) connectivity options set forth in the Exchange’s Fee Schedule.

“MEO Interface” or “MEO” means a binary order interface for certain order types as set forth in Rule 2614 into the MIAX Pearl System. See Exchange Rule 100.

“Percent Time at NBBO” means the aggregate of the percentage of time during regular trading hours where a Member has a displayed order of at least one round lot at the national best bid (“NBB”) or national best offer (“NBO”).

General Notes

For the purpose of determining qualification for the Market Quality Tiers the Exchange will exclude from its calculation: (1) any trading day that the Exchange’s system experiences a disruption that lasts for more than 60 minutes during regular trading hours; (2) any day with a scheduled early market close; and (3) the “Russell Reconstitution Day” (typically the last Friday in June).

1) Transaction Rebates/Fees

a) – e) No change.

f) Market Quality Tiers

| <u>Tier</u> | <u>Required Criteria</u> | <u>Securities Priced at or Above \$1.00</u> |
|-------------|---|---|
| <u>1</u> | <u>Member has a Percent Time at NBBO of \geq 25% in an average of at least 250 securities, at least 50 of which must be MQ Securities, per trading day during the month</u> | <u>(\$0.0032)</u> |
| <u>2</u> | <u>Member has a Percent Time at NBBO of \geq 25% in an average of at least 1,000 securities, at least 100 of which must be MQ Securities, per trading day during the month</u> | <u>(\$0.0034)</u> |

The rebates provided for by the above table are applicable to the following fee codes: AA, AB, and AC.
