

Required fields are shown with yellow backgrounds and asterisks.

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

File No. * SR 2022 - * 51

Amendment No. (req. for Amendments *)

Filing by MIAX PEARL, LLC

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

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

<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 *).

Proposal to amend the MIAX Pearl Options Fee Schedule to amend the amount and calculation of the monthly Trading Permit fees for Market Makers.

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 * Michael Last Name * Slade

Title * AVP, Associate Counsel

E-mail * mslade@miami-holdings.com

Telephone * (609) 897-8499 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 11/15/2022

(Title *)

By Michael Slade

AVP, Associate 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.

Michael Slade Date: 2022.11.15 13:49:30 -05'00'

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 EFFS website.

Form 19b-4 Information *

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SR-PEARL-2022-51 - 19b4.docx

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-2022-51 - 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-2022-51 - Exhibit 5.docx

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 MIAX Pearl Options Fee Schedule (the “Fee Schedule”) to amend its monthly Trading Permit³ fees for Market Makers.⁴

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 proposed 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 his designee pursuant to authority delegated by the MIAX Pearl Board of Directors on June 16, 2022. 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.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The term “Trading Permit” means a permit issued by the Exchange that confers the ability to transact on the Exchange. See Exchange Rule 100.

⁴ The term “Market Maker” or “MM” means a Member registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VI of the Exchange Rules. See the Definitions Section of the Fee Schedule and Exchange Rule 100.

a. Purpose

The Exchange proposes to amend the Fee Schedule to amend the amount and calculation of the monthly Trading Permit fees for Market Makers. Currently, the Exchange assesses Trading Permit fees based upon the monthly total volume executed by the Member⁵ and its Affiliates⁶ on the Exchange across all origin types, not including Excluded Contracts,⁷ as

⁵ The term “Member” means an individual or organization that is registered with the Exchange pursuant to Chapter II of Exchange Rules for purposes of trading on the Exchange as an “Electronic Exchange Member” or “Market Maker.” Members are deemed “members” under the Exchange Act. See Exchange Rule 100 and the Definitions Section of the Fee Schedule.

⁶ “Affiliate” means (i) an affiliate of a Member of at least 75% common ownership between the firms as reflected on each firm’s Form BD, Schedule A, or (ii) the Appointed Market Maker of an Appointed EEM (or, conversely, the Appointed EEM of an Appointed Market Maker). An “Appointed Market Maker” is a MIAX Pearl Market Maker (who does not otherwise have a corporate affiliation based upon common ownership with an EEM) that has been appointed by an EEM and an “Appointed EEM” is an EEM (who does not otherwise have a corporate affiliation based upon common ownership with a MIAX Pearl Market Maker) that has been appointed by a MIAX Pearl Market Maker, pursuant to the following process. A MIAX Pearl Market Maker appoints an EEM and an EEM appoints a MIAX Pearl Market Maker, for the purposes of the Fee Schedule, by each completing and sending an executed Volume Aggregation Request Form by email to membership@miaxoptions.com no later than 2 business days prior to the first business day of the month in which the designation is to become effective. Transmittal of a validly completed and executed form to the Exchange along with the Exchange’s acknowledgement of the effective designation to each of the Market Maker and EEM will be viewed as acceptance of the appointment. The Exchange will only recognize one designation per Member. A Member may make a designation not more than once every 12 months (from the date of its most recent designation), which designation shall remain in effect unless or until the Exchange receives written notice submitted 2 business days prior to the first business day of the month from either Member indicating that the appointment has been terminated. Designations will become operative on the first business day of the effective month and may not be terminated prior to the end of the month. Execution data and reports will be provided to both parties. See the Definitions Section of the Fee Schedule.

⁷ “Excluded Contracts” means any contracts routed to an away market for execution. See the Definitions Section of the Fee Schedule.

compared to the Total Consolidated Volume (“TCV”)⁸ in all MIAX Pearl-listed options. This Trading Permit fee structure has been in place since 2018.⁹ The Exchange adopted a tier-based fee structure based upon the volume-based tiers detailed in the definition of “Non-Transaction Fees Volume-Based Tiers”¹⁰ in the Definitions section of the Fee Schedule. The Exchange also assesses Trading Permit fees based upon the type of interface used by the Member to connect to the Exchange – the FIX Interface¹¹ and/or the MEO Interface.¹²

The Exchange now proposes to amend the calculation and amount of Trading Permit fees for Market Makers by moving away from the above-described volume tier-based fee structure to harmonize the Trading Permit fee structure for Market Makers with that of the Exchange’s affiliates, Miami International Securities Exchange, LLC (“MIAX”) and MIAX Emerald, LLC (“MIAX Emerald”).¹³ The Exchange also notes that this proposal is substantially based on the recent filing by BOX Exchange LLC (“BOX”) to adopt monthly Electronic Market Maker Trading Permit Fees based on options classes assigned, which filing has since passed the 60-day

⁸ “TCV” means total consolidated volume calculated as the total national volume in those classes listed on MIAX Pearl for the month for which the fees apply, excluding consolidated volume executed during the period of time in which the Exchange experiences an Exchange System Disruption (solely in the option classes of the affected Matching Engine). See the Definitions Section of the Fee Schedule.

⁹ See Securities Exchange Act Release No. 82867 (March 13, 2018), 83 FR 12044 (March 19, 2018) (SR-PEARL-2018-07).

¹⁰ See the Definitions Section of the Fee Schedule for the monthly volume thresholds associated with each Tier.

¹¹ “FIX Interface” means the Financial Information Exchange interface for certain order types as set forth in Exchange Rule 516. See the Definitions Section of the Fee Schedule and Exchange Rule 100.

¹² “MEO Interface” or “MEO” means a binary order interface for certain order types as set forth in Rule 516 into the MIAX Pearl System. See the Definitions Section of the Fee Schedule and Exchange Rule 100.

¹³ See MIAX Fee Schedule, Section 3)b) and MIAX Emerald Fee Schedule, Section 3)b).

suspension deadline.¹⁴

The Exchange proposes that the amount of the monthly Trading Permit fees for Market Makers would be based on the lesser of either the per class traded or percentage of total national average daily volume (“ADV”) measurement based on classes traded by volume. The amount of monthly Market Maker Trading Permit fee would be based upon the number of classes in which the Market Maker was registered to quote on any given day within the calendar month, or upon the class volume percentages.

Specifically, the Exchange proposes to adopt the following Trading Permit fees for Market Makers: (i) \$3,000 for Market Maker registrations in up to 10 option classes or up to 20% of option classes by national ADV; (ii) \$5,000 for Market Maker registrations in up to 40 option classes or up to 35% of option classes by ADV; (iii) \$7,000 for Market Maker registrations in up to 100 option classes or up to 50% of option classes by ADV; and (iv) \$9,000 for Market Maker registrations in over 100 option classes or over 50% of option classes by ADV up to all option classes listed on MIAX Pearl. For example, if Market Maker 1 elects to quote the top 40 option classes which consist of 58% of the total national average daily volume in the prior calendar quarter, the Exchange would assess \$5,000 to Market Maker 1 for the month which is the lesser of ‘up to 40 classes’ and ‘over 50% of classes by volume up to all classes listed on MIAX Pearl’. If Market Maker 2 elects to quote the bottom 1000 option classes which consist of 10% of the total national average daily volume in the prior quarter, the Exchange would assess \$3,000 to Market Maker 2 for the month which is the lesser of ‘over 100 classes’ and ‘up to 20% of classes by volume.’ The Exchange notes that the proposed tiers (ranging from

¹⁴ See Securities Exchange Act Release No. 94894 (May 11, 2022), 87 FR 29987 (May 17, 2022) (SR-BOX-2022-17); see also BOX Exchange LLC (“BOX”) Fee Schedule, Section I.C.

\$3,000 to \$9,000) are lower than the tiers recently approved by the Commission in BOX's filing to adopt market maker trading permit fees (ranging from \$4,000 to \$10,000) for similar per class tier thresholds.¹⁵

With the proposed changes, a Market Maker would be determined to be registered in a class if that Market Maker has been registered in one or more series in that class.¹⁶ The Exchange will assess MIAX Pearl Market Makers the monthly Market Maker Trading Permit fee based on the greatest number of classes listed on MIAX Pearl that the MIAX Pearl Market Maker registered to quote in on any given day within a calendar month. Therefore, with the proposed changes to the calculation of Market Maker Trading Permit fees, the Exchange's Market Makers would be encouraged to quote in more series in each class they are registered in because each additional series in that class would not count against their total classes for purposes of the Trading Permit fee tiers. The class volume percentage is based on the total national ADV in classes listed on MIAX Pearl in the prior calendar quarter. Newly listed option classes are excluded from the calculation of the monthly Market Maker Trading Permit fee until the calendar quarter following their listing, at which time the newly listed option classes will be included in both the per class count and the percentage of total national ADV.

The Exchange also proposes to adopt an alternative lower Trading Permit fee for Market Makers who fall within the 2nd, 3rd and 4th levels of the Market Maker Trading Permit fee table:

(i) Market Maker registrations in up to 40 option classes or up to 35% of option classes by volume; (ii) Market Maker registrations in up to 100 option classes or up to 50% of option classes by volume; and (iii) Market Maker registrations in over 100 option classes or over 50%

¹⁵ Id.

¹⁶ Pursuant to Exchange Rule 602(a), a Member that has qualified as a Market Maker may register to make markets in individual series of options.

of option classes by volume up to all option classes listed on MIAX Pearl. In particular, the Exchange proposes to adopt footnote “***” following the Market Maker Trading Permit fee table for these Monthly Trading Permit tier levels. New proposed footnote “***” will provide that if the Market Maker’s total monthly executed volume during the relevant month is less than 0.040% of the total monthly TCV for MIAX Pearl-listed option classes for that month, then the fee will be \$3,500 instead of the fee otherwise applicable to such level.

The purpose of the alternative lower fee designated in proposed footnote “***” is to provide a lower fixed cost to those Market Makers who are willing to quote the entire Exchange market (or substantial amount of the Exchange market), as objectively measured by either number of classes assigned or national ADV, but who do not otherwise execute a significant amount of volume on the Exchange. The Exchange believes that, by offering lower fixed costs to Market Makers that execute less volume, the Exchange will retain and attract smaller-scale Market Makers, which are an integral component of the option marketplace, but have been decreasing in number in recent years, due to industry consolidation and lower market maker profitability. Since these smaller-scale Market Makers utilize less Exchange capacity due to lower overall volume executed, the Exchange believes it is reasonable and equitable to offer such Market Makers a lower fixed cost. The Exchange notes that the Exchange’s affiliates, MIAX and MIAX Emerald, also provide lower Trading Permit fees for Market Makers who quote the entire MIAX and MIAX Emerald markets (or substantial amount of those markets), as objectively measured by either number of classes assigned or national ADV, but who do not otherwise execute a significant amount of volume on MIAX or MIAX Emerald.¹⁷ The Exchange also notes that other options exchanges assess certain of their membership fees at different rates,

¹⁷ See MIAX Fee Schedule, Section 3)b) and MIAX Emerald Fee Schedule, Section 3)b).

based upon a member’s participation on that exchange (as described in the table below), and, as such, this concept is not new or novel. The proposed changes to the Trading Permit fees for Market Makers who fall within the 2nd, 3rd and 4th levels of the fee table are based upon a business determination of current Market Maker assignments and trading volume.

* * * * *

As illustrated by the table below, the Exchange notes that the proposed Trading Permit fees for Market Makers are in line with, or cheaper than, the similar trading permit fees and membership fees charged by other options exchanges. The Exchange believes other exchanges’ membership and trading permit fees are useful examples of alternative approaches to providing and charging for membership and provides the table for comparison purposes only to show how the Exchange’s proposed fees compare to fees currently charged by other options exchanges for similar membership and trading permits.

Exchange	Monthly Membership/Trading Permit Fee
MIAX Pearl Options (as proposed)	Market Maker Trading Permit fees: <ul style="list-style-type: none"> - Tier1: \$3,000 for Market Maker Assignments in up to 10 option classes or up to 20% of option classes by national ADV - Tier 2: \$5,000 for Market Maker Assignments in up to 40 option classes or up to 35% of option classes by ADV - Tier 3: \$7,000 for Market Maker Assignments in up to 100 option classes or up to 50% of option classes by ADV - Tier 4: \$9,000 for Market Maker Assignments in over 100 option classes or over 50% of option classes by ADV up to all option classes listed on MIAX Pearl *Discounted rate of \$3,500 for Market Makers in Tiers 2, 3 and 4 if the Market Maker’s total monthly executed volume during the relevant month is less than 0.040% of the total monthly TCV for MIAX Pearl-listed option classes for that month
BOX Options Exchange LLC	Electronic Market Maker Trading Permit Fees: <ul style="list-style-type: none"> Tier 1 (up to and including 10 classes): \$4,000 Tier 2 (up to and including 40 classes): \$6,000 Tier 3 (up to and including 100 classes): \$8,000 Tier 4 (over 100 classes): \$10,000

("BOX") ¹⁸	
NYSE Arca, Inc. ("NYSE Arca") ¹⁹	<p>Options Trading Permits:</p> <p>Market Makers: 1st OTP - \$8,000 for up to 60 plus the bottom 45% of option issues</p> <p>2nd OTP - Additional \$6,000 for up to 150 plus the bottom 45% of option issues</p> <p>3rd OTP - Additional \$5,000 for up to 500 plus the bottom 45% of option issues</p> <p>4th OTP - Additional \$4,000 for up to 1,100 plus the bottom 45% of option issues</p> <p>5th OTP - Additional \$3,000 for all option issues</p> <p>6th – 9th OTP - Additional \$2,000</p> <p>10th or more OTPs - \$500 for all options issues</p>
NYSE American, LLC ("NYSE American") ²⁰	<p>ATP Trading Permits:</p> <p>Market Makers: \$8,000 for up to 60 plus the bottom 45% of option issues</p> <p>Additional \$6,000 for up to 150 plus the bottom 45% of option issues</p> <p>Additional \$5,000 for up to 500 plus the bottom 45% of option issues</p> <p>Additional \$4,000 for up to 1,100 plus the bottom 45% of option issues</p> <p>Additional \$3,000 for all option issues</p> <p>Additional \$2,000 for 6th to 9th ATPs (plus additional fee for premium products)</p> <p>Additional \$500 for the 10th or more ATPs</p>

¹⁸ See BOX fee schedule, Section 1.C., available at <https://boxexchange.com/assets/BOX-Fee-Schedule-as-of-October-28-2022.pdf> (last visited November 15, 2022). BOX had an average daily market share of 6.62% for the month of October 2022. See Market at a Glance, available at <https://www.miaxoptions.com/> (last visited November 15, 2022).

¹⁹ See NYSE Arca Options Fees and Charges, OTP Trading Participant Rights, p.1, available at https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf (last visited November 15, 2022). NYSE Arca recently increased this Options Trading Permit Fees approximately 45%. See Securities Exchange Act Release No. 95142 (June 23, 2022), 87 FR 38786 (June 29, 2022) (SR-NYSEArca-2022-36). Under the new fee structure, it effectively costs a Market Maker \$26,000 per month to trade all options issues on NYSE Arca.

²⁰ See NYSE American Options Fee Schedule, Section III, Monthly Trading Permit, Rights, Floor Access and Premium Product Fees, p. 23-24, available at https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf (last visited November 15, 2022). Under this fee structure, it effectively costs a Market Maker \$26,000 per month to trade all options issues on NYSE American. NYSE American had an average daily market share of 7.20% for the month of October 2022. See Market at a Glance, available at <https://www.miaxoptions.com/> (last visited November 15, 2022).

Nasdaq PHLX LLC (“Nasdaq PHLX”) ²¹	<p>Streaming Quote Trader (“SQT”) permit fees: Tier 1 (up to 200 option classes): \$0.00 Tier 2 (up to 400 option classes): \$2,200 Tier 3 (up to 600 option classes): \$3,200 Tier 4 (up to 800 option classes): \$4,200 Tier 5 (up to 1,000 option classes): \$5,200 Tier 6 (up to 1,200 option classes): \$6,200 Tier 7 (all option classes): \$7,200</p> <p>Remote Market Maker Organization (“RMMO”) permit fees: Tier 1 (less than 100 option classes): \$5,000 Tier 2 (more than 100 and less than 999 option classes): \$8,000 Tier 3 (1,000 or more option classes): \$11,000</p>
Nasdaq ISE LLC (“Nasdaq ISE”) ²²	<p>Access Fees: Primary Market Maker: \$5,000 per membership Competitive Market Maker: \$2,500 per membership</p>
Cboe Exchange, Inc. (“Cboe”) ²³	<p>Electronic Trading Permit Fees: Market Maker: \$5,000 Electronic Access Permit: \$3,000</p>
Cboe C2 Exchange, Inc. (“Cboe C2”) ²⁴	<p>Access Permit Fees for Market Makers: \$5,000</p>
Cboe BZX Exchange, Inc.	<p>\$500 where member has an ADV < 5,000 contracts traded \$1,000 where member has an ADV ≥ 5,000 contracts traded</p>

²¹ See Nasdaq PHLX Options 7 Pricing Schedule, Section 8. Membership Fees, available at <https://listingcenter.nasdaq.com/rulebook/phlx/rules/Phlx%20Options%207> (last visited November 15, 2022).

²² See Nasdaq ISE Options 7 Pricing Schedule, Section 8.A. Access Services, available at <https://listingcenter.nasdaq.com/rulebook/ise/rules/ISE%20Options%207> (last visited November 15, 2022). Nasdaq ISE had an average daily market share of 6.41% for the month of October 2022. See Market at a Glance, available at <https://www.miaxoptions.com/> (last visited November 15, 2022).

²³ See Cboe Fee Schedule, Electronic Trading Permit Fees, available at https://cdn.cboe.com/resources/membership/Cboe_FeeSchedule.pdf (last visited November 15, 2022).

²⁴ See Cboe C2 Fee Schedule, Access Fees, available at https://www.cboe.com/us/options/membership/fee_schedule/ctwo/ (last visited November 15, 2022). Cboe C2 had an average daily market share of 4.77% for the month of October 2022. See Market at a Glance, available at <https://www.miaxoptions.com/> (last visited November 15, 2022).

("Cboe BZX Options") ²⁵	
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Clarifying Change

The Exchange also proposes to amend the first table of Trading Permit fees in Section 3)b) of the Fee Schedule to provide additional clarity. The Exchange has two categories of Members, Market Makers and Electronic Exchange Members²⁶ ("EEMs"). The Exchange, therefore, proposes to replace the word "Member" with "EEM" under the heading "Type of Trading Permit" in the table of Trading Permit fees that are based on type of interface used, FIX or MEO. The purpose of this change is to clarify that the first table of Trading Permit fees will now be applicable only to EEMs since the Exchange proposes herein to provide a separate table describing the new calculation and amount of Trading Permit fees for Market Makers.

History and Implementation

The Exchange notes that it previously filed similar proposals to amend the amount and calculation of Trading Permit fees for Market Makers, which filings contained other changes to the Exchange's Trading Permit fees for EEMs. The Exchange has withdrawn those filings and replaced them with the current filing.²⁷ The Exchange previously filed this proposal on

²⁵ See "Membership Fees" section of the Cboe BZX Options Fee Schedule, available at https://www.cboe.com/us/options/membership/fee_schedule/bzx (last visited November 15, 2022). The Exchange understands Cboe BZX Options charges the same Membership Fee to all of its Options Members.

²⁶ The term "Electronic Exchange Member" or "EEM" means the holder of a Trading Permit who is a Member representing as agent Public Customer Orders or Non-Customer Orders on the Exchange and those non-Market Maker Members conducting proprietary trading. Electronic Exchange Members are deemed "members" under the Exchange Act. See the Definitions Section of the Fee Schedule and Exchange Rule 100.

²⁷ See SR-PEARL-2022-37 (withdrawn without being noticed by the Commission) and Securities Exchange Act Release No. 95780 (September 15, 2022), 87 FR 57732 (September 21, 2022) (SR-PEARL-2022-39) (withdrawn on November 7, 2022).

November 7, 2022.²⁸ On November 15, 2022, the Exchange withdrew SR-PEARL-2022-49 and replaced it with this filing.

The proposed rule change is immediately effective.

b. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act, in general, and Section 6(b)(4) and 6(b)(5) of the Act,²⁹ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among Exchange Members and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange commenced operations in February 2017³⁰ and adopted its initial fee schedule that waived fees for Trading Permits to trade on the Exchange.³¹ Although trading permit fees were waived, an initial fee structure was put in place to communicate the Exchange's intent to charge trading permit fees in the future. As a new exchange entrant, the Exchange chose to offer Trading Permits free of charge to encourage market participants to trade on the Exchange and experience, among things, the quality of the Exchange's technology and trading functionality. This practice is not uncommon. New exchanges often do not charge fees or charge lower fees for certain services such as memberships/trading permits to attract order flow to an exchange, and later amend their fees to reflect the true value of those services, absorbing all

²⁸ See SR-PEARL-2022-49 (withdrawn without being noticed by the Commission).

²⁹ 15 U.S.C. 78f(b)(4) and (5).

³⁰ See MIAX PEARL Successfully Launches Trading Operations, dated February 6, 2017, available at https://www.miaxoptions.com/sites/default/files/alert-files/MIAX_Press_Release_02062017.pdf.

³¹ See Securities Exchange Act Release No. 80061 (February 17, 2017), 82 FR 11676 (February 24, 2017) (SR-PEARL-2017-10).

costs to provide those services in the meantime. Allowing new exchange entrants time to build and sustain market share through various pricing incentives before increasing non-transaction fees encourages market entry and promotes competition. It also enables new exchanges to mature their markets and allow market participants to trade on the new exchanges without fees serving as a potential barrier to attracting memberships and order flow.³²

Later in 2018, as the Exchange's market share increased,³³ the Exchange adopted nominal fees for Trading Permits along with a tiered-volume based fee credit, known as the Trading Permit Fee Credit, and a Monthly Volume Credit.³⁴ At that time, the Exchange chose to adopt a volume tier-based fee for Trading Permits along with the type of interface used – FIX or

³² See Securities Exchange Act Release No. 94894 (May 11, 2022), 87 FR 29987 (May 17, 2022) (SR-BOX-2022-17) (stating, “[t]he Exchange established this lower (when compared to other options exchanges in the industry) Participant Fee in order to encourage market participants to become Participants of BOX...”). See also Securities Exchange Act Release No. 90076 (October 2, 2020), 85 FR 63620 (October 8, 2020) (SR-MEMX-2020-10) (“MEMX Membership Fee Proposal”) (proposing to adopt the initial fee schedule and stating that “[u]nder the initial proposed Fee Schedule, the Exchange proposes to make clear that it does not charge any fees for membership, market data products, physical connectivity or application sessions.”). MEMX has seen its market share increase and recently proposed to adopt a membership fee and fees for connectivity. See Securities Exchange Act Release Nos. 93927 (January 7, 2022), 87 FR 2191 (January 13, 2022) (SR-MEMX-2021-19) (proposing to adopt membership fees); and 95299 (July 15, 2022), 87 FR 43563 (July 21, 2022) (SR-MEMX-2022-17) (proposing to adopt fees for connectivity). See also, e.g., Securities Exchange Act Release No. 88211 (February 14, 2020), 85 FR 9847 (February 20, 2020) (SR-NYSE-NAT-2020-05), available at <https://www.nyse.com/publicdocs/nyse/markets/nyse-national/rule-filings/filings/2020/SR-NYSENat-2020-05.pdf> (initiating market data fees for the NYSE National exchange after initially setting such fees at zero).

³³ The Exchange experienced a monthly average trading volume of 3.94% for the month of March 2018. See Market at a Glance, available at www.miaxoptions.com (last visited (November 15, 2022)).

³⁴ See *supra* note 9. The Exchange notes that it has since filed to remove these credits. See Securities Exchange Act Release Nos. 96249 (November 7, 2022), 87 FR 68217 (November 14, 2022) (SR-PEARL-2022-47) and 96250 (November 7, 2022), 87 FR 68214 (November 14, 2022) (SR-PEARL-2022-46).

MEO – as a way to provide different choices regarding how potential Members could access the Exchange’s System. This was for business and competitive reasons and to provide choice regarding Trading Permits and membership that had not previously existed. The Exchange now proposes to move away from the above described volume tier-based Trading Permit fee structure and align its Market Maker Trading Permit fees with the Trading Permit fee structure of the Exchange’s affiliates, MIAX and MIAX Emerald, as well as other options exchanges by assessing Market Makers Trading Permit fees based on options classes assigned or percentage of national ADV.

The Exchange recently reviewed its current Trading Permit fees. In its review, the Exchange determined that the calculation and amount of Trading Permit fees would need to be amended, and volume tier-based Trading Permit fees for all Member types is no longer appropriate. Specifically, the Exchange found that Market Makers were benefitting from lower Trading Permit fees while (1) consuming the most bandwidth and resources of the network; (2) transacting the vast majority of the volume on the Exchange; and (3) requiring the high touch network support services provided by the Exchange and its staff. The Exchange notes that Broker Dealers, Professional Customers, and Priority Customers³⁵ take up significantly less Exchange resources and costs. Further, the Exchange notes that Market Makers account for greater than 99% of message traffic over the network, while other non-Market Maker market participants account for less than 1% of message traffic over the network. Market Makers are the primary users of the Exchange’s high performance MEO Interface. The Exchange’s high

³⁵ The term “Priority Customer” means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial accounts(s). The number of orders shall be counted in accordance with Interpretation and Policy .01 of Exchange Rule 100. See the Definitions Section of the Fee Schedule and Exchange Rule 100, including Interpretation and Policy .01.

performance MEO Interface (including employee support for such interface), utilized by Market Makers, provides unparalleled system throughput and the capacity to handle 10.8 million quotes per second and average round trip latency rate of approximately 30.76 microseconds for a single quote. Over the period from March 2022 through May 2022, the Exchange processed 386.1 billion messages (99.67% of total messages received) over the MEO Interface, almost entirely from Market Maker message traffic (which equals approximately 6 billion messages per day over that time period) (386.1 billion messages divided 64 trading days from March through May 2022).

The Exchange notes that while Market Makers continue to account for a vast majority of the increased costs and resources placed on the Exchange and its systems (as discussed herein), Market Makers continue to be valuable market participants on the exchanges as the options market is a quote driven industry. The Exchange recognizes the value that Market Makers bring to the Exchange. In fact, the Exchange provides Market Makers transactional volume-based discounts and rebates to incentivize Market Makers to direct order flow to the Exchange to obtain the benefit of the rebate, which will in turn benefit all market participants by increasing liquidity on the Exchange.³⁶ The proposed Trading Permit fees discussed herein are meant to strike a balance between offsetting the costs to which Market Makers place on the Exchange and continuing to incentivize Market Makers to access and make markets on the Exchange.

In its review of Trading Permit fees, the Exchange found that since 2018, Market Makers

³⁶ For example, Market Makers may qualify for higher Tier 3 rebates as follows: (i) Maker rebates of (\$0.44) in SPY, QQQ and IWM options for their Market Maker Origin when trading against Origins not Priority Customer, and (ii) Maker rebates of (\$0.42) in SPY, QQQ and IWM options for their Market Maker Origin when trading against Priority Customer Origins, if the Market Maker executes at least 1.10% in SPY when adding liquidity. This is compared to a lower Professional Customer Tier 3 rebate of (\$0.40) for options transactions in the same classes. See Fee Schedule, Section 1)a), footnote “◆.”

were paying nearly the same Trading Permit fees as EEMs that used the MEO Interface despite Market Makers consuming the most resources on the Exchange's system and contributing to increased costs for the Exchange. As such, the Exchange proposes to establish higher, separate electronic Trading Permit fees for Market Makers that are more aligned with the costs and resources that Market Makers continue to place on the Exchange and its systems and will align the Trading Permit fees with those of the majority of other options exchanges at similar or lower rates.³⁷

Additionally, the Exchange believes that the proposed change will better align the Exchange's Trading Permit fees with rates charged by its affiliates and competing options exchanges in the industry for similar Trading Permits for such market participants. As such, the Exchange believes the proposed Market Maker Trading Permit fees are reasonable in that they are lower than comparable fees at other options exchanges.³⁸ Further, the Exchange believes that the proposal is reasonably designed to continue to compete with other options exchanges by incentivizing market participants to register as Market Makers on the Exchange in a manner that enables the Exchange to improve its overall competitiveness and strengthen market quality for all market participants. As stated above, the Exchange believes the proposed Market Maker Trading Permit fees are an appropriate balance between offsetting the costs to which Market Makers cost the Exchange and continuing to incentivize Market Makers to access and make a market on the Exchange.

The proposed fees are equitable and not unfairly discriminatory as the fees apply equally to all Market Makers. As such, all similarly situated Market Makers, with the same number of

³⁷ See supra notes 18 to 25.

³⁸ See id.

appointments, will be subject to the same Market Maker Trading Permit fee. With the proposed changes, a Market Maker would be determined to be registered in a class if that Market Maker has been registered in one or more series in that class. Exchange Rule 602(a) provides that a Member that has qualified as a Market Maker may register to make markets in individual series of options. The proposed tiered structure is based on the number of options classes the Market Maker is registered in, not the number of series within the options class. The Exchange believes its proposal is fair and reasonable because the proposed tiered structure would encourage Market Makers to register in more series within each options class as each additional series in that class would not count towards the particular Market Maker's overall number of classes assigned, and cause them to qualify for a higher tier and higher fee.

The Exchange also believes that assessing lower fees to Market Makers that quote in fewer classes is reasonable and appropriate as it will allow the Exchange to retain and attract smaller-scale Market Makers, which are an integral component of the options industry marketplace. Since these smaller Market Makers utilize less bandwidth and capacity on the Exchange network due to the lower number of quoted classes, the Exchange believes it is reasonable and appropriate to offer such Market Makers a lower fee. The Exchange also notes that other options exchanges assess permit fees at different rates, based upon a member's participation on that exchange,³⁹ and, as such, this concept is not new or novel.

Further, the Exchange believes the proposed tiered structure of the Market Maker Trading Permit fees is reasonable and appropriate. Under the proposal, Market Makers will be charged monthly fees based on the greatest number of classes quoted on any given trading day in a calendar month or upon certain class volume percentages of national ADV. Under the proposed

³⁹ See supra notes 18 to 25; see also MIA X Fee Schedule, Section 3)b) and MIA X Emerald Fee Schedule, Section 3)b).

fee structure, the fees increase as the number of classes quoted by a Market Maker increases. The Exchange believes this structure is reasonable and not unfairly discriminatory because the Exchange's system requires increased performance and capacity in order to provide the opportunity for Market Makers to quote in a higher number of options classes on the Exchange. Specifically, the more classes that are actively quoted on the Exchange by a Market Maker requires increased memory for record retention, increased bandwidth for optimized performance, increased functionalities on each application layer, and increased optimization with regard to surveillance and monitoring of such classes quoted. As such, basing the Market Maker Trading Permit fee on the greatest number of classes quoted in on any given day in a calendar month is reasonable and appropriate when taking into account how the increased number of quoted classes directly impact the costs and resources required for the Exchange. Further, the Exchange believes that the proposed structure is equitable and not unfairly discriminatory as all similarly situated Market Makers will be charged the same fee. The Exchange notes that options exchanges in the industry calculate Market Maker Permit Fees in the same manner.⁴⁰

There is no requirement, regulatory or otherwise, that any broker-dealer connect to and access any (or all of) the available options exchanges. One other exchange recently noted in a proposal to amend their own trading permit fees that of the 62 market making firms that are registered as Market Makers across Cboe, MIAX, and BOX, 42 firms access only one of the three exchanges.⁴¹ Further, the Exchange and its affiliates, MIAX and MIAX Emerald, have a

⁴⁰ See supra notes 18 to 25.

⁴¹ See Securities Exchange Act Release No. 94894 (May 11, 2022), 87 FR 29987 (May 17, 2022) (SR-BOX-2022-17) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Fee Schedule on the BOX Options Market LLC Facility To Adopt Electronic Market Maker Trading Permit Fees). The Exchange believes that BOX's observation demonstrates that market making firms can, and do, select which exchanges they wish to access, and, accordingly, options exchanges must take

total of 47 members. Of those 47 total members, 36 are members of all three exchanges, four (4) are members of only two (2) exchanges, and seven (7) are members of only one exchange. Of those that are currently Market Makers on the Exchange, two (2) are not registered as Market Makers on MIAX, four (4) are not registered as Market Makers on MIAX Emerald, and one (1) is not registered as a Market Maker on MIAX or MIAX Emerald. The above data evidences that a Market Maker need not be a Member of all options exchanges, let alone the Exchange and its two affiliates, and market makers elect to do so based on their own business decisions and need to directly access each exchange's liquidity pool. Not only is there not an actual regulatory requirement to connect to every options exchange, the Exchange believes there is also no "de facto" or practical requirement as well, as further evidenced by the market maker membership analysis of the options exchanges discussed above. Indeed, Market Makers choose if and how to access a particular exchange and because it is a choice, the Exchange must set reasonable pricing, otherwise prospective market makers would not connect and existing Market Makers would disconnect from the Exchange.

The Exchange believes that elasticity of demand for Exchange Membership exists when it comes to purchasing a Trading Permit and, as evidenced by the data provided below, prior fee proposals have resulted in Members terminating their memberships.⁴² For example, over the course of those prior filings, three Members terminated their memberships in the time since the proposed fee increase first went into effect.

Further, other exchanges have also experienced termination of memberships if their

competitive considerations into account when setting fees for such access.

⁴² See Securities Exchange Act Release No. 95419 (August 4, 2022), 87 FR 48702 (August 10, 2022) (SR-PEARL-2022-30).

members deem permit or membership fees to be unreasonable or excessive. For example, the Exchange notes that a BOX participant modified its access to BOX in connection with the implementation of a proposed change to BOX's permit fees.⁴³ The absence of new memberships coupled with the termination of three memberships on the Exchange, as well as similar membership changes on another options exchange in relation to a trading permit fee increase, clearly shows that elasticity of demand exists.

The Exchange notes that there are material costs associated with providing the infrastructure and headcount to fully-support access to the Exchange. The Exchange incurs technology expenses related to establishing and maintaining Information Security services, enhanced network monitoring and customer reporting associated with its network technology. While some of the expense is fixed, much of the expense is not fixed, and thus increases as the expenses associated with access services for Market Makers increases. For example, new Market Makers to the Exchange may require the purchase of additional hardware to support those Members as well as enhanced monitoring and reporting of customer performance that the Exchange provides. Further, as the total number of Market Makers increase, the Exchange may need to increase its data center footprint and consume more power, resulting in increased costs charged by their third-party data center provider. Accordingly, the cost to the Exchange to provide access to its Market Makers is not fixed. The Exchange believes the proposed Market Maker Trading Permit fees are reasonable in order to offset a portion of the costs to the

⁴³ According to BOX, a Market Maker on BOX terminated its status as a Market Maker in response to BOX's proposed modification of Market Maker trading permit fees. See Securities Exchange Act Release No. 94894 (May 11, 2022), 87 FR 29987 (May 17, 2022) (SR-BOX-2022-17). BOX noted, and the Exchange agrees, that this Market Maker's decision demonstrates that Market Makers can, and do, alter their membership status if they deem permit fees at an exchange to be unsuitable for their business needs, thus demonstrating the competitive environment for Market Maker permit fees and the constraints on options exchanges when setting Market Maker permit fees.

Exchange associated with providing access to Market Makers to its quote and order infrastructure.

The Exchange believes that charging higher fees to Market Makers, who connect solely through the MEO Interface, is not unfairly discriminatory because Market Makers continue to account for the vast majority of network capacity utilization and trading activity on the Exchange and the MEO Interface provides higher throughput and enhanced functionality compared to the FIX Interface, justifying the increased cost. MEO Interface users account for the majority of expenses placed on the Exchange's systems. The MEO Interface also provides additional functionality that Market Makers using the MEO Interface use to fulfill their market making obligations. The Exchange offers three time-in-force modifiers:⁴⁴ Day Limit ("Day"), Immediate-Or-Cancel ("IOC"), and Good 'Til Cancelled ("GTC").⁴⁵ While all order types are available for use on either interface, only the time-in-force modifiers of IOC and Day are available on the MEO Interface.⁴⁶ Market Makers utilize the time-in-force of Day on orders to be posted on the MIAX Pearl Options Book⁴⁷ and to meet Market Makers' continuous quoting obligations under Exchange Rule 605(d).⁴⁸ The MEO Interface allows the submission of

⁴⁴ See MIAX Pearl Options Exchange User Manual, Section 6, Order Types, available at <https://www.miaxoptions.com/exchange-functionality/pearl> (last visited November 4, 2022).

⁴⁵ See, e.g., Exchange Rule 516.

⁴⁶ See preamble to Exchange Rule 516 (noting that not all order types and modifiers are available for use on each of the MEO Interface and the FIX Interface). See also Section 4.1.1.2 of the MEO Interface Specification, available at https://www.miaxoptions.com/sites/default/files/page-files/MIAX_Express_Orders_MEO_v2.0.pdf (indicating that the time-in-force instructions of IOC and Day are available on the MEO interface).

⁴⁷ The term "Book" means the electronic book of buy and sell orders and quotes maintained by the System. See Exchange Rule 100.

⁴⁸ Only the time-in-force modifiers of IOC and Day are available on the MEO Interface.

Cancel-Replacement orders,⁴⁹ which allow for the immediate cancellation of a previously received order and the replacement of that order with a new order with new terms and conditions.⁵⁰ Cancel-Replacement orders are primarily used by Market Makers as part of their continuous quoting obligations. Market Makers use only the MEO Interface due to its lower latency, higher throughput, available time-in-force instructions and order types that assist them in satisfying their market making obligations. Market Makers do not use the FIX Interface due to the unavailability of the above functionality. The MEO Interface is the more robust interface offering lower latency and higher throughput. Market Makers use only the MEO Interface.

The Exchange notes that while Market Makers continue to account for a vast majority of the increased System usage placed on the Exchange, Market Makers continue to be valuable market participants on the exchanges as the options market is a quote driven industry. The Exchange recognizes the value that Market Makers bring to the Exchange. The Exchange proposes higher, separate fees for Market Makers that are more aligned with the costs and resources that Market Makers continue to place on the Exchange and its systems.

The Exchange believes that the proposed Market Maker Trading Permit fees are reasonable, equitable, and not unfairly discriminatory. The Exchange believes that the reasonableness of its proposed fees is demonstrated by the very fact that such fees are in line

See Exchange Rule 516 (noting that not all order types and modifiers are available for use on each of the MEO Interface and the FIX Interface). See also MIAX Pearl Options Exchange MEO Interface Specification, Section 4.1.1.2, available at https://www.miaxoptions.com/sites/default/files/page-files/MIAX_Express_Orders_MEO_v2.0.pdf (indicating that the time-in-force instructions of IOC and Day are available on the MEO interface).

⁴⁹ See MIAX Pearl Options Exchange User Manual, Section 6, Interfaces and Liquidity Types, available at <https://www.miaxoptions.com/exchange-functionality/pearl> (last visited November 4, 2022).

⁵⁰ See Exchange Rule 516(d).

with, and in some cases lower than, the costs of similar access fees at other exchanges.⁵¹ The Exchange notes these fees were similarly filed with the Commission and neither suspended nor disapproved.⁵² The proposed fees are fair and equitable and not unfairly discriminatory because they apply equally to all Market Makers and access to the Exchange is offered on terms that are not unfairly discriminatory. The Exchange designed the fee rates in order to provide objective criteria for Market Makers of different sizes and business models that best matches their quoting activity on the Exchange. The Exchange believes that the proposed fee rates and criteria provide an objective and flexible framework that will encourage Market Makers to be appointed and quote in option classes while also equitably allocating the fees in a reasonable manner amongst Market Maker appointments to account for quoting and trading activity.

The Exchange again notes that it operates in a highly competitive market in which market makers can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees for services and products, in addition to order flow, to remain competitive with other exchanges. The Exchange believes that the proposed changes reflect this competitive environment.

The Exchange again notes it is not aware of any reason why Market Makers could not simply drop their access to an exchange (or not initially access an exchange) if an exchange were to establish prices for its non-transaction fees that, in the determination of such Market Maker, did not make business or economic sense for such Market Maker to access such exchange. The Exchange again notes that no market makers are required by rule, regulation, or competitive

⁵¹ See supra notes 18 to 25.

⁵² The Exchange presumes that the fees of other exchanges are reasonable, as required by the Exchange Act in the absence of any suspension or disapproval order by the Commission providing otherwise.

forces to be a Market Maker on the Exchange.

In sum, the Exchange believes the proposed fees are reasonable and reflect a competitive environment, as the Exchange seeks to amend its Trading Permit fees for Market Makers, while still attracting Market Makers to continue to, or seek to, access the Exchange. The Exchange further believes the proposed Trading Permit fees discussed herein are an appropriate balance between offsetting the costs to which Market Makers cost the Exchange and continuing to incentivize Market Makers to access and make a market on the Exchange.

Clarifying Change

The Exchange believes its proposal to change the word “Member” to “EEM” under the heading “Type of Trading Permit” in the table of Trading Permit fees that are based on type of interface used, FIX or MEO, is reasonable because it will provide additional clarity within the Fee Schedule. As stated above, the Exchange has two categories of Members, Market Makers and EEMs. This proposed change would remove impediments to and perfect the mechanism of a free and open market and a national market system because it specifies that there are separate Trading Permit fee tables for EEMs and Market Makers, removing the potential investor confusion and clearly setting forth which fee is applicable to EEMs and which fee is applicable to Market Makers.

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

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

Intra-Market Competition

The Exchange believes that the proposed Market Maker Trading Permit fees do not place certain market participants at a relative disadvantage to other market participants because the proposed fees do not favor certain categories of market participants in a manner that would

impose a burden on competition; rather, the fee rates are designed in order to provide objective criteria for Market Makers of different sizes and business models that best matches their quoting activity on the Exchange. Further, the Exchange believes that the proposed Market Maker Trading Permit fees will not impose a burden on intramarket competition because, when these fees are viewed in the context of the overall activity on the Exchange, Market Makers: (1) consume the most bandwidth and resources of the network; (2) transact the vast majority of the volume on the Exchange; and (3) require the high touch network support services provided by the Exchange and its staff, including more costly network monitoring, reporting and support services, resulting in a much higher cost to the Exchange. The Exchange notes that the majority of customer demand comes from Market Makers, whose transactions make up a majority of the volume on the Exchange. Further, as discussed herein, other Member types (Broker Dealers, Professional Customers, and Priority Customers) take up significantly less Exchange resources and costs. As such, the Exchange does not believe charging Market Makers higher Trading Permit fees than other Member types will impose a burden on intramarket competition.

The Exchange believes that the tiered structure of the proposed Market Maker Trading Permit fees will not impose a burden on intramarket competition because the tiered structure takes into account the number of classes quoted by each individual Market Maker. As discussed herein, the Exchange's system requires increased performance and capacity in order to provide the opportunity for each Market Maker to quote in a higher number of options classes on the Exchange. Specifically, the more classes that are actively quoted on the Exchange by a Market Maker requires increased memory for record retention, increased bandwidth for optimized performance, increased functionalities on each application layer, and increased optimization with regard to surveillance and monitoring of such classes quoted. As such, basing the Market Maker

Trading Permit fee on the greatest number of classes quoted in on any given day in a calendar month is reasonable and appropriate when taking into account how the increased number of quoted classes directly impact the costs and resources for the Exchange.

Inter-Market Competition

The Exchange believes the proposed Market Maker Trading Permit fees do not place an undue burden on competition on other self-regulatory organizations that is not necessary or appropriate. The proposed tiered structure is based on the number of options classes the Market Maker is registered in, not the number of series within the options class. The Exchange believes its proposal would promote intermarket competition because the proposed tiered structure would encourage Market Makers to register in more series within each options class as each additional series in that class would not count towards the particular Market Maker's overall number of classes assigned, and cause them to qualify for a higher tier and higher fee. This could improve the Exchange's market quality by encouraging Market Makers to quote more series within an options class without it impacting its Trading Permit fee.

Market making firms are not forced to become market makers on all options exchanges. The Exchange notes that it has far less Market Makers as compared to the much greater number of market makers at other options exchanges. There are a number of large market makers that are participants of other options exchange but not Members of the Exchange. The Exchange is also unaware of any assertion that its existing fee levels or the proposed Market Maker Trading Permit fees would somehow unduly impair its competition with other options exchanges. To the contrary, if the fees charged are deemed too high by a market making firm, they can simply discontinue their membership with the Exchange.

The Exchange operates in a highly competitive market in which market participants can

readily favor one of the 15 competing options venues if they deem fee levels at a particular venue to be excessive. Based on publicly-available information, and excluding index-based options, no single exchange has more than 11-12% equity options market share.⁵³ Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and exchange-traded fund (“ETF”) options order flow. For the month of October 2022, the Exchange had a market share of approximately 4.32% of executed multiply-listed equity options⁵⁴ and the Exchange believes that the ever-shifting market share among exchanges from month to month demonstrates that market participants can discontinue or reduce use of certain categories of products, or shift order flow, in response to fee changes. In such an environment, the Exchange must continually adjust its fees and fee waivers to remain competitive with other exchanges and to attract order flow to the facility.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

Clarifying Change

The Exchange believes its proposal to change the word “Member” to “EEM” under the heading “Type of Trading Permit” in the table of Trading Permit fees that are based on type of interface used, FIX or MEO, will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed

⁵³ See Market at a Glance, available at www.miaxoptions.com (last visited November 15, 2022).

⁵⁴ See id.

changes will not impose any burden on intra-market competition because the change simply clarifies that the first table of Trading Permit fees applies only to EEMs. The Exchange believes the proposed change will not impose any burden on intra-market competition as the proposed change is not designed to address any competitive issue but rather is designed to provide clarity to the Fee Schedule. In addition, the Exchange does not believe the proposal will impose any burden on inter-market competition as the proposal does not address any competitive issues and is intended to protect investors by providing further transparency and precision for the Fee Schedule.

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

Not applicable.

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,⁵⁵ and Rule 19b-4(f)(2) thereunder⁵⁶ 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.

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

The proposed rule change is not based on the rules of another exchange or of the Commission.

⁵⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

⁵⁶ 17 CFR 240.19b-4.

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.

11. Exhibits

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

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-PEARL-2022-51)

November____, 2022

Self-Regulatory Organizations: Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by MIAX PEARL, LLC to Amend the MIAX Pearl Options 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 November____, 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 MIAX Pearl Options Fee Schedule (the “Fee Schedule”) to amend its monthly Trading Permit³ fees for Market Makers.⁴

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The term “Trading Permit” means a permit issued by the Exchange that confers the ability to transact on the Exchange. See Exchange Rule 100.

⁴ The term “Market Maker” or “MM” means a Member registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VI of the Exchange Rules. See the Definitions Section of the Fee Schedule and Exchange Rule 100.

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

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

1. Purpose

The Exchange proposes to amend the Fee Schedule to amend the amount and calculation of the monthly Trading Permit fees for Market Makers. Currently, the Exchange assesses Trading Permit fees based upon the monthly total volume executed by the Member⁵ and its

⁵ The term “Member” means an individual or organization that is registered with the Exchange pursuant to Chapter II of Exchange Rules for purposes of trading on the Exchange as an “Electronic Exchange Member” or “Market Maker.” Members are deemed “members” under the Exchange Act. See Exchange Rule 100 and the Definitions Section of the Fee Schedule.

Affiliates⁶ on the Exchange across all origin types, not including Excluded Contracts,⁷ as compared to the Total Consolidated Volume (“TCV”)⁸ in all MIAX Pearl-listed options. This Trading Permit fee structure has been in place since 2018.⁹ The Exchange adopted a tier-based fee structure based upon the volume-based tiers detailed in the definition of “Non-Transaction

⁶ “Affiliate” means (i) an affiliate of a Member of at least 75% common ownership between the firms as reflected on each firm’s Form BD, Schedule A, or (ii) the Appointed Market Maker of an Appointed EEM (or, conversely, the Appointed EEM of an Appointed Market Maker). An “Appointed Market Maker” is a MIAX Pearl Market Maker (who does not otherwise have a corporate affiliation based upon common ownership with an EEM) that has been appointed by an EEM and an “Appointed EEM” is an EEM (who does not otherwise have a corporate affiliation based upon common ownership with a MIAX Pearl Market Maker) that has been appointed by a MIAX Pearl Market Maker, pursuant to the following process. A MIAX Pearl Market Maker appoints an EEM and an EEM appoints a MIAX Pearl Market Maker, for the purposes of the Fee Schedule, by each completing and sending an executed Volume Aggregation Request Form by email to membership@miaxoptions.com no later than 2 business days prior to the first business day of the month in which the designation is to become effective. Transmittal of a validly completed and executed form to the Exchange along with the Exchange’s acknowledgement of the effective designation to each of the Market Maker and EEM will be viewed as acceptance of the appointment. The Exchange will only recognize one designation per Member. A Member may make a designation not more than once every 12 months (from the date of its most recent designation), which designation shall remain in effect unless or until the Exchange receives written notice submitted 2 business days prior to the first business day of the month from either Member indicating that the appointment has been terminated. Designations will become operative on the first business day of the effective month and may not be terminated prior to the end of the month. Execution data and reports will be provided to both parties. See the Definitions Section of the Fee Schedule.

⁷ “Excluded Contracts” means any contracts routed to an away market for execution. See the Definitions Section of the Fee Schedule.

⁸ “TCV” means total consolidated volume calculated as the total national volume in those classes listed on MIAX Pearl for the month for which the fees apply, excluding consolidated volume executed during the period of time in which the Exchange experiences an Exchange System Disruption (solely in the option classes of the affected Matching Engine). See the Definitions Section of the Fee Schedule.

⁹ See Securities Exchange Act Release No. 82867 (March 13, 2018), 83 FR 12044 (March 19, 2018) (SR-PEARL-2018-07).

Fees Volume-Based Tiers”¹⁰ in the Definitions section of the Fee Schedule. The Exchange also assesses Trading Permit fees based upon the type of interface used by the Member to connect to the Exchange – the FIX Interface¹¹ and/or the MEO Interface.¹²

The Exchange now proposes to amend the calculation and amount of Trading Permit fees for Market Makers by moving away from the above-described volume tier-based fee structure to harmonize the Trading Permit fee structure for Market Makers with that of the Exchange’s affiliates, Miami International Securities Exchange, LLC (“MIAX”) and MIAX Emerald, LLC (“MIAX Emerald”).¹³ The Exchange also notes that this proposal is substantially based on the recent filing by BOX Exchange LLC (“BOX”) to adopt monthly Electronic Market Maker Trading Permit Fees based on options classes assigned, which filing has since passed the 60-day suspension deadline.¹⁴

The Exchange proposes that the amount of the monthly Trading Permit fees for Market Makers would be based on the lesser of either the per class traded or percentage of total national average daily volume (“ADV”) measurement based on classes traded by volume. The amount of monthly Market Maker Trading Permit fee would be based upon the number of classes in which

¹⁰ See the Definitions Section of the Fee Schedule for the monthly volume thresholds associated with each Tier.

¹¹ “FIX Interface” means the Financial Information Exchange interface for certain order types as set forth in Exchange Rule 516. See the Definitions Section of the Fee Schedule and Exchange Rule 100.

¹² “MEO Interface” or “MEO” means a binary order interface for certain order types as set forth in Rule 516 into the MIAX Pearl System. See the Definitions Section of the Fee Schedule and Exchange Rule 100.

¹³ See MIAX Fee Schedule, Section 3)b) and MIAX Emerald Fee Schedule, Section 3)b).

¹⁴ See Securities Exchange Act Release No. 94894 (May 11, 2022), 87 FR 29987 (May 17, 2022) (SR-BOX-2022-17); see also BOX Exchange LLC (“BOX”) Fee Schedule, Section I.C.

the Market Maker was registered to quote on any given day within the calendar month, or upon the class volume percentages.

Specifically, the Exchange proposes to adopt the following Trading Permit fees for Market Makers: (i) \$3,000 for Market Maker registrations in up to 10 option classes or up to 20% of option classes by national ADV; (ii) \$5,000 for Market Maker registrations in up to 40 option classes or up to 35% of option classes by ADV; (iii) \$7,000 for Market Maker registrations in up to 100 option classes or up to 50% of option classes by ADV; and (iv) \$9,000 for Market Maker registrations in over 100 option classes or over 50% of option classes by ADV up to all option classes listed on MIAX Pearl. For example, if Market Maker 1 elects to quote the top 40 option classes which consist of 58% of the total national average daily volume in the prior calendar quarter, the Exchange would assess \$5,000 to Market Maker 1 for the month which is the lesser of ‘up to 40 classes’ and ‘over 50% of classes by volume up to all classes listed on MIAX Pearl’. If Market Maker 2 elects to quote the bottom 1000 option classes which consist of 10% of the total national average daily volume in the prior quarter, the Exchange would assess \$3,000 to Market Maker 2 for the month which is the lesser of ‘over 100 classes’ and ‘up to 20% of classes by volume.’ The Exchange notes that the proposed tiers (ranging from \$3,000 to \$9,000) are lower than the tiers recently approved by the Commission in BOX’s filing to adopt market maker trading permit fees (ranging from \$4,000 to \$10,000) for similar per class tier thresholds.¹⁵

With the proposed changes, a Market Maker would be determined to be registered in a class if that Market Maker has been registered in one or more series in that class.¹⁶ The

¹⁵ Id.

¹⁶ Pursuant to Exchange Rule 602(a), a Member that has qualified as a Market Maker may register to make markets in individual series of options.

Exchange will assess MIAX Pearl Market Makers the monthly Market Maker Trading Permit fee based on the greatest number of classes listed on MIAX Pearl that the MIAX Pearl Market Maker registered to quote in on any given day within a calendar month. Therefore, with the proposed changes to the calculation of Market Maker Trading Permit fees, the Exchange's Market Makers would be encouraged to quote in more series in each class they are registered in because each additional series in that class would not count against their total classes for purposes of the Trading Permit fee tiers. The class volume percentage is based on the total national ADV in classes listed on MIAX Pearl in the prior calendar quarter. Newly listed option classes are excluded from the calculation of the monthly Market Maker Trading Permit fee until the calendar quarter following their listing, at which time the newly listed option classes will be included in both the per class count and the percentage of total national ADV.

The Exchange also proposes to adopt an alternative lower Trading Permit fee for Market Makers who fall within the 2nd, 3rd and 4th levels of the Market Maker Trading Permit fee table:

- (i) Market Maker registrations in up to 40 option classes or up to 35% of option classes by volume;
- (ii) Market Maker registrations in up to 100 option classes or up to 50% of option classes by volume; and
- (iii) Market Maker registrations in over 100 option classes or over 50% of option classes by volume up to all option classes listed on MIAX Pearl.

In particular, the Exchange proposes to adopt footnote "***" following the Market Maker Trading Permit fee table for these Monthly Trading Permit tier levels. New proposed footnote "***" will provide that if the Market Maker's total monthly executed volume during the relevant month is less than 0.040% of the total monthly TCV for MIAX Pearl-listed option classes for that month, then the fee will be \$3,500 instead of the fee otherwise applicable to such level.

The purpose of the alternative lower fee designated in proposed footnote "***" is to provide a lower fixed cost to those Market Makers who are willing to quote the entire Exchange

market (or substantial amount of the Exchange market), as objectively measured by either number of classes assigned or national ADV, but who do not otherwise execute a significant amount of volume on the Exchange. The Exchange believes that, by offering lower fixed costs to Market Makers that execute less volume, the Exchange will retain and attract smaller-scale Market Makers, which are an integral component of the option marketplace, but have been decreasing in number in recent years, due to industry consolidation and lower market maker profitability. Since these smaller-scale Market Makers utilize less Exchange capacity due to lower overall volume executed, the Exchange believes it is reasonable and equitable to offer such Market Makers a lower fixed cost. The Exchange notes that the Exchange's affiliates, MIAX and MIAX Emerald, also provide lower Trading Permit fees for Market Makers who quote the entire MIAX and MIAX Emerald markets (or substantial amount of those markets), as objectively measured by either number of classes assigned or national ADV, but who do not otherwise execute a significant amount of volume on MIAX or MIAX Emerald.¹⁷ The Exchange also notes that other options exchanges assess certain of their membership fees at different rates, based upon a member's participation on that exchange (as described in the table below), and, as such, this concept is not new or novel. The proposed changes to the Trading Permit fees for Market Makers who fall within the 2nd, 3rd and 4th levels of the fee table are based upon a business determination of current Market Maker assignments and trading volume.

* * * * *

As illustrated by the table below, the Exchange notes that the proposed Trading Permit fees for Market Makers are in line with, or cheaper than, the similar trading permit fees and membership fees charged by other options exchanges. The Exchange believes other exchanges'

¹⁷ See MIAX Fee Schedule, Section 3)b) and MIAX Emerald Fee Schedule, Section 3)b).

membership and trading permit fees are useful examples of alternative approaches to providing and charging for membership and provides the table for comparison purposes only to show how the Exchange's proposed fees compare to fees currently charged by other options exchanges for similar membership and trading permits.

Exchange	Monthly Membership/Trading Permit Fee
MIAX Pearl Options (as proposed)	Market Maker Trading Permit fees: <ul style="list-style-type: none"> - Tier 1: \$3,000 for Market Maker Assignments in up to 10 option classes or up to 20% of option classes by national ADV - Tier 2: \$5,000 for Market Maker Assignments in up to 40 option classes or up to 35% of option classes by ADV - Tier 3: \$7,000 for Market Maker Assignments in up to 100 option classes or up to 50% of option classes by ADV - Tier 4: \$9,000 for Market Maker Assignments in over 100 option classes or over 50% of option classes by ADV up to all option classes listed on MIAX Pearl *Discounted rate of \$3,500 for Market Makers in Tiers 2, 3 and 4 if the Market Maker's total monthly executed volume during the relevant month is less than 0.040% of the total monthly TCV for MIAX Pearl-listed option classes for that month
BOX Options Exchange LLC ("BOX") ¹⁸	Electronic Market Maker Trading Permit Fees: <ul style="list-style-type: none"> Tier 1 (up to and including 10 classes): \$4,000 Tier 2 (up to and including 40 classes): \$6,000 Tier 3 (up to and including 100 classes): \$8,000 Tier 4 (over 100 classes): \$10,000
NYSE Arca, Inc. ("NYSE Arca") ¹⁹	Options Trading Permits: <ul style="list-style-type: none"> Market Makers: 1st OTP - \$8,000 for up to 60 plus the bottom 45% of option issues

¹⁸ See BOX fee schedule, Section 1.C., available at <https://boxexchange.com/assets/BOX-Fee-Schedule-as-of-October-28-2022.pdf> (last visited November 15, 2022). BOX had an average daily market share of 6.62% for the month of October 2022. See Market at a Glance, available at <https://www.miaxoptions.com/> (last visited November 15, 2022).

¹⁹ See NYSE Arca Options Fees and Charges, OTP Trading Participant Rights, p.1, available at https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf (last visited November 15, 2022). NYSE Arca recently increased this Options Trading Permit Fees approximately 45%. See Securities Exchange Act Release No. 95142 (June 23, 2022), 87 FR 38786 (June 29, 2022) (SR-NYSEArca-2022-36). Under the new fee structure, it effectively costs a Market Maker \$26,000 per month to trade all options issues on NYSE Arca.

	<p>2nd OTP - Additional \$6,000 for up to 150 plus the bottom 45% of option issues</p> <p>3rd OTP - Additional \$5,000 for up to 500 plus the bottom 45% of option issues</p> <p>4th OTP - Additional \$4,000 for up to 1,100 plus the bottom 45% of option issues</p> <p>5th OTP - Additional \$3,000 for all option issues</p> <p>6th – 9th OTP - Additional \$2,000</p> <p>10th or more OTPs - \$500 for all options issues</p>
NYSE American, LLC (“NYSE American”) ²⁰	<p>ATP Trading Permits:</p> <p>Market Makers: \$8,000 for up to 60 plus the bottom 45% of option issues</p> <p>Additional \$6,000 for up to 150 plus the bottom 45% of option issues</p> <p>Additional \$5,000 for up to 500 plus the bottom 45% of option issues</p> <p>Additional \$4,000 for up to 1,100 plus the bottom 45% of option issues</p> <p>Additional \$3,000 for all option issues</p> <p>Additional \$2,000 for 6th to 9th ATPs (plus additional fee for premium products)</p> <p>Additional \$500 for the 10th or more ATPs</p>
Nasdaq PHLX LLC (“Nasdaq PHLX”) ²¹	<p>Streaming Quote Trader (“SQT”) permit fees:</p> <p>Tier 1 (up to 200 option classes): \$0.00</p> <p>Tier 2 (up to 400 option classes): \$2,200</p> <p>Tier 3 (up to 600 option classes): \$3,200</p> <p>Tier 4 (up to 800 option classes): \$4,200</p> <p>Tier 5 (up to 1,000 option classes): \$5,200</p> <p>Tier 6 (up to 1,200 option classes): \$6,200</p> <p>Tier 7 (all option classes): \$7,200</p> <p>Remote Market Maker Organization (“RMMO”) permit fees:</p> <p>Tier 1 (less than 100 option classes): \$5,000</p> <p>Tier 2 (more than 100 and less than 999 option classes): \$8,000</p> <p>Tier 3 (1,000 or more option classes): \$11,000</p>

²⁰ See NYSE American Options Fee Schedule, Section III, Monthly Trading Permit, Rights, Floor Access and Premium Product Fees, p. 23-24, available at https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf (last visited November 15, 2022). Under this fee structure, it effectively costs a Market Maker \$26,000 per month to trade all options issues on NYSE American. NYSE American had an average daily market share of 7.20% for the month of October 2022. See Market at a Glance, available at <https://www.miaxoptions.com/> (last visited November 15, 2022).

²¹ See Nasdaq PHLX Options 7 Pricing Schedule, Section 8. Membership Fees, available at <https://listingcenter.nasdaq.com/rulebook/phlx/rules/Phlx%20Options%207> (last visited November 15, 2022).

Nasdaq ISE LLC ("Nasdaq ISE") ²²	Access Fees: Primary Market Maker: \$5,000 per membership Competitive Market Maker: \$2,500 per membership
Cboe Exchange, Inc. ("Cboe") ²³	Electronic Trading Permit Fees: Market Maker: \$5,000 Electronic Access Permit: \$3,000
Cboe C2 Exchange, Inc. ("Cboe C2") ²⁴	Access Permit Fees for Market Makers: \$5,000
Cboe BZX Exchange, Inc. ("Cboe BZX Options") ²⁵	\$500 where member has an ADV < 5,000 contracts traded \$1,000 where member has an ADV ≥ 5,000 contracts traded

Clarifying Change

The Exchange also proposes to amend the first table of Trading Permit fees in Section 3)b) of the Fee Schedule to provide additional clarity. The Exchange has two categories of Members, Market Makers and Electronic Exchange Members²⁶ ("EEMs"). The Exchange,

²² See Nasdaq ISE Options 7 Pricing Schedule, Section 8.A. Access Services, available at <https://listingcenter.nasdaq.com/rulebook/ise/rules/ISE%20Options%207> (last visited November 15, 2022). Nasdaq ISE had an average daily market share of 6.41% for the month of October 2022. See Market at a Glance, available at <https://www.miaxoptions.com/> (last visited November 15, 2022).

²³ See Cboe Fee Schedule, Electronic Trading Permit Fees, available at https://cdn.cboe.com/resources/membership/Cboe_FeeSchedule.pdf (last visited November 15, 2022).

²⁴ See Cboe C2 Fee Schedule, Access Fees, available at https://www.cboe.com/us/options/membership/fee_schedule/ctwo/ (last visited November 15, 2022). Cboe C2 had an average daily market share of 4.77% for the month of October 2022. See Market at a Glance, available at <https://www.miaxoptions.com/> (last visited November 15, 2022).

²⁵ See "Membership Fees" section of the Cboe BZX Options Fee Schedule, available at https://www.cboe.com/us/options/membership/fee_schedule/bzx (last visited November 15, 2022). The Exchange understands Cboe BZX Options charges the same Membership Fee to all of its Options Members.

²⁶ The term "Electronic Exchange Member" or "EEM" means the holder of a Trading Permit who is a Member representing as agent Public Customer Orders or Non-Customer Orders on the Exchange and those non-Market Maker Members conducting proprietary

therefore, proposes to replace the word “Member” with “EEM” under the heading “Type of Trading Permit” in the table of Trading Permit fees that are based on type of interface used, FIX or MEO. The purpose of this change is to clarify that the first table of Trading Permit fees will now be applicable only to EEMs since the Exchange proposes herein to provide a separate table describing the new calculation and amount of Trading Permit fees for Market Makers.

History and Implementation

The Exchange notes that it previously filed similar proposals to amend the amount and calculation of Trading Permit fees for Market Makers, which filings contained other changes to the Exchange’s Trading Permit fees for EEMs. The Exchange has withdrawn those filings and replaced them with the current filing.²⁷ The Exchange previously filed this proposal on November 7, 2022.²⁸ On November 15, 2022, the Exchange withdrew SR-PEARL-2022-49 and replaced it with this filing.

The proposed rule change is immediately effective.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act, in general, and Section 6(b)(4) and 6(b)(5) of the Act,²⁹ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among Exchange Members and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

trading. Electronic Exchange Members are deemed “members” under the Exchange Act. See the Definitions Section of the Fee Schedule and Exchange Rule 100.

²⁷ See SR-PEARL-2022-37 (withdrawn without being noticed by the Commission) and Securities Exchange Act Release No. 95780 (September 15, 2022), 87 FR 57732 (September 21, 2022) (SR-PEARL-2022-39) (withdrawn on November 7, 2022).

²⁸ See SR-PEARL-2022-49 (withdrawn without being noticed by the Commission).

²⁹ 15 U.S.C. 78f(b)(4) and (5).

The Exchange commenced operations in February 2017³⁰ and adopted its initial fee schedule that waived fees for Trading Permits to trade on the Exchange.³¹ Although trading permit fees were waived, an initial fee structure was put in place to communicate the Exchange's intent to charge trading permit fees in the future. As a new exchange entrant, the Exchange chose to offer Trading Permits free of charge to encourage market participants to trade on the Exchange and experience, among things, the quality of the Exchange's technology and trading functionality. This practice is not uncommon. New exchanges often do not charge fees or charge lower fees for certain services such as memberships/trading permits to attract order flow to an exchange, and later amend their fees to reflect the true value of those services, absorbing all costs to provide those services in the meantime. Allowing new exchange entrants time to build and sustain market share through various pricing incentives before increasing non-transaction fees encourages market entry and promotes competition. It also enables new exchanges to mature their markets and allow market participants to trade on the new exchanges without fees serving as a potential barrier to attracting memberships and order flow.³²

³⁰ See MIAX PEARL Successfully Launches Trading Operations, dated February 6, 2017, available at https://www.miaxoptions.com/sites/default/files/alert-files/MIAX_Press_Release_02062017.pdf.

³¹ See Securities Exchange Act Release No. 80061 (February 17, 2017), [82 FR 11676](#) (February 24, 2017) (SR-PEARL-2017-10).

³² See Securities Exchange Act Release No. 94894 (May 11, 2022), 87 FR 29987 (May 17, 2022) (SR-BOX-2022-17) (stating, “[t]he Exchange established this lower (when compared to other options exchanges in the industry) Participant Fee in order to encourage market participants to become Participants of BOX...”). See also Securities Exchange Act Release No. 90076 (October 2, 2020), 85 FR 63620 (October 8, 2020) (SR-MEMX-2020-10) (“MEMX Membership Fee Proposal”) (proposing to adopt the initial fee schedule and stating that “[u]nder the initial proposed Fee Schedule, the Exchange proposes to make clear that it does not charge any fees for membership, market data products, physical connectivity or application sessions.”). MEMX has seen its market share increase and recently proposed to adopt a membership fee and fees for connectivity. See Securities Exchange Act Release Nos. 93927 (January 7, 2022), 87 FR 2191 (January 13, 2022) (SR-MEMX-2021-19) (proposing to adopt membership fees); and 95299 (July 15, 2022), 87 FR 43563 (July 21, 2022) (SR-MEMX-2022-17)

Later in 2018, as the Exchange's market share increased,³³ the Exchange adopted nominal fees for Trading Permits along with a tiered-volume based fee credit, known as the Trading Permit Fee Credit, and a Monthly Volume Credit.³⁴ At that time, the Exchange chose to adopt a volume tier-based fee for Trading Permits along with the type of interface used – FIX or MEO – as a way to provide different choices regarding how potential Members could access the Exchange's System. This was for business and competitive reasons and to provide choice regarding Trading Permits and membership that had not previously existed. The Exchange now proposes to move away from the above described volume tier-based Trading Permit fee structure and align its Market Maker Trading Permit fees with the Trading Permit fee structure of the Exchange's affiliates, MIAX and MIAX Emerald, as well as other options exchanges by assessing Market Makers Trading Permit fees based on options classes assigned or percentage of national ADV.

The Exchange recently reviewed its current Trading Permit fees. In its review, the Exchange determined that the calculation and amount of Trading Permit fees would need to be amended, and volume tier-based Trading Permit fees for all Member types is no longer appropriate. Specifically, the Exchange found that Market Makers were benefitting from lower Trading Permit fees while (1) consuming the most bandwidth and resources of the network; (2)

(proposing to adopt fees for connectivity). See also, e.g., Securities Exchange Act Release No. 88211 (February 14, 2020), 85 FR 9847 (February 20, 2020) (SR-NYSE-NAT-2020-05), available at <https://www.nyse.com/publicdocs/nyse/markets/nyse-national/rule-filings/filings/2020/SR-NYSE-NAT-2020-05.pdf> (initiating market data fees for the NYSE National exchange after initially setting such fees at zero).

³³ The Exchange experienced a monthly average trading volume of 3.94% for the month of March 2018. See Market at a Glance, available at www.miaxoptions.com (last visited (November 15, 2022)).

³⁴ See supra note 9. The Exchange notes that it has since filed to remove these credits. See Securities Exchange Act Release Nos. 96249 (November 7, 2022), 87 FR 68217 (November 14, 2022) (SR-PEARL-2022-47) and 96250 (November 7, 2022), 87 FR 68214 (November 14, 2022) (SR-PEARL-2022-46).

transacting the vast majority of the volume on the Exchange; and (3) requiring the high touch network support services provided by the Exchange and its staff. The Exchange notes that Broker Dealers, Professional Customers, and Priority Customers³⁵ take up significantly less Exchange resources and costs. Further, the Exchange notes that Market Makers account for greater than 99% of message traffic over the network, while other non-Market Maker market participants account for less than 1% of message traffic over the network. Market Makers are the primary users of the Exchange's high performance MEO Interface. The Exchange's high performance MEO Interface (including employee support for such interface), utilized by Market Makers, provides unparalleled system throughput and the capacity to handle 10.8 million quotes per second and average round trip latency rate of approximately 30.76 microseconds for a single quote. Over the period from March 2022 through May 2022, the Exchange processed 386.1 billion messages (99.67% of total messages received) over the MEO Interface, almost entirely from Market Maker message traffic (which equals approximately 6 billion messages per day over that time period) (386.1 billion messages divided 64 trading days from March through May 2022).

The Exchange notes that while Market Makers continue to account for a vast majority of the increased costs and resources placed on the Exchange and its systems (as discussed herein), Market Makers continue to be valuable market participants on the exchanges as the options market is a quote driven industry. The Exchange recognizes the value that Market Makers bring to the Exchange. In fact, the Exchange provides Market Makers transactional volume-based

³⁵ The term "Priority Customer" means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial accounts(s). The number of orders shall be counted in accordance with Interpretation and Policy .01 of Exchange Rule 100. See the Definitions Section of the Fee Schedule and Exchange Rule 100, including Interpretation and Policy .01.

discounts and rebates to incentivize Market Makers to direct order flow to the Exchange to obtain the benefit of the rebate, which will in turn benefit all market participants by increasing liquidity on the Exchange.³⁶ The proposed Trading Permit fees discussed herein are meant to strike a balance between offsetting the costs to which Market Makers place on the Exchange and continuing to incentivize Market Makers to access and make markets on the Exchange.

In its review of Trading Permit fees, the Exchange found that since 2018, Market Makers were paying nearly the same Trading Permit fees as EEMs that used the MEO Interface despite Market Makers consuming the most resources on the Exchange's system and contributing to increased costs for the Exchange. As such, the Exchange proposes to establish higher, separate electronic Trading Permit fees for Market Makers that are more aligned with the costs and resources that Market Makers continue to place on the Exchange and its systems and will align the Trading Permit fees with those of the majority of other options exchanges at similar or lower rates.³⁷

Additionally, the Exchange believes that the proposed change will better align the Exchange's Trading Permit fees with rates charged by its affiliates and competing options exchanges in the industry for similar Trading Permits for such market participants. As such, the Exchange believes the proposed Market Maker Trading Permit fees are reasonable in that they are lower than comparable fees at other options exchanges.³⁸ Further, the Exchange believes that

³⁶ For example, Market Makers may qualify for higher Tier 3 rebates as follows: (i) Maker rebates of (\$0.44) in SPY, QQQ and IWM options for their Market Maker Origin when trading against Origins not Priority Customer, and (ii) Maker rebates of (\$0.42) in SPY, QQQ and IWM options for their Market Maker Origin when trading against Priority Customer Origins, if the Market Maker executes at least 1.10% in SPY when adding liquidity. This is compared to a lower Professional Customer Tier 3 rebate of (\$0.40) for options transactions in the same classes. See Fee Schedule, Section 1)a), footnote "◆."

³⁷ See supra notes 18 to 25.

³⁸ See id.

the proposal is reasonably designed to continue to compete with other options exchanges by incentivizing market participants to register as Market Makers on the Exchange in a manner that enables the Exchange to improve its overall competitiveness and strengthen market quality for all market participants. As stated above, the Exchange believes the proposed Market Maker Trading Permit fees are an appropriate balance between offsetting the costs to which Market Makers cost the Exchange and continuing to incentivize Market Makers to access and make a market on the Exchange.

The proposed fees are equitable and not unfairly discriminatory as the fees apply equally to all Market Makers. As such, all similarly situated Market Makers, with the same number of appointments, will be subject to the same Market Maker Trading Permit fee. With the proposed changes, a Market Maker would be determined to be registered in a class if that Market Maker has been registered in one or more series in that class. Exchange Rule 602(a) provides that a Member that has qualified as a Market Maker may register to make markets in individual series of options. The proposed tiered structure is based on the number of options classes the Market Maker is registered in, not the number of series within the options class. The Exchange believes its proposal is fair and reasonable because the proposed tiered structure would encourage Market Makers to register in more series within each options class as each additional series in that class would not count towards the particular Market Maker's overall number of classes assigned, and cause them to qualify for a higher tier and higher fee.

The Exchange also believes that assessing lower fees to Market Makers that quote in fewer classes is reasonable and appropriate as it will allow the Exchange to retain and attract smaller-scale Market Makers, which are an integral component of the options industry marketplace. Since these smaller Market Makers utilize less bandwidth and capacity on the Exchange network due to the lower number of quoted classes, the Exchange believes it is

reasonable and appropriate to offer such Market Makers a lower fee. The Exchange also notes that other options exchanges assess permit fees at different rates, based upon a member's participation on that exchange,³⁹ and, as such, this concept is not new or novel.

Further, the Exchange believes the proposed tiered structure of the Market Maker Trading Permit fees is reasonable and appropriate. Under the proposal, Market Makers will be charged monthly fees based on the greatest number of classes quoted on any given trading day in a calendar month or upon certain class volume percentages of national ADV. Under the proposed fee structure, the fees increase as the number of classes quoted by a Market Maker increases. The Exchange believes this structure is reasonable and not unfairly discriminatory because the Exchange's system requires increased performance and capacity in order to provide the opportunity for Market Makers to quote in a higher number of options classes on the Exchange. Specifically, the more classes that are actively quoted on the Exchange by a Market Maker requires increased memory for record retention, increased bandwidth for optimized performance, increased functionalities on each application layer, and increased optimization with regard to surveillance and monitoring of such classes quoted. As such, basing the Market Maker Trading Permit fee on the greatest number of classes quoted in on any given day in a calendar month is reasonable and appropriate when taking into account how the increased number of quoted classes directly impact the costs and resources required for the Exchange. Further, the Exchange believes that the proposed structure is equitable and not unfairly discriminatory as all similarly situated Market Makers will be charged the same fee. The Exchange notes that options exchanges in the industry calculate Market Maker Permit Fees in the same manner.⁴⁰

³⁹ See supra notes 18 to 25; see also MIAX Fee Schedule, Section 3)b) and MIAX Emerald Fee Schedule, Section 3)b).

⁴⁰ See supra notes 18 to 25.

There is no requirement, regulatory or otherwise, that any broker-dealer connect to and access any (or all of) the available options exchanges. One other exchange recently noted in a proposal to amend their own trading permit fees that of the 62 market making firms that are registered as Market Makers across Cboe, MIAX, and BOX, 42 firms access only one of the three exchanges.⁴¹ Further, the Exchange and its affiliates, MIAX and MIAX Emerald, have a total of 47 members. Of those 47 total members, 36 are members of all three exchanges, four (4) are members of only two (2) exchanges, and seven (7) are members of only one exchange. Of those that are currently Market Makers on the Exchange, two (2) are not registered as Market Makers on MIAX, four (4) are not registered as Market Makers on MIAX Emerald, and one (1) is not registered as a Market Maker on MIAX or MIAX Emerald. The above data evidences that a Market Maker need not be a Member of all options exchanges, let alone the Exchange and its two affiliates, and market makers elect to do so based on their own business decisions and need to directly access each exchange's liquidity pool. Not only is there not an actual regulatory requirement to connect to every options exchange, the Exchange believes there is also no "de facto" or practical requirement as well, as further evidenced by the market maker membership analysis of the options exchanges discussed above. Indeed, Market Makers choose if and how to access a particular exchange and because it is a choice, the Exchange must set reasonable pricing, otherwise prospective market makers would not connect and existing Market Makers would disconnect from the Exchange.

⁴¹ See Securities Exchange Act Release No. 94894 (May 11, 2022), 87 FR 29987 (May 17, 2022) (SR-BOX-2022-17) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Fee Schedule on the BOX Options Market LLC Facility To Adopt Electronic Market Maker Trading Permit Fees). The Exchange believes that BOX's observation demonstrates that market making firms can, and do, select which exchanges they wish to access, and, accordingly, options exchanges must take competitive considerations into account when setting fees for such access.

The Exchange believes that elasticity of demand for Exchange Membership exists when it comes to purchasing a Trading Permit and, as evidenced by the data provided below, prior fee proposals have resulted in Members terminating their memberships.⁴² For example, over the course of those prior filings, three Members terminated their memberships in the time since the proposed fee increase first went into effect.

Further, other exchanges have also experienced termination of memberships if their members deem permit or membership fees to be unreasonable or excessive. For example, the Exchange notes that a BOX participant modified its access to BOX in connection with the implementation of a proposed change to BOX's permit fees.⁴³ The absence of new memberships coupled with the termination of three memberships on the Exchange, as well as similar membership changes on another options exchange in relation to a trading permit fee increase, clearly shows that elasticity of demand exists.

The Exchange notes that there are material costs associated with providing the infrastructure and headcount to fully-support access to the Exchange. The Exchange incurs technology expenses related to establishing and maintaining Information Security services, enhanced network monitoring and customer reporting associated with its network technology. While some of the expense is fixed, much of the expense is not fixed, and thus increases as the expenses associated with access services for Market Makers increases. For example, new

⁴² See Securities Exchange Act Release No. 95419 (August 4, 2022), 87 FR 48702 (August 10, 2022) (SR-PEARL-2022-30).

⁴³ According to BOX, a Market Maker on BOX terminated its status as a Market Maker in response to BOX's proposed modification of Market Maker trading permit fees. See Securities Exchange Act Release No. 94894 (May 11, 2022), 87 FR 29987 (May 17, 2022) (SR-BOX-2022-17). BOX noted, and the Exchange agrees, that this Market Maker's decision demonstrates that Market Makers can, and do, alter their membership status if they deem permit fees at an exchange to be unsuitable for their business needs, thus demonstrating the competitive environment for Market Maker permit fees and the constraints on options exchanges when setting Market Maker permit fees.

Market Makers to the Exchange may require the purchase of additional hardware to support those Members as well as enhanced monitoring and reporting of customer performance that the Exchange provides. Further, as the total number of Market Makers increase, the Exchange may need to increase its data center footprint and consume more power, resulting in increased costs charged by their third-party data center provider. Accordingly, the cost to the Exchange to provide access to its Market Makers is not fixed. The Exchange believes the proposed Market Maker Trading Permit fees are reasonable in order to offset a portion of the costs to the Exchange associated with providing access to Market Makers to its quote and order infrastructure.

The Exchange believes that charging higher fees to Market Makers, who connect solely through the MEO Interface, is not unfairly discriminatory because Market Makers continue to account for the vast majority of network capacity utilization and trading activity on the Exchange and the MEO Interface provides higher throughput and enhanced functionality compared to the FIX Interface, justifying the increased cost. MEO Interface users account for the majority of expenses placed on the Exchange's systems. The MEO Interface also provides additional functionality that Market Makers using the MEO Interface use to fulfill their market making obligations. The Exchange offers three time-in-force modifiers:⁴⁴ Day Limit ("Day"), Immediate-Or-Cancel ("IOC"), and Good 'Til Cancelled ("GTC").⁴⁵ While all order types are available for use on either interface, only the time-in-force modifiers of IOC and Day are available on the MEO Interface.⁴⁶ Market Makers utilize the time-in-force of Day on orders to

⁴⁴ See MIAX Pearl Options Exchange User Manual, Section 6, Order Types, available at <https://www.miaxoptions.com/exchange-functionality/pearl> (last visited November 4, 2022).

⁴⁵ See, e.g., Exchange Rule 516.

⁴⁶ See preamble to Exchange Rule 516 (noting that not all order types and modifiers are available for use on each of the MEO Interface and the FIX Interface). See also Section

be posted on the MIAX Pearl Options Book⁴⁷ and to meet Market Makers' continuous quoting obligations under Exchange Rule 605(d).⁴⁸ The MEO Interface allows the submission of Cancel-Replacement orders,⁴⁹ which allow for the immediate cancellation of a previously received order and the replacement of that order with a new order with new terms and conditions.⁵⁰ Cancel-Replacement orders are primarily used by Market Makers as part of their continuous quoting obligations. Market Makers use only the MEO Interface due to its lower latency, higher throughput, available time-in-force instructions and order types that assist them in satisfying their market making obligations. Market Makers do not use the FIX Interface due to the unavailability of the above functionality. The MEO Interface is the more robust interface offering lower latency and higher throughput. Market Makers use only the MEO Interface.

The Exchange notes that while Market Makers continue to account for a vast majority of the increased System usage placed on the Exchange, Market Makers continue to be valuable market participants on the exchanges as the options market is a quote driven industry. The

4.1.1.2 of the MEO Interface Specification, available at https://www.miaxoptions.com/sites/default/files/page-files/MIAX_Express_Orders_MEO_v2.0.pdf (indicating that the time-in-force instructions of IOC and Day are available on the MEO interface).

⁴⁷ The term "Book" means the electronic book of buy and sell orders and quotes maintained by the System. See Exchange Rule 100.

⁴⁸ Only the time-in-force modifiers of IOC and Day are available on the MEO Interface. See Exchange Rule 516 (noting that not all order types and modifiers are available for use on each of the MEO Interface and the FIX Interface). See also MIAX Pearl Options Exchange MEO Interface Specification, Section 4.1.1.2, available at https://www.miaxoptions.com/sites/default/files/page-files/MIAX_Express_Orders_MEO_v2.0.pdf (indicating that the time-in-force instructions of IOC and Day are available on the MEO interface).

⁴⁹ See MIAX Pearl Options Exchange User Manual, Section 6, Interfaces and Liquidity Types, available at <https://www.miaxoptions.com/exchange-functionality/pearl> (last visited November 4, 2022).

⁵⁰ See Exchange Rule 516(d).

Exchange recognizes the value that Market Makers bring to the Exchange. The Exchange proposes higher, separate fees for Market Makers that are more aligned with the costs and resources that Market Makers continue to place on the Exchange and its systems.

The Exchange believes that the proposed Market Maker Trading Permit fees are reasonable, equitable, and not unfairly discriminatory. The Exchange believes that the reasonableness of its proposed fees is demonstrated by the very fact that such fees are in line with, and in some cases lower than, the costs of similar access fees at other exchanges.⁵¹ The Exchange notes these fees were similarly filed with the Commission and neither suspended nor disapproved.⁵² The proposed fees are fair and equitable and not unfairly discriminatory because they apply equally to all Market Makers and access to the Exchange is offered on terms that are not unfairly discriminatory. The Exchange designed the fee rates in order to provide objective criteria for Market Makers of different sizes and business models that best matches their quoting activity on the Exchange. The Exchange believes that the proposed fee rates and criteria provide an objective and flexible framework that will encourage Market Makers to be appointed and quote in option classes while also equitably allocating the fees in a reasonable manner amongst Market Maker appointments to account for quoting and trading activity.

The Exchange again notes that it operates in a highly competitive market in which market makers can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees for services and products, in addition to order flow, to remain competitive with other exchanges. The Exchange believes that the proposed changes reflect this competitive environment.

⁵¹ See supra notes 18 to 25.

⁵² The Exchange presumes that the fees of other exchanges are reasonable, as required by the Exchange Act in the absence of any suspension or disapproval order by the Commission providing otherwise.

The Exchange again notes it is not aware of any reason why Market Makers could not simply drop their access to an exchange (or not initially access an exchange) if an exchange were to establish prices for its non-transaction fees that, in the determination of such Market Maker, did not make business or economic sense for such Market Maker to access such exchange. The Exchange again notes that no market makers are required by rule, regulation, or competitive forces to be a Market Maker on the Exchange.

In sum, the Exchange believes the proposed fees are reasonable and reflect a competitive environment, as the Exchange seeks to amend its Trading Permit fees for Market Makers, while still attracting Market Makers to continue to, or seek to, access the Exchange. The Exchange further believes the proposed Trading Permit fees discussed herein are an appropriate balance between offsetting the costs to which Market Makers cost the Exchange and continuing to incentivize Market Makers to access and make a market on the Exchange.

Clarifying Change

The Exchange believes its proposal to change the word “Member” to “EEM” under the heading “Type of Trading Permit” in the table of Trading Permit fees that are based on type of interface used, FIX or MEO, is reasonable because it will provide additional clarity within the Fee Schedule. As stated above, the Exchange has two categories of Members, Market Makers and EEMs. This proposed change would remove impediments to and perfect the mechanism of a free and open market and a national market system because it specifies that there are separate Trading Permit fee tables for EEMs and Market Makers, removing the potential investor confusion and clearly setting forth which fee is applicable to EEMs and which fee is applicable to Market Makers.

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

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

competition not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

The Exchange believes that the proposed Market Maker Trading Permit fees do not place certain market participants at a relative disadvantage to other market participants because the proposed fees do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the fee rates are designed in order to provide objective criteria for Market Makers of different sizes and business models that best matches their quoting activity on the Exchange. Further, the Exchange believes that the proposed Market Maker Trading Permit fees will not impose a burden on intramarket competition because, when these fees are viewed in the context of the overall activity on the Exchange, Market Makers: (1) consume the most bandwidth and resources of the network; (2) transact the vast majority of the volume on the Exchange; and (3) require the high touch network support services provided by the Exchange and its staff, including more costly network monitoring, reporting and support services, resulting in a much higher cost to the Exchange. The Exchange notes that the majority of customer demand comes from Market Makers, whose transactions make up a majority of the volume on the Exchange. Further, as discussed herein, other Member types (Broker Dealers, Professional Customers, and Priority Customers) take up significantly less Exchange resources and costs. As such, the Exchange does not believe charging Market Makers higher Trading Permit fees than other Member types will impose a burden on intramarket competition.

The Exchange believes that the tiered structure of the proposed Market Maker Trading Permit fees will not impose a burden on intramarket competition because the tiered structure takes into account the number of classes quoted by each individual Market Maker. As discussed herein, the Exchange's system requires increased performance and capacity in order to provide the opportunity for each Market Maker to quote in a higher number of options classes on the

Exchange. Specifically, the more classes that are actively quoted on the Exchange by a Market Maker requires increased memory for record retention, increased bandwidth for optimized performance, increased functionalities on each application layer, and increased optimization with regard to surveillance and monitoring of such classes quoted. As such, basing the Market Maker Trading Permit fee on the greatest number of classes quoted in on any given day in a calendar month is reasonable and appropriate when taking into account how the increased number of quoted classes directly impact the costs and resources for the Exchange.

Inter-Market Competition

The Exchange believes the proposed Market Maker Trading Permit fees do not place an undue burden on competition on other self-regulatory organizations that is not necessary or appropriate. The proposed tiered structure is based on the number of options classes the Market Maker is registered in, not the number of series within the options class. The Exchange believes its proposal would promote intermarket competition because the proposed tiered structure would encourage Market Makers to register in more series within each options class as each additional series in that class would not count towards the particular Market Maker's overall number of classes assigned, and cause them to qualify for a higher tier and higher fee. This could improve the Exchange's market quality by encouraging Market Makers to quote more series within an options class without it impacting its Trading Permit fee.

Market making firms are not forced to become market makers on all options exchanges. The Exchange notes that it has far less Market Makers as compared to the much greater number of market makers at other options exchanges. There are a number of large market makers that are participants of other options exchange but not Members of the Exchange. The Exchange is also unaware of any assertion that its existing fee levels or the proposed Market Maker Trading Permit fees would somehow unduly impair its competition with other options exchanges. To the

contrary, if the fees charged are deemed too high by a market making firm, they can simply discontinue their membership with the Exchange.

The Exchange operates in a highly competitive market in which market participants can readily favor one of the 15 competing options venues if they deem fee levels at a particular venue to be excessive. Based on publicly-available information, and excluding index-based options, no single exchange has more than 11-12% equity options market share.⁵³ Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and exchange-traded fund (“ETF”) options order flow. For the month of October 2022, the Exchange had a market share of approximately 4.32% of executed multiply-listed equity options⁵⁴ and the Exchange believes that the ever-shifting market share among exchanges from month to month demonstrates that market participants can discontinue or reduce use of certain categories of products, or shift order flow, in response to fee changes. In such an environment, the Exchange must continually adjust its fees and fee waivers to remain competitive with other exchanges and to attract order flow to the facility.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

Clarifying Change

⁵³ See Market at a Glance, available at www.miaxoptions.com (last visited November 15, 2022).

⁵⁴ See id.

The Exchange believes its proposal to change the word “Member” to “EEM” under the heading “Type of Trading Permit” in the table of Trading Permit fees that are based on type of interface used, FIX or MEO, will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed changes will not impose any burden on intra-market competition because the change simply clarifies that the first table of Trading Permit fees applies only to EEMs. The Exchange believes the proposed change will have not impose any burden on intra-market competition as the proposed change is not designed to address any competitive issue but rather is designed to provide clarity to the Fee Schedule. In addition, the Exchange does not believe the proposal will impose any burden on inter-market competition as the proposal does not address any competitive issues and is intended to protect investors by providing further transparency and precision for the Fee Schedule.

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,⁵⁵ and Rule 19b-4(f)(2)⁵⁶ 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

⁵⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

⁵⁶ 17 CFR 240.19b-4(f)(2).

takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>);
- or
- Send an e-mail [to rule-comments@sec.gov](mailto:to-rule-comments@sec.gov). Please include File Number SR-PEARL-2022-51 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-2022-51. 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-2022-51 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.⁵⁷

Vanessa Countryman
Secretary

⁵⁷ 17 CFR 200.30-3(a)(12).

Exhibit 5

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

MIAX Pearl Options Exchange Fee Schedule

* * * * *

3) Membership Fees

- a) No change.
- b) Monthly Trading Permit Fee

MIAX Pearl will issue Trading Permits to Members that confer the ability to transact on MIAX Pearl. (For a complete description of MIAX Pearl Trading Permits, see MIAX Pearl Rule 200.) Members receiving Trading Permits during a particular calendar month will be assessed Trading Permit Fees according to the tables below, and (except for EEM Clearing Firms) is based upon the Non-Transaction Fees Volume-Based Tiers. Monthly Trading Permit Fees will be assessed with respect to EEM Clearing Firms in any month the EEM Clearing Firm is certified in the membership system to clear transactions on the Exchange.

Type of Trading Permit	Monthly MIAX Pearl Trading Permit Fee
[Member] <u>EEM</u> that connects via the FIX Interface	No change
[Member] <u>EEM</u> that connects via the MEO Interface	No change
Member that is an EEM Clearing Firm	No change

Type of Trading Permit	Monthly MIAX Pearl Trading Permit Fee	<u>Market Maker Registrations</u> (the lesser of the applicable measurements below)	
		Per Class	% of National Average Daily Volume
Market Maker	\$3,000.00	<u>Up to 10 Classes</u>	<u>Up to 20% of Classes by volume</u>
	\$5,000.00**	<u>Up to 40 Classes</u>	<u>Up to 35% of Classes by volume</u>
	\$7,000.00**	<u>Up to 100 Classes</u>	<u>Up to 50% of Classes by volume</u>
	\$9,000.00**	<u>Over 100 Classes</u>	<u>Over 50% of Classes by volume</u> <u>up to all Classes listed on MIAX Pearl Options</u>

** For these Monthly MIAX Pearl Trading Permit Fee levels, if the Market Maker's total monthly executed volume during the relevant month is less than 0.040% of the total monthly TCV for MIAX Pearl-listed option classes for that month, then the fee will be \$3,500 instead of the fee otherwise applicable to such level.

For the calculation of the monthly Market Maker Trading Permits, the applicable fee rate is the lesser of either the per class basis or percentage of total national average daily volume measurement. The amount of monthly Market Maker Trading Permit Fee will be based upon the number of classes in which the Market Maker was registered to quote on any given day within the calendar month, or upon the class volume percentages set forth in the above table. A Market Maker is determined to be registered in a class if that Market Maker has been registered in one or more series in that class. The Exchange will assess MIAX Pearl Market Makers the monthly Market Maker Trading Permit Fee based on the greatest number of classes listed on MIAX Pearl

that the MIAX Pearl Market Maker registered to quote in on any given day within a calendar month. The class volume percentage is based on the total national average daily volume in classes listed on MIAX Pearl in the prior calendar quarter. Newly listed option classes are excluded from the calculation of the monthly Market Maker Trading Permit Fee until the calendar quarter following their listing, at which time the newly listed option classes will be included in both the per class count and the percentage of total national average daily volume. For example, if Market Maker 1 elects to quote the top 40 option classes which consist of 58% of the total national average daily volume in the prior calendar quarter, the Exchange would assess \$5,000 to Market Maker 1 for the month which is the lesser of 'up to 40 classes' and 'over 50% of classes by volume up to all classes listed on MIAX Pearl'. If Market Maker 2 elects to quote the bottom 1000 option classes which consist of 10% of the total national average daily volume in the prior quarter, the Exchange would assess \$3,000 to Market Maker 2 for the month which is the lesser of 'over 100 classes' and 'up to 20% of classes by volume.'

* * * * *