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Page 1 of \* 35

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

File No. \* SR 2023 - \* 16

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"/>	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)		
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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 Equities Fee Schedule to: (i) to increase the rebate for Adding Liquidity (displayed and non-displayed) orders in sub-dollar securities; (ii) increase the fee for Removing Liquidity in sub-dollar securities; (iii) update the corresponding liquidity indicator codes; and (iv) increase the percentage threshold for Add Volume Tier 3.

**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) 955-0460    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 03/31/2023 (Title \*)

By Michael Slade (Name \*) AVP, Associate Counsel

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: 2023.03.31 08:43:55 -04'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

**Form 19b-4 Information \***

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SR-PEARL-2023-16 - 19b4 (3-29-23).

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-2023-16 - 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-2023-16 - 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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> proposes to amend the fee schedule (the “Fee Schedule”) applicable to MIAX Pearl Equities, an equities trading facility of the Exchange.

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

(b) Inapplicable.

(c) Inapplicable.

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

The proposed rule change was approved by the Chief Executive Officer of the Exchange or his designee pursuant to authority delegated by the Exchange Board of Directors on February 2, 2023. Exchange staff will advise the Board of Directors of any action taken pursuant to delegated authority. No other action by the Exchange is necessary for the filing of the proposed rule change.

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

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

a. Purpose

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

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

The Exchange proposes to amend the Fee Schedule to: (i) increase the rebate for Adding Liquidity Displayed Orders and Adding Liquidity Non-Displayed Orders in securities priced below \$1.00 per share; (ii) increase the fee for Removing Liquidity in securities priced below \$1.00 per share; (iii) update the corresponding liquidity indicator codes to reflect the aforementioned proposed changes in (i) and (ii) above; and (iv) increase the percentage threshold for Add Volume Tier 3 from 0.20% to 0.30% of total consolidated volume (“TCV”)<sup>3</sup>.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of many venues, including 16 registered equities exchanges as well as a number of alternative trading systems and other off-exchange venues, to which market participants may direct their order flow. Based on publicly available information, no single registered equities exchange currently has more than approximately 15-16% of the total market share of executed volume of equities trading.<sup>4</sup>

Proposal to Increase the Rebate for Adding Liquidity Displayed Orders and Adding Liquidity Non-Displayed Orders in Securities Priced Below \$1.00 Per Share

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<sup>3</sup> The term “TCV” means total consolidated volume calculated as the volume in shares reported by all exchanges and reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply. The Exchange excludes from its calculation of TCV volume on any given day that the Exchange’s system experiences a disruption that lasts for more than 60 minutes during Regular Trading Hours, on any day with a scheduled early market close, and on the “Russell Reconstitution Day” (typically the last Friday in June). See the Definition Section of the Fee Schedule.

<sup>4</sup> Market share percentage calculated as of March 29, 2023. The Exchange receives and processes data made available through consolidated data feeds.

Currently, the Exchange provides a rebate of (0.10%)<sup>5</sup> of the total dollar value of any transaction in securities priced below \$1.00 per share that adds liquidity (displayed or non-displayed) across all Tapes to the Exchange.<sup>6</sup> The Exchange now proposes to increase the rebate from (0.10%) to (0.15%) of the total dollar value of any transaction in securities priced below \$1.00 per share that adds liquidity (displayed or non-displayed) across all Tapes to the Exchange. The purpose of the proposed change is for business and competitive reasons.

Proposal to Increase the Fee for Removing Liquidity in Securities Priced Below \$1.00 Per Share

Currently, the Exchange assesses a fee of 0.20% of the total dollar value of any transaction in securities priced below \$1.00 per share that removes liquidity across all Tapes from the Exchange.<sup>7</sup> The Exchange now proposes to increase the fee from 0.20% to 0.25% of the total dollar value of any transaction in securities priced below \$1.00 per share that removes liquidity across all Tapes from the Exchange. The purpose of the proposed change is for business and competitive reasons.

Proposal to Harmonize Section 1)b), Liquidity Indicator Codes and Associated Fees, with the Proposed Changes to the Standard Rates Table

The Exchange provides a table of liquidity indicator codes and associated fees/rebates that are applied to transactions so that Equity Members<sup>8</sup> may better understand the fee or rebate that is applied to each execution. The liquidity indicator code for each execution is returned on

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<sup>5</sup> The Exchange indicates rebates in parentheses in the Fee Schedule. See the General Notes Section of the Fee Schedule.

<sup>6</sup> See Fee Schedule, Section 1)a). See also Fee Schedule, Section 1)b), Liquidity Indicator Codes AA, AB, AC, AR, Aa, Ab, Ac, Ap, and Ar.

<sup>7</sup> See Fee Schedule, Section 1)a). See also Fee Schedule, Section 1)b), Liquidity Indicator Codes RA, RB, RC, RR, Ra, Rb, Rc, Rp and Rr.

<sup>8</sup> The term “Equity Member” is a Member authorized by the Exchange to transact business on MIAX Pearl Equities. See Exchange Rule 1901.

the real-time trade report sent to the Equity Member that submitted the order. Currently, the Exchange provides over thirty different liquidity indicator codes, nine of which relate to adding liquidity to the Exchange and nine that relate to removing liquidity from the Exchange.

The Exchange now proposes to update the rebates for liquidity indicator codes that add liquidity to the Exchange to align to the aforementioned proposed change to increase the standard rebate for Adding Liquidity Displayed Orders and Adding Liquidity Non-Displayed Orders from (0.10%) to (0.15%) of the total dollar value of the transaction in securities priced below \$1.00 per share. Specifically, the Exchange proposes to amend the column titled “Fee/(Rebate) Securities Priced Below \$1.00” in Section 1)b) of the Fee Schedule to reflect the proposed increase to the standard rebate for Adding Liquidity (Displayed Orders and Non-Displayed Orders) in securities priced below \$1.00 per share for the following liquidity indicator codes: AA, AB, AC, AR, Aa, Ab, Ac, Ap, and Ar.

Additionally, the Exchange proposes to update the fees for liquidity indicator codes that remove liquidity from the Exchange to align to the aforementioned proposed change to increase the standard fee for Removing Liquidity from 0.20% to 0.25% of the total dollar value of the transaction in securities priced below \$1.00 per share. Specifically, the Exchange proposes to amend the column titled “Fee/(Rebate) Securities Priced Below \$1.00” in Section 1)b) of the Fee Schedule to reflect the proposed increase to the standard fee for Removing Liquidity in securities priced below \$1.00 per share for the following liquidity indicator codes: RA, RB, RC, RR, Ra, Rb, Rc, Rp, and Rr. The purpose of these changes is to harmonize the table in Section 1)b) of the Fee Schedule to the changes proposed in Section 1)a) of the Fee Schedule.

Proposal to Amend the Percentage Threshold for Tier 3 of the Add Volume Tiers

Currently, the Exchange provides a volume-based tier structure in Section 1)c) of the Fee Schedule, referred to as the Add Volume Tiers, in which the Exchange provides an enhanced rebate for executions of Adding Liquidity Displayed Orders in securities priced at or above \$1.00 per share for Equity Members that meet certain specified volume thresholds on the Exchange (applicable to Liquidity Indicator Codes AA, AB and AC). Pursuant to the Add Volume Tiers table in Section 1)c) of the Fee Schedule, an Equity Member qualifies for an enhanced rebate under Tier 1 by achieving an average daily volume added (“ADAV”)<sup>9</sup> of at least 0.07% of the TCV. Equity Members that qualify for Tier 1 receive an enhanced rebate of (\$0.0032) per share for executions of Adding Liquidity Displayed Orders for executions of orders in securities priced at or above \$1.00 per share across all Tapes. An Equity Member qualifies for an enhanced rebate under Tier 2 by achieving an ADAV of at least 0.10% of the TCV. Equity Members that qualify for Tier 2 receive an enhanced rebate of (\$0.0035) per share for executions of Added Displayed Volume for executions of orders in securities priced at or above \$1.00 per share across all Tapes. An Equity Member qualifies for an enhanced rebate under Tier 3 by achieving an ADAV of at least 0.20% of the TCV. Equity Members that qualify for Tier 3 receive an enhanced rebate of (\$0.0036) per share for executions of Added Displayed Volume for executions of orders in securities priced at or above \$1.00 per share across all Tapes.

The Exchange now proposes to amend the Add Volume Tiers table in Section 1)c) of the Fee Schedule to increase the percentage threshold for Add Volume Tier 3 from 0.20% to 0.30% of TCV. The Exchange does not propose to amend the percentage thresholds for Add Volume

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<sup>9</sup> The term “ADAV” means average daily added volume calculated as the number of shares added per day and “ADV” means average daily volume calculated as the number of shares added or removed, combined, per day. ADAV and ADV are calculated on a monthly basis. See the Definitions Section of the Fee Schedule.

Tiers 1 or 2 and does not propose to amend any of the enhanced rebates applicable to the Add Volume Tiers table. With the proposed change, an Equity Member will now qualify for an enhanced rebate under Tier 3 by achieving an ADAV of at least 0.30% of the TCV (enhanced rebate of (\$0.0036) per share for executions of Added Displayed Volume for executions of orders in securities priced at or above \$1.00 per share across all Tapes). The purpose of this change is for business and competitive reasons and to level-set the Tier 3 volume threshold in light of recent market share change on the Exchange.

#### Implementation

The Exchange proposes to implement the changes to the Fee Schedule pursuant to this proposal on April 1, 2023.

#### b. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act<sup>10</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>11</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among its Equity Members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with the objectives of Section 6(b)(5)<sup>12</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, and to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the

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<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(4).

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



mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange operates in a highly fragmented and competitive market in which market participants can readily direct their order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of many venues, including 16 registered equities exchanges as well as a number of alternative trading systems and other off-exchange venues, to which market participants may direct their order flow. Based on publicly available information, no single registered equities exchange currently has more than approximately 15-16% of the total market share of executed volume of equities trading.<sup>13</sup> Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow, and the Exchange currently represents less than 2% of the overall market share.<sup>14</sup> The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and also recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>15</sup>

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<sup>13</sup> See “The Market at a Glance,” available at <https://www.miaxoptions.com/> (last visited March 29, 2023).

<sup>14</sup> Id.

<sup>15</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37499 (June 29, 2005).

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

Proposal to Increase the Rebate for Adding Liquidity (Displayed Orders and Non-Displayed Orders) in Securities Priced Below \$1.00 Per Share

The Exchange believes that the proposed increased rebate for executions of all orders in securities priced below \$1.00 per share that add displayed and non-displayed liquidity to the Exchange is reasonable, equitable, and non-discriminatory because it would further incentivize Equity Members to submit displayed and non-displayed liquidity-adding orders in sub-dollar securities to the Exchange. The Exchange believes that this would deepen liquidity and promote price discovery in such securities to the benefit of all Equity Members, and such rebates would continue to apply equally to all Equity Members. The Exchange further believes that the proposed increased rebate is reasonable because the proposed rebates for executions of liquidity-adding orders in sub-dollar securities are higher than the rebates provided by competing exchanges for sub-dollar securities.<sup>16</sup>

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<sup>16</sup> See e.g., NYSE Arca Equities Fee Schedule, III. Standard Rates – Transactions, available at

Proposal to Increase the Fee for Removing Liquidity in Securities Priced Below \$1.00 Per Share

The Exchange believes that the proposed change to increase the standard fee for executions of all orders in securities priced below \$1.00 per share that remove liquidity from the Exchange is reasonable, equitable, and consistent with the Act because it represents a modest increase from the current standard fee (change from 0.20% to 0.25% of the total dollar value). Even with the proposed increase, the Exchange's standard fee for executions of all orders in securities priced below \$1.00 per share that remove liquidity from the Exchange remains lower than, or similar to, the standard fee to remove liquidity in securities priced below \$1.00 per share charged by competing equities exchanges.<sup>17</sup> The Exchange further believes that the proposal to increase the standard fee for executions of all orders in securities priced below \$1.00 per share that remove liquidity from the Exchange is equitably allocated and not unfairly discriminatory because it will apply to all Equity Members that remove liquidity from the Exchange.

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[arca/NYSE Arca Marketplace Fees.pdf](#) (providing a standard rebate of 0.0% of the total dollar value of the transaction for liquidity-adding transactions in securities priced below \$1.00 per share, and tiered rebates for such transactions ranging from 0.05% to 0.15% of the total dollar value of the transaction based on a participant achieving certain volume thresholds); see also MEMX Fee Schedule, Transaction Fees, available at <https://info.memxtrading.com/fee-schedule/> (providing standard rebates ranging from 0.075% to 0.15% of the total dollar value for executions in securities priced below \$1.00 per share).

<sup>17</sup> See Cboe EDGX Equities Fee Schedule, Standard Rates, available at [https://www.cboe.com/us/equities/membership/fee\\_schedule/edgx/](https://www.cboe.com/us/equities/membership/fee_schedule/edgx/) (charging a standard fee of 0.30% of the dollar value to remove liquidity in securities priced below \$1.00 per share); see also MEMX Fee Schedule, Transaction Fees (charging a standard fee of 0.28% of the total dollar value to remove liquidity in securities priced below \$1.00 per share) and NYSE American Equities Price List, Section I.A.2., available at [https://www.nyse.com/publicdocs/nyse/markets/nyse-american/NYSE\\_America\\_Equities\\_Price\\_List.pdf](https://www.nyse.com/publicdocs/nyse/markets/nyse-american/NYSE_America_Equities_Price_List.pdf) (charging a standard fee of 0.25% of the total dollar value of the transaction to remove liquidity in securities priced below \$1.00 per share).

Proposal to Amend the Percentage Threshold for Tier 3 of the Add Volume Tiers

The Exchange believes that the proposed change to increase the percentage threshold for Add Volume Tier 3 is reasonable, equitable, and consistent with the Act because the Exchange's market share has risen over the past few months and the proposed change is designed to level-set Equity Members' trading activity on the Exchange with recent performance. Even with the proposed percentage threshold increase, the Exchange's percentage thresholds and corresponding enhanced rebates for executions of orders in securities priced at or above \$1.00 per share that add liquidity in displayed orders remains similar to the enhanced rebates to add such liquidity by at least one competing equities exchange.<sup>18</sup> The Exchange believes that even with the proposed volume threshold change to the Add Volume Tier 3, the Exchange's enhanced rebates and volume thresholds will still allow the Exchange to remain highly competitive such that the thresholds should enable the Exchange to continue to attract order flow and maintain market share. As the amount and type of volume that is executed on the Exchange has shifted since it first established the Add Volume Tier thresholds, the Exchange has determined to level-set the volume criteria threshold amount in Tier 3 so that is more reflective of the current operating conditions and the current type and amount of volume executed on the Exchange.

For the reasons discussed above, the Exchange submits that the proposal satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Equity Members and other persons using its facilities and is not designed to unfairly discriminate between customers,

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<sup>18</sup> See MEMX Fee Schedule, Liquidity Provision Tiers, available at <https://info.memxtrading.com/fee-schedule/> (providing enhanced rebate for added displayed volume in Tier 1 of \$0.00335 if the member has an ADAV (excluding retail orders) greater than or equal to 0.45% of the TCV).

issuers, brokers, or dealers. As described more fully below in the Exchange's statement regarding the burden on competition, the Exchange believes that its transaction pricing is subject to significant competitive forces, and that the proposed fees and rebates described herein are appropriate to address such forces.

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

The Exchange does not believe that the proposed changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed changes will continue to encourage Equity Members to maintain or increase their order flow to the Exchange, thereby contributing to a deeper and more liquid market to the benefit of all market participants and enhancing the attractiveness of the Exchange as a trading venue. As a result, the Exchange believes the proposal will enhance its competitiveness as a market that attracts actionable orders, thereby making it a more desirable destination venue for its customers. For these reasons, the Exchange believes that the proposal furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."<sup>19</sup>

##### Intra-market Competition

The Exchange believes that the proposed changes will continue to incentivize market participants to direct order flow to the Exchange, thereby contributing to a deeper and more liquid market to the benefit of all market participants and enhancing the attractiveness of the Exchange as a trading venue, which the Exchange believes, in turn, will continue to encourage

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<sup>19</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 47396 (June 29, 2005).

market participants to direct additional order flow to the Exchange. Greater liquidity benefits all Equity Members by providing more trading opportunities and encourages Equity Members to send orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all Equity Members.

The opportunity to qualify for the Add Volume Tiers, and thus receive the proposed enhanced rebates for executions of displayed added volume will continue to be available to all Equity Members that meet the associated volume requirement in any month. The Exchange believes that meeting the volume requirement of the Add Volume Tiers is attainable for market participants, as the Exchange believes the thresholds are relatively low, even with the proposed change to Tier 3, and are reasonably related to the enhanced liquidity and market quality that the Add Volume Tiers are designed to promote. Similarly, the proposed increase to the standard fee for executions of orders that remove volume from the Exchange will continue to apply equally to all Equity Members. As such, the Exchange believes the proposed changes would not impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### Intermarket Competition

The Exchange believes its proposal will benefit competition as the Exchange operates in a highly competitive market. Equity Members have numerous alternative venues they may participate on and direct their order flow to, including fifteen other equities exchanges and numerous alternative trading systems and other off-exchange venues. As noted above, no single registered equities exchange currently has more than 15-16% of the total market share of executed volume of equities trading.<sup>20</sup> Thus, in such a low-concentrated and highly competitive

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<sup>20</sup> See supra note 13.

market, no single equities exchange possesses significant pricing power in the execution of order flow. Moreover, the Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow in response to new or different pricing structures being introduced to the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates generally, including with respect to executions of orders that remove volume from the Exchange, and market participants can readily choose to send their orders to other exchanges and off-exchange venues if they deem fee levels at those other venues to be more favorable.

As described above, the proposed changes are competitive proposals through which the Exchange is seeking to encourage additional order flow to the Exchange. Such proposed changes to (i) increase the Adding Liquidity (displayed and non-displayed orders) rebates and Removing Liquidity fee and (ii) increase the threshold to achieve the enhanced Tier 3 Add Volume rebate are comparable to, and competitive with, rates charged by other exchanges.<sup>21</sup> The proposed change to update the Liquidity Indicator Codes and Associated Fees table is in conjunction with the Exchange's abovementioned proposed changes.

Additionally, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."<sup>22</sup>

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<sup>21</sup> See supra notes 16, 17 and 18.

<sup>22</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. circuit stated: “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possess a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’ . . . .”<sup>23</sup> Accordingly, the Exchange does not believe its proposed pricing changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

No written comments were either solicited or received.

**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,<sup>24</sup> and Rule 19b-4(f)(2) thereunder<sup>25</sup> 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.

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<sup>23</sup> *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSE-2006-21)).

<sup>24</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>25</sup> 17 CFR 240.19b-4.



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

Not applicable.

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

Not applicable.

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

Not applicable.

**11. Exhibits**

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

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-PEARL-2023-16)

March \_\_\_\_, 2023

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

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March \_\_\_\_, 2023, MIAX PEARL, LLC (“MIAX Pearl” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange is filing a proposal to amend the fee schedule (the “Fee Schedule”) applicable to MIAX Pearl Equities, an equities trading facility of the Exchange.

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

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified

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

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

in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to amend the Fee Schedule to: (i) increase the rebate for Adding Liquidity Displayed Orders and Adding Liquidity Non-Displayed Orders in securities priced below \$1.00 per share; (ii) increase the fee for Removing Liquidity in securities priced below \$1.00 per share; (iii) update the corresponding liquidity indicator codes to reflect the aforementioned proposed changes in (i) and (ii) above; and (iv) increase the percentage threshold for Add Volume Tier 3 from 0.20% to 0.30% of total consolidated volume (“TCV”)<sup>3</sup>.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of many venues, including 16 registered equities exchanges as well as a number of alternative trading systems and other off-exchange venues, to which market participants may direct their order flow. Based on publicly available information, no single registered equities exchange currently has more than approximately 15-16% of the total market share of executed volume of equities trading.<sup>4</sup>

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<sup>3</sup> The term “TCV” means total consolidated volume calculated as the volume in shares reported by all exchanges and reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply. The Exchange excludes from its calculation of TCV volume on any given day that the Exchange’s system experiences a disruption that lasts for more than 60 minutes during Regular Trading Hours, on any day with a scheduled early market close, and on the “Russell Reconstitution Day” (typically the last Friday in June). See the Definition Section of the Fee Schedule.

<sup>4</sup> Market share percentage calculated as of March 29, 2023. The Exchange receives and processes data made available through consolidated data feeds.

Proposal to Increase the Rebate for Adding Liquidity Displayed Orders and Adding Liquidity Non-Displayed Orders in Securities Priced Below \$1.00 Per Share

Currently, the Exchange provides a rebate of (0.10%)<sup>5</sup> of the total dollar value of any transaction in securities priced below \$1.00 per share that adds liquidity (displayed or non-displayed) across all Tapes to the Exchange.<sup>6</sup> The Exchange now proposes to increase the rebate from (0.10%) to (0.15%) of the total dollar value of any transaction in securities priced below \$1.00 per share that adds liquidity (displayed or non-displayed) across all Tapes to the Exchange. The purpose of the proposed change is for business and competitive reasons.

Proposal to Increase the Fee for Removing Liquidity in Securities Priced Below \$1.00 Per Share

Currently, the Exchange assesses a fee of 0.20% of the total dollar value of any transaction in securities priced below \$1.00 per share that removes liquidity across all Tapes from the Exchange.<sup>7</sup> The Exchange now proposes to increase the fee from 0.20% to 0.25% of the total dollar value of any transaction in securities priced below \$1.00 per share that removes liquidity across all Tapes from the Exchange. The purpose of the proposed change is for business and competitive reasons.

Proposal to Harmonize Section 1)b), Liquidity Indicator Codes and Associated Fees, with the Proposed Changes to the Standard Rates Table

The Exchange provides a table of liquidity indicator codes and associated fees/rebates that are applied to transactions so that Equity Members<sup>8</sup> may better understand the fee or rebate

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<sup>5</sup> The Exchange indicates rebates in parentheses in the Fee Schedule. See the General Notes Section of the Fee Schedule.

<sup>6</sup> See Fee Schedule, Section 1)a). See also Fee Schedule, Section 1)b), Liquidity Indicator Codes AA, AB, AC, AR, Aa, Ab, Ac, Ap, and Ar.

<sup>7</sup> See Fee Schedule, Section 1)a). See also Fee Schedule, Section 1)b), Liquidity Indicator Codes RA, RB, RC, RR, Ra, Rb, Rc, Rp and Rr.

<sup>8</sup> The term “Equity Member” is a Member authorized by the Exchange to transact business on MIA X Pearl Equities. See Exchange Rule 1901.

that is applied to each execution. The liquidity indicator code for each execution is returned on the real-time trade report sent to the Equity Member that submitted the order. Currently, the Exchange provides over thirty different liquidity indicator codes, nine of which relate to adding liquidity to the Exchange and nine that relate to removing liquidity from the Exchange.

The Exchange now proposes to update the rebates for liquidity indicator codes that add liquidity to the Exchange to align to the aforementioned proposed change to increase the standard rebate for Adding Liquidity Displayed Orders and Adding Liquidity Non-Displayed Orders from (0.10%) to (0.15%) of the total dollar value of the transaction in securities priced below \$1.00 per share. Specifically, the Exchange proposes to amend the column titled “Fee/(Rebate) Securities Priced Below \$1.00” in Section 1)b) of the Fee Schedule to reflect the proposed increase to the standard rebate for Adding Liquidity (Displayed Orders and Non-Displayed Orders) in securities priced below \$1.00 per share for the following liquidity indicator codes: AA, AB, AC, AR, Aa, Ab, Ac, Ap, and Ar.

Additionally, the Exchange proposes to update the fees for liquidity indicator codes that remove liquidity from the Exchange to align to the aforementioned proposed change to increase the standard fee for Removing Liquidity from 0.20% to 0.25% of the total dollar value of the transaction in securities priced below \$1.00 per share. Specifically, the Exchange proposes to amend the column titled “Fee/(Rebate) Securities Priced Below \$1.00” in Section 1)b) of the Fee Schedule to reflect the proposed increase to the standard fee for Removing Liquidity in securities priced below \$1.00 per share for the following liquidity indicator codes: RA, RB, RC, RR, Ra, Rb, Rc, Rp, and Rr. The purpose of these changes is to harmonize the table in Section 1)b) of the Fee Schedule to the changes proposed in Section 1)a) of the Fee Schedule.

Proposal to Amend the Percentage Threshold for Tier 3 of the Add Volume Tiers

Currently, the Exchange provides a volume-based tier structure in Section 1)c) of the Fee Schedule, referred to as the Add Volume Tiers, in which the Exchange provides an enhanced rebate for executions of Adding Liquidity Displayed Orders in securities priced at or above \$1.00 per share for Equity Members that meet certain specified volume thresholds on the Exchange (applicable to Liquidity Indicator Codes AA, AB and AC). Pursuant to the Add Volume Tiers table in Section 1)c) of the Fee Schedule, an Equity Member qualifies for an enhanced rebate under Tier 1 by achieving an average daily volume added (“ADAV”)<sup>9</sup> of at least 0.07% of the TCV. Equity Members that qualify for Tier 1 receive an enhanced rebate of (\$0.0032) per share for executions of Adding Liquidity Displayed Orders for executions of orders in securities priced at or above \$1.00 per share across all Tapes. An Equity Member qualifies for an enhanced rebate under Tier 2 by achieving an ADAV of at least 0.10% of the TCV. Equity Members that qualify for Tier 2 receive an enhanced rebate of (\$0.0035) per share for executions of Added Displayed Volume for executions of orders in securities priced at or above \$1.00 per share across all Tapes. An Equity Member qualifies for an enhanced rebate under Tier 3 by achieving an ADAV of at least 0.20% of the TCV. Equity Members that qualify for Tier 3 receive an enhanced rebate of (\$0.0036) per share for executions of Added Displayed Volume for executions of orders in securities priced at or above \$1.00 per share across all Tapes.

The Exchange now proposes to amend the Add Volume Tiers table in Section 1)c) of the Fee Schedule to increase the percentage threshold for Add Volume Tier 3 from 0.20% to 0.30% of TCV. The Exchange does not propose to amend the percentage thresholds for Add Volume Tiers 1 or 2 and does not propose to amend any of the enhanced rebates applicable to the Add

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<sup>9</sup> The term “ADAV” means average daily added volume calculated as the number of shares added per day and “ADV” means average daily volume calculated as the number of shares added or removed, combined, per day. ADAV and ADV are calculated on a monthly basis. See the Definitions Section of the Fee Schedule.

Volume Tiers table. With the proposed change, an Equity Member will now qualify for an enhanced rebate under Tier 3 by achieving an ADAV of at least 0.30% of the TCV (enhanced rebate of (\$0.0036) per share for executions of Added Displayed Volume for executions of orders in securities priced at or above \$1.00 per share across all Tapes). The purpose of this change is for business and competitive reasons and to level-set the Tier 3 volume threshold in light of recent market share change on the Exchange.

### Implementation

The Exchange proposes to implement the changes to the Fee Schedule pursuant to this proposal on April 1, 2023.

### 2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act<sup>10</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>11</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among its Equity Members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with the objectives of Section 6(b)(5)<sup>12</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, and to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect

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<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(4).

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

investors and the public interest, and, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange operates in a highly fragmented and competitive market in which market participants can readily direct their order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of many venues, including 16 registered equities exchanges as well as a number of alternative trading systems and other off-exchange venues, to which market participants may direct their order flow. Based on publicly available information, no single registered equities exchange currently has more than approximately 15-16% of the total market share of executed volume of equities trading.<sup>13</sup> Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow, and the Exchange currently represents less than 2% of the overall market share.<sup>14</sup> The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and also recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>15</sup>

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to

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<sup>13</sup> See “The Market at a Glance,” available at <https://www.miaxoptions.com/> (last visited March 29, 2023).

<sup>14</sup> Id.

<sup>15</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37499 (June 29, 2005).



reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. The Exchange believes the proposal reflects a reasonable and competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance liquidity and market quality to the benefit of all Equity Members and market participants.

Proposal to Increase the Rebate for Adding Liquidity (Displayed Orders and Non-Displayed Orders) in Securities Priced Below \$1.00 Per Share

The Exchange believes that the proposed increased rebate for executions of all orders in securities priced below \$1.00 per share that add displayed and non-displayed liquidity to the Exchange is reasonable, equitable, and non-discriminatory because it would further incentivize Equity Members to submit displayed and non-displayed liquidity-adding orders in sub-dollar securities to the Exchange. The Exchange believes that this would deepen liquidity and promote price discovery in such securities to the benefit of all Equity Members, and such rebates would continue to apply equally to all Equity Members. The Exchange further believes that the proposed increased rebate is reasonable because the proposed rebates for executions of liquidity-adding orders in sub-dollar securities are higher than the rebates provided by competing exchanges for sub-dollar securities.<sup>16</sup>

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<sup>16</sup> See e.g., NYSE Arca Equities Fee Schedule, III. Standard Rates – Transactions, available at [https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE\\_Arca\\_Marketplace\\_Fees.pdf](https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf) (providing a standard rebate of 0.0% of the total dollar value of the transaction for liquidity-adding transactions in securities priced below \$1.00 per share, and tiered rebates for such transactions ranging from 0.05% to 0.15% of the total dollar value of the transaction based on a participant achieving certain volume thresholds); see also MEMX Fee Schedule, Transaction Fees, available at <https://info.memxtrading.com/fee-schedule/> (providing standard rebates ranging from

Proposal to Increase the Fee for Removing Liquidity in Securities Priced Below \$1.00 Per Share

The Exchange believes that the proposed change to increase the standard fee for executions of all orders in securities priced below \$1.00 per share that remove liquidity from the Exchange is reasonable, equitable, and consistent with the Act because it represents a modest increase from the current standard fee (change from 0.20% to 0.25% of the total dollar value). Even with the proposed increase, the Exchange's standard fee for executions of all orders in securities priced below \$1.00 per share that remove liquidity from the Exchange remains lower than, or similar to, the standard fee to remove liquidity in securities priced below \$1.00 per share charged by competing equities exchanges.<sup>17</sup> The Exchange further believes that the proposal to increase the standard fee for executions of all orders in securities priced below \$1.00 per share that remove liquidity from the Exchange is equitably allocated and not unfairly discriminatory because it will apply to all Equity Members that remove liquidity from the Exchange.

Proposal to Amend the Percentage Threshold for Tier 3 of the Add Volume Tiers

The Exchange believes that the proposed change to increase the percentage threshold for Add Volume Tier 3 is reasonable, equitable, and consistent with the Act because the Exchange's market share has risen over the past few months and the proposed change is designed to level-set

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0.075% to 0.15% of the total dollar value for executions in securities priced below \$1.00 per share).

<sup>17</sup> See Cboe EDGX Equities Fee Schedule, Standard Rates, available at [https://www.cboe.com/us/equities/membership/fee\\_schedule/edgx/](https://www.cboe.com/us/equities/membership/fee_schedule/edgx/) (charging a standard fee of 0.30% of the dollar value to remove liquidity in securities priced below \$1.00 per share); see also MEMX Fee Schedule, Transaction Fees (charging a standard fee of 0.28% of the total dollar value to remove liquidity in securities priced below \$1.00 per share) and NYSE American Equities Price List, Section I.A.2., available at [https://www.nyse.com/publicdocs/nyse/markets/nyse-american/NYSE\\_America\\_Equities\\_Price\\_List.pdf](https://www.nyse.com/publicdocs/nyse/markets/nyse-american/NYSE_America_Equities_Price_List.pdf) (charging a standard fee of 0.25% of the total dollar value of the transaction to remove liquidity in securities priced below \$1.00 per share).

Equity Members' trading activity on the Exchange with recent performance. Even with the proposed percentage threshold increase, the Exchange's percentage thresholds and corresponding enhanced rebates for executions of orders in securities priced at or above \$1.00 per share that add liquidity in displayed orders remains similar to the enhanced rebates to add such liquidity by at least one competing equities exchange.<sup>18</sup> The Exchange believes that even with the proposed volume threshold change to the Add Volume Tier 3, the Exchange's enhanced rebates and volume thresholds will still allow the Exchange to remain highly competitive such that the thresholds should enable the Exchange to continue to attract order flow and maintain market share. As the amount and type of volume that is executed on the Exchange has shifted since it first established the Add Volume Tier thresholds, the Exchange has determined to level-set the volume criteria threshold amount in Tier 3 so that is more reflective of the current operating conditions and the current type and amount of volume executed on the Exchange.

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

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<sup>18</sup> See MEMX Fee Schedule, Liquidity Provision Tiers, available at <https://info.memxtrading.com/fee-schedule/> (providing enhanced rebate for added displayed volume in Tier 1 of \$0.00335 if the member has an ADAV (excluding retail orders) greater than or equal to 0.45% of the TCV).

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

The Exchange does not believe that the proposed changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed changes will continue to encourage Equity Members to maintain or increase their order flow to the Exchange, thereby contributing to a deeper and more liquid market to the benefit of all market participants and enhancing the attractiveness of the Exchange as a trading venue. As a result, the Exchange believes the proposal will enhance its competitiveness as a market that attracts actionable orders, thereby making it a more desirable destination venue for its customers. For these reasons, the Exchange believes that the proposal furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."<sup>19</sup>

Intra-market Competition

The Exchange believes that the proposed changes will continue to incentivize market participants to direct order flow to the Exchange, thereby contributing to a deeper and more liquid market to the benefit of all market participants and enhancing the attractiveness of the Exchange as a trading venue, which the Exchange believes, in turn, will continue to encourage market participants to direct additional order flow to the Exchange. Greater liquidity benefits all Equity Members by providing more trading opportunities and encourages Equity Members to send orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all Equity Members.

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<sup>19</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 47396 (June 29, 2005).

The opportunity to qualify for the Add Volume Tiers, and thus receive the proposed enhanced rebates for executions of displayed added volume will continue to be available to all Equity Members that meet the associated volume requirement in any month. The Exchange believes that meeting the volume requirement of the Add Volume Tiers is attainable for market participants, as the Exchange believes the thresholds are relatively low, even with the proposed change to Tier 3, and are reasonably related to the enhanced liquidity and market quality that the Add Volume Tiers are designed to promote. Similarly, the proposed increase to the standard fee for executions of orders that remove volume from the Exchange will continue to apply equally to all Equity Members. As such, the Exchange believes the proposed changes would not impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### Intermarket Competition

The Exchange believes its proposal will benefit competition as the Exchange operates in a highly competitive market. Equity Members have numerous alternative venues they may participate on and direct their order flow to, including fifteen other equities exchanges and numerous alternative trading systems and other off-exchange venues. As noted above, no single registered equities exchange currently has more than 15-16% of the total market share of executed volume of equities trading.<sup>20</sup> Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. Moreover, the Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow in response to new or different pricing structures being introduced to the market. Accordingly, competitive

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<sup>20</sup> See supra note 13.

forces constrain the Exchange's transaction fees and rebates generally, including with respect to executions of orders that remove volume from the Exchange, and market participants can readily choose to send their orders to other exchanges and off-exchange venues if they deem fee levels at those other venues to be more favorable.

As described above, the proposed changes are competitive proposals through which the Exchange is seeking to encourage additional order flow to the Exchange. Such proposed changes to (i) increase the Adding Liquidity (displayed and non-displayed orders) rebates and Removing Liquidity fee and (ii) increase the threshold to achieve the enhanced Tier 3 Add Volume rebate are comparable to, and competitive with, rates charged by other exchanges.<sup>21</sup> The proposed change to update the Liquidity Indicator Codes and Associated Fees table is in conjunction with the Exchange's abovementioned proposed changes.

Additionally, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."<sup>22</sup> The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. circuit stated: "[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their routing

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<sup>21</sup> See supra notes 16, 17 and 18.

<sup>22</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possess a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’ . . . .”<sup>23</sup> Accordingly, the Exchange does not believe its proposed pricing changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Written comments were neither solicited nor received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>24</sup> and Rule 19b-4(f)(2)<sup>25</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

Comments may be submitted by any of the following methods:

Electronic comments:

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<sup>23</sup> NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSE-2006-21)).

<sup>24</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>25</sup> 17 CFR 240.19b-4(f)(2).

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>);
- or
- Send an e-mail [to rule-comments@sec.gov](mailto:to-rule-comments@sec.gov). Please include File Number SR-PEARL-2023-16 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-2023-16. 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-2023-16 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.<sup>26</sup>

Vanessa Countryman  
Secretary

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<sup>26</sup> 17 CFR 200.30-3(a)(12).

**Exhibit 5**New text is underlined;

Deleted text is in [brackets]

**MIAX Pearl Equities Exchange Fee Schedule**

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**1) Transaction Rebates/Fees****a) Standard Rates**

<b>Category</b>	<b>Adding Liquidity Displayed Order</b>	<b>Adding Liquidity Non-Displayed Order</b>	<b>Removing Liquidity</b>	<b>Routing and Removing Liquidity</b>	<b>Opening or Re-Opening Process</b>
Securities at or above \$1.00	No change	No change	No change	No change	No change
Securities below \$1.00	(0.[10] <u>15</u> % of Dollar Value)	(0.[10] <u>15</u> % of Dollar Value)	0.[20] <u>25</u> % of Dollar Value	No change	No change
Standard Liquidity Indicator Codes	No change	No change	No change	No change	No change

**b) Liquidity Indicator Codes and Associated Fees**

<b>Liquidity Indicator Code</b>	<b>Description</b>	<b>Fee/(Rebate) Securities Priced at or Above \$1.00</b>	<b>Fee/(Rebate) Securities Priced Below \$1.00</b>
AA	Adds Liquidity, Displayed Order (Tape A)	No change	(0.[10] <u>15</u> % of Dollar Value)
AB	Adds Liquidity, Displayed Order (Tape B)	No change	(0.[10] <u>15</u> % of Dollar Value)
AC	Adds Liquidity, Displayed Order(Tape C)	No change	(0.[10] <u>15</u> % of Dollar Value)
AR	Retail Order, Adds Liquidity, Displayed Order (All Tapes)	No change	(0.[10] <u>15</u> % of Dollar Value)
Aa	Adds Liquidity, Non-Displayed Order (Tape A)	No change	(0.[10] <u>15</u> % of Dollar Value)
Ab	Adds Liquidity, Non-Displayed Order (Tape B)	No change	(0.[10] <u>15</u> % of Dollar Value)

Liquidity Indicator Code	Description	Fee/(Rebate) Securities Priced at or Above \$1.00	Fee/(Rebate) Securities Priced Below \$1.00
Ac	Adds Liquidity, Non-Displayed Order (Tape C)	No change	(0.[10]15% of Dollar Value)
Ap	Adds Liquidity and Executes at the Midpoint, Non-Displayed Midpoint Peg Order (All Tapes)	No change	(0.[10]15% of Dollar Value)
Ar	Retail Order, Adds Liquidity, Non-Displayed Order (All Tapes)	No change	(0.[10]15% of Dollar Value)
O	Opening/Re-Opening Process	No change	No change
RA	Removes Liquidity, Displayed Order (Tape A)	No change	0.[20]25% of Dollar Value
RB	Removes Liquidity, Displayed Order (Tape B)	No change	0.[20]25% of Dollar Value
RC	Removes Liquidity, Displayed Order (Tape C)	No change	0.[20]25% of Dollar Value
RR	Retail Order, Removes Liquidity, Displayed Order (All Tapes)	No change	0.[20]25% of Dollar Value
Ra	Removes Liquidity, Non-Displayed Order (Tape A)	No change	0.[20]25% of Dollar Value
Rb	Removes Liquidity, Non-Displayed Order (Tape B)	No change	0.[20]25% of Dollar Value
Rc	Removes Liquidity, Non-Displayed Order (Tape C)	No change	0.[20]25% of Dollar Value
Rp	Removes Liquidity and Executes at the Midpoint, Non-Displayed Midpoint Peg Order (All Tapes)	No change	0.[20]25% of Dollar Value
Rr	Retail Order, Removes Liquidity, Non-Displayed Order (All Tapes)	No change	0.[20]25% of Dollar Value

\*\*\*\*\*

## c) Add Volume Tiers

Tier	Percentage Thresholds	Securities Priced at or Above \$1.00
1	ADAV $\geq$ 0.07% of TCV	No change
2	ADAV $\geq$ 0.10% of TCV	No change
3	ADAV $\geq$ 0.[2]30% of TCV	No change

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