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

File No. * SR 2023 - * 69

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 Equities Fee Schedule to modify the Remove Volume Tiers and modify the expiration month for the Step-Up Added Liquidity Rebate.

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@miaxglobal.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 12/12/2023

(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: 2023.12.12 13:51:34 -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 EDFS website.

Form 19b-4 Information *

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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-2023-69 - 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

Add	Remove	View
SR-PEARL-2023-69 - 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 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) Not Applicable.

(c) Not Applicable.

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

The proposed rule change was approved by the Chief Executive Officer of the Exchange or his duly appointed designee pursuant to authority delegated by the MIAX Pearl 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 Michael Slade, AVP, Associate Counsel, at (609) 955-0460.

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

a. Purpose

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

The Exchange proposes to amend the Fee Schedule to: (1) amend Section 1)d) to modify the volume requirement in Tier 1 of the Remove Volume Tiers³ applicable to executions of orders in securities priced at or above \$1.00 per share that remove liquidity from the Exchange (“Removed Volume”) and eliminate Remove Volume Tier 2 and the corresponding fee; and (2) amend Section 1)f) to modify the expiration month (referred to herein as the “sunset period”) for the Step-Up Added Liquidity Rebate. The Exchange originally filed this proposal on November 30, 2023 (SR-PEARL-2023-67). On December 12, 2023, the Exchange withdrew SR-PEARL-2023-67 and refiled this proposal with minor changes.

Remove Volume Tiers Table Changes

Currently the Exchange charges a fee of \$0.00295 per share for executions of Removed Volume on the Exchange in securities priced at or above \$1.00 per share, except for executions of Removed Volume that execute at the midpoint for non-displayed Midpoint Peg Orders⁴ in all Tapes.⁵ The Exchange also offers a tiered pricing structure in Section 1)d) of the Fee Schedule, Remove Volume Tiers, which provides reduced fees for executions of Removed Volume on the Exchange in securities priced at or above \$1.00 per share based on certain volume thresholds achieved by Equity Members.⁶ To achieve the reduced fees of the Remove Volume Tiers, Equity Members must, (i) for Tier 1, achieve an average daily volume (“ADV”)⁷ that is equal to

³ See Fee Schedule, Section 1)d).

⁴ See 2614(a)(3)(i)(A) for the definition of Midpoint Peg Order.

⁵ See Fee Schedule, Section 1)a) and Liquidity Indicator Codes RA, Ra, RB, Rb, RC, Rc, Rp, RR, Rr, RT, and Rt.

⁶ The term “Equity Member” is a Member authorized by the Exchange to transact business on MIAX Pearl Equities. See Exchange Rule 1901.

⁷ “ADV” means average daily volume calculated as the number of shares added or removed, combined, per day. ADV is calculated on a monthly basis. See the Definitions Section of the Fee Schedule. The Exchange excludes from its calculation of ADV shares added or removed on any day that the Exchange’s system experiences a disruption that lasts for more than 60 minutes during regular trading hours, on any day with a

or greater than 0.10% of the total consolidated volume (“TCV”)⁸ and execute at least 1,000 shares of added liquidity during the month; and (ii) for Tier 2, achieve an ADV that is equal to or greater than 0.15% of TCV and execute at least 1,000 shares of added liquidity during the month. Equity Members that qualify for the discounted rates of the Remove Volume Tiers in a particular month will be charged the lower fee according to the threshold tier achieved instead of the standard Remove Volume fee of \$0.00295 per share for executions of orders in securities priced at or above \$1.00 per share in that particular month.

The Exchange proposes to increase the ADV requirement in Remove Volume Tier 1 from 0.10% to now be 0.20% of TCV. The Exchange also proposes to eliminate Remove Volume Tier 2 from the Fee Schedule. Accordingly, with the proposed changes, to achieve the reduced fee of Remove Volume Tier 1, Equity Members must achieve an ADV that is equal to or greater than 0.20% of TCV and execute at least 1,000 shares of added liquidity during the month.

The purpose of this change is for business and competitive reasons. The Exchange notes that despite the modest increase in volume ADV requirement and elimination of Remove Volume Tier 2, the Exchange’s reduced fee and requirements to achieve Remove Volume Tier 1 remain competitive with the fees to remove liquidity in securities priced at or above \$1.00 per

scheduled early market close, and on the “Russell Reconstitution Day” (typically the last Friday in June). Routed shares are also not included in the ADV calculation. See id.

⁸ “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 Definitions Section of the Fee Schedule.

share charged by other equity exchanges, including other equity exchanges that also have reduced fees for meeting certain criteria for removing liquidity.⁹

Step-Up Added Liquidity Rebate

The Exchange currently provides a standard rebate of (\$0.0024)¹⁰ per share for executions of orders in securities priced at or above \$1.00 per share that add displayed liquidity to the Exchange. The Exchange also currently offers various volume-based tiers and incentives through which an Equity Member may receive an enhanced rebate for executions of orders that add displayed liquidity to the Exchange by achieving the specified criteria that corresponds to a particular tier/incentive.

In particular, the Exchange adopted a volume based pricing incentive, referred to as the “Step-Up Added Liquidity Rebate,” in which qualifying Equity Members receive an enhanced rebate of (\$0.0031) per share for executions of orders in securities priced at or above \$1.00 per share that add displayed liquidity to the Exchange.¹¹ The enhanced rebate provided by the Step-Up Added Liquidity Rebate applies to Liquidity Indicator Codes AA (adds liquidity, displayed

⁹ See MEMX LLC (“MEMX”) Equities Fee Schedule, available at <https://info.memxtrading.com/equities-trading-resources/us-equities-fee-schedule/> (providing standard remove volume fee of \$0.0030 per share and reduced Liquidity Removal Tier fee of \$0.00295 per share so long as a member achieves an ADV greater than or equal to 0.60% of TCV and a Removed Volume ADV greater than or equal to 0.30% of TCV); see also Cboe EDGX Equities Fee Schedule, available at https://www.cboe.com/us/equities/membership/fee_schedule/edgx/ (providing a standard fee of \$0.0030 per share to remove liquidity in securities priced at or above \$1.00 per share, Remove Volume Tier 1 fee of \$0.0029 per share to remove liquidity in securities priced at or above \$1.00 per share so long as the member achieves an ADAV greater than or equal to 0.25% of TCV).

¹⁰ Rebates are indicated by parentheses. See the General Notes Section of the Fee Schedule.

¹¹ See Securities Exchange Act Release No. 95614 (August 26, 2022), 87 FR 53813 (September 1, 2022) (SR-PEARL-2022-33).

order, Tape A), AB (adds liquidity, displayed order, Tape B) and AC (adds liquidity, displayed order, Tape C).¹²

Equity Members qualify for the Step-Up Added Liquidity Rebate by achieving a “Step-Up ADAV as a % of TCV”¹³ of at least 0.03% over the baseline month of May 2023. Average daily added volume (“ADAV”) means average daily added volume calculated as the number of shares added per day.¹⁴ For example, if an Equity Member had an ADAV as a percent of TCV of 0.01% in May 2023, then that Equity Member has to achieve an ADAV as a percent of TCV equal to or greater than 0.04% in any subsequent month in order to qualify for the Step-Up Added Liquidity Rebate. Currently, the Step-Up Added Liquidity Rebate will expire no later than November 30, 2023.¹⁵

The Exchange now proposes to amend Section 1)f) of the Fee Schedule so that the criteria to qualify for the Step-Up Added Liquidity Rebate will expire no later than December 31, 2023.¹⁶ The Exchange will issue an alert to market participants should the Exchange determine that the Step-Up Added Liquidity Rebate will expire earlier than December 31, 2023, or if the Exchange determines to amend the criteria or rate applicable to the Step-Up Added Liquidity Rebate prior to the end of the sunset period. The Exchange notes that at least one other

¹² See Fee Schedule, Section 1)f), Step-Up Added Liquidity Rebate, and Section 1)b), Liquidity Indicator Codes and Associated Fees.

¹³ The term “Step-Up ADAV as a % of TCV” means ADAV as a percent of TCV in the relevant baseline month subtracted from the current month’s ADAV as a percent of TCV. See the Definitions Section of the Fee Schedule. The Exchange notes that the Step-Up Added Liquidity Rebate does not apply to executions of orders in securities priced below \$1.00 per share or executions of orders that constitute added non-displayed liquidity.

¹⁴ See the Definitions Section of the Fee Schedule. ADAV and ADV are calculated on a monthly basis. See id.

¹⁵ See Fee Schedule, Section 1)f).

¹⁶ The Exchange notes that at the end of the sunset period, the Step-Up Added Liquidity Rebate will no longer apply unless the Exchange files another 19b-4 Filing with the Commission to amend the criteria terms.

competing equities exchange provides a similar “sunset period” for one of its enhanced rebates subject to the same baseline month as the Exchange proposes.¹⁷

The Exchange does not propose any other changes to the qualifying criteria for Equity Members to receive the Step-Up Added Liquidity Rebate. The Exchange also does not propose to amend the amount of the enhanced rebate of (\$0.0031) per share for Equity Members that qualify for the Step-Up Added Liquidity Rebate. Finally, the Exchange does not propose to change the baseline ADAV of 0.00% of TCV used for firms that become Equity Members of the Exchange after May 2023 for the purpose of the Step-Up Added Liquidity Rebate calculation.

This change simply extends the sunset period from November 30, 2023 until December 31, 2023. The Exchange believes that the Step-Up Added Liquidity Rebate will continue to provide an incentive for Equity Members to strive for higher ADAV on the Exchange (above their ADAV in the baseline month of May 2023) to receive the enhanced rebate for qualifying executions of orders in securities priced at or above \$1.00 per share that add displayed liquidity to the Exchange. The Exchange believes that with the extension of the sunset period the Step-Up Added Liquidity Rebate will continue to encourage the submission of additional displayed added liquidity to the Exchange, thereby promoting price discovery and contributing to a deeper and more liquid market, which benefits all market participants and enhances the attractiveness of the Exchange as a trading venue.

The purpose of this change is for business and competitive reasons. Several competing equities exchanges continue to use a baseline month’s volume for their members as the requirements for higher rebates/lower fees that is an older month than the Exchange’s baseline

¹⁷ See MEMX Equities Fee Schedule, Liquidity Provision Tiers table and corresponding footnotes “*” through “***”, supra note 9.

month of May 2023 and many of those exchanges do not have a sunset provision.¹⁸ By extending the sunset period, the Exchange will be able to continue to compete with the enhanced rebates offered by competing exchanges that use older baseline months' volume in their requirements for the higher rebates/lower fees.

Implementation

The proposed changes are immediately effective.

b. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act¹⁹ in general, and furthers the objectives of Section 6(b)(4) of the Act²⁰ 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 and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange operates in a highly fragmented and competitive market in which market participants can readily direct their order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of sixteen registered equities exchanges, and there are a number of alternative trading systems and other off-exchange venues, to which market participants may direct their order flow.

¹⁸ See NYSE Arca Equities Fee Schedule, Section VII, Step Up Tiers table, footnote “(b),” available at https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf (providing enhanced rebate of \$0.0036 per share on all LMM add volume if the ETP Holder, together with its affiliates, executes Tape B adding ADV that is at least 40% over the ETP Holder's adding ADV in Q3 2019, as a percentage of Tape B CADV with no sunset provision); Cboe BYX Equities Fee Schedule, Step-Up Tier table, available at https://www.cboe.com/us/equities/membership/fee_schedule/byx/ (providing reduced fee if the member has a combined Step-Up Auction ADV and Step-Up ADAV from April 2022 greater than or equal to 3,000,000 and the member has a combined Auction ADV and ADAV greater than or equal to 0.25% of TCV with no sunset provision).

¹⁹ 15 U.S.C. 78f(b).

²⁰ 15 U.S.C. 78f(b)(4).

Based on publicly available information, no single registered equities exchange had more than approximately 15.58% of the total market share of executed volume of equities trading for the month of November 2023.²¹ 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 represented approximately 2.08% of the overall equities market share for the month of November 2023.²² 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.”²³

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 continue to incentivize market participants to direct additional orders that add liquidity to the Exchange in

²¹ See the “Market Share” section of the Exchange’s website, available at <https://www.miaxglobal.com/> (last visited December 12, 2023).

²² See *id.*

²³ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37499 (June 29, 2005).

securities priced at or above \$1.00 per share, which the Exchange believes would deepen liquidity and promote market quality on the Exchange to the benefit of all market participants.

The Exchange notes that volume-based incentives and discounts (such as tiers) have been widely adopted by exchanges (including the Exchange), and believes they are reasonable, equitable and not unfairly discriminatory because they are available to all Equity Members on an equal basis, provide additional benefits or discounts that are reasonably related to the value of an exchange's market quality associated with higher levels of market activity (such as higher levels of liquidity provision and/or growth patterns), and the introduction of higher volumes of orders into the price and volume discovery process.

The Exchange believes its proposal to increase the ADV requirement in Remove Volume Tier 1 and eliminate Remove Volume Tier 2 from the Fee Schedule is reasonable, equitably allocated and not unfairly discriminatory because the reduced fee for Remove Volume Tier 1 will continue to be available to all Equity Members on an equal basis, and is reasonably designed to encourage Equity Members to maintain or increase their order flow. The Exchange believes that even with this proposal, the reduced fee of Remove Volume Tier 1 will continue to promote price discovery, enhance liquidity and market quality, and contribute to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Equity Members and market participants.

Further, the Exchange believes its proposal to increase the ADV requirement in Remove Volume Tier 1 from 0.10% to now be 0.20% of TCV and eliminate Remove Volume Tier 2 is reasonable, equitably allocated and not unfairly discriminatory because, despite the modest increase in ADV requirement and elimination of Remove Volume Tier 2, the Exchange's reduced fee and requirements to achieve Remove Volume Tier 1 remain competitive with the

fees to remove liquidity in securities priced at or above \$1.00 per share charged by other equity exchanges, including other equity exchanges that also have reduced fees for meeting certain criteria for removing liquidity.²⁴

The Exchange believes that the Step-Up Added Liquidity Rebate, as modified by the proposed change to the sunset period, is reasonable, equitable and not unfairly discriminatory as the Step-Up Added Liquidity Rebate will continue to be available to all Equity Members on an equal basis, and is reasonably designed to encourage Equity Members to maintain or increase their order flow in liquidity-adding volume. The Exchange believes this will continue to promote price discovery, enhance liquidity and market quality, and contribute to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Equity Members and market participants.

In addition, the Exchange believes its proposal is reasonable because several competing equities exchanges continue to use a baseline month's volume for their members as the requirement for higher rebates/lower fees that is an older month than the Exchange's baseline month of May 2023 and many of those exchanges do not have a sunset provision.²⁵ By extending the sunset period, the Exchange will be able to continue to compete with the enhanced rebates offered by competing exchanges that use older baseline months' volume in their requirements for the higher rebates/lower fees.

The Exchange believes it is reasonable, equitable and not unfairly discriminatory to amend the sunset period in the Fee Schedule for the Step-Up Added Liquidity Rebate because it will provide clarity to Equity Members that, unless the Exchange determines to amend or

²⁴ See supra note 9.

²⁵ See supra note 18.

otherwise modify the Step-Up Added Liquidity Rebate, the Step-Up Added Liquidity Rebate will expire at the end of the sunset period. This will allow Equity Members to take into account that the enhanced rebate provided for by the Step-Up Added Liquidity Rebate may be discontinued at the end of sunset period unless the Exchange announces otherwise and files a revised proposal with the Commission. The Exchange further notes that it will issue an alert to market participants should the Exchange determine that the Step-Up Added Liquidity Rebate will expire earlier than December 31, 2023, or if the Exchange determines to amend the criteria or rate applicable to the Step-Up Added Liquidity Rebate prior to the end of the sunset period.

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

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

Intramarket Competition

The Exchange believes that its proposal will not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the Step-Up Added Liquidity Rebate, as modified by this proposal, will continue to incentivize Equity Members to submit additional orders that add liquidity to the Exchange, thereby contributing to a deeper and more liquid market and promoting price discovery and market quality on the Exchange to the benefit of all market participants and enhancing the attractiveness of the Exchange as a trading venue, which the Exchange believes, in turn, would continue to encourage market participants to direct additional order flow to the Exchange. Greater liquidity benefits all Equity Members by providing more trading opportunities and encourages Equity Members to send additional orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants. As described above, the Exchange believes its proposal to increase the ADV requirement in Remove Volume

Tier 1 from 0.10% to now be 0.20% of TCV and eliminate Remove Volume Tier 2 allows the Exchange's reduced Removed Volume fee to remain competitive with the fees to remove liquidity in securities priced at or above \$1.00 per share charged by other equity exchanges, including other equity exchanges that also have reduced fees for meeting certain criteria for removing liquidity.²⁶ Similarly, the opportunity to qualify for the proposed new Step-Up Added Liquidity Rebate, and thus receive the proposed rebate for qualifying executions of orders in securities priced at or above \$1.00 per share that add displayed volume will continue to be available to all Equity Members that meet the associated volume requirement, and the Exchange believes the proposed extension of the sunset period is reasonably related to the enhanced market quality that the Step-Up Added Liquidity Rebate is designed to promote. Accordingly, the Exchange does not believe the proposed changes would impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purpose of the Act.

The Exchange believes its proposal to extend the sunset period in the Fee Schedule for the Step-Up Added Liquidity Rebate will not impose any burden on intramarket competition not necessary or appropriate in furtherance of the purposes of the Act because it will provide clarity to Equity Members that, unless the Exchange determines to amend or otherwise modify the Step-Up Added Liquidity Rebate, the Step-Up Added Liquidity Rebate will be discontinued at the end of the sunset period. This will allow Equity Members to take into account that the enhanced rebate provided for by the Step-Up Added Liquidity Rebate may be discontinued at the end of the sunset period unless the Exchange announces otherwise. The Exchange further notes that it will issue an alert to market participants should the Exchange determine that the Step-Up Added Liquidity Rebate will expire earlier than December 31, 2023, or if the Exchange determines to

²⁶ See supra note 9.

amend the criteria or rate applicable to the Step-Up Added Liquidity Rebate prior to the end of the sunset period.

Intermarket Competition

The Exchange believes its proposal will benefit competition, and the Exchange notes that it 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, based on publicly available information, no single registered equities exchange had more than approximately 15.58% of the total market share of executed volume of equities trading for the month of November 2023.²⁷ 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 represented approximately 2.08% of the overall market for the month of November 2023.²⁸ 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 the criteria for Equity Members to achieve Remove Volume Tier 1 and the Step-Up Added Liquidity Rebate, and market participants can readily choose to send their orders to other exchanges and off-exchange venues if they deem rebate criteria at those other venues to be more favorable.

²⁷ See supra note 21.

²⁸ See id.

As described above, the proposed changes represent a competitive proposal through which the Exchange is seeking to continue to encourage additional order flow to the Exchange through a volume-based incentive that is comparable to the criteria for volume-based incentives adopted by at least one other competing exchange that has a similar sunset period for a specific enhanced rebate that adds liquidity to that market.²⁹ Accordingly, the Exchange believes that its proposal would not burden, but rather promote, intermarket competition by enabling it to better compete with other exchanges that offer similar pricing incentives to market participants that achieve certain volume criteria and thresholds.

Additionally, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”³⁰ 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 possesses a

²⁹ See supra note 17.

³⁰ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'...".³¹

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,³² and Rule 19b-4(f)(2) thereunder³³ 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

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

³¹ See *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)).

³² 15 U.S.C. 78s(b)(3)(A)(ii).

³³ 17 CFR 240.19b-4.

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-2023-69)

December ____, 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”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on December ____, 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 <https://www.miaxglobal.com/markets/us-options/pearl-options/rule-filings>, at MIAX Pearl’s principal office, and at the Commission’s Public Reference Room.

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

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

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

1. Purpose

The Exchange proposes to amend the Fee Schedule to: (1) amend Section 1)d) to modify the volume requirement in Tier 1 of the Remove Volume Tiers³ applicable to executions of orders in securities priced at or above \$1.00 per share that remove liquidity from the Exchange (“Removed Volume”) and eliminate Remove Volume Tier 2 and the corresponding fee; and (2) amend Section 1)f) to modify the expiration month (referred to herein as the “sunset period”) for the Step-Up Added Liquidity Rebate. The Exchange originally filed this proposal on November 30, 2023 (SR-PEARL-2023-67). On December 12, 2023, the Exchange withdrew SR-PEARL-2023-67 and refiled this proposal with minor changes.

Remove Volume Tiers Table Changes

Currently the Exchange charges a fee of \$0.00295 per share for executions of Removed Volume on the Exchange in securities priced at or above \$1.00 per share, except for executions of Removed Volume that execute at the midpoint for non-displayed Midpoint Peg Orders⁴ in all Tapes.⁵ The Exchange also offers a tiered pricing structure in Section 1)d) of the Fee Schedule, Remove Volume Tiers, which provides reduced fees for executions of Removed Volume on the Exchange in securities priced at or above \$1.00 per share based on certain volume thresholds

³ See Fee Schedule, Section 1)d).

⁴ See 2614(a)(3)(i)(A) for the definition of Midpoint Peg Order.

⁵ See Fee Schedule, Section 1)a) and Liquidity Indicator Codes RA, Ra, RB, Rb, RC, Rc, Rp, RR, Rr, RT, and Rt.

achieved by Equity Members.⁶ To achieve the reduced fees of the Remove Volume Tiers, Equity Members must, (i) for Tier 1, achieve an average daily volume (“ADV”)⁷ that is equal to or greater than 0.10% of the total consolidated volume (“TCV”)⁸ and execute at least 1,000 shares of added liquidity during the month; and (ii) for Tier 2, achieve an ADV that is equal to or greater than 0.15% of TCV and execute at least 1,000 shares of added liquidity during the month. Equity Members that qualify for the discounted rates of the Remove Volume Tiers in a particular month will be charged the lower fee according to the threshold tier achieved instead of the standard Remove Volume fee of \$0.00295 per share for executions of orders in securities priced at or above \$1.00 per share in that particular month.

The Exchange proposes to increase the ADV requirement in Remove Volume Tier 1 from 0.10% to now be 0.20% of TCV. The Exchange also proposes to eliminate Remove Volume Tier 2 from the Fee Schedule. Accordingly, with the proposed changes, to achieve the reduced fee of Remove Volume Tier 1, Equity Members must achieve an ADV that is equal to or greater than 0.20% of TCV and execute at least 1,000 shares of added liquidity during the month.

The purpose of this change is for business and competitive reasons. The Exchange notes that despite the modest increase in volume ADV requirement and elimination of Remove Volume Tier 2, the Exchange’s reduced fee and requirements to achieve Remove Volume Tier 1

⁶ The term “Equity Member” is a Member authorized by the Exchange to transact business on MIAX Pearl Equities. See Exchange Rule 1901.

⁷ “ADV” means average daily volume calculated as the number of shares added or removed, combined, per day. ADV is calculated on a monthly basis. See the Definitions Section of the Fee Schedule. The Exchange excludes from its calculation of ADV shares added or removed on any day that the Exchange’s system experiences a disruption that lasts for more than 60 minutes during regular trading hours, on any day with a scheduled early market close, and on the “Russell Reconstitution Day” (typically the last Friday in June). Routed shares are also not included in the ADV calculation. See id.

⁸ “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 Definitions Section of the Fee Schedule.

remain competitive with the fees to remove liquidity in securities priced at or above \$1.00 per share charged by other equity exchanges, including other equity exchanges that also have reduced fees for meeting certain criteria for removing liquidity.⁹

Step-Up Added Liquidity Rebate

The Exchange currently provides a standard rebate of (\$0.0024)¹⁰ per share for executions of orders in securities priced at or above \$1.00 per share that add displayed liquidity to the Exchange. The Exchange also currently offers various volume-based tiers and incentives through which an Equity Member may receive an enhanced rebate for executions of orders that add displayed liquidity to the Exchange by achieving the specified criteria that corresponds to a particular tier/incentive.

In particular, the Exchange adopted a volume based pricing incentive, referred to as the “Step-Up Added Liquidity Rebate,” in which qualifying Equity Members receive an enhanced rebate of (\$0.0031) per share for executions of orders in securities priced at or above \$1.00 per share that add displayed liquidity to the Exchange.¹¹ The enhanced rebate provided by the Step-Up Added Liquidity Rebate applies to Liquidity Indicator Codes AA (adds liquidity, displayed

⁹ See MEMX LLC (“MEMX”) Equities Fee Schedule, available at <https://info.memxtrading.com/equities-trading-resources/us-equities-fee-schedule/> (providing standard remove volume fee of \$0.0030 per share and reduced Liquidity Removal Tier fee of \$0.00295 per share so long as a member achieves an ADV greater than or equal to 0.60% of TCV and a Removed Volume ADV greater than or equal to 0.30% of TCV); see also Cboe EDGX Equities Fee Schedule, available at https://www.cboe.com/us/equities/membership/fee_schedule/edgx/ (providing a standard fee of \$0.0030 per share to remove liquidity in securities priced at or above \$1.00 per share, Remove Volume Tier 1 fee of \$0.0029 per share to remove liquidity in securities priced at or above \$1.00 per share so long as the member achieves an ADAV greater than or equal to 0.25% of TCV).

¹⁰ Rebates are indicated by parentheses. See the General Notes Section of the Fee Schedule.

¹¹ See Securities Exchange Act Release No. 95614 (August 26, 2022), 87 FR 53813 (September 1, 2022) (SR-PEARL-2022-33).

order, Tape A), AB (adds liquidity, displayed order, Tape B) and AC (adds liquidity, displayed order, Tape C).¹²

Equity Members qualify for the Step-Up Added Liquidity Rebate by achieving a “Step-Up ADAV as a % of TCV”¹³ of at least 0.03% over the baseline month of May 2023. Average daily added volume (“ADAV”) means average daily added volume calculated as the number of shares added per day.¹⁴ For example, if an Equity Member had an ADAV as a percent of TCV of 0.01% in May 2023, then that Equity Member has to achieve an ADAV as a percent of TCV equal to or greater than 0.04% in any subsequent month in order to qualify for the Step-Up Added Liquidity Rebate. Currently, the Step-Up Added Liquidity Rebate will expire no later than November 30, 2023.¹⁵

The Exchange now proposes to amend Section 1)f) of the Fee Schedule so that the criteria to qualify for the Step-Up Added Liquidity Rebate will expire no later than December 31, 2023.¹⁶ The Exchange will issue an alert to market participants should the Exchange determine that the Step-Up Added Liquidity Rebate will expire earlier than December 31, 2023, or if the Exchange determines to amend the criteria or rate applicable to the Step-Up Added Liquidity Rebate prior to the end of the sunset period. The Exchange notes that at least one other

¹² See Fee Schedule, Section 1)f), Step-Up Added Liquidity Rebate, and Section 1)b), Liquidity Indicator Codes and Associated Fees.

¹³ The term “Step-Up ADAV as a % of TCV” means ADAV as a percent of TCV in the relevant baseline month subtracted from the current month’s ADAV as a percent of TCV. See the Definitions Section of the Fee Schedule. The Exchange notes that the Step-Up Added Liquidity Rebate does not apply to executions of orders in securities priced below \$1.00 per share or executions of orders that constitute added non-displayed liquidity.

¹⁴ See the Definitions Section of the Fee Schedule. ADAV and ADV are calculated on a monthly basis. See id.

¹⁵ See Fee Schedule, Section 1)f).

¹⁶ The Exchange notes that at the end of the sunset period, the Step-Up Added Liquidity Rebate will no longer apply unless the Exchange files another 19b-4 Filing with the Commission to amend the criteria terms.

competing equities exchange provides a similar “sunset period” for one of its enhanced rebates subject to the same baseline month as the Exchange proposes.¹⁷

The Exchange does not propose any other changes to the qualifying criteria for Equity Members to receive the Step-Up Added Liquidity Rebate. The Exchange also does not propose to amend the amount of the enhanced rebate of (\$0.0031) per share for Equity Members that qualify for the Step-Up Added Liquidity Rebate. Finally, the Exchange does not propose to change the baseline ADAV of 0.00% of TCV used for firms that become Equity Members of the Exchange after May 2023 for the purpose of the Step-Up Added Liquidity Rebate calculation.

This change simply extends the sunset period from November 30, 2023 until December 31, 2023. The Exchange believes that the Step-Up Added Liquidity Rebate will continue to provide an incentive for Equity Members to strive for higher ADAV on the Exchange (above their ADAV in the baseline month of May 2023) to receive the enhanced rebate for qualifying executions of orders in securities priced at or above \$1.00 per share that add displayed liquidity to the Exchange. The Exchange believes that with the extension of the sunset period the Step-Up Added Liquidity Rebate will continue to encourage the submission of additional displayed added liquidity to the Exchange, thereby promoting price discovery and contributing to a deeper and more liquid market, which benefits all market participants and enhances the attractiveness of the Exchange as a trading venue.

The purpose of this change is for business and competitive reasons. Several competing equities exchanges continue to use a baseline month’s volume for their members as the requirements for higher rebates/lower fees that is an older month than the Exchange’s baseline

¹⁷ See MEMX Equities Fee Schedule, Liquidity Provision Tiers table and corresponding footnotes “*” through “***”, supra note 9.

month of May 2023 and many of those exchanges do not have a sunset provision.¹⁸ By extending the sunset period, the Exchange will be able to continue to compete with the enhanced rebates offered by competing exchanges that use older baseline months' volume in their requirements for the higher rebates/lower fees.

Implementation

The proposed changes are immediately effective.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act¹⁹ in general, and furthers the objectives of Section 6(b)(4) of the Act²⁰ 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 and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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

¹⁸ See NYSE Arca Equities Fee Schedule, Section VII, Step Up Tiers table, footnote “(b),” available at https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf (providing enhanced rebate of \$0.0036 per share on all LMM add volume if the ETP Holder, together with its affiliates, executes Tape B adding ADV that is at least 40% over the ETP Holder's adding ADV in Q3 2019, as a percentage of Tape B CADV with no sunset provision); Cboe BYX Equities Fee Schedule, Step-Up Tier table, available at https://www.cboe.com/us/equities/membership/fee_schedule/byx/ (providing reduced fee if the member has a combined Step-Up Auction ADV and Step-Up ADAV from April 2022 greater than or equal to 3,000,000 and the member has a combined Auction ADV and ADAV greater than or equal to 0.25% of TCV with no sunset provision).

¹⁹ 15 U.S.C. 78f(b).

²⁰ 15 U.S.C. 78f(b)(4).

approximately 15.58% of the total market share of executed volume of equities trading for the month of November 2023.²¹ 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 represented approximately 2.08% of the overall equities market share for the month of November 2023.²² 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.”²³

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 continue to incentivize market participants to direct additional orders that add liquidity to the Exchange in securities priced at or above \$1.00 per share, which the Exchange believes would deepen liquidity and promote market quality on the Exchange to the benefit of all market participants.

²¹ See the “Market Share” section of the Exchange’s website, available at <https://www.miaxglobal.com/> (last visited December 12, 2023).

²² See *id.*

²³ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37499 (June 29, 2005).

The Exchange notes that volume-based incentives and discounts (such as tiers) have been widely adopted by exchanges (including the Exchange), and believes they are reasonable, equitable and not unfairly discriminatory because they are available to all Equity Members on an equal basis, provide additional benefits or discounts that are reasonably related to the value of an exchange's market quality associated with higher levels of market activity (such as higher levels of liquidity provision and/or growth patterns), and the introduction of higher volumes of orders into the price and volume discovery process.

The Exchange believes its proposal to increase the ADV requirement in Remove Volume Tier 1 and eliminate Remove Volume Tier 2 from the Fee Schedule is reasonable, equitably allocated and not unfairly discriminatory because the reduced fee for Remove Volume Tier 1 will continue to be available to all Equity Members on an equal basis, and is reasonably designed to encourage Equity Members to maintain or increase their order flow. The Exchange believes that even with this proposal, the reduced fee of Remove Volume Tier 1 will continue to promote price discovery, enhance liquidity and market quality, and contribute to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Equity Members and market participants.

Further, the Exchange believes its proposal to increase the ADV requirement in Remove Volume Tier 1 from 0.10% to now be 0.20% of TCV and eliminate Remove Volume Tier 2 is reasonable, equitably allocated and not unfairly discriminatory because, despite the modest increase in ADV requirement and elimination of Remove Volume Tier 2, the Exchange's reduced fee and requirements to achieve Remove Volume Tier 1 remain competitive with the fees to remove liquidity in securities priced at or above \$1.00 per share charged by other equity

exchanges, including other equity exchanges that also have reduced fees for meeting certain criteria for removing liquidity.²⁴

The Exchange believes that the Step-Up Added Liquidity Rebate, as modified by the proposed change to the sunset period, is reasonable, equitable and not unfairly discriminatory as the Step-Up Added Liquidity Rebate will continue to be available to all Equity Members on an equal basis, and is reasonably designed to encourage Equity Members to maintain or increase their order flow in liquidity-adding volume. The Exchange believes this will continue to promote price discovery, enhance liquidity and market quality, and contribute to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Equity Members and market participants.

In addition, the Exchange believes its proposal is reasonable because several competing equities exchanges continue to use a baseline month's volume for their members as the requirement for higher rebates/lower fees that is an older month than the Exchange's baseline month of May 2023 and many of those exchanges do not have a sunset provision.²⁵ By extending the sunset period, the Exchange will be able to continue to compete with the enhanced rebates offered by competing exchanges that use older baseline months' volume in their requirements for the higher rebates/lower fees.

The Exchange believes it is reasonable, equitable and not unfairly discriminatory to amend the sunset period in the Fee Schedule for the Step-Up Added Liquidity Rebate because it will provide clarity to Equity Members that, unless the Exchange determines to amend or otherwise modify the Step-Up Added Liquidity Rebate, the Step-Up Added Liquidity Rebate will expire at the end of the sunset period. This will allow Equity Members to take into account

²⁴ See supra note 9.

²⁵ See supra note 18.

that the enhanced rebate provided for by the Step-Up Added Liquidity Rebate may be discontinued at the end of sunset period unless the Exchange announces otherwise and files a revised proposal with the Commission. The Exchange further notes that it will issue an alert to market participants should the Exchange determine that the Step-Up Added Liquidity Rebate will expire earlier than December 31, 2023, or if the Exchange determines to amend the criteria or rate applicable to the Step-Up Added Liquidity Rebate prior to the end of the sunset period.

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

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

Intramarket Competition

The Exchange believes that its proposal will not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the Step-Up Added Liquidity Rebate, as modified by this proposal, will continue to incentivize Equity Members to submit additional orders that add liquidity to the Exchange, thereby contributing to a deeper and more liquid market and promoting price discovery and market quality on the Exchange to the benefit of all market participants and enhancing the attractiveness of the Exchange as a trading venue, which the Exchange believes, in turn, would continue to encourage market participants to direct additional order flow to the Exchange. Greater liquidity benefits all Equity Members by providing more trading opportunities and encourages Equity Members to send additional orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants. As described above, the Exchange believes its proposal to increase the ADV requirement in Remove Volume Tier 1 from 0.10% to now be 0.20% of TCV and eliminate Remove Volume Tier 2 allows the Exchange's reduced Removed Volume fee to remain competitive with the fees to remove

liquidity in securities priced at or above \$1.00 per share charged by other equity exchanges, including other equity exchanges that also have reduced fees for meeting certain criteria for removing liquidity.²⁶ Similarly, the opportunity to qualify for the proposed new Step-Up Added Liquidity Rebate, and thus receive the proposed rebate for qualifying executions of orders in securities priced at or above \$1.00 per share that add displayed volume will continue to be available to all Equity Members that meet the associated volume requirement, and the Exchange believes the proposed extension of the sunset period is reasonably related to the enhanced market quality that the Step-Up Added Liquidity Rebate is designed to promote. Accordingly, the Exchange does not believe the proposed changes would impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purpose of the Act.

The Exchange believes its proposal to extend the sunset period in the Fee Schedule for the Step-Up Added Liquidity Rebate will not impose any burden on intramarket competition not necessary or appropriate in furtherance of the purposes of the Act because it will provide clarity to Equity Members that, unless the Exchange determines to amend or otherwise modify the Step-Up Added Liquidity Rebate, the Step-Up Added Liquidity Rebate will be discontinued at the end of the sunset period. This will allow Equity Members to take into account that the enhanced rebate provided for by the Step-Up Added Liquidity Rebate may be discontinued at the end of the sunset period unless the Exchange announces otherwise. The Exchange further notes that it will issue an alert to market participants should the Exchange determine that the Step-Up Added Liquidity Rebate will expire earlier than December 31, 2023, or if the Exchange determines to amend the criteria or rate applicable to the Step-Up Added Liquidity Rebate prior to the end of the sunset period.

²⁶ See supra note 9.

Intermarket Competition

The Exchange believes its proposal will benefit competition, and the Exchange notes that it 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, based on publicly available information, no single registered equities exchange had more than approximately 15.58% of the total market share of executed volume of equities trading for the month of November 2023.²⁷ 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 represented approximately 2.08% of the overall market for the month of November 2023.²⁸ 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 the criteria for Equity Members to achieve Remove Volume Tier 1 and the Step-Up Added Liquidity Rebate, and market participants can readily choose to send their orders to other exchanges and off-exchange venues if they deem rebate criteria at those other venues to be more favorable.

As described above, the proposed changes represent a competitive proposal through which the Exchange is seeking to continue to encourage additional order flow to the Exchange through a volume-based incentive that is comparable to the criteria for volume-based incentives adopted by at least one other competing exchange that has a similar sunset period for a specific

²⁷ See supra note 21.

²⁸ See id.

enhanced rebate that adds liquidity to that market.²⁹ Accordingly, the Exchange believes that its proposal would not burden, but rather promote, intermarket competition by enabling it to better compete with other exchanges that offer similar pricing incentives to market participants that achieve certain volume criteria and thresholds.

Additionally, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”³⁰

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 possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’ . . .”³¹

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.

²⁹ See *supra* note 17.

³⁰ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

³¹ See *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)).

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,³² and Rule 19b-4(f)(2)³³ 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:

- Use the Commission's Internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail [to rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-PEARL-2023-69 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.

³² 15 U.S.C. 78s(b)(3)(A)(ii).

³³ 17 CFR 240.19b-4(f)(2).

All submissions should refer to file number SR-PEARL-2023-69. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-PEARL-2023-69 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁴

Sherry R. Haywood,
Assistant Secretary

³⁴ 17 CFR 200.30-3(a)(12).

Exhibit 5

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

MIAX Pearl Equities Exchange Fee Schedule

* * * * *

1) Transaction Rebates/Fees

* * * * *

d) Remove Volume Tiers

Tier	Required Criteria	Securities Priced at or Above \$1.00
1	ADV ≥ [0.10] <u>0.20</u> % of TCV and ≥1,000 shares of added liquidity	\$0.00290
[2	ADV ≥ 0.15% of TCV and ≥1,000 shares of added liquidity	\$0.00285]

The fees provided for by the above table are applicable to the following fee codes: RA, RB, RC, RR, RT, Ra, Rb, Rc, Rr, and Rt.

* * * * *

f) Step-Up Added Liquidity Rebate

Tier	Required Criteria	Securities Priced at or Above \$1.00
1	Step-Up ADAV as a % of TCV from May 2023 ≥ 0.03% of the TCV. This criteria will expire no later than [November 30, 2023] <u>December 31, 2023</u> .	(\$0.0031)

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