SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-94722; File No. SR-PEARL-2022-12)

April 14, 2022

Self-Regulatory Organizations; MIAX PEARL LLC; Notice of Filing of a Proposed Rule Change to Amend the MIAX PEARL Options Fee Schedule to Increase the Monthly Fees for MIAX Express Network Full Service Port; Suspension of and Order Instituting Proceedings to Determine Whether to Approve or Disapprove the Proposed Rule Change

Pursuant to 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 April 1, 2022, MIAX PEARL, LLC ("MIAX Pearl" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is, pursuant to Section 19(b)(3)(C) of the Act, hereby: (i) temporarily suspending the rule change; and (ii) instituting proceedings to determine whether to approve or disapprove the proposed rule change.

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

The Exchange is filing a proposal to amend the MIAX Pearl Options Fee Schedule (the "Fee Schedule") to amend the fees for the Exchange's MIAX Express Network Full Service ("MEO")[3] Ports.

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

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

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 in Item IV [sic] 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 increase the fees for its Full Service MEO Ports, Bulk and Single, which allow Members[4] to submit electronic orders in all products to the Exchange. The Exchange initially filed this proposal on July 1, 2021, with the proposed fee changes being immediately effective ("First Proposed Rule Change").[5] The First Proposed Rule Change was published for comment in the Federal Register on July 15, 2021.[6]

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

5 See Securities Exchange Act Release No. 92365 (July 9, 2021), 86 FR 37347 (July 15, 2021) (SR-PEARL-2021-33).

6 See id.

The Commission received one comment letter on the First Proposed Rule Change[7] and subsequently suspended the Frist [sic] Proposed Rule Change on August 27, 2021.[8] The Exchange withdrew First Proposed Rule Change on October 12, 2021 and re-submitted the proposal on November 1, 2021, with the proposed fee changes being immediately effective ("Second Proposed Rule Change").[9] The Second Proposed Rule Change provided additional justification for the proposed fee changes and addressed certain points raised in the single comment letter that was submitted on the First Proposed Rule Change. The Second Proposed Rule Change was published for comment in the Federal Register on November 17, 2021.[10] The Commission received no comment letters on the Second Proposed Rule Change. Nonetheless, the Exchange withdrew the Second Proposed Rule Change on December 20, 2021 and submitted a revised proposal for immediate effectiveness ("Third Proposed Rule Change").[11] The Third Proposed Rule Change was published for comment in the Federal Register on January 10, 2022.[12] Although the Commission again did not receive any comment letters on the Third Proposed Rule Change, the Exchange withdrew the Third Proposed Rule Change on February 15, 2022 and submitted a revised proposal for immediate effectiveness, which was noticed and immediately suspended by the Commission on February 18, 2022 ("Fourth Proposed Rule

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7 See Letter from Richard J. McDonald, Susquehanna International Group, LLC ("SIG"), to Vanessa Countryman, Secretary, Commission, dated September 7, 2021 ("SIG Letter 1").

8 See Securities Exchange Act Release No. 92798 (August 27, 2021), 86 FR 49360 (September 2, 2021).

9 See Securities Exchange Act Release No. 93556 (November 10, 2021), 86 FR 64235 (November 17, 2021) (SR-PEARL-2021-53).

10 See id.

11 Securities Exchange Act Release No. 93894 (January 4, 2022), 87 FR 1203 (January 10, 2022) (SR-PEARL-2021-58).

12 Id.

Change").[13] The Commission received one comment letter on the Fourth Proposed Rule Change.[14] The Exchange withdrew the Fourth Proposed Rule Change on March 30, 2022 and submits this revised proposal to be effective April 1, 2022 ("Fifth Proposed Rule Change").

Full Service MEO Port Fee Changes

The Exchange currently offers different types of MEO Ports depending on the services required by the Member, including a Full Service MEO Port-Bulk,[15] a Full Service MEO Port-Single,[16] and a Limited Service MEO Port.[17] For one monthly price, a Member may be allocated two (2) Full-Service MEO Ports of either type per matching engine[18] and may request Limited Service MEO Ports for which MIAX Pearl will assess Members Limited Service MEO Port fees

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13 See Securities Exchange Act Release No. 94286 (February 18, 2022), 87 FR 10860 (February 25, 2022) (SR-PEARL-2022-04) (Notice of Filing of a Proposed Rule Change to Amend the MIAX PEARL Options Fee Schedule to Increase the Monthly Fees for MIAX Express Network Full Service Port; Suspension of and Order Instituting Proceedings to Determine Whether to Approve or Disapprove the Proposed Rule Change).

14 See Letter from Richard J. McDonald, SIG, to Vanessa Countryman, Secretary, Commission, dated March 15, 2022 ("SIG Letter 2").

15 "Full Service MEO Port – Bulk" means an MEO port that supports all MEO input message types and binary bulk order entry. See the Definitions Section of the Fee Schedule.

16 "Full Service MEO Port – Single" means an MEO port that supports all MEO input message types and binary order entry on a single order-by-order basis, but not bulk orders. See the Definitions Section of the Fee Schedule.

17 "Limited Service MEO Port" means an MEO port that supports all MEO input message types, but does not support bulk order entry and only supports limited order types, as specified by the Exchange via Regulatory Circular. See the Definitions Section of the Fee Schedule.

18 A "Matching Engine" is a part of the MIAX Pearl electronic system that processes options orders and trades on a symbol-by-symbol basis. Some Matching Engines will process option classes with multiple root symbols, and other Matching Engines may be dedicated to one single option root symbol. A particular root symbol may only be assigned to a single designated Matching Engine. A particular root symbol may not be assigned to multiple Matching Engines. See the Definitions Section of the Fee Schedule.

per matching engine based on a sliding scale for the number of Limited Service MEO Ports utilized each month. The two (2) Full-Service MEO Ports that may be allocated per matching engine to a Member may consist of: (a) two (2) Full Service MEO Ports – Bulk; (b) two (2) Full Service MEO Ports – Single; or (c) one (1) Full Service MEO Port – Bulk and one (1) Full Service MEO Port – Single.

Unlike other options exchanges that provide similar port functionality and charge fees on a per port basis,[19] the Exchange offers Full Service MEO Ports as a package and provides Members with the option to receive up to two Full Service MEO Ports (described above) per matching engine to which that Member connects. The Exchange currently has twelve (12) matching engines, which means Members may receive up to twenty-four (24) Full Service MEO Ports for a single monthly fee, that can vary based on certain volume percentages, as described

19 See NYSE American Options Fee Schedule, Section V.A., Port Fees (each port charged on a per matching engine basis, with NYSE American having 17 match engines). See NYSE Technology FAQ and Best Practices: Options, Section 5.1 (How many matching engines are used by each exchange?) (September 2020) (providing a link to an Excel file detailing the number of matching engines per options exchange); NYSE Arca Options Fee Schedule, Port Fees (each port charged on a per matching engine basis, NYSE Arca having 19 match engines); and NYSE Technology FAQ and Best Practices: Options, Section 5.1 (How many matching engines are used by each exchange?) (September 2020) (providing a link to an Excel file detailing the number of matching engines per options exchange). See NASDAQ Fee Schedule, Nasdaq Options 7 Pricing Schedule, Section 3, Nasdaq Options Market – Ports and Other Services (each port charged on a per matching engine basis, with Nasdaq having multiple matching engines). See Nasdaq Specialized Quote Interface (SQF) Specification, Version 6.5b (updated February 13, 2020), Section 2, Architecture, available at https://www.nasdaq.com/docs/2020/02/18/Specialized-Quote-Interface-SQI-6.5b.pdf (the "NASDAQ SQF Interface Specification"). The NASDAQ SQF Interface Specification also provides that NASDAQ's affiliates, Nasdaq PHLX LLC ("Nasdaq Phlx") and Nasdaq BX, Inc. ("Nasdaq BX"), have trading infrastructures that may consist of multiple matching engines with each matching engine trading only a range of option underlyings. Further, the NASDAQ SQF Interface Specification provides that the SQF infrastructure is such that the firms connect to one or more servers residing directly on the matching engine infrastructure. Since there may be multiple matching engines, firms will need to connect to each engine's infrastructure in order to establish the ability to quote the symbols handled by that engine.

below. For illustrative purposes and as described in more detail below, the Exchange currently assesses a fee of $5,000 per month for Members that reach the highest Full Service MEO Port – Bulk Tier, regardless of the number of Full Service MEO Ports allocated to the Member. For example, assuming a Member connects to all twelve (12) matching engines during a month, with two Full Service MEO Ports per matching engine, this results in a cost of $208.33 per Full Service MEO Port ($5,000 divided by 24) for the month. This fee had been unchanged since the Exchange adopted Full Service MEO Port fees in 2018.[20] The Exchange proposes to increase Full Service MEO Port fees as further described below, with the highest monthly fee of $10,000 for the Full Service MEO Port – Bulk. Members will continue to receive two (2) Full Service MEO Ports to each matching engine to which they connect for the single flat monthly fee. Assuming a Member connects to all twelve (12) matching engines during the month, with two Full Service MEO Ports per matching engine, this would result in a cost of $416.67 per Full Service MEO Port ($10,000 divided by 24).

The Exchange assesses Members Full Service MEO Port Fees, either for a Full Service MEO Port - Bulk and/or for a Full Service MEO Port - Single, based upon the monthly total volume executed by a Member and its Affiliates[21] on the Exchange across all origin types, not

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

21 "Affiliate" means (i) an affiliate of a Member of at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A, or (ii) the Appointed Market Maker of an Appointed EEM (or, conversely, the Appointed EEM of an Appointed Market Maker). An "Appointed Market Maker" is a MIAX Pearl Market Maker (who does not otherwise have a corporate affiliation based upon common ownership with an EEM) that has been appointed by an EEM and an "Appointed EEM" is an EEM (who does not otherwise have a corporate affiliation based upon common ownership with a MIAX Pearl Market Maker) that has been appointed by a MIAX Pearl Market Maker, pursuant to the following process. A MIAX Pearl Market Maker appoints an EEM and an EEM appoints a MIAX Pearl Market Maker, for the purposes of the Fee Schedule, by each completing and sending an executed Volume Aggregation Request

including Excluded Contracts[22], as compared to the Total Consolidated Volume ("TCV"),[23] in all MIAX Pearl-listed options. The Exchange adopted a tier-based fee structure based upon the volume-based tiers detailed in the definition of "Non-Transaction Fees Volume-Based Tiers" described in the Definitions section of the Fee Schedule. The Exchange assesses these and other monthly Port fees to Members in each month the market participant is credentialed to use a Port in the production environment.

Current Full Service MEO Port – Bulk Fees. The Exchange currently assesses Members monthly Full Service MEO Port – Bulk fees as follows:

(i) if its volume falls within the parameters of Tier 1 of the Non-Transaction Fees Volume-Based Tiers, or volume up to 0.30%, $3,000;

(ii) if its volume falls within the parameters of Tier 2 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.30% up to 0.60%, $4,500; and

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Form by email to membership@miaxoptions.com no later than 2 business days prior to the first business day of the month in which the designation is to become effective. Transmittal of a validly completed and executed form to the Exchange along with the Exchange's acknowledgement of the effective designation to each of the Market Maker and EEM will be viewed as acceptance of the appointment. The Exchange will only recognize one designation per Member. A Member may make a designation not more than once every 12 months (from the date of its most recent designation), which designation shall remain in effect unless or until the Exchange receives written notice submitted 2 business days prior to the first business day of the month from either Member indicating that the appointment has been terminated. Designations will become operative on the first business day of the effective month and may not be terminated prior to the end of the month. Execution data and reports will be provided to both parties. See the Definitions Section of the Fee Schedule.

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

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

(iii) if its volume falls with the parameters of Tier 3 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.60%, $5,000.

Proposed Full Service MEO Port – Bulk Fees. The Exchange proposes to assess Members monthly Full Service MEO Port – Bulk fees as follows:

(i) if its volume falls within the parameters of Tier 1 of the Non-Transaction Fees Volume-Based Tiers, or volume up to 0.30%, $5,000;

(ii) if its volume falls within the parameters of Tier 2 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.30% up to 0.60%, $7,500; and

(iii) if its volume falls with the parameters of Tier 3 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.60%, $10,000.

Current Full Service MEO Port – Single Fees. The Exchange currently assesses Members monthly Full Service MEO Port – Single fees as follows:

(i) if its volume falls within the parameters of Tier 1 of the Non-Transaction Fees Volume-Based Tiers, or volume up to 0.30%, $2,000;

(ii) if its volume falls within the parameters of Tier 2 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.30% up to 0.60%, $3,375; and

(iii) if its volume falls with the parameters of Tier 3 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.60%, $3,750.

Proposed Full Service MEO Port – Single Fees. The Exchange proposes to assess Members monthly Full Service MEO Port – Single fees as follows:

(i) if its volume falls within the parameters of Tier 1 of the Non-Transaction Fees Volume-Based Tiers, or volume up to 0.30%, $2,500;

(ii) if its volume falls within the parameters of Tier 2 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.30% up to 0.60%, $3,500; and

(iii) if its volume falls with the parameters of Tier 3 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.60%, $4,500.

The Exchange offers various types of ports with differing prices because each port accomplishes different tasks, are suited to different types of Members, and consume varying capacity amounts of the network. For instance, MEO ports allow for a higher throughput and can handle much higher quote/order rates than FIX ports. Members that are Market Makers[24] or high frequency trading firms utilize these ports (typically coupled with 10Gb ULL connectivity) because they transact in significantly higher amounts of messages being sent to and from the Exchange, versus FIX port users, who are traditionally customers sending only orders to the Exchange (typically coupled with 1Gb connectivity). The different types of ports cater to the different types of Exchange Memberships and different capabilities of the various Exchange Members. Certain Members need ports and connections that can handle using far more of the network's capacity for message throughput, risk protections, and the amount of information that the System has to assess. Those Members may account for the vast majority of network capacity utilization and volume executed on the Exchange, as discussed throughout.

The Exchange proposes to increase its monthly Full Service MEO Port fees since it has not done so since the fees were adopted in 2018,[25] which are designed to recover a portion of the costs associated with directly accessing the Exchange. The Exchange notes that its affiliates,

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

25 See supra note 20.

Miami International Securities Exchange, LLC ("MIAX") and MIAX Emerald, LLC ("MIAX Emerald"), charge fees for their high throughput, low latency MIAX Express Interface ("MEI") Ports in a similar fashion as the Exchange charges for its MEO Ports – generally, the more active user the Member (i.e., the greater number / greater national ADV of classes assigned to quote on MIAX and MIAX Emerald), the higher the MEI Port fee.[26] This concept is not new or novel. The Exchange also notes that the proposed increased fees for the Exchange's Full Service MEO Ports are in line with, or cheaper than, the similar port fees for similar membership fees charged by other options exchanges.[27]

The Exchange has historically undercharged for Full Service MEO Ports as compared to other options exchanges because the Exchange provides Full Service MEO Ports as a package for a single monthly fee. As described above, this package includes two Full Service MEO Ports for each of the Exchange's twelve (12) matching engines. The Exchange understands other options exchanges charge fees on a per port basis. The Exchange believes other exchanges' port fees are useful examples of alternative approaches to providing and charging for port access and provides the below table for comparison purposes only to show how its proposed fees compare to fees currently charged by other options exchanges for similar port access.

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26 See MIAX Fee Schedule, Section 5)d)ii); MIAX Emerald Fee Schedule, Section 5)d)ii).

27 See NYSE American Options Fee Schedule, Section V.A., Port Fees; NYSE Arca Options Fee Schedule, Port Fees; Nasdaq Stock Market LLC ("NASDAQ"), Options 7, Pricing Schedule, Section 3.

Exchange	Type of Port	Monthly Fee
MIAX Pearl (as proposed) (equity options market share of 4.32% as of March 29, 2022 for the month of March)[28]	MEO Full Service – Bulk MEO Full Service – Single	Tier 1: $5,000 (or $208.33 per Matching Engine) Tier 2: $7,500 (or $312.50 per Matching Engine) Tier 3: $10,000 (or $416.66 per Matching Engine) Tier 1: $2,500 (or $104.16 per Matching Engine) Tier 2: $3,500 (or $145.83 per Matching Engine) Tier 3: $4,500 (or $187.50 per Matching Engine)
The NASDAQ Stock Market LLC ("NASDAQ")[29] (equity options market share of 8.62% as of March 29, 2022 for the month of March)[30]	Order/Quote Entry	Ports 1-40: $450 each Ports 41 or more: $150 each
Nasdaq ISE LLC ("ISE")[31] (equity options market share of 5.83% as of March 29, 2022 for the month of March)[32]	Order/Quote Entry	Ports 1-40: $450 each Ports 41 or more: $150 each
NYSE American LLC ("Amex")[33] (equity options market share of 7.15% as of March 29, 2022 for the month of March)[34]	Specialized Quote Interface	Ports 1-5: $1,500 each Ports 6-20: $1,000 each Ports 21 or more: $500

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28 See "The market at a glance," available at https://www.miaxoptions.com/ (last visited March 29, 2022).

29 See NASDAQ Rules, General 8: Connectivity, Section 1. Co-Location Services.

30 See supra note 28.

31 See ISE Rules, General 8: Connectivity.

32 See supra note 28.

33 See NYSE American Options Fee Schedule, Section IV.

34 See supra note 28.

Implementation

The proposed fees are effective beginning April 1, 2022.

2. Statutory Basis

The Exchange believes that the proposed increase to the MEO Port fees is consistent with Section 6(b) of the Act[35] in general, and furthers the objectives of Section 6(b)(4) of the Act[36] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Members and other persons using any facility or system that the Exchange operates or controls. The Exchange also believes the proposed MEO Port fees furthers the objectives of Section 6(b)(5) of the Act[37] in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest and are not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes that the information provided to justify the proposed fees meets or exceeds the amount of detail required in respect of proposed fee changes as set forth in recent Commission and Commission Staff guidance. On March 29, 2019, the Commission issued an Order disapproving a proposed fee change by the BOX Market LLC Options Facility to establish connectivity fees for its BOX Network (the "BOX Order").[38] On May 21, 2019, the Commission Staff issued guidance "to assist the national securities exchanges and FINRA … in preparing Fee

35 15 U.S.C. 78f(b).

36 15 U.S.C. 78f(b)(4).

37 15 U.S.C. 78f(b)(5).

38 See Securities Exchange Act Release No. 85459 (March 29, 2019), 84 FR 13363 (April 4, 2019) (SR-BOX-2018-24, SR-BOX-2018-37, and SR-BOX-2019-04) (Order Disapproving Proposed Rule Changes to Amend the Fee Schedule on the BOX Market LLC Options Facility to Establish BOX Connectivity Fees for Participants and Non-Participants Who Connect to the BOX Network).

Filings that meet their burden to demonstrate that proposed fees are consistent with the requirements of the Securities Exchange Act."[39] Based on both the BOX Order and the Guidance, the Exchange believes that the proposed MEO Port fees is consistent with the Act because it (i) is reasonable, equitably allocated, not unfairly discriminatory, and not an undue burden on competition; (ii) complies with the BOX Order and the Guidance; and (iii) is supported by evidence (including comprehensive revenue and cost data and analysis) that the proposed fees are fair and reasonable and will not result in excessive pricing or supra-competitive profit.

The Proposed Fees will not Result in a Supra-Competitive Profit

The Exchange believes that exchanges, in setting fees of all types, should meet very high standards of transparency to demonstrate why each new fee or fee amendment meets the requirements of the Act that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among market participants. The Exchange believes this high standard is especially important when an exchange imposes various fees for market participants to access an exchange's marketplace.

In the Guidance, the Commission Staff states that, "[a]s an initial step in assessing the reasonableness of a fee, staff considers whether the fee is constrained by significant competitive forces."[40] The Guidance further states that, "… even where an SRO cannot demonstrate, or does not assert, that significant competitive forces constrain the fee at issue, a cost-based discussion may be an alternative basis upon which to show consistency with the Exchange Act."[41] In the

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39 See Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019), at https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees (the "Guidance").

40 Id.

41 Id.

Guidance, the Commission Staff further states that, "[i]f an SRO seeks to support its claims that a proposed fee is fair and reasonable because it will permit recovery of the SRO's costs, or will not result in excessive pricing or supra-competitive profit, specific information, including quantitative information, should be provided to support that argument."[42] The Exchange does not assert that the proposed fees are constrained by competitive forces. Rather, the Exchange asserts that the proposed fees are reasonable because they will permit recovery of the Exchange's costs in providing access services to supply MEO Ports and will not result in the Exchange generating a supra-competitive profit.

The Guidance defines "supra-competitive profit" as "profits that exceed the profits that can be obtained in a competitive market."[43] The Commission Staff further states in the Guidance that "the SRO should provide an analysis of the SRO's baseline revenues, costs, and profitability (before the proposed fee change) and the SRO's expected revenues, costs, and profitability (following the proposed fee change) for the product or service in question."[44] The Exchange provides this analysis below.

The proposed fees are based on a cost-plus model. An MEO Port provides access to each of the three Exchange networks, extranet, internal network, and external network, all of which are necessary for Exchange operations. The Exchange's extranet provides the means by which the Exchange communicates with market participants and includes access to the Member portal and the ability to send and receive daily communications and reports. The internal network connects the extranet to the rest of the Exchange's systems and includes trading systems, market

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42 Id.

43 Id.

44 Id.

data systems, and network monitoring. The external network includes connectivity between the Exchange and other national securities exchanges, market data providers, and between the Exchange's locations in Princeton, New Jersey, Secaucus, New Jersey (NY4), Miami, Florida, and Chicago, Illinois (CH4). In determining the appropriate fees to charge Members and non-Members to access the Exchange's System Networks via MEO Ports, the Exchange considered its costs to provide and maintain its System Networks and connectivity to those System Networks, using costs that are related to providing and maintaining access the Exchange's System Networks via MEO Ports to estimate such costs, and set fees that are designed to cover its costs with a limited return in excess of such costs. The Exchange believes that it is important to demonstrate that the proposed fees are based on the Exchange's costs and reasonable business needs and believes the proposed fees will allow the Exchange to continue to offset expenses. However, as discussed more fully below, such fees may also result in the Exchange recouping less than all of its costs of providing and maintaining access to the Exchange's System Networks via MEO Ports because of the uncertainty of forecasting subscriber decision making with respect to firms' port and access needs. The Exchange believes that the proposed fees will not result in excessive pricing or supra-competitive profit based on the total expenses the Exchange incurs versus the total revenue the Exchange projects to collect, and therefore meets the standards in the Act as interpreted by the Commission and the Commission Staff in the BOX Order and the Guidance.

The Exchange conducted an extensive cost review in which the Exchange analyzed nearly every expense item in the Exchange's general expense ledger to determine whether each such expense relates to MEO Ports, and, if such expense did so relate, what portion (or percentage) of such expense actually supports access to the Exchange's System Networks via

MEO Ports. In determining what portion (or percentage) to allocate to access services, each Exchange department head, in coordination with other Exchange personnel, determined the expenses that support access services and System Networks associated with MEO Ports. This included numerous meetings between the Exchange's Chief Information Officer, Chief Financial Officer, Head of Strategic Planning and Operations, Chief Technology Officer, various members of the Legal Department, and other group leaders. The analysis also included each department head meeting with the divisions of teams within each department to determine the amount of time and resources allocated by employees within each division towards the access services and System Networks associated with MEO Ports. The Exchange reviewed each individual expense to determine if such expense was related to MEO Ports. Once the expenses were identified, the Exchange department heads, with the assistance of our internal finance department, reviewed such expenses holistically on an Exchange-wide level to determine what portion of that expense supports providing access services and the System Networks. The sum of all such portions of expenses represents the total cost to the Exchange to provide access services associated with MEO Ports. For the avoidance of doubt, no expense amount is allocated twice.

The analysis conducted by the Exchange is a proprietary process that is designed to make a fair and reasonable assessment of costs and resources allocated to support the provision of access services associated with MEO Ports. The Exchange acknowledges that this assessment can only capture a moment in time and that costs and resource allocations may change. That is why the Exchange historically, and on an ongoing annual basis, reviews its costs and resource allocations to ensure it appropriately allocates resources to properly provide services to the Exchange's constituents.

The Exchange believes exchanges, like all businesses, should be provided flexibility when developing and applying a methodology to allocate costs and resources they deem necessary to operate their business, including providing market data and access services. The Exchange notes that costs and resource allocations may vary from business to business and, likewise, costs and resource allocations may differ from exchange to exchange when it comes to providing market data and access services. It is a business decision that must be evaluated by each exchange as to how to allocate internal resources and what costs to incur internally or via third parties that it may deem necessary to support its business and its provision of market data and access services to market participants.

The Exchange notes that there are material costs associated with providing the infrastructure and headcount to fully support access to the Exchange and its System Networks via MEO Ports. The Exchange incurs technology expense related to establishing and maintaining Information Security services, enhanced network monitoring and customer reporting, as well as Regulation SCI-mandated processes associated with its network technology. Both fixed and variable expenses have significant impact on the Exchange's overall costs to provide and maintain access to the Exchange's System Networks via MEO Ports. For example, to accommodate new Members, the Exchange may need to purchase additional hardware to support those Members as well as provide enhanced monitoring and reporting of customer performance that the Exchange and its affiliates currently provide. Further, as the total number of Members increases, the Exchange and its affiliates may need to increase their data center footprint and consume more power, resulting in increased costs charged by their third-party data center provider. Accordingly, the cost to the Exchange and its affiliates to provide access to its Members is not fixed. The Exchange believes the proposed fees are a reasonable attempt to offset a portion of those costs associated with providing access to and maintaining its System Networks' infrastructure and related MEO Ports.

The Exchange estimated its total annual expense to provide and maintain access to the Exchange's System Networks via MEO Ports based on the following general expense categories: (1) external expenses, which include fees paid to third parties for certain products and services; (2) internal expenses relating to the internal costs to provide the services associated with MEO Ports; and (3) general shared expenses.[45] The Guidance does not include any information regarding the methodology that an exchange should use to determine its cost associated with a proposed fee change. The Exchange utilized a methodology in this proposed fee change that it believes is reasonable because the Exchange analyzed its entire cost structure, allocated a percentage of each cost attributable to maintaining its System Networks, then divided those costs according to the cost methodology outlined below.

For 2022, the total annual expense for providing the access services associated with the MEO Ports is estimated to be $2,923,534, or $243,627 per month. The Exchange believes it is more appropriate to analyze the proposed fees utilizing its estimated 2022 revenue and costs, which utilize the same presentation methodology as set forth in the Exchange's previously-issued Audited Unconsolidated Financial Statements.[46] The $2,923,534 estimated total annual

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45 The percentage allocations used in this proposed rule change may differ from past filings from the Exchange or its affiliates due to, among other things, changes in expenses charged by third parties, adjustments to internal resource allocations, and different system architecture of the Exchange as compared to its affiliates.

46 For example, the Exchange previously noted that all third-party expense described in its prior fee filing was contained in the information technology and communication costs line item under the section titled "Operating Expenses Incurred Directly or Allocated From Parent," in the Exchange's 2019 Form 1 Amendment containing its financial statements for 2018. See Securities Exchange Act Release No. 87876 (December 31, 2019), 85 FR 757 (January 7, 2020) (SR-PEARL-2019-36). Accordingly, the third party

expense is directly related to the access to the Exchange's System Networks via MEO Ports and not any other product or service offered by the Exchange. For example, it does not include general costs of operating matching engines and other trading technology. No expense amount was allocated twice. Each of the categories of expenses are set forth in the following table and details of the individual line-item costs considered by the Exchange for each category are described further below.

expense described in this filing is attributed to the same line item for the Exchange's 2022 Form 1 Amendment, which will be filed in 2023.

External Expenses	
Category	**Percentage of Total Expense Amount Allocated**
Data Center Provider	1.80%
Fiber Connectivity Provider	0.90%
Security Financial Transaction Infrastructure (“SFTI”), and Other Connectivity and Content Service Providers	0.90%
Hardware and Software Providers	0.90%
Total of External Expenses	$295,184[47]
Internal Expenses	
Category	**Expense Amount Allocated**
Employee Compensation	$2,066,488
Depreciation and Amortization	$161,578
Occupancy	$62,531
Total of Internal Expenses	$2,290,597
Allocated Shared Expenses	**$337,753**

The Exchange notes that it only has two primary sources of revenue, connectivity and port fees, to recover those costs associated with providing and maintaining access to the Exchange's System Networks. The Exchange notes that, without the specific third party and internal expense items, the Exchange would not be able to provide and maintain the System Networks and access to the System Networks via MEO Ports to Members. Each of these

[47] The Exchange does not believe it is appropriate to disclose the actual amount it pays to each individual third-party provider as those fee arrangements are competitive or the Exchange is contractually prohibited from disclosing that number.

expense items, including physical hardware, software, employee compensation and benefits, occupancy costs, and the depreciation and amortization of equipment, has been identified through a line-by-line item analysis to be integral to providing and maintaining the System Networks and access to System Networks via MEO Ports.

For clarity, the Exchange took a conservative approach in determining the expense and the percentage of that expense to be allocated to providing and maintaining the System Networks and access to System Networks in connection with MEO Ports. The Exchange describes the analysis conducted for each expense and the resources or determinations that were considered when determining the amount necessary to allocate to each expense. Only a portion of all fees paid to such third-parties is included in the third-party expenses described herein, and no expense amount is allocated twice. Accordingly, the Exchange does not allocate its entire information technology and communication costs to providing and maintaining the System Networks and access to Exchange's System Networks via MEO Ports. This may result in the Exchange under allocating an expense to provide and maintain its System Networks and access to the System Networks via MEO Ports, and such expenses may actually be higher than what the Exchange allocated as part of this proposal. The Exchange notes that expenses associated with its affiliates, MIAX and MIAX Emerald, as well as the Exchange's equities market, are accounted for separately and are not included within the scope of this filing.

Further, as part its ongoing assessment of costs and expenses, the Exchange recently conducted a periodic, thorough review of its expenses and resource allocations, which resulted in revised percentage allocations in this filing. The revised percentages are, among other things, the result of the shuffling of internal resources in response to business objectives and changes to fees charged and services provided by third parties. Therefore, the percentage allocations used in this proposed rule change may differ from past filings from the Exchange or its affiliates due to, among other things, changes in expenses charged by third parties, adjustments to internal resource allocations, and different system architecture of the Exchange as compared to its affiliates.

External Expense Allocations

For 2022, expenses relating to fees paid by the Exchange to third parties for products and services necessary to provide and maintain the System Networks and access to the System Networks via a MEO Port are estimated to be $295,184. This includes, but is not limited to, a portion of the fees paid to: (1) a third party data center provider, including for the primary, secondary, and disaster recovery locations of the Exchange's trading system infrastructure; (2) a fiber connectivity provider for network services (fiber and bandwidth products and services) linking the Exchange's and its affiliates' office locations in Princeton, New Jersey and Miami, Florida, to all data center locations; (3) SFTI, which supports connectivity feeds for the entire U.S. options industry; (4) various other content and connectivity service providers, which provide content, connectivity services, and infrastructure services for critical components of options connectivity and network services; and (5) various other hardware and software providers that support the production environment in which Members and non-Members connect to the network to trade and receive market data.

Data Center Space and Operations Provider

The Exchange does not own the primary data center or the secondary data center, but instead leases space in data centers operated by third parties where the Exchange houses servers, switches and related equipment. Data center costs include an allocation of the costs the Exchange incurs to provide physical connectivity in the third-party data centers where it maintains its equipment as well as related costs. The data center provider operates the data centers (primary, secondary, and disaster recovery) that host the Exchange's network infrastructure. Without the retention of a third-party data center, the Exchange would not be able to operate its systems and provide a trading platform for market participants. The Exchange does not employ a separate fee to cover its data center expense and recoups that expense, in part, by charging for MEO Ports.

The Exchange reviewed its data center footprint, including its total rack space, cage usage, number of servers, switches, cabling within the data center, heating and cooling of physical space, storage space, and monitoring and divided its data center expenses among providing transaction services, market data, and connectivity. Based on this review, the Exchange determined that 1.80% of the total applicable data center provider expense is applicable to providing and maintaining access services and System Networks associated with MEO Ports. The Exchange believes this allocation is reasonable because MEO Ports are a core means of access to the Exchange's network, providing one method for market participants to send and receive order and trade messages, as well as receive market data. A large portion of the Exchange's data center expense is due to providing and maintaining port access and connectivity to the Exchange's System Networks, including providing cabling within the data center between market participants and the Exchange. The Exchange excluded from this allocation servers that are dedicated to market data. The Exchange also did not allocate the remainder of the data center expense because it pertains to other areas of the Exchange's operations, such as other ports, market data, and transaction services.

Fiber Connectivity Provider

The Exchange engages a third-party service provider that provides the internet, fiber and bandwidth connections between the Exchange's networks, primary and secondary data center, and office locations in Princeton and Miami. Fiber connectivity is necessary for the Exchange to switch to its secondary data center in the case of an outage in its primary data center. Fiber connectivity also allows the Exchange's National Operations & Control Center ("NOCC") and Security Operations Center ("SOC") in Princeton to communicate with the Exchange's primary and secondary data centers. As such, all trade data, including the billions of messages each day, flow through this third-party provider's infrastructure over the Exchange's network. Without these services, the Exchange would not be able to operate and support the network and provide and maintain access services and System Networks associated with the MEO Ports to its Members and their customers. Without the retention of a third-party fiber connectivity provider, the Exchange would not be able to communicate between its data centers and office locations. The Exchange does not employ a separate fee to cover its fiber connectivity expense and recoups that expense, in part, by charging for MEO Ports.

The Exchange reviewed it costs to retain fiber connectivity from a third party, including the ongoing costs to support fiber connectivity, ensuring adequate bandwidth and infrastructure maintenance to support exchange operations, and ongoing network monitoring and maintenance and determined that 0.90% of the total fiber connectivity expense was applicable to providing and maintaining access services and System Networks associated with MEO Ports. The Exchange believes this allocation is reasonable because MEO Ports are a core means of access to the Exchange's network, providing one method for market participants to send and receive order and trade messages, as well as receive market data. A large portion of the

Exchange's fiber connectivity expense is due to providing and maintaining connectivity between the Exchange's System Networks, data centers, and office locations and is core to the daily operation of the Exchange. Fiber connectivity is a necessary integral means to disseminate information from the Exchange's primary data center to other Exchange locations. The Exchange excluded from this allocation fiber connectivity usage related to market data or other business lines. The Exchange also did not allocate the remainder of this expense because it pertains to other areas of the Exchange's operations and does not directly relate to providing and maintaining access services and System Networks associated with MEO Ports. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to retain fiber connectivity and maintain and provide access to its System Networks via MEO Ports.

Connectivity and Content Services Provided by SFTI and Other Providers

The Exchange relies on SFTI and various other connectivity and content service providers for connectivity and data feeds for the entire U.S. options industry, as well as content, connectivity, and infrastructure services for critical components of the network that are necessary to provide and maintain its System Networks and access to its System Networks via MEO Ports. Specifically, the Exchange utilizes SFTI and other content service provider to connect to other national securities exchanges, the Options Price Reporting Authority ("OPRA"), and to receive market data from other exchanges and market data providers. SFTI is operated by the Intercontinental Exchange, the parent company of five registered exchanges, and has become integral to the U.S. markets. The Exchange understands SFTI provides services to most, if not all, of the other U.S. exchanges and other market participants. Without services from SFTI and various other service providers, the Exchange would not be able to connect to other national securities exchanges, market data providers, or OPRA and, therefore, would not be able to operate and support its System Networks. The Exchange does not employ a separate fee to cover its SFTI and content service provider expense and recoups that expense, in part, by charging for MEO Ports.

The Exchange reviewed it costs to retain SFTI and other content service providers, including network monitoring and maintenance, remediation of connectivity related issues, and ongoing administrative activities related to connectivity management and determined that 0.90% of the total applicable SFTI and other service provider expense is allocated to providing the access services associated with MEO Ports. SFTI and other content service providers are key vendors and necessary components in providing connectivity to the Exchange. The primary service SFTI provides for the Exchange is connectivity to other national securities exchanges and their disaster recovery facilities and, therefore, a vast portion of this expense is allocated to providing access to the System Networks via MEO Ports. Connectivity via SFTI is necessary for purposes of order routing and accessing disaster recovery facilities in the case of a system outage. Engaging SFTI and other like vendors provides purchasers of MEO Ports connectivity to other national securities exchanges for purposes of order routing and disaster recovery. The Exchange did not allocate a portion of this expense that relates to the receipt of market data from other national securities exchange and OPRA. The Exchange also did not allocate the remainder of this expense because it pertains to other areas of the Exchange's operations and does not directly relate to providing and maintaining the System Networks or access to its System Networks via MEO Ports. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide and maintain its System

Networks and access to its System Networks via MEO Ports, and not any other service, as supported by its cost review.

Hardware and Software Providers

The Exchange relies on dozens of third-party hardware and software providers for equipment necessary to operate its System Networks. This includes either the purchase or licensing of physical equipment, such as servers, switches, cabling, and monitoring devices. It also includes the purchase or license of software necessary for security monitoring, data analysis and Exchange operations. Hardware and software providers are necessary to maintain its System Networks and provide access to its System Networks via MEO Ports. Hardware and software equipment and licenses for that equipment are also necessary to operate and monitor physical assets necessary to offer physical connectivity to the Exchange. Hardware and software equipment and licenses are key to the operation of the Exchange and, without them, the Exchange would not be able to operate and support its System Networks and provide access to its Members and their customers. The Exchange does not employ a separate fee to cover its hardware and software expense and recoups that expense, in part, by charging for MEO Ports.

The Exchange reviewed it hardware and software related costs, including software patch management, vulnerability management, administrative activities related to equipment and software management, professional services for selection, installation and configuration of equipment and software supporting exchange operations and determined that 0.90% of the total applicable hardware and software expense is allocated to providing and maintaining access services and System Networks associated with MEO Ports. Hardware and software equipment and licenses are key to the operation of the Exchange and its System Networks. Without them, market participants would not be able to access the System Networks via MEO Ports. The

Exchange only allocated the portion of this expense to the hardware and software that is related to a market participant's use of MEO Ports, such as operating its matching engines. The Exchange, therefore, did not allocate portions of its hardware and software expense that related to other areas of the Exchange's business, such as hardware and software used for market data or unrelated administrative services. The Exchange also did not allocate the remainder of this expense because it pertains to other areas of the Exchange's operations, such as ports or transaction services, and does not directly relate to providing and maintaining its System Networks and access to its System Networks via MEO Ports. The Exchange believes this allocation is reasonable because it represents the Exchange's cost to provide and maintain its System Networks and access to its System Networks via MEO Ports, and not any other service, as supported by its cost review.

Internal Expense Allocations

For 2022, total internal expenses relating to the Exchange providing and maintaining its System Networks and access to its System Networks via a MEO Port connection are estimated to be $2,290,597. This includes, but is not limited to, costs associated with: (1) employee compensation and benefits for full-time employees that support the System Networks and access to System Networks via MEO Ports, including staff in network operations, trading operations, development, system operations, business, as well as staff in general corporate departments (such as legal, regulatory, and finance) that support those employees and functions as well as important system upgrades; (2) depreciation and amortization of hardware and software used to provide and maintain access services and System Networks associated with MEO Ports, including equipment, servers, cabling, purchased software and internally developed software used in the production environment to support the network for trading; and

(3) occupancy costs for leased office space for staff that provide and maintain the System Networks and access to System Networks via MEO Ports. The breakdown of these costs is more fully described below.

Employee Compensation and Benefits

Human personnel are key to exchange operations and supporting the Exchange's ongoing provision and maintenance of the System Networks and access to System Networks via MEO Ports. The Exchange reviewed its employee compensation and benefits expense and the portion of that expense allocated to providing and maintaining the System Networks and access to System Networks via MEO Ports. As part of this review, the Exchange considered employees whose functions include providing and maintaining the System Networks and MEO Ports and used a blended rate of compensation reflecting salary, stock and bonus compensation, bonuses, benefits, payroll taxes, and 401K matching contributions.[48]

Based on this review, the Exchange determined to allocate $2,066,488 in employee compensation and benefits expense to providing access to the System Networks. To determine the appropriate allocation the Exchange reviewed the time employees allocated to supporting its System Networks and access to its System Networks via MEO Ports. Senior staff also reviewed these time allocations with department heads and team leaders to determine whether those allocations were appropriate. These employees are critical to the Exchange to provide and

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48 For purposes of this allocation, the Exchange did not consider expenses related to supporting employees who support MEO Ports, such as office space and supplies. The Exchange determined cost allocation for employees who perform work in support of offering access services and System Networks to arrive at a full time equivalent ("FTE") of 6.3 FTEs across all the identified personnel. The Exchange then multiplied the FTE times a blended compensation rate for all relevant Exchange personnel to determine the personnel costs associated with providing the access services and System Networks associated with MEO Ports.

maintain access to its System Networks via MEO Ports for its Members, non-Members and their customers. The Exchange determined the above allocation based on the personnel whose work focused on functions necessary to provide and maintain the System Networks and access to System Networks via MEO Ports. The Exchange does not charge a separate fee regarding employees who support MEO Ports and the Exchange seeks to recoup that expense, in part, by charging for MEO Ports.

Depreciation and Amortization

A key expense incurred by the Exchange relates to the depreciation and amortization of equipment that the Exchange procured to provide and maintain the System Networks and access to System Networks via MEO Ports. The Exchange reviewed all of its physical assets and software, owned and leased, and determined whether each asset is related to providing and maintaining its System Networks and access to its System Networks via MEO Ports, and added up the depreciation of those assets. All physical assets and software, which includes assets used for testing and monitoring of Exchange infrastructure, were valued at cost, depreciated or leased over periods ranging from three to five years. In determining the amount of depreciation and amortization to apply to providing MEO Ports and the System Networks, the Exchange considered the depreciation of hardware and software that are key to the operation of the Exchange and its System Networks. This includes servers, computers, laptops, monitors, information security appliances and storage, and network switching infrastructure equipment, including switches and taps, that were previously purchased to maintain and provide access to its System Networks via MEO Ports. Without them, market participants would not be able to access the System Networks. The Exchange seeks to recoup a portion of its depreciation expense by charging for MEO Ports.

Based on this review, the Exchange determined to allocate $161,578 in depreciation and amortization expense to providing access to the System Networks via a MEO Port fees. The Exchange only allocated the portion of this depreciation expense to the hardware and software related to a market participant's use of MEO Ports. The Exchange, therefore, did not allocate portions of depreciation expense that relates to other areas of the Exchange's business, such as the depreciation of hardware and software used for market data or unrelated administrative services.[49]

Occupancy

The Exchange rents and maintains multiple physical locations to house staff and equipment necessary to support access services, System Networks, and exchange operations. The Exchange's occupancy expense is not limited to the housing of personnel and includes locations used to store equipment necessary for Exchange operations. In determining the amount of its occupancy related expense, the Exchange considered actual physical space used to house employees whose functions include providing and maintaining the System Networks and MEO Ports. Similarly, the Exchange also considered the actual physical space used to house hardware and other equipment necessary to provide and maintain the System Networks and MEO Ports. This equipment includes computers, servers, and accessories necessary to support the System Networks and MEO Ports. Based on this review, the Exchange determined to allocate $62,531 of its occupancy expense to provide and maintain the System Networks and

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49 All of the expenses outlined in this proposed fee change refer to the operating expenses of the Exchange. The Exchange did not included any future capital expenditures within these costs. Depreciation and amortization represent the expense of previously purchased hardware and internally developed software spread over the useful life of the assets. Due to the fact that the Exchange has only included operating expense and historical purchases, there is no double counting of expenses in the Exchange's cost estimates.

MEO Ports. The Exchange believes this allocation is reasonable because it represents the Exchange's cost to rent and maintain a physical location for the Exchange's staff who operate and support the System Networks, including providing and maintaining access to its System Networks via MEO Ports. The Exchange considered the rent paid for the Exchange's Princeton and Miami offices, as well as various related costs, such as physical security, property management fees, property taxes, and utilities at each of those locations. The Exchange did not include occupancy expenses related to housing employees and equipment related to other Exchange operations, such as market data and administrative services.

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The Exchange notes that a material portion of its total overall expense is allocated to the provision and maintenance of access services (including connectivity and ports). The Exchange believes this is reasonable as the Exchange operates a technology-based business that differentiates itself from its competitors based on its more deterministic and resilient trading systems that rely on access to a high performance network, resulting in significant technology expense. Over two-thirds of Exchange staff are technology-related employees. The majority of the Exchange's expense is technology-based. Thus, the Exchange believes it is reasonable to allocate a material portion of its total overall expense towards providing and maintaining its System Networks and access to its System Networks via MEO Ports.

<u>Allocated Shared Expense</u>

Finally, a limited portion of general shared expenses was allocated to overall MEO Port costs as without these general shared costs, the Exchange would not be able to operate in the manner that it does and provide MEO Ports. The costs included in general shared expenses include recruiting and training, marketing and advertising costs, professional fees for legal, tax and accounting services, and telecommunications costs. For 2022, the Exchange's general shared expense allocated to MEO Ports and the System Networks that support those connections is estimated to be $337,753. The Exchange used the average of the above allocations to determine the amount of general shared expenses to allocate to this proposal. The Exchange believes this ensures that the allocation correlates to the percentage of the above internal and external expense applied to the proposed fee change.

Revenue and Estimated Profit Margin

The Exchange only has four primary sources of revenue and cost recovery mechanisms to fund all of its operations: transaction fees, access fees (which includes MEO Ports), regulatory fees, and market data fees. Accordingly, the Exchange must cover all of its expenses from these four primary sources of revenue and cost recovery mechanisms.

To determine the Exchange's estimated revenue associated with MEO Ports, the Exchange analyzed the number of Members currently utilizing MEO Ports and used a recent monthly billing cycle representative of current monthly revenue. The Exchange also provided its baseline by analyzing March 2022, the monthly billing cycle prior to the proposed fees and compared this to its expenses for that month. As discussed below, the Exchange does not believe it is appropriate to factor into its analysis future revenue growth or decline into its estimates for purposes of these calculations, given the uncertainty of such estimates due to the continually changing access needs of market participants and potential changes in internal and third-party expenses.

For March 2022, prior to the proposed fees, Members purchased 15 Full Service MEO Port – Bulk, for which the Exchange anticipates charging $60,500, and 4 Full Service MEO Port – Single, for which the Exchange anticipates charging $11,125, for a total of $71,625 for that month. This will result in a loss of $171,999 ($71,625 in MEO Port revenue, minus $243,627 in monthly MEO Port expenses). For April 2022, assuming the Exchange charges the proposed fees described herein, the Exchange anticipates Members purchasing 15 Full Service MEO Port – Bulk, for which the Exchange anticipates charging $112,500, and 4 Full Service MEO Port – Single, for which the Exchange anticipates charging $13,000, for a total of $125,500 for that month. This will result in a loss of $118,127 ($125,500 in MEO Port revenue, minus $243,627 in monthly MEO Port expenses).

The Exchange believes that conducting the above analysis on a per month basis is reasonable as the revenue generated from access services subject to the proposed fee generally remains static from month to month. The Exchange also conducted the above analysis on a per month basis to comply with the Commission Staff's Guidance, which requires a baseline analysis to assist in determining whether the proposal generates a supra-competitive profit. The Exchange cautions that this profit margin may also fluctuate from month to month based on the uncertainty of predicting how many ports may be purchased from month to month as Members are free to add and drop ports at any time based on their own business decisions.

The Exchange believes the proposed margin is reasonable and will not result in a "supra-competitive" profit. The Guidance defines "supra-competitive profit" as "profits that exceed the profits that can be obtained in a competitive market."[50] Until recently, the Exchange has operated at a cumulative net annual loss since it launched operations in 2017.[51] The Exchange has operated at a net loss due to a number of factors, one of which is choosing to

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50 See supra note 35.

51 The Exchange has incurred a cumulative loss of $86 million since its inception in 2017 to 2020. See Exchange's Form 1/A, Application for Registration or Exemption from Registration as a National Securities Exchange, filed July 28, 2021, available at https://www.sec.gov/Archives/edgar/vprr/2100/21000461.pdf.

forgo revenue by offering certain products, such as MEO Ports, at lower rates than other options exchanges to attract order flow and encourage market participants to experience the high determinism, low latency, and resiliency of the Exchange's trading systems. The Exchange is not generating a profit, and therefore, cannot be deemed to be generating a "supra-competitive" profit by now increasing the fees for MEO Ports while still sustaining a loss. The Exchange should not now be penalized for now seeking to raise it fees to near market rates after offering such products as discounted prices.

The Exchange notes that its revenue estimate is based on estimates and will only be realized to the extent such revenue actually produces the revenue estimated. As a generally new entrant to the hyper-competitive exchange environment, and an exchange focused on driving competition, the Exchange does not yet know whether such expectations will be realized. For instance, in order to generate the revenue expected from MEO Ports, the Exchange will have to be successful in retaining existing clients that wish to maintain physical connectivity or obtaining new clients that will purchase such services. To the extent the Exchange is successful in encouraging new clients to connect directly to the Exchange, the Exchange does not believe it should be penalized for such success. The Exchange, like other exchanges, is, after all, a for-profit business. While the Exchange believes in transparency around costs and potential margins, the Exchange does not believe that these estimates should form the sole basis of whether or not a proposed fee is reasonable or can be adopted. Instead, the Exchange believes that the information should be used solely to confirm that an Exchange is not earning supra-competitive profits, and the Exchange believes its cost analysis and related estimates demonstrate this fact.

The Proposed Fees are Reasonable when Compared to The Fees of other Options Exchanges with Similar Market Share

The Exchange does not have visibility into other exchanges' costs to provide ports or their fee markup over those costs, and therefore cannot use other exchange's port fees as a benchmark to determine a reasonable markup over the costs of providing ports. Nevertheless, the Exchange believes the other exchanges' port fees are useful examples of alternative approaches to providing and charging for ports notwithstanding that the competing exchanges may have different system architectures that may result in different cost structures for the provision of connectivity. To that end, the Exchange believes the proposed fees are reasonable because the proposed fees are still less than fees charged for similar ports provided by other options exchanges with comparable market shares.

As described in the above table, the Exchange's proposed fees remain less than fees charged for similar ports provided by other options exchanges with similar market share. In the each of the above cases, the Exchange's proposed fees are still significantly lower than that of competing options exchanges with similar market share. Despite proposing lower or similar fees to that of competing options exchanges with similar market share, the Exchange believes that it provides a premium network experience to its Members and non-Members via a highly deterministic System, enhanced network monitoring and customer reporting, and a superior network infrastructure than markets with higher market shares and more expensive connectivity alternatives. Each of the rates in place at competing options exchanges were filed with the Commission for immediate effectiveness and remain in place today.

The Proposed Fees are Equitably Allocated

The Exchange further believes that the proposed fees are reasonable, equitably allocated and not unfairly discriminatory because, for the flat fee, the Exchange provides each Member two (2) Full Service MEO Ports for each matching engine to which that Member is connected. Unlike other options exchanges that provide similar port functionality and charge fees on a per port basis,[52] the Exchange offers Full Service MEO Ports as a package and provides Members with the option to receive up to two Full Service MEO Ports per matching engine to which it connects. The Exchange currently has twelve (12) matching engines, which means Members may receive up to twenty-four (24) Full Service MEO Ports for a single monthly fee, that can vary based on certain volume percentages. The Exchange currently assesses Members a fee of $5,000 per month in the highest Full Service MEO Port - Bulk Tier, regardless of the number of Full Service MEO Ports allocated to the Member. Assuming a Member connects to all twelve (12) matching engines during a month, with two Full Service MEO Ports per matching engine, this results in a cost of $208.33 per Full Service MEO Port - Bulk ($5,000 divided by 24) for the month. This fee has been unchanged since the Exchange adopted Full Service MEO Port fees in 2018.[53] The Exchange now proposes to increase the Full Service MEO Port fees, with the highest Tier fee for a Full Service MEO Port - Bulk of $10,000 per month. Members will continue to receive two (2) Full Service MEO Ports to each matching engine to which they are connected for the single flat monthly fee. Assuming a Member connects to all twelve (12) matching engines during the month, and achieves the highest Tier for that month, with two Full Service MEO Ports - Bulk per matching engine, this would result in a cost of $416.67 per Full Service MEO Port ($10,000 divided by 24).

52 See supra note 19.

53 See supra note 20.

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

The Exchange does not believe that the proposed rule change would place certain market participants at the Exchange at a relative disadvantage compared to other market participants or affect the ability of such market participants to compete.

Intra-Market Competition

The Exchange believes that the proposed fees do not place certain market participants at a relative disadvantage to other market participants because the proposed fees do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation of the proposed fees reflects the network resources consumed by the various size of market participants – lowest bandwidth consuming members pay the least, and highest bandwidth consuming members pays the most, particularly since higher bandwidth consumption translates to higher costs to the Exchange.

Inter-Market Competition

The Exchange believes the proposed fees do not place an undue burden on competition on other options exchanges that is not necessary or appropriate. In particular, options market participants are not forced to connect to (and purchase MEO Ports from) all options exchanges. The Exchange also notes that it has far less Members as compared to the much greater number of members at other options exchanges. Not only does MIAX Pearl have less than half the number of members as certain other options exchanges, but there are also a number of the Exchange's Members that do not connect directly to MIAX Pearl. There are a number of large users of the MEO Interface and broker-dealers that are members of other options exchange but not Members of MIAX Pearl. The Exchange is also unaware of any assertion that its existing fee levels or the proposed fees would somehow unduly impair its competition with other options exchanges. To the contrary, if the fees charged are deemed too high by market participants, they can simply disconnect.

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

One comment letter was submitted on the Fourth Proposed Rule Change[54] and the Exchange responds to issues raised in that comment letter here.

First, SIG Letter 2 asserts that the Exchange's motivation for the proposed fees is not a proper justification and refers to statements included in withdrawn filings about the Exchange's need to recoup initial capital expenditures. SIG Letter 2 does not provided a reason why recoupment of initial capital expenditures is not a proper justification for a proposed rule change. SIG Letter 2 also asserts that enhancing profitability is not an appropriate justification for the proposed fee change. The Exchange never asserted in any of the preceding versions of this proposed fee change that enhancing profitability was a motivation for the proposed fee change. Rather, the Exchange provided numerous reasons for the proposed fee change, including the need to cover ongoing internal and external expenses and anticipated increases in those costs due to ongoing inflationary pressures.

Second, SIG Letter 2 claims that the Exchange omitted the data necessary to assess the proposed fee change under the Exchange Act. SIG Letter 2 also asserts that the Exchange's disclosed cost data is not reliable. With each iteration of this proposed fee change, the Exchange provided more detail about its cost based analysis and rationale. In accordance with the Guidance, the Exchange has provided sufficient detail to support a finding that the proposed fees are consistent with the Exchange Act. The proposal includes a detailed description of the

54 See supra note 14.

Exchange's costs and how the Exchange determined to allocate those costs related to the proposed fees. The Exchange was commended by an industry group regarding the level of transparency and disclosure included in the proposed fee changes and that group was supportive of the efforts made by the Exchange and its affiliates to provide increased transparency and justification for their proposed fees. The commenter specifically noted that:

> "MIAX has repeatedly filed to change its connectivity fees in a way that will materially lower costs for many users, while increasing the costs for some of its heaviest of users. These filings have been withdrawn and repeatedly refiled. Each time, however, the filings contain significantly greater information about who is impacted and how than other filings that have been permitted to take effect without suspension. For example, MIAX detailed the associated projected revenues generated from the connectivity fees by user class, again in a clear attempt to comply with the SRO Fee Filing Guidance."[55]

Despite the Exchange refiling its fee proposals to include significantly greater information about the impact of the proposed fees on Members and non-Members, primarily at the request of the Commission Staff and in response to comments from SIG, SIG argues that the data the Exchange provided is insufficient or unreliable. Section 6(b)(4) of the Act[56] requires an exchange to "provide for the equitable allocation of reasonable dues, fees and other charges." The standard set by Congress for the Exchange to establish or amend a certain fee is "reasonableness," and the Exchange provided significant detail in this filing and past filings to support a finding that the proposed fees are reasonable under the Exchange Act.

SIG Letter 2 also claims that the Exchange has not shown that the estimated profit margin is reasonable. In this filing, the Exchange enhanced its justification and support to find that the

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55 See letter from Tyler Gellasch, Executive Director, Healthy Markets Association ("HMA"), to Hon. Gary Gensler, Chair, Commission, dated October 29, 2021 (commenting on SR-CboeEDGA-2021-017, SR-CboeBYX-2021-020, SR-Cboe-BZX-2021-047, SR-CboeEDGX-2021-030, SR-MIAX-2021-41, SR-PEARL-2021-45, and SR-EMERALD-2021-29) ("HMA Letter").

56 15 U.S.C. 78f(b)(4).

projected margin is reasonable and would not result in a supra-competitive profit. SIG Letter 2 states that SIG believes exchanges are utilities and utilities should only generate single to low double digit profit margins. This statement assumes that the projected profit margin is reflective of the Exchange's overall profit margin and ignores that this is a single profit margin from a single offering that is offset by lower or negative profit margins for other products and services offered by the Exchange. SIG's statement that utilities should only generate single to low double digit profit margins ignores SIG's own reference to a 14.4%, low double digit profit margin from one of the Exchange's recent proposed fee changes, as well as single digit to negative profit margins in other Exchange filings currently pending before the Commission.

III. Suspension of the Proposed Rule Change

Pursuant to Section 19(b)(3)(C) of the Act,[57] at any time within 60 days of the date of filing of a proposed rule change pursuant to Section 19(b)(1) of the Act,[58] the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization ("SRO") 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. As discussed below, the Commission believes a temporary suspension of the proposed rule change is necessary and appropriate to allow for additional analysis of the proposed rule change's consistency with the Act and the rules thereunder.

As the Exchange further details above, the Exchange first filed a proposed rule change proposing fee changes as proposed herein on July 1, 2021, with the proposed fee changes being immediately effective. That proposal, SR-PEARL-2021-33, was published for comment in the

57 15 U.S.C. 78s(b)(3)(C).

58 15 U.S.C. 78s(b)(1).

Federal Register on July 15, 2021.[59] On August 27, 2021, pursuant to Section 19(b)(3)(C) of the Act, the Commission: (1) temporarily suspended the proposed rule change (SR-PEARL-2021-33) and (2) instituted proceedings to determine whether to approve or disapprove the proposed rule change.[60] On October 12, 2021, the Exchange withdrew SR-PEARL-2021-33. On November 1, 2021, the Exchange filed a proposed rule change proposing fee changes as proposed herein (SR-PEARL-2021-53). That proposal, SR-PEARL-2021-53, was published for comment in the Federal Register on November 17, 2021.[61] On December 20, 2021, the Exchange withdrew SR-PEARL-2021-53 and filed a proposed rule change proposing fee changes as proposed herein on December 20, 2021 (PEARL-2022-58). That filing, SR-PEARL-2021-58, was published for comment in the Federal Register on January 10, 2022.[62] On February 15, 2022, the Exchange withdrew SR-PEARL-2021-58 and filed a proposed rule change proposing fee changes as proposed herein (SR-PEARL-2022-04). On February 18, 2022, pursuant to Section 19(b)(3)(C) of the Act, the Commission: (1) temporarily suspended the proposed rule change (SR-PEARL-2022-04); and (2) instituted proceedings to determine whether to approve or disapprove the proposal.[63] The Commission received one comment letter

59 See Securities Exchange Act Release No. 92365 (July 9, 2021), 86 FR 37347. The Commission received one comment letter on that proposal. Comment for SR-PEARL-2021-33 can be found at: https://www.sec.gov/comments/sr-pearl-2021-33/srpearl202133-9208443-250011.pdf.

60 See Securities Exchange Act Release No. 93556, 86 FR 49360 (September 2, 2021).

61 See Securities Exchange Act Release No. 93556 (November 19, 2021), 86 FR 64235.

62 See Securities Exchange Act Release No. 93894 (January 4, 2022), 87 FR 1203.

63 See Securities Exchange Act Release No. 94286, 87 FR 10860 (February 25, 2022).

on SR-PEARL-2022-04.[64] On April 1, 2022, the Exchange withdrew SR-PEARL-2022-04 and filed the instant filing, which is substantially similar.

When exchanges file their proposed rule changes with the Commission, including fee filings like the Exchange's present proposal, they are required to provide a statement supporting the proposal's basis under the Act and the rules and regulations thereunder applicable to the exchange.[65] The instructions to Form 19b-4, on which exchanges file their proposed rule changes, specify that such statement "should be sufficiently detailed and specific to support a finding that the proposed rule change is consistent with [those] requirements."[66]

Among other things, exchange proposed rule changes are subject to Section 6 of the Act, including Sections 6(b)(4), (5), and (8), which requires the rules of an exchange to: (1) provide for the equitable allocation of reasonable fees among members, issuers, and other persons using the exchange's facilities;[67] (2) perfect the mechanism of a free and open market and a national market system, protect investors and the public interest, and not permit unfair discrimination between customers, issuers, brokers, or dealers;[68] and (3) not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[69]

In temporarily suspending the Exchange's fee change, the Commission intends to further consider whether the proposal to increase the monthly fees for MIAX Express Network Full

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64 Comment on SR-PEARL-2022-04 can be found at: https://www.sec.gov/comments/sr-emerald-2022-05/sremerald202205-20119633-272460.pdf.

65 See 17 CFR 240.19b-4 (Item 3 entitled "Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change").

66 Id.

67 15 U.S.C. 78f(b)(4).

68 15 U.S.C. 78f(b)(5).

69 15 U.S.C. 78f(b)(8).

Service Ports is consistent with the statutory requirements applicable to a national securities exchange under the Act. In particular, the Commission will consider whether the proposed rule change satisfies the standards under the Act and the rules thereunder requiring, among other things, that an exchange's rules provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; not be designed to permit unfair discrimination between customers, issuers, brokers or dealers; and not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[70]

Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to temporarily suspend the proposed rule change.[71]

IV. Proceedings to Determine Whether to Approve or Disapprove the Proposed Rule Change

The Commission is instituting proceedings pursuant to Sections 19(b)(3)(C)[72] and 19(b)(2)(B)[73] of the Act to determine whether the Exchange's proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons

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70 See 15 U.S.C. 78f(b)(4), (5), and (8), respectively.

71 For purposes of temporarily suspending the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

72 15 U.S.C. 78s(b)(3)(C). Once the Commission temporarily suspends a proposed rule change, Section 19(b)(3)(C) of the Act requires that the Commission institute proceedings under Section 19(b)(2)(B) to determine whether a proposed rule change should be approved or disapproved.

73 15 U.S.C. 78s(b)(2)(B).

to provide comments on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[74] the Commission is providing notice of the grounds for possible disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of whether the Exchange has sufficiently demonstrated how the proposed rule change is consistent with Sections 6(b)(4),[75] 6(b)(5),[76] and 6(b)(8)[77] of the Act. Section 6(b)(4) of the Act requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. Section 6(b)(5) of the Act requires that the rules of a national securities exchange be designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Section 6(b)(8) of the Act requires that the rules of a national securities exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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74 15 U.S.C. 78s(b)(2)(B). Section 19(b)(2)(B) of the Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. See id. The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding, or if the exchange consents to the longer period. See id.

75 15 U.S.C. 78f(b)(4).

76 15 U.S.C. 78f(b)(5).

77 15 U.S.C. 78f(b)(8).

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the following aspects of the proposal and asks commenters to submit data where appropriate to support their views:

1. Cost Estimates and Allocation. The Exchange states that it is not asserting that the proposed MEO Port fee is constrained by competitive forces, but rather set forth a "cost-plus model," employing a "conservative approach" in determining the expense and the percentage of that expense to be allocated to providing and maintaining the System Networks and access to System Networks in connection with MEO Ports.[78] Setting forth its costs in providing MEO Ports, and as summarized in greater detail above, the Exchange projects that the total combined annual expense for providing the access services associated with the MEO Ports in 2022 will be $2,923,534, the sum of: (1) $295,184 in third-party expenses paid in total to their Data Center Provider (1.8% of the total applicable expense) for data center services; Fiber Connectivity Provider, for network services (0.90% of the total applicable expense); SFTI and other connectivity and content service providers for connectivity support (0.90% of the total applicable expense); and various other hardware and software providers (0.90% of the total applicable expense), (2) $2,290,597 in internal expenses, allocated to (a) employee compensation and benefit costs ($2,066,488); (b) depreciation and amortization ($161,578); and (c) occupancy costs ($62,531) and (3) $337,753 of allocated general shared expenses that include recruiting and training,

78 See supra Section II.A.2.

marketing and advertising costs, professional fees for legal, tax and accounting services, and telecommunications costs. Do commenters believe that these allocations are reasonable? Should the Exchange be required to provide more specific information regarding the allocation of third-party expenses, such as the overall estimated cost for each category of external expenses or at minimum the total applicable third-party expenses? Should the Exchange have provided either a percentage allocation or statements regarding the Exchange's overall estimated costs for the internal expense categories and general shared expenses figure? Do commenters believe that the Exchange has provided sufficient detail about how it determined which costs are associated with providing and maintaining MEO Ports and why? Do commenters believe that the Exchange has provided sufficient detail about how it determined "general shared expenses" and how it determined what portion should be associated with providing and maintaining MEO Ports? The Exchange describes a "proprietary" process that was applied in making these determinations or arriving at particular allocations. Do commenters believe further explanation is necessary? What are commenters' views on whether the Exchange has provided sufficient detail on the identity and nature of services provided by third parties? Across all of the Exchange's projected costs, what are commenters' views on whether the Exchange has provided sufficient detail on the elements that go into MEO Port costs, including how shared costs are allocated and attributed to MEO Port expenses, to permit an independent review and assessment of the reasonableness of purported cost-based fees and the corresponding profit margin thereon?

2. Revenue Estimates and Profit Margin Range. The Exchange provides a single monthly revenue figure from March 2022 as the basis for calculating a revenue loss of $118,127 for April 2022. Previously, the Exchange stated an estimated profit margin of 38%. What are commenters views on the significant increases in expenses allocated for this product? If not, why not? The Exchange states that their proposed margin is reasonable and is "designed recover a portion of the costs associated with directly accessing the Exchange."[79] The profit margin is also dependent on the accuracy of the cost projections which, if inflated (intentionally or unintentionally), may render the projected profit margin meaningless. The Exchange acknowledges that this margin may fluctuate from month to month due to changes in the number of ports purchased, and that costs may increase, but that the number of ports has not materially changed over the prior months and so the months that the Exchange has used as a baseline to perform its assessment are representative of reasonably anticipated costs and expenses.[80] The Exchange does not account for the possibility of cost decreases, however. What are commenters' views on the extent to which actual costs (or revenues) deviate from projected costs (or revenues)? Do commenters believe that the Exchange's methodology for estimating the profit or loss margin is reasonable? Should the Exchange provide a range of profit or loss margins that they believe are reasonably possible, and the reasons therefor?

3. Reasonable Rate of Return. As noted, the Exchange previously stated an estimated profit margin of 38% and now states a loss. What would commenters consider to be a

79 See supra Section II.A.2.

80 See id.

reasonable rate of return and/or what methodology would they consider to be appropriate for determining a reasonable rate of return? What are commenters' views regarding what factors should be considered in determining what constitutes a reasonable rate of return for MEO Port fees? Do commenters believe it relevant to an assessment of reasonableness that the Exchange's proposed fees for MEO Ports are lower than those of other options exchanges to which the Exchange has compared? Should an assessment of reasonable rate of return include consideration of factors other than costs; and if so, what factors should be considered, and why?

4. Periodic Reevaluation. The Exchange has not stated that it would re-evaluate the appropriate level of MEO Ports if there is a material deviation from the anticipated profit margin. In light of the impact that the number of subscribers has on MEO Port profit margins, and the potential for costs to decrease (or increase) over time, what are commenters' views on the need for exchanges to commit to reevaluate, on an ongoing and periodic basis, their cost-based MEO Port fees to ensure that they stay in line with their stated profitability target and do not become unreasonable over time, for example, by failing to adjust for efficiency gains, cost increases or decreases, and changes in subscribers? How formal should that process be, how often should that reevaluation occur, and what metrics and thresholds should be considered? How soon after a new MEO Port fee change is implemented should an exchange assess whether its subscriber estimates were accurate and at what threshold should an exchange commit to file a fee change if its estimates were inaccurate? Should an initial review take place within the first 30 days after a MEO Port fee is implemented? 60 days? 90 days? Some other period?

5. Tiered Structure for Full Service MEO Ports Fees. The Exchange states that proposed tiered-pricing structure is reasonable, equitably allocated, and not unfairly discriminatory because for a flat fee the Exchange provides each Member two Full Service MEO Ports for each matching engine to which the Member is connected, and further, it is the model adopted by the Exchange when it launched operations for its Full Service MEO Port fees,.[81] What are commenters' views on the adequacy of the information the Exchange provides regarding the proposed differentials in fees? Do commenters believe that the proposed price differences are supported by the Exchange's assertions that it set the level of each proposed new fee in a manner that it equitable and not unfairly discriminatory?

Under the Commission's Rules of Practice, the "burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change."[82] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[83] and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.[84] Moreover, "unquestioning

81 See id.

82 17 CFR 201.700(b)(3).

83 See id.

84 See id.

reliance" on an SRO's representations in a proposed rule change would not be sufficient to justify Commission approval of a proposed rule change.[85]

The Commission believes it is appropriate to institute proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposal is consistent with the Act, any potential comments or supplemental information provided by the Exchange, and any additional independent analysis by the Commission.

V. Commission's Solicitation of Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above as well as any other relevant concerns. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Sections 6(b)(4), 6(b)(5), and 6(b)(8), or any other provision of the Act, or the rules and regulations thereunder. The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.[86]

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85 See Susquehanna Int'l Group, LLP v. Securities and Exchange Commission, 866 F.3d 442, 446-47 (D.C. Cir. 2017) (rejecting the Commission's reliance on an SRO's own determinations without sufficient evidence of the basis for such determinations).

86 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by an SRO. See Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by [insert date 21 days from publication in the Federal Register]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [insert date 35 days from publication in the Federal Register].

Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-PEARL-2022-12 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-PEARL-2022-12. 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 website (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m.

and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-PEARL-2022-12 and should be submitted on or before [insert date 21 days from publication in the Federal Register]. Rebuttal comments should be submitted by [insert date 35 days from publication in the Federal Register].

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(3)(C) of the Act,[87] that File Number SR-PEARL-2022-12 be, and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule change should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[88]

J. Matthew DeLesDernier
Assistant Secretary

87 15 U.S.C. 78s(b)(3)(C).

88 17 CFR 200.30-3(a)(12), (57) and (58).