SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-100491; File No. SR-PEARL-2024-28)

July 10, 2024

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

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on June 28, 2024, MIAX PEARL, LLC ("MIAX Pearl" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

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

The text of the proposed rule change is available on the Exchange's website at https://www.miaxglobal.com/markets/us-equities/pearl-equities/rule-filings, at MIAX Pearl's principal office, and at the Commission's Public Reference Room.

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

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

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

2 17 CFR 240.19b-4.

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

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

1. Purpose

The Exchange proposes to amend the Fee Schedule to establish an alternative volume calculation method for Equity Members[3] to achieve the additive Step-Up Rebate described in the NBBO Setter Plus Program (referred to in this filing as the "NBBO Program").[4]

Background of the NBBO Program and Additive Rebates

The NBBO Program was implemented beginning September 1, 2023 and subsequently amended several times.[5] In general, the NBBO Program provides enhanced rebates[6] for Equity Members that add displayed liquidity ("Added Displayed Volume") in securities priced at or above $1.00 per share in all Tapes based on increasing volume thresholds and increasing market quality levels (described below). Pursuant to the NBBO Setter Plus Table in Section 1)c) of the Fee Schedule, the NBBO Program provides six volume tiers enhanced by three market quality levels to provide increasing rebates in this segment. The six volume tiers are achievable by greater volume from the best of four alternative volume calculation methods. The three market quality levels are achievable by greater NBBO participation in a minimum number of specific securities (described below).

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

4 See Fee Schedule, Section 1)c), note #4.

5 See, e.g., Securities Exchange Act Release Nos. 98472 (September 21, 2023), 88 FR 66533 (September 27, 2023) (SR-PEARL-2023-45); 99318 (January 11, 2024), 89 FR 3488 (January 18, 2024) (SR-PEARL-2023-73); 99695 (March 8, 2024), 89 FR 18694 (March 14, 2024) (SR-PEARL-2024-11); and 100338 (June 14, 2024), 89 FR 52141 (June 21, 2024) (SR-PEARL-2024-26).

6 Rebates are indicated by parentheses in the Fee Schedule. See the General Notes section of the Fee Schedule.

MIAX Pearl Equities first determines the applicable NBBO Program tier based on four different volume calculation methods. The four volume-based methods to determine the Equity Member's tier for purposes of the NBBO Program are calculated in parallel in each month, and each Equity Member receives the highest tier achieved from any of the four methods each month. The first three volume calculation methods are based on an Equity Member's respective ADAV, NBBO Set Volume, or ADV,[7] each as a percent of industry TCV[8] as the denominator, inclusive of executions of orders in securities priced below $1.00 per share across all Tapes. The fourth volume calculation method is based on an Equity Member's ADAV as a percentage of industry TCV as the denominator, exclusive of executions of orders in securities priced below $1.00 per share across all Tapes.[9] The Exchange does not propose to amend the four volume calculation methods or tier threshold percentages pursuant to this proposal.

After the volume calculation is performed to determine highest tier achieved by the Equity Member, the applicable rebate is calculated based on two different measurements based on the Equity Member's participation at the NBBO on the Exchange in certain securities (referenced below). The Exchange provides one column of base rebates (referred to in the NBBO Setter Plus Table as "Level A") and two columns of enhanced rebates (referred to in the

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7 "ADAV" means average daily added volume calculated as the number of shares added per day and "ADV" means average daily volume calculated as the number of shares added or removed, combined, per day. ADAV and ADV are calculated on a monthly basis. "NBBO Set Volume" means the ADAV in all securities of an Equity Member that sets the NBB or NBO on MIAX Pearl Equities. See the Definitions section of the Fee Schedule. The Exchange excludes from its calculation of ADAV, ADV, and TCV: (1) any trading day that the Exchange's system experiences a disruption that lasts for more than 60 minutes during regular trading hours; (2) any day with a scheduled early market close; (3) the "Russell Reconstitution Day" (typically the last Friday in June); (4) any day that the MSCI Equities Indexes are rebalanced (i.e., on a quarterly basis); and (5) any day that the S&P 400, S&P 500, and S&P 600 Indexes are rebalanced (i.e., on a quarterly basis). See id.

8 "TCV" means total consolidated volume calculated as the volume in shares reported by all exchanges and reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply. See id.

9 See supra note 5 (recent filings amending the NBBO Program, which provide a description of the different volume calculation methods and tier threshold percentages); see also Fee Schedule, Section 1)c).

NBBO Setter Plus Table as "Level B" and "Level C")[10], depending on the Equity Member's Percent Time at NBBO[11] on MIAX Pearl Equities in a certain amount of specified securities ("Market Quality Securities" or "MQ Securities").[12] The NBBO Setter Plus Table specifies the percentage of time that the Equity Member must be at the NBB or NBO on MIAX Pearl Equities in at least 200 symbols out of the full list of 1,000 MQ Securities (which symbols may vary from time to time based on market conditions). The list of MQ Securities is generally based on the top multi-listed 1,000 symbols by ADV across all U.S. securities exchanges. The list of MQ Securities is updated monthly by the Exchange and published on the Exchange's website.[13] The Exchange does not propose to amend the rebates described in Level A, Level B, or Level C pursuant to this proposal.[14]

The NBBO Program provides the following additional incentives: (1) an NBBO Setter Additive Rebate[15] applied to executions of orders in securities priced at or above $1.00 per share

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10 For the purpose of determining qualification for the rebates described in all Levels of the Market Quality Tier columns in the NBBO Setter Plus Table, the Exchange will exclude from its calculation: (1) any trading day that the Exchange's system experiences a disruption that lasts for more than 60 minutes during regular trading hours; (2) any day with a scheduled early market close; (3) the "Russell Reconstitution Day" (typically the last Friday in June); (4) any day that the MSCI Equities Indexes are rebalanced (i.e., on a quarterly basis); and (5) any day that the S&P 400, S&P 500, and S&P 600 Indexes are rebalanced (i.e., on a quarterly basis). See the General Notes section of the Fee Schedule.

11 "Percent Time at NBBO" means the aggregate of the percentage of time during regular trading hours where a Member has a displayed order of at least one round lot at the national best bid ("NBB") or national best offer ("NBO"). See the Definitions section of the Fee Schedule.

12 "Market Quality Securities" or "MQ Securities" shall mean a list of securities designated as such, that are used for the purposes of qualifying for the rebates described in Level B and Level C of the Market Quality Tier columns in the NBBO Setter Plus Program. The universe of these securities will be determined by the Exchange and published on the Exchange's website. See id.

13 See e.g, MIAX Pearl Equities Exchange – Market Quality Securities (MQ Securities) List, effective June 1 through June 30, 2024, available at https://www.miaxglobal.com/markets/us-equities/pearl-equities/fees (last visited June 26, 2024).

14 See supra note 5 for a complete description of the Level A, Level B, and Level C rebates; see also Fee Schedule, Section 1)c).

15 The Exchange does not propose to amend the NBBO Setter Additive Rebate, which is an additive rebate of ($0.0004) per share for executions of orders in securities priced at or above $1.00 per share that set the NBB or NBO on MIAX Pearl Equities with a minimum size of a round lot. See Fee Schedule, Section 1)c).

that set the NBB or NBO upon entry; (2) an NBBO First Joiner Additive Rebate[16] applied to executions of orders in securities priced at or above $1.00 per share that bring MIAX Pearl Equities to the established NBB or NBO; and (3) an additive Step-Up Rebate[17] (described further below) for Equity Members that satisfy the (i) minimum displayed ADAV as a percentage of TCV of 0.35% and (ii) an increase in the percentage of displayed ADAV as a percentage of TCV of at least 0.05% as compared to the Equity Member's February 2024 displayed ADAV percentage.

Proposal to Amend the NBBO Setter Plus Table to Establish an Alternative Volume Calculation Method for Equity Members to Achieve the Step-Up Rebate

The Exchange proposes to amend the Step-Up Rebate in footnote #4 of the NBBO Setter Plus Table in Section 1)c) of the Fee Schedule to establish an alternative volume calculation method for Equity Members to achieve the additive Step-Up Rebate. Currently, the Exchange offers a Step-Up Rebate of ($0.0001) per share for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume (other than Retail Orders)[18] for Equity Members that satisfy the following requirements in the relevant month: (1) minimum displayed ADAV of 0.35% of TCV; and (2) increase in the percentage of displayed ADAV of at least 0.05% of TCV as compared to the Equity Member's February 2024[19] displayed ADAV

16 The Exchange does not propose to amend the NBBO First Joiner Additive Rebate, which is an additive rebate of ($0.0002) per share for executions of orders in securities priced at or above $1.00 per share that bring MIAX Pearl Equities to the established NBB or NBO with a minimum size of a round lot. See Fee Schedule, Section 1)c).

17 See supra note 4.

18 The Exchange excludes Retail Orders from participating in the Step-Up Rebate because executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume in Retail Orders already receive an enhanced rebate of ($0.0037) per share. See Fee Schedule, Section 1)b), Liquidity Indicator Code "AR".

19 The Exchange uses a baseline ADAV of 0.00% of TCV for firms that become Equity Members of the Exchange after February 2024 for the purpose of the Step-Up Rebate calculation. See Securities Exchange Act Release No. 99982 (April 17, 2024), 89 FR 30408 (April 23, 2024) (SR-PEARL-2024-18).

percentage.[20] The Step-Up Rebate is set to expire no later than August 31, 2024 (referred to herein as the "sunset period"),[21] which is stated in the Fee Schedule.[22]

The Exchange proposes to amend the Step-Up Rebate described in footnote #4 of the NBBO Setter Plus Table to establish an alternative volume calculation method for Equity Members to achieve the Step-Up Rebate, which will be in addition to the current volume calculation method for the Step-Up Rebate. The proposed alternative volume calculation method will provide the same requirements as the current Step-Up Rebate volume calculation requirements, except when calculating both the numerator (ADAV) and the denominator (TCV), executions of orders in securities priced below $1.00 per share ("sub-dollar volume") across all Tapes will be excluded. Accordingly, with the addition of the alternative volume calculation method to the footnote describing the Step-Up Rebate, footnote #4 of the NBBO Setter Plus Table will provide as follows:

> An Equity Member may qualify for a Step-Up Rebate of ($0.0001) per share by satisfying the following requirements in the relevant month: (1) minimum Displayed ADAV as a percentage of TCV of 0.35%; and (2) increase in the percentage of Displayed ADAV as a percentage of TCV of at least 0.05% as compared to the Equity Member's February 2024 Displayed ADAV percentage. Alternatively, an Equity Member may qualify for a Step-Up Rebate of ($0.0001) per share by satisfying the following requirements in the relevant month: (1) minimum Displayed ADAV as a percentage of TCV of 0.35% (excluding sub-dollar volume); and (2) increase in the percentage of Displayed ADAV as percentage of TCV of at least 0.05% as compared to the Equity Member's February 2024 Displayed ADAV percentage (excluding sub-dollar volume). The Step-Up Rebate will expire no later than August 31, 2024.[23]

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[20] The Exchange notes that the proposed Step-Up Rebate will not apply to executions of orders in securities priced below $1.00 per share or executions of orders that constitute added non-displayed liquidity. See id.

[21] The Exchange notes that at the end of the sunset period, the Step-Up Rebate will no longer apply unless the Exchange files a rule filing pursuant to Rule 19b-4 of the Exchange Act with the U.S. Securities and Exchange Commission ("Commission") to amend the criteria terms or update the baseline month to a more recent month. See id.

[22] The Exchange will issue an alert to market participants should the Exchange determine that the Step-Up Rebate will expire earlier than August 31, 2024 or if the Exchange determines to amend the criteria or rate applicable to the Step-Up Rebate prior to the end of the sunset period. See id.

[23] The Exchange proposes to use a baseline ADAV of 0.00% of TCV for firms that become Equity Members of the Exchange after February 2024 for the purpose of the alternative volume calculation method for the

The Step-Up Rebate, as proposed to be amended, will still expire no later than August 31, 2024,[24] which will continue to be stated in the Fee Schedule. The Exchange will issue an alert to market participants should the Exchange determine that the Step-Up Rebate will expire earlier than August 31, 2024 or if the Exchange determines to amend the criteria or rate applicable to the Step-Up Rebate prior to the end of the sunset period.

The purpose of establishing the proposed alternative volume calculation method for Equity Members to achieve the Step-Up Rebate, which excludes sub-dollar volume, is for business and competitive reasons. Generally, the ratio of consolidated volumes in securities priced at or above $1.00 per share relative to consolidated volumes inclusive of securities priced below $1.00 per share is usually stable from month to month, such that TCV has been a reasonable baseline for determining tiered and additive incentives for Equity Members that execute order in securities priced at or above $1.00 per share on the Exchange. However, there have been recent months where volumes in securities priced below $1.00 per share have been elevated, thereby impacting the ratio mentioned above.

Anomalous rises in sub-dollar volume may have a material adverse impact on Equity Members' qualifications for the pricing tiers and enhanced rebates in the NBBO Program, including the additive Step-Up Rebate, because such qualifications depend upon Equity Members achieving threshold percentages of volumes as a percentage of TCV, and an extraordinary rise in sub-dollar volume may significantly elevate TCV. As a result, Equity Members may find it more difficult to qualify for or to continue to qualify for their existing

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Step-Up Rebate calculation, just as the Exchange does now for the current Step-Up Rebate calculation. See id.

24 The Exchange notes that at the end of the sunset period, the Step-Up Rebate will no longer apply unless the Exchange files a rule filing pursuant to Rule 19b-4 of the Exchange Act with the Commission to amend the criteria terms or update the baseline month to a more recent month.

incentives during months where there are such rises in sub-dollar volumes, even if their volume of executions of orders in securities priced at or above $1.00 per share have not diminished relative to prior months. The Exchange believes that it would be unfair for its Equity Members that execute significant volumes in securities priced at or above $1.00 per share on the Exchange to fail to achieve or to lose their existing incentives for such volumes due to anomalous behavior that is extraneous to them. Therefore, the Exchange proposes to amend the NBBO Program to establish the proposed alternative volume calculation method for the Step-Up Rebate to provide an alternative option when extraordinary spikes in sub-dollar volumes may adversely affect an Equity Member's qualification for such incentive for their executions of orders in securities priced at or above $1.00 per share.

The NBBO Program currently provides a similar volume calculation that excludes sub-dollar volume (i.e., volume calculation Method 4), which calculates Equity Members' volume for purposes of pricing tiers and incentives by excluding sub-dollar volumes from the calculation, which may result in the most advantageous volume calculation for such pricing tiers and incentives.[25] In addition, at least one competing equities exchange calculates their members' volume for purposes of pricing tiers and incentives by excluding sub-dollar volumes from one calculation and utilizing the most advantageous volume calculation for such pricing tiers and incentives.[26] Accordingly, this proposal is not new or novel.

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25 See supra note 9.

26 See the Nasdaq Stock Market LLC ("Nasdaq") Rules, Equity 7: Pricing Schedule, Section 114. Market Quality Incentive Programs, Section (h)(5) ("For purposes of calculating a member's qualifications for Tiers 1 and 2 of the QMM Program credits…the Exchange will calculate a member's volume and total Consolidated Volume twice. First, the Exchange will calculate a member's volume and total Consolidated Volume inclusive of volume that consists of executions in securities priced less than $1. Second, the Exchange will calculate a member's volume and total Consolidated Volume exclusive of volume that consists of executions in securities priced less than $1, while also applying distinct qualifying volume thresholds to each Tier….The Exchange will then assess which of these two calculations would qualify the member for the most advantageous credits for the month and then it will apply those credits to the

Implementation

The proposed fee change is effective beginning July 1, 2024.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[27] in general, and furthers the objectives of Section 6(b)(4) of the Act[28] in particular, in that it is an equitable allocation of reasonable fees and other charges among its Equity Members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with the objectives of Section 6(b)(5)[29] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, and to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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

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member."). See also Securities Exchange Act Release No. 99535 (February 14, 2024), 89 FR 13125 (February 21, 2024) (SR-NASDAQ-2024-005).

27 15 U.S.C. 78f(b).

28 15 U.S.C. 78f(b)(4).

29 15 U.S.C 78f(b)(5).

For the month of May 2024, based on publicly available information, no single registered equities exchange had more than approximately 14-15% of the total market share of executed volume of equities trading.[30] Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. For the month of May 2024, the Exchange represented 1.68% of the total market share of executed volume of equities trading.[31] The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and also recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."[32]

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

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30 See the "Market Share" section of the Exchange's website, available at https://www.miaxglobal.com/.

31 Id.

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

believes would continue to enhance liquidity and market quality to the benefit of all Equity Members and market participants.

The Exchange believes its proposal to amend the NBBO Setter Plus Table to establish an alternative volume calculation method for Equity Members to achieve the Step-Up Rebate is reasonable and equitable because, in its absence, Equity Members may experience material adverse impacts on their ability to qualify for the additive Step-Up Rebate during a month with an anomalous rise in sub-dollar volumes. The Exchange believes it is reasonable and equitable to not inadvertently penalize Equity Members that execute significant volumes on the Exchange due to anomalous and extraneous trading activities in sub-dollar securities. The proposed alternative volume calculation method would provide a means for Equity Members that add displayed liquidity an alternative method by determining whether calculating ADAV as a percentage of TCV to include or exclude sub-dollar volume would result in Equity Members qualifying for the additive Step-Up Rebate. The Exchange would then be able to apply the most advantageous volume calculation that would result in the Step-Up Rebate being achieved for each Equity Member. The Exchange believes that the proposed rule change is equitable and not unfairly discriminatory because the Exchange does not intend for the proposal to advantage any particular Equity Member.

The Exchange believes that the proposal to establish the alternative volume calculation method for the Step-Up Rebate provides a reasonable means to continue to encourage Equity Members to not only increase their order flow to the Exchange but also to contribute to price discovery and market quality on the Exchange by submitting aggressively priced displayed liquidity in securities priced at or above $1.00 per share. The Exchange believes that the NBBO Program, as modified with this proposal, continues to be equitable and not unfairly discriminatory because it is open to all Equity Members on an equal basis and provides enhanced rebates that are reasonably related to the value of the Exchange's market quality associated with greater order flow by Equity Members that set the NBBO, and the introduction of higher volumes of orders into the price and volume discovery process. The Exchange believes the proposal is equitable and not unfairly discriminatory because it is designed to incentivize the entry of aggressively priced displayed liquidity that will create tighter spreads, thereby promoting price discovery and market quality on the Exchange to the benefit of all Equity Members and public investors.

The Exchange's NBBO Program currently provides for volume calculation Method 4, which calculates Equity Members' volume for purposes of pricing tiers and incentives by excluding sub-dollar volumes from the calculation, which may result in the most advantageous volume calculation for such pricing tiers and incentives.[33] The Exchange notes that at least one other competing equities exchange calculates their members' volume for purposes of pricing tiers and incentives by excluding sub-dollar volumes from one calculation and utilizing the most advantageous volume calculation for such pricing tiers and incentives.[34]

The Exchange believes it is reasonable to continue to use February 2024 as the baseline month for the proposed alternative volume calculation method for the Step-Up Rebate (with a sunset period of August 31, 2024) because it will provide a consistent baseline month for volume calculation purposes for both methods of determining the Step-Up Rebate. The Exchange believes it is equitable and not unfairly discriminatory to use February 2024 as the baseline month for the proposed alternative volume calculation method for the Step-Up Rebate because the Exchange will use a baseline of 0.00% ADAV for those market participants that became

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[33] See supra note 9.

[34] See supra note 26.

Equity Members of the Exchange post-February 2024, providing a consistent and equitable approach for those Equity Members to achieve the Step-Up Rebate.

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

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

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

Intramarket Competition

The Exchange believes that the proposed change to establish an alternative volume calculation method for the Step-Up Rebate will not impose any burden on intramarket competition because it will incentivize Equity Members to submit additional orders that add liquidity to the Exchange, thereby contributing to a deeper and more liquid market and promoting price discovery and market quality on the Exchange to the benefit of all market participants and enhancing the attractiveness of the Exchange as a trading venue. In turn, the Exchange believes that this will continue to encourage market participants to direct additional order flow to the Exchange. Greater liquidity benefits all Members by providing more trading opportunities and encourages Equity Members to send additional orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants. As described above, the opportunity to qualify for the Step-Up Rebate, as amended, would be available to all Equity Members that meet the associated requirements, and the Exchange believes the proposed changes provide such incentives is reasonably related to the enhanced market quality that they are designed to promote.

The Exchange intends for its proposal to establish an alternative volume calculation method for the Step-Up Rebate to provide an alternative option for Equity Members to achieve such additive rebate due to anomalous spikes in sub-dollar volumes and is not intended to provide a competitive advantage to any particular Equity Member. The proposed alternative volume calculation method will be eligible to all Equity Members equally in that the Exchange will calculate both volume calculation methods for the Step-Up Rebate in parallel each month and apply the most advantageous calculation to each Equity Member's volume to qualify for the additive Step-Up Rebate. For the foregoing reasons, the Exchange believes the proposed changes would not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

<u>Intermarket Competition</u>

The Exchange believes its proposal will benefit competition as the Exchange operates in a highly competitive market. Equity Members have numerous alternative venues they may participate on and direct their order flow to, including fifteen other equities exchanges and numerous alternative trading systems and other off-exchange venues. As noted above, no single registered equities exchange currently has more than approximately 14-15% of the total market share of executed volume of equities trading. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. Moreover, the Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow in response to new or different pricing structures being introduced to the market.

As described above, the proposed change is a competitive proposal through which the Exchange seeks to encourage certain order flow to the Exchange and to promote market quality through an alternative pricing incentive that is similar in structure and purpose to a pricing program available at the Exchange, as well as at least one competing equities exchange.[35] Accordingly, the Exchange believes the proposal would not burden, but rather promote, intermarket competition by enabling it to better compete with other exchanges that offer similar incentives to market participants that enhance market quality.

Additionally, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."[36] The fact that this market is competitive has also long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. circuit stated: "[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possess a

35 See supra notes 9 and 26.

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

monopoly, regulatory or otherwise, in the execution of order flow from broker dealers' . . . ."[37] Accordingly, the Exchange does not believe its proposed pricing changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Written comments were neither solicited nor received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[38] and Rule 19b-4(f)(2)[39] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's internet comment form (https://www.sec.gov/rules/sro.shtml); or

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

38 15 U.S.C. 78s(b)(3)(A)(ii).

39 17 CFR 240.19b-4(f)(2).

- Send an email to rule-comments@sec.gov. Please include file number SR-PEARL-2024-28 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-2024-28. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (https://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-PEARL-2024-28 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[40]

Vanessa A. Countryman,
Secretary.

[40] 17 CFR 200.30-3(a)(12).