

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-91605; File No. SR-PEARL-2021-16)

April 16, 2021

Self-Regulatory Organizations: MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the MIAX Pearl 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 April 8, 2021, MIAX PEARL, LLC (“MIAX Pearl” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange is filing a proposal to amend the MIAX Pearl Fee Schedule (the “Fee Schedule”) for the Exchange’s options market.

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

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 make several amendments to the tables for the Add/Remove Tiered Rebates/Fees set forth in Section 1)a) of the Fee Schedule that apply to the Priority Customer³ Origin, MIAX Pearl Market Maker⁴ Origin, and Non-Priority Customer, Firm, BD, and Non-MIAX Pearl Market Maker Origin (collectively, “Professional Members”). As described more fully below, the Exchange proposes to: (i) modify the volume thresholds for standard volume criteria in all Tiers (defined below) for all Origin types; (ii) decrease the Maker (defined below) rebate in Tier 4 for options transactions in Penny Classes (defined below) for the Priority Customer Origin; (iii) modify the volume threshold for the alternative volume criteria in Tiers 3 and 4 for the Market Maker Origin; and (iv) modify the volume thresholds for the alternative volume criteria for certain Maker rebates and Taker fees for Professional Members.

³ “Priority Customer” means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial accounts(s). The number of orders shall be counted in accordance with Interpretation and Policy .01 of Exchange Rule 100. See the Definitions Section of the Fee Schedule and Exchange Rule 100, including Interpretation and Policy .01.

⁴ “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.

Background

The Exchange currently assesses transaction rebates and fees to all market participants which are based upon the total monthly volume executed by the Member⁵ on MIAX Pearl in the relevant, respective origin type (not including Excluded Contracts)⁶ (as the numerator) expressed as a percentage of (divided by) TCV⁷ (as the denominator). In addition, the per contract transaction rebates and fees are applied retroactively to all eligible volume for that origin type once the respective threshold tier (“Tier”) has been reached by the Member. The Exchange

⁵ “Member” means an individual or organization that is registered with the Exchange pursuant to Chapter II of the 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.

⁶ “Excluded Contracts” means any contracts routed to an away market for execution. See the Definitions Section of the Fee Schedule.

⁷ “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 time in which the Exchange experiences an “Exchange System Disruption” (solely in the option classes of the affected Matching Engine (as defined below)). The term Exchange System Disruption, which is defined in the Definitions section of the Fee Schedule, means an outage of a Matching Engine or collective Matching Engines for a period of two consecutive hours or more, during trading hours. The term Matching Engine, which is also defined in the Definitions section of the Fee Schedule, 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 (for example, options on SPY may be processed by one single Matching Engine that is dedicated only to SPY). 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. The Exchange believes that it is reasonable and appropriate to select two consecutive hours as the amount of time necessary to constitute an Exchange System Disruption, as two hours equates to approximately 1.4% of available trading time per month. The Exchange notes that the term “Exchange System Disruption” and its meaning have no applicability outside of the Fee Schedule, as it is used solely for purposes of calculating volume for the threshold tiers in the Fee Schedule. See the Definitions Section of the Fee Schedule.

aggregates the volume of Members and their Affiliates.⁸ Members that place resting liquidity, i.e., orders resting on the book of the MIAX Pearl System,⁹ are paid the specified “maker” rebate (each a “Maker”), and Members that execute against resting liquidity are assessed the specified “taker” fee (each a “Taker”). For opening transactions and ABBO¹⁰ uncrossing transactions, per contract transaction rebates and fees are waived for all market participants. Finally, Members are assessed lower transaction fees and receive lower rebates for order executions in standard option classes in the Penny Interval Program¹¹ (“Penny Classes”) than for order executions in standard option classes that are not in the Penny Interval Program (“Non-Penny Classes”), where Members are assessed higher transaction fees and receive higher rebates.

Modifications to Standard Volume Criteria Percentage Thresholds in all Tiers for all Origins

The Exchange proposes to amend the Add/Remove Tiered Rebates/Fees set forth in Section 1)a) of the Fee Schedule to modify the volume thresholds for standard volume criteria in

⁸ “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 process described in the Fee Schedule. See the Definitions Section of the Fee Schedule.

⁹ The term “System” means the automated trading system used by the Exchange for the trading of securities. See Exchange Rule 100.

¹⁰ “ABBO” means the best bid(s) or offer(s) disseminated by other Eligible Exchanges (defined in Exchange Rule 1400(g) and calculated by the Exchange based on market information received by the Exchange from OPRA. See the Definitions Section of the Fee Schedule and Exchange Rule 100.

¹¹ See Securities Exchange Act Release No. 88992 (June 2, 2020), 85 FR 35142 (June 8, 2020) (SR-PEARL-2020-06).

all Tiers for all Origins. In particular, for the Priority Customer Origin, the Exchange proposes to amend the volume criteria percentage thresholds in each Tier, as follows: (i) Tier 1 will be amended from 0.00% - 0.10% to now be 0.00% - 0.15%; (ii) Tier 2 will be amended from above 0.10% - 0.35% to now be above 0.15% - 0.40%; (iii) Tier 3 will be amended from above 0.35% - 0.50% to now be above 0.40% - 0.85%; (iv) Tier 4 will be amended from above 0.50% - 0.75% to now be above 0.85% - 1.25%; (v) Tier 5 will be amended from above 0.75% - 1.25% to now be above 1.25% - 2.25%; and (vi) Tier 6 will be amended from above 1.25% to now be above 2.25%.

Next, the Exchange proposes to modify the volume thresholds for standard volume criteria in all Tiers for the MIAX Pearl Market Maker Origin.¹² For the MIAX Pearl Market Maker Origin, the Exchange proposes to amend the standard volume criteria percentage thresholds in each Tier, as follows: (i) Tier 1 will be amended from 0.00% - 0.15% to now be 0.00% - 0.20%; (ii) Tier 2 will be amended from above 0.15% - 0.40% to now be above 0.20% - 0.50%; (iii) Tier 3 will be amended from above 0.40% - 0.65% to now be above 0.50% - 0.85%; (iv) Tier 4 will be amended from above 0.65% - 1.00% to now be above 0.85% - 1.25%; (v) Tier 5 will be amended from above 1.00% - 1.40% to now be above 1.25% - 1.50%; and (vi) Tier 6 will be amended from above 1.40% to now be above 1.50%.

Next, the Exchange proposes to modify the volume thresholds for volume criteria in all Tiers for the Professional Members Origin. For the Professional Members Origin, the Exchange proposes to amend the volume criteria percentage thresholds in each Tier, as follows: (i) Tier 1

¹² The Exchange notes that it also proposes to amend the alternative volume criteria in Tiers 3 and 4 for the Market Maker Origin, described below. The Exchange does not propose to amend the alternative volume criteria in Tier 2 for the Market Maker Origin at this time.

will be amended from 0.00% - 0.15% to now be 0.00% - 0.20%; (ii) Tier 2 will be amended from above 0.15% - 0.40% to now be above 0.20% - 0.50%; (iii) Tier 3 will be amended from above 0.40% - 0.65% to now be above 0.50% - 0.85%; (iv) Tier 4 will be amended from above 0.65% - 1.00% to now be above 0.85% - 1.25%; (v) Tier 5 will be amended from above 1.00% - 1.40% to now be above 1.25% - 1.50%; and (vi) Tier 6 will be amended from above 1.40% to now be above 1.50%.

The purpose of adjusting the percentage thresholds for standard volume criteria in all Tiers for all Origins is for business and competitive reasons. In order to attract order flow, the Exchange initially set its volume thresholds so that they were meaningfully lower than other options exchanges that operate comparable maker/taker pricing models. The Exchange now believes that it is appropriate to adjust the volume thresholds so that they are more in line with other exchanges, but will still remain highly competitive such that it should enable the Exchange to continue to attract order flow and maintain market share.

Decrease to Priority Customer Origin Tier 4 Rebate

The Exchange proposes to amend the Maker rebate in Tier 4 for options transactions in Penny Classes for the Priority Customer Origin. Currently, the Exchange offers a Maker rebate of (\$0.51) in Tier 4 for options transactions in Penny Classes for the Priority Customer Origin. The Exchange now proposes to decrease the Maker rebate in Tier 4 for options transactions in Penny Classes for the Priority Customer Origin from (\$0.51) to (\$0.49).

The purpose of adjusting the specified Maker rebate is for business and competitive reasons. In order to attract order flow, the Exchange initially set its Maker rebates and Taker fees so that they were meaningfully higher/lower than other options exchanges that operate comparable maker/taker pricing models. The Exchange now believes that it is appropriate to

further adjust this specified Maker rebate so that it is more in line with other exchanges, but will still remain highly competitive such that it should enable the Exchange to continue to attract order flow and maintain market share.

Modification to Alternative Volume Criteria for Market Maker Origin Tier 3

The Market Maker Origin set forth in Section 1)a) of the Fee Schedule currently provides an alternative volume criteria in Tier 3.¹³ The alternative volume criteria in Tier 3 is based upon the total monthly volume executed in SPY options on MIAX Pearl by a MIAX Pearl Market Maker when adding liquidity. Pursuant to this alternative volume criteria, Market Makers qualify for: (i) Maker rebates of (\$0.44) in SPY, QQQ and IWM options for their Market Maker Origin when trading against Origins not Priority Customer, and (ii) Maker rebates of (\$0.42) in SPY, QQQ and IWM options for their Market Maker Origin when trading against Priority Customer Origins, if the Market Maker executes at least 1.10% in SPY options when adding liquidity. The Tier 3 alternative Volume Criteria (above 1.10% in SPY when Adding Liquidity) is calculated based on the total monthly volume that added liquidity executed by the Market Maker solely in SPY options on MIAX Pearl, not including Excluded Contracts, (as the numerator) expressed as a percentage of (divided by) SPY TCV¹⁴ (as the denominator). The Exchange notes that Market Makers that achieve the standard Tier 3 volume percentage but do not qualify for the proposed alternative Volume Criteria in that Tier, receive the Tier 3 rates in the Market Maker Origin table in Penny Classes and Non-Penny Classes. Members receive the

¹³ See Securities Exchange Act Release No. 90906 (January 12, 2021), 86 FR 5296 (January 19, 2021) (SR-PEARL-2020-38).

¹⁴ “SPY TCV” means total consolidated volume in SPY calculated as the total national volume in SPY 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 SPY options). See the Definitions Section of the Fee Schedule.

highest tier based on the thresholds achieved. Other Penny classes and Non-Penny classes receive the Tier 3 rates in the Market Maker Origin table.

The Exchange now proposes to amend the Tier 3 alternative volume criteria percentage threshold from above 1.10% to now be above 1.20% in SPY when adding liquidity. With the proposed change, Market Makers will qualify for: (i) Maker rebates of (\$0.44) in SPY, QQQ and IWM options for their Market Maker Origin when trading against Origins not Priority Customer, and (ii) Maker rebates of (\$0.42) in SPY, QQQ and IWM options for their Market Maker Origin when trading against Priority Customer Origins, if the Market Maker executes at least 1.20% in SPY options when adding liquidity. Other Penny Classes and Non-Penny Classes receive the Tier 3 rates in the Market Maker Origin table. The Exchange does not propose to modify the calculation method for a Market Maker to reach the alternative Volume Criteria in Tier 3, only the threshold percentage. The Exchange proposes to make the corresponding changes to the volume threshold percentages described in the explanatory paragraph in footnote “◆” for the alternative volume criteria for Tier 3 that is below the fee/rebate tables in Section 1)a) of the Fee Schedule. The purpose of this proposed change is for business and competitive reasons.

Alternative Volume Criteria for Market Maker Origin Tier 4

The Market Maker Origin set forth in Section 1)a) of the Fee Schedule currently provides alternative volume criteria in Tier 4.¹⁵ In Tier 4 for MIAX Pearl Market Makers, the alternative volume criteria (above 2.25% in SPY) is calculated based on the total monthly volume executed by the Market Maker solely in SPY options on MIAX Pearl in the relevant Origin type, not including Excluded Contracts, (as the numerator) expressed as a percentage of (divided by) SPY

¹⁵ See Securities Exchange Act Release no. 83419 (June 12, 2018), 83 FR 28285 (June 18, 2018) (SR-PEARL-2018-13).

TCV (as the denominator). Pursuant to this alternative volume criteria, a Market Maker could currently reach the Tier 4 threshold if the Market Maker's total executed monthly volume in SPY options on MIAX Pearl is above 2.25% of total consolidated national monthly volume in SPY options.

The Exchange proposes to amend the threshold percentage for the alternative volume criteria such that a Market Maker can reach the Tier 4 threshold if the Market Maker's total executed monthly volume in SPY options on MIAX Pearl is above 2.50% of the total consolidated national monthly volume in SPY options. The alternative volume criteria threshold in Tier 4 for Market Makers in SPY options is also discussed in the note beneath the transaction fee tables, which provides more explanation on the alternative threshold. Accordingly, the Exchange also proposes to change the threshold amount (increasing it from 2.25% to 2.50%) in that note beneath the tables.

The Exchange notes that it does not propose to amend the volume threshold for the alternative criteria in Tier 2 for the Market Maker Origin (above 0.75% in SPY/QQQ/IWM) for business reasons.

Modification to Volume Thresholds for Alternative Volume Criteria for Certain Maker Rebates and Taker Fees for Professional Members

The Exchange also proposes to amend footnote “^” below the tables in the Add/Remove Tiered Rebates/Fees set forth in Section 1)a) of the Fee Schedule to increase the Priority Customer threshold in which Members may qualify for alternative Maker rebates for options transactions in all classes for Professional Members, provided that the Member meets certain volume criteria. Currently, Members may qualify for Maker rebates equal to the greater of: (A) (\$0.40) for Penny Classes and (\$0.65) for Non-Penny Classes, or (B) the amount set forth in the applicable Tier reached by the Member in the relevant Origin, if the Member and their Affiliates

execute at least 2.00% volume in the relevant month, in Priority Customer Origin type, in all options classes, not including Excluded Contracts, as compared to the TCV in all MIAX Pearl listed option classes.

The Exchange proposes to increase the Priority Customer threshold percentage amount in footnote “^” from at least 2.00% to at least 2.25% of volume in the relevant month, in Priority Customer Origin type, in all options classes, not including Excluded Contracts, as compared to the TCV in all MIAX Pearl listed option classes, in order to qualify for the alternative Maker rebates. For purposes of qualifying for such rates, the Exchange will continue to aggregate the Priority Customer volume transacted by Members and their Affiliates. As the amount and type of volume that is executed on the Exchange has shifted since it first established the alternative Maker rebates for options transactions in all classes for Professional Members, provided that the Member meets certain volume criteria,¹⁶ the Exchange has determined to level-set this threshold amount so that it is more reflective of the current operating conditions and the current type and amount of volume executed on the Exchange.

The Exchange also proposes to amend footnote “◇” below the tables in the Add/Remove Tiered Rebates/Fees set forth in Section 1)a) of the Fee Schedule to increase the Priority Customer threshold in which Members may qualify for alternative Taker fees for options transactions in Penny Classes for Professional Members, provided that the Member meets certain volume criteria. Currently, Members may qualify for Taker fees of \$0.48 for Penny Classes for their Firm Origin when trading against Origins not Priority Customer if the Member and their Affiliates execute at least 2.00% of TCV in the relevant month in the Priority Customer Origin

¹⁶ See Securities Exchange Act Release Nos. 83419 (June 12, 2018), 83 FR 28285 (June 18, 2018) (SR-PEARL-2018-13); 85608 (April 11, 2019), 84 FR 16073 (April 17, 2019) (SR-PEARL-2019-13).

type, in all options classes, not including Excluded Contracts, as compared to TCV in all MIAX Pearl listed option classes.

The Exchange proposes to increase the Priority Customer threshold percentage amount in footnote “◇” from at least 2.00% to at least 2.25% of volume in the relevant month, in Priority Customer Origin type, in all options classes, not including Excluded Contracts, as compared to the TCV in all MIAX Pearl listed option classes, in order to qualify for the alternative Taker fees. For purposes of qualifying for such rates, the Exchange will continue to aggregate the Priority Customer volume transacted by Members and their Affiliates. As the amount and type of volume that is executed on the Exchange has shifted since it first established the alternative Taker fees for options transactions in all classes for Professional Members, provided that the Member meets certain volume criteria,¹⁷ the Exchange has determined to level-set this threshold amount so that it is more reflective of the current operating conditions and the current type and amount of volume executed on the Exchange.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act¹⁸ in general, and furthers the objectives of Section 6(b)(4) of the Act,¹⁹ in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members and issuers and other persons using its facilities, and 6(b)(5) of the Act,²⁰ in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable

¹⁷ See Securities Exchange Act Release Nos. 85608 (April 11, 2019), 84 FR 16073 (April 17, 2019) (SR-PEARL-2019-13); 85807 (May 8, 2019), 84 FR 21368 (May 14, 2019) (SR-PEARL-2019-15).

¹⁸ 15 U.S.C. 78f(b).

¹⁹ 15 U.S.C. 78f(b)(4).

²⁰ 15 U.S.C. 78f(b)(1) and (b)(5).

principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes its proposal provides for the equitable allocation of reasonable dues and fees and is not unfairly discriminatory for the following reasons. The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its 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.”²¹ There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than approximately 14-15% of the market share of executed volume of multiply-listed equity and ETF options trades as of March 25, 2021, for the month of March 2021.²² Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, as of March 25, 2021, the Exchange had a market share of approximately 5.87% of executed volume of multiply-listed equity and ETF options for the month of March 2021.²³

²¹ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

²² See https://www.cboe.com/us/options/market_statistics/.

²³ See *id.*

The Exchange believes that the ever-shifting market shares among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to transaction and/or non-transaction fee changes. For example, on February 28, 2019, the Exchange filed with the Commission a proposal to increase Taker fees in certain Tiers for options transactions in certain Penny classes for Priority Customers and decrease Maker rebates in certain Tiers for options transactions in Penny classes for Priority Customers (which fee was to be effective March 1, 2019).²⁴ The Exchange experienced a decrease in total market share between the months of February and March of 2019, after the fees were in effect. Accordingly, the Exchange believes that the March 1, 2019 fee change may have contributed to the decrease in the Exchange's market share and, as such, the Exchange believes competitive forces constrain options exchange transaction fees and market participants can shift order flow based on fee changes instituted by the exchanges.

The Exchange believes its proposal to modify the volume thresholds for standard volume criteria and certain alternative volume criteria is reasonable, equitably allocated and not unfairly discriminatory because these changes are for business and competitive reasons. In order to attract order flow, the Exchange initially set its volume thresholds for standard and alternative volume criteria at meaningful low levels. The Exchange now believes that it is appropriate to adjust these volume thresholds so that they are more reflective of the current operating conditions and the current type and amount of volume executed on the Exchange. The Exchange believes that the proposed volume thresholds will still allow the Exchange to remain highly

²⁴ See Securities Exchange Act Release No. 85304 (March 13, 2019), 84 FR 10144 (March 19, 2019) (SR-PEARL-2019-07).

competitive such that the thresholds should enable the Exchange to continue to attract order flow and maintain market share.

The Exchange also believes that its proposal is not unfairly discriminatory as all Market Makers can qualify for the alternative volume criteria in Tiers 3 and 4 of the MIAX Pearl Market Maker Origin by meeting the requirements that are designed to incentivize Market Makers to maintain quality markets. In addition, the Exchange continues to believe that it is not unfairly discriminatory to offer certain rebates pursuant to this proposal to only Market Makers because Market Makers add value by adding liquidity and are subject to additional requirements and obligations that other market participants are not.

The Exchange believes its proposal to decrease the Maker rebate in Tier 4 for options transactions in Penny Classes for Priority Customers is reasonable, equitable and not unfairly discriminatory because all similarly situated market participants in the same Origin type are subject to the same tiered Maker rebates and Taker fees and access to the Exchange is offered on terms that are not unfairly discriminatory. The Exchange believes it is equitable and not unfairly discriminatory to reduce the Maker rebate to Priority Customer orders in Penny Classes for business and competitive reasons because the Exchange initially set its Maker rebates for such orders higher than certain other options exchanges that operate comparable maker/taker pricing models. The Exchange now believes that it is appropriate to further decrease the specified Maker rebate so that it is more in line with other exchanges,²⁵ and will still remain highly

²⁵ See Cboe BZX Exchange, Inc. Options Fee Schedule (standard Customer Add rates for Penny Program securities ranging from (\$0.25) to (\$0.53)); see also Nasdaq GEMX, LLC, Options 7, Pricing Schedule, Section 3 (Priority Customer Maker Rebates for Penny Symbol securities ranging from (\$0.25) to (\$0.53)).

competitive such that they should enable the Exchange to continue to attract order flow and maintain market share.

The Exchange believes its proposal to increase the Priority Customer threshold for alternative Maker rebates for options transactions in all classes for Professional Members, provided that the Member meets certain volume criteria (the Member and their Affiliates execute at least 2.25% (instead of 2.00%) of volume in the relevant month, in Priority Customer Origin type, in all options classes, not including Excluded Contracts, as compared to the TCV in all MIAX Pearl listed option classes), is reasonable, equitable and not unfairly discriminatory because all similarly situated market participants are subject to the same tiered rebates and fees and access to the Exchange is offered on terms that are not unfairly discriminatory. The Exchange believes that providing alternative Maker rebates for options transactions in all classes for Professional Members (if the Member meets certain volume criteria relating to Priority Customer volume), and adjusting the threshold requirements so that they are reflective of current operating conditions and the current type and amount of volume executed on the Exchange, will encourage Members to execute additional Priority Customer and Professional Member volume on the Exchange. The Exchange believes that additional Priority Customer and Professional Member volume executed on the Exchange will attract further liquidity to the Exchange, which in turn will benefit all market participants.

The Exchange believes its proposal to modify the volume thresholds for the alternative volume criteria for certain Taker fees for Professional Members is consistent with Section 6(b)(4) of the Act²⁶ because the proposed change applies equally to all Members for their Firm Origin with similar order flow. The Exchange believes that the proposed alternative threshold by

²⁶ 15 U.S.C. 78f(b)(4).

which any Member may qualify for the lower Taker fee of \$0.48 for Penny Classes for their Firm Origin when trading against Origins other than Priority Customer instead of the Taker fee otherwise applicable to such orders is fair, equitable, and not unreasonably discriminatory because it will encourage Members to submit both Firm and Priority Customer orders, which will increase liquidity to the benefit all market participants by providing more trading opportunities and tighter spreads. The alternative Taker fee is reasonable because it will incentivize providers of Priority Customer order flow to send that Priority Customer order flow to the Exchange in order to obtain the highest volume threshold and receive a Taker fee in a manner that enables the Exchange to improve its overall competitiveness and strengthen its market quality for all market participants.

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

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

The Exchange believes its proposal will not impose any burden on intra-market competition because the Exchange believes that its proposal will not place any category of Exchange market participant at a competitive disadvantage. The proposal to modify the volume thresholds for standard and alternative volume criteria is intended to improve market quality. The Exchange believes that its proposal will continue to encourage additional Priority Customer and Professional Member volume be executed on the Exchange, which will attract further liquidity to the Exchange and benefit all market participants. Accordingly, the Exchange believes that the proposed changes will continue to attract order flow to the Exchange, thereby encouraging additional volume and liquidity to the benefit of all market participants.

The Exchange believes its proposal will not impose any burden on inter-market competition because the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than approximately 14-15% of the market share of executed volume of multiply-listed equity and ETF options trades as of March 25, 2021, for the month of March 2021.²⁷ Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, as of March 25, 2021, the Exchange had a market share of approximately 5.87% of executed volume of multiply-listed equity and ETF options for the month of March 2021.²⁸ In such an environment, the Exchange must continually adjust its fees to remain competitive with other options exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. The Exchange believes that the proposed rule changes reflect this competitive environment because they modify the Exchange's fees in a manner that encourages market participants to continue to provide liquidity and to send order flow to the Exchange.

²⁷ See supra note 22.

²⁸ See id.

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,²⁹ and Rule 19b-4(f)(2)³⁰ 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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-PEARL-2021-16 on the subject line.

²⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

³⁰ 17 CFR 240.19b-4(f)(2).

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-2021-16. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet 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-2021-16, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³¹

J. Lynn Taylor
Assistant Secretary

³¹ 17 CFR 200.30-3(a)(12).