SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-94993; File No. SR-PEARL-2022-23)

May 26, 2022

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the MIAX PEARL Options Fee Schedule to Remove Certain Credits and Increase Trading Permit Fees

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 May 17, 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, 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 Options Fee Schedule (the "Fee Schedule") to amend its monthly Trading Permit[3] fees for Members[4] and no longer provide two monthly credits associated with Trading Permit and non-transaction fees.

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

2 17 CFR 240.19b-4.

3 The term "Trading Permit" means a permit issued by the Exchange that confers the ability to transact on the Exchange. See Exchange Rule 100.

4 The term "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 Exchange Rule 100 and the Definitions Section of the Fee Schedule.

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 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 amend the monthly Trading Permit fees for Members and to no longer provide two monthly credits associated with Trading Permit and non-transaction fees. The proposed changes are designed to update the Exchange's Trading Permit fees to reflect their current value—rather than their value when MIAX Pearl was a new options exchange five years ago—based on the Exchange's ability to deliver value to its customers through technology, liquidity and functionality. Newly-opened exchanges often charge lower fees for certain services such as memberships to attract order flow to an exchange, and later amend their fees to reflect the true value of those services,[5] absorbing all costs to provide those services in the meantime. Allowing newly-opened exchanges time to build and sustain market share before increasing non-transaction fees encourages market entry and promotes competition. In fact, the Exchange socialized the proposed fee increases with Members prior to first implementing the changes. During that process, some Members stated that they anticipated a potential increase due to the lower rates the Exchange historically charged. Each of these changes are described below.

A Trading Permit confers the right to transact on the Exchange[6] and are available to all Members. The Exchange notes that requiring a Trading Permit to trade on the Exchange and charging a monthly fee for such is comparable to other monthly membership requirements and associated fees charged by other exchanges and is described further below. Trading Permits, like membership fees, grant access and allow Members to be active on the Exchange, thus providing the ability to submit orders and trade on the Exchange, in the manner consistent with the membership type. Without a Trading Permit, or "membership" as referred to by other exchanges, a Member cannot directly trade on the Exchange. Therefore, a Trading Permit is a means to directly access the Exchange, which offers meaningful value. The Exchange has not amended its Trading Permit fees since the fees were first adopted in 2018.[7]

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5 See, e.g., Securities Exchange Act Release No 88211 (February 14, 2020), 85 FR 9847 (February 20, 2020) (SR-NYSENAT-2020-05), also available at https://www.nyse.com/publicdocs/nyse/markets/nyse-national/rulefilings/filings/2020/SR-NYSENat-2020-05.pdf. (initiating market data fees for the NYSE National exchange after initially setting such fees at zero); see also Securities Exchange Act Release No. 93927 (January 7, 2022), 87 FR 2191 (January 13, 2022) (SR-MEMX-2021-19) (introduction of membership fees by MEMX).

6 See Exchange Rule 200(a).

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

The Exchange has two types of Members, Electronic Exchange Members[8] ("EEMs") and Market Makers.[9] The Exchange currently charges monthly fees for Trading Permits pursuant to Exchange Rule 200(f), which varies based on the interface used by the Member and the Member's average monthly trading volumes. The Exchange provides two interfaces to access the MIAX Pearl System,[10] the FIX Interface[11] and MEO Interface,[12] and all Members are able to use either interface based on their business models and needs. The FIX Interface is the industry-wide uniform message format and provides lower bandwidth, less capacity, and fewer Exchange resources. EEMs, who are primarily order flow providers, are the primary users of the FIX Interface.[13] Meanwhile, the MEO Interface is the more robust interface offering lower latency

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8 The term "Electronic Exchange Member" or "EEM" means the holder of a Trading Permit who is a Member representing as agent Public Customer Orders or Non-Customer Orders on the Exchange and those non-Market Maker Members conducting proprietary trading. Electronic Exchange Members are deemed "members" under the Exchange Act. See the Definitions Section of the Fee Schedule and Exchange Rule 100.

9 The term "Market Maker" or "MM" 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 the Exchange Rules. See the Definitions Section of the Fee Schedule and Exchange Rule 100.

10 The term "System" means the automated trading system used by the Exchange for the trading of securities. See Exchange Rule 100.

11 The term "FIX Interface" means the Financial Information Exchange interface for certain order types as set forth in Exchange Rule 516. See the Definitions Section of the Fee Schedule and Exchange Rule 100.

12 The term "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.

13 The Exchange does not propose to amend the fees for EEM Clearing Firms, which is set at $250 per month and not based on the amount of volume conducted on the Exchange. The term "EEM Clearing Firm" means an EEM that solely clears transactions on the Exchange and does not connect to the Exchange via either the FIX Interface or MEO Interface. See the Definitions Section of the Fee Schedule.

and higher throughput. Market Makers primarily use the MEO Interface.[14]

The Exchange offers three time-in-force modifiers:[15] Day Limit ("Day"), Immediate-Or-Cancel ("IOC"), and Good-Till Cancel ("GTC").[16] While all order types are available for use on either interface, only the time-in-force modifiers of IOC and Day are available on the MEO Interface.[17] Market Makers utilize the time-in-force of Day on orders to be posted on the MIAX Pearl Options Book[18] and to meet Market Makers' continuous quoting obligations under Exchange Rule 605(d).[19] Other Market Makers that primarily remove liquidity tend to be more latency sensitive and utilize the time-in-force of IOC on orders when looking to remove liquidity from the MIAX Pearl Options Book. The MEO Interface allows the submission of Cancel-

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14 Today, seven Members that are EEMs and twelve Members that are Market Makers utilize the MEO Interface. Based on their own business decisions and needs, some EEMs elect to utilize the MEO Interface today due to its lower latency and higher throughput. Also, Members that act as both an EEM and Market Maker may choose to ulitlize only the MEO Interface for both activities as a means to streamline their architecture between them and the Exchange. No Market Maker utilizes the FIX Interface.

15 See MIAX Pearl Options Exchange User Manual, Section 6, Order Types, available at https://www.miaxoptions.com/exchange-functionality/pearl (last visited May 16, 2022).

16 See, e.g., Exchange Rule 516.

17 See preamble to Exchange Rule 516 (noting that not all order types and modifiers are available for use on each of the MEO Interface and the FIX Interface). See also Section 4.1.1.2 of the MEO Interface Specification, available at https://www.miaxoptions.com/sites/default/files/page-files/MIAX_Express_Orders_MEO_v2.0.pdf (indicating that the time--in-force instructions of IOC and Day are available on the MEO interface).

18 The term "Book" means the electronic book of buy and sell orders and quotes maintained by the System. See Exchange Rule 100.

19 Only the time-in-force modifiers of IOC and Day are available on the MEO Interface. See id. (noting that not all order types and modifiers are available for use on each of the MEO Interface and the FIX Interface). See also MIAX Pearl Options Exchange MEO Interface Specification, Section 4.1.1.2, available at https://www.miaxoptions.com/sites/default/files/page-files/MIAX_Express_Orders_MEO_v2.0.pdf (indicating that the time--in-force instructions of IOC and Day are available on the MEO interface).

Replacement orders,[20] which allow for the immediate cancellation of a previously received order and the replacement of that order with a new order with new terms and conditions.[21] Cancel-Replacement orders are primarily used by Market Makers as part of their continuous quoting obligation. Market Makers primary users of the MEO Interface due to its lower latency, higher throughput, and available time-in-force instructions and order types that assist them in satisfying their market making obligations.

Removal of Monthly Trading Permit Fee Credits

Monthly Volume Credit

The Exchange proposes to amend the Definitions section of the Fee Schedule to delete the definition and remove the credits applicable to the Monthly Volume Credit for Members. The Exchange established the Monthly Volume Credit in 2018[22] to encourage Members to send increased Priority Customer[23] order flow to the Exchange, which the Exchange applied to the assessment of non-transaction fees for that Member. Prior to and during periods when this proposal was not in effect, the Exchange applied a different Monthly Volume Credit depending on whether the Member connects to the Exchange via the FIX or MEO Interface. Prior to and during periods when this proposal was not in effect, the Exchange assessed the Monthly Volume

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20 See MIAX Pearl Options Exchange User Manual, Section 6, Interfaces and Liquidity Types, available at https://www.miaxoptions.com/exchange-functionality/pearl (last visited May 16, 2022).

21 See Exchange Rule 516(d).

22 See supra note 7.

23 The term "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.

Credit to each Member that has executed Priority Customer volume along with that of its affiliates,[24] not including Excluded Contracts,[25] of at least 0.30% of MIAX Pearl-listed Total Consolidated Volume ("TCV"),[26] as set forth in the following table:

Type of Member Connection	Monthly Volume Credit
Member that connects via the FIX Interface	$250
Member that connects via the MEO Interface	$1,000

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[24] "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 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.

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

[26] "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.

If a Member connects via both the MEO Interface and FIX Interface and qualifies for the Monthly Volume Credit based upon its Priority Customer volume, the greater Monthly Volume Credit shall apply to such Member. Prior to and during periods when this proposal was not in effect, the Monthly Volume Credit was a single, once-per-month credit towards the aggregate monthly total of non-transaction fees assessable to a Member.

The Exchange proposes an amendment to the Definitions section of the Fee Schedule to delete the definition and remove the Monthly Volume Credit. The Exchange established the Monthly Volume Credit when it first launched operations to encourage members to increase their order flow by providing a credit to those that exceeded a volume threshold. The Exchange believes that the Exchange's existing Priority Customer rebates and fees will continue to allow the Exchange to remain highly competitive and continue to attract order flow and maintain market share even without the Monthly Volume Credit.

Trading Permit Fee Credit

The Exchange proposes to amend Section 3)b) of the Fee Schedule to remove the Trading Permit fee credit that is denoted in footnote "*" below the Trading Permit fee table. Prior to and during periods when this proposal was not in effect, the Trading Permit fee credit was applicable to Members that connected via both the MEO and FIX Interfaces. Members who connect via both the MEO and FIX Interfaces are assessed the rates for both types of Trading Permits, but these Members received a $100 monthly credit towards the Trading Permit fees applicable to the MEO Interface prior to and during periods when this proposal was not in effect. The Exchange proposes to remove the Trading Permit fee credit and delete footnote "*" from Section 3)b) of the Fee Schedule.

The Exchange established the Trading Permit fee credit when it first launched operations to attract order flow and increase membership by lowering the costs for Members that connect via the MEO Interface and FIX Interface. The Trading Permit fee credit has achieved its purpose and the Exchange now believes that it is appropriate to remove this credit in light of the current operating conditions and membership population on the Exchange.

Amendments to Monthly Trading Permit Fees

The Exchange proposes to amend the Fee Schedule to amend the fees for Trading Permits. As a self-regulatory organization, the Exchange's membership department reviews applicants to ensure that each application complies with Exchange Rule 200 as well as other requirements for membership.[27] Applicants must meet the Exchange's qualification criteria prior to approval. The new member review includes, but is not limited to, the registration and qualification of associated persons, financial health of the proposed member, the validity of the required clearing relationship, and the history of disciplinary matters. Approved new Members are required to comply with Exchange's By-Laws and Rules and are subject to regulation by the Exchange.

The Exchange believes that there are many factors that may cause a market participant to decide to become a member of a particular exchange. Among various factors, the Exchange believes market participants consider: (i) an exchange's available liquidity in options series; (ii) trading functionality offered on a particular market; (iii) product offerings; (iv) customer service on an exchange; and (v) transactional pricing. The Exchange believes that the decision to become a member of an exchange, particularly as a registered market maker, is a complex one

27 The Exchange's Membership Department must ensure, among other things, that an applicant is not statutorily disqualified.

that is not solely based on non-transactional costs assessed by an exchange. Market participants weigh the tradeoff between where they choose to deploy liquidity versus where trading opportunities exist. Of course, the cost of membership may factor into a decision to become a member of a certain exchange, but the Exchange believes it is by no means the only factor when comparing exchanges.

The Exchange assesses Trading Permit fees based upon the monthly total volume executed by the Member and its Affiliates on the Exchange across all origin types, not including Excluded Contracts, as compared to the total TCV 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"[28] in the Definitions section of the Fee Schedule. The Exchange also assesses Trading Permit fees based upon the type of interface used by the Member to connect to the Exchange – the FIX Interface and/or the MEO Interface.

Current Trading Permit Fees. Prior to and during periods when this proposal was not in effect, each Member who connected to the System via the FIX Interface was assessed the following monthly Trading Permit fees:

(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%, $250;

(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%, $350; and

(iii) if its volume falls within the parameters of Tier 3 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.60%, $450.

[28] See the Definitions Section of the Fee Schedule for the monthly volume thresholds associated with each Tier.

Each Member who connected to the System via the MEO Interface was assessed the following monthly Trading Permit fees:

(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%, $300;

(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%, $400; and

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

Proposed Trading Permit Fees. As discussed below, the pull on Exchange resources associated with the review of membership applications and the surveillance and retention of increased message traffic due to increased trading volumes continue to increase since the Trading Permit fee was first adopted in 2018.[29] The Exchange proposes to amend its Trading Permit fees as follows. Each Member who connects to the System via the FIX Interface will be assessed the following monthly Trading Permit fees:

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

(ii) if its volume falls within the parameters of Tier 2 of the Non-Transaction Fees Volume-Based Tiers, $1,000; and

(iii) if its volume falls within the parameters of Tier 3 of the Non-Transaction Fees Volume-Based Tiers, $1,500.

Each Member who connects to the System via the MEO Interface will be assessed the following monthly Trading Permit fees:

[29] See supra note 7.

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

(ii) if its volume falls within the parameters of Tier 2 of the Non-Transaction Fees Volume-Based Tiers, $4,000; and

(iii) if its volume falls within the parameters of Tier 3 of the Non-Transaction Fees Volume-Based Tiers, $6,000.

As discussed above, both the MEO Interface and FIX Interface are available to all Members and each Member may choose which interface to utilize based on their own business needs. The MEO Interface is primarily used by Market Makers due to its robustness, lower latency, and higher throughput and, as discussed below, utilizes greater Exchange resources due to the increased volume of message traffic that travels through the MEO interface. Trading Permit fees for Members who connect through the MEO Interface are, therefore, higher than the Trading Permit fees for Members who connect through the FIX Interface. The FIX Interface provides lower capacity and bandwidth and, therefore, utilizes less Exchange resources. The FIX Interface is primarily used by order flow providers, who tend to be less latency sensitive and submit less orders and messages than Market Makers.

The Exchange has not amended its Trading Permit fees since the fees were first adopted in 2018.[30] The Exchange notes that its affiliates, Miami International Securities Exchange, LLC ("MIAX") and MIAX Emerald, LLC ("MIAX Emerald"), charge EEMs a similar, fixed flat trading permit fee of $1,500,[31] which equals the top tier proposed herein for users of the FIX Interface and also primarily consists of EEMs. MIAX and MIAX Emerald also charge tiered

30 Id.

31 See the MIAX Fee Schedule, Section 3)b) and MIAX Emerald Fee Schedule, Section 3)b), available at https://www.miaxoptions.com/fees (last visited May 16, 2022).

trading permit fees to Market Makers as the Exchange proposes herein for users of the MEO Interface, which also primarily consists of Market Makers. However, the Exchange's proposed fees for users of the MEO Interface range from $2,500 to $6,000 while the fees on MIAX and MIAX Emerald range from $7,000 to $22,000. The Exchange also proposes to base its pricing on trading volume while MIAX and MIAX Emerald base their trading permit fees on number of options classes assigned to the Market Maker or the percentage of volume in option classes.[32]

As illustrated by the table below, the Exchange notes that the proposed fees for the Exchange's Trading Permits are in line with, or cheaper than, the similar trading permit and membership fees charged by other options exchanges. The below table also illustrates how the Exchange has historically undercharged for access via Trading Permits as compared to other options exchanges. The Exchange believes other exchanges' membership and trading permit fees are useful examples of alternative approaches to providing and charging for access and provides the below table for comparison purposes only to show how the Exchange's proposed fees compare to fees currently charged by other options exchanges for similar access.

Exchange	**Monthly Membership/Trading Permit Fee**
MIAX Pearl Options (as proposed)	Trading Permit access via FIX Interface: Tier 1: $500 Tier 2: $1,000 Tier 3: $1,500 Trading Permit access via MEO Interface: Tier 1: $2,500 Tier 2: $4,000 Tier 3: $6,000

32 Both MIAX and MIAX Emerald charge Market Makers a monthly fee of $7,000 for up to 10 classes or up to 20% of classes assigned by volume, $12,000 for up to 40 classes or up to 35% of classes assigned by volume, $17,000 for up to 100 classes or up to 50% of classes assigned by volume, or $22,000 for over 100 classes or over 50% of classes assigned by volume up to all classes listed on MIAX or MIAX Emerald, as applicable. Id.

NYSE Arca, Inc. ("NYSE Arca")[33]	Options Trading Permits: Office and Clearing Firms: $1,000 Market Makers: $6,000 for up to 175 option issues Additional $5,000 for up to 350 option issues Additional $4,000 for up to 1,000 option issues Additional $3,000 for all option issues Additional $1,000 for the 5th OTP and each OTP thereafter
NYSE American, LLC ("NYSE American")[34]	ATP Trading Permits: Clearing Member: $1,000 Order Flow Provider: $1,000 Market Makers: $8,000 for up to 60 plus the bottom 45% of option issues Additional $6,000 for up to 150 plus the bottom 45% of option issues Additional $5,000 for up to 500 plus the bottom 45% of option issues Additional $4,000 for up to 1,100 plus the bottom 45% of option issues Additional $3,000 for all option issues Additional $2,000 for 6th to 9th ATPs (plus additional fee for premium products)
Nasdaq PHLX LLC ("Nasdaq PHLX")[35]	Streaming Quote Trader ("SQT") permit fees: Tier 1 (up to 200 option classes): $0.00 Tier 2 (up to 400 option classes): $2,200 Tier 3 (up to 600 option classes): $3,200

33 See NYSE Arca Options Fees and Charges, OTP Trading Participant Rights, p.1, available at https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf (last visited May 16, 2022). NYSE Arca's Options Trading Permit fee is the analog to the Exchange's Trading Permit fee for Members who use the FIX interface. NYSE Arca's Options Trading Permit fee for Market Makers is the analog for the Exchange's Trading Permit fee for Members who use the MEO interface.

34 See NYSE American Options Fee Schedule, Section III, Monthly Trading Permit, Rights, Floor Access and Premium Product Fees, p. 23-24, available at https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf (last visited May 16, 2022). NYSE American's ATP Trading Permit fee for Clearing Members and Order Flow Providers is the analog for the Exchange's Trading Permit fee for Members that use the FIX interface. NYSE American's ATP Trading Permit fee for Market Makers is the analog for the Exchange's Trading Permit fee for Members that use the MEO interface.

35 See Nasdaq PHLX Options 7 Pricing Schedule, Section 8. Membership Fees, available at https://listingcenter.nasdaq.com/rulebook/phlx/rules/Phlx%20Options%207 (last visited May 16, 2022). Nasdaq PHLX Options' SQT and RMMO fees is the analog to the Exchange's Trading Permit fee for Members that use the MEO Interface.

	Tier 4 (up to 800 option classes): $4,200 Tier 5 (up to 1,000 option classes): $5,200 Tier 6 (up to 1,200 option classes): $6,200 Tier 7 (all option classes): $7,200 Remote Market Maker Organization ("RMMO") permit fees: Tier 1 (less than 100 option classes): $5,000 Tier 2 (more than 100 and less than 999 option classes): $8,000 Tier 3 (1,000 or more option classes): $11,000
Nasdaq ISE LLC ("Nasdaq ISE")[36]	Access Fees: Electronic Access Members ("EAMs"): $500 Primary Market Maker: $5,000 per membership Competitive Market Maker: $2,500 per membership
Cboe Exchange, Inc. ("Cboe")[37]	Electronic Trading Permit Fees: Market Maker: $5,000 Electronic Access Permit: $3,000 Clearing TPH Permit: $2,000
Cboe C2 Exchange, Inc. ("Cboe C2")[38]	Access Permit Fees for Market Makers: $5,000 Electronic Access Permits: $1,000

36 See Nasdaq ISE Options 7 Pricing Schedule, Section 8.A. Access Services, available at https://listingcenter.nasdaq.com/rulebook/ise/rules/ISE%20Options%207 (last visited May 16, 2022). Nasdaq ISE Options' EAM Access Fee is the analog to the Exchange's Trading Permit fee for Members that use the FIX Interface. Nasdaq ISE Options' Primary and Competitive Market Maker Access Fees are the analog to the Exchange's Trading Permit fee for Members that use the MEO Interface.

37 See Cboe Fee Schedule, Electronic Trading Permit Fees, available at https://cdn.cboe.com/resources/membership/Cboe_FeeSchedule.pdf (last visited May 16, 2022). Cboe's Electronic Access Permit fee and Clearing TPH fee are the analog to the Exchange's Trading Permit fee for Members that use the FIX Interface. Cboe's Market Maker Permit fee is the analog to the Exchange's Trading Permit fee for Members that use the MEO Interface.

38 See Cboe C2 Fee Schedule, Access Fees, available at https://www.cboe.com/us/options/membership/fee_schedule/ctwo/ (last visited May 16, 2022). C2's Market Maker Access Permit fee is the analog to the Exchange's Trading Permit fee for Members that use the MEO Interface. C2's Electronic Access Permit fee is the analog to the Exchange's Trading Permit fee for Members that use the FIX Interface.

Cboe BZX Exchange, Inc. ("Cboe BZX Options")[39]	\$500 where member has an ADV < 5,000 contracts traded[40] \$1,000 where member has an ADV ≥ 5,000 contracts traded

Implementation and Procedural History

The proposed rule change will be immediately effective. The Exchange initially filed this proposal on July 1, 2021, with the proposed fees being immediately effective.[41] Between August 2021 and February 2022, the Exchange withdrew and refiled the proposed rule change, each time to meaningfully attempt to provide additional justification for the proposed fee changes, provide enhanced details regarding the Exchange's cost methodology, and address questions contained in the Commission's suspension orders.[42] The Commission received one comment letter on the

39 See "Membership Fees" section of the Cboe BZX Options Fee Schedule, available at https://www.cboe.com/us/options/membership/fee_schedule/bzx (last visited May 16, 2022)/. The Exchange understands Cboe BZX Options charges the same Membership Fee to all of its Options Members.

40 Under the Exchange's tiered structure, a Member may trade approximately 106,000 more contracts on the Exchange than on Cboe BZX Options and continue to qualify for the Exchange's lowest tier. For example, a Member would qualify for Tier 1 of the Exchange's tiered pricing structure where that Member's total volume as a percentage of TCV is between 0.00% and 0.30%. Assuming an average of 37 million contracts are traded each day during a month, that Member would qualify for Tier 1 where that Member traded less than 111,000 contracts that day and be charged \$500, the same fee as Cboe BZX Options, where that Member connects via the FIX Interface. On Cboe BZX Options, the Exchange understands that same member would no longer qualify for their lowest tier when their ADV equals or exceeds 5,000 contracts and be charged a fee of \$1,000 for that month.

41 See Securities Exchange Act Release No. 92366 (July 9, 2021), 86 FR 37379 (SR-PEARL-2021-32).

42 See Securities Exchange Act Release Nos. 92797 (August 27, 2021), 86 FR 49399 (September 2, 2021) (SR-PEARL-2021-32) ("Suspension Order 1"); 93555 (November 10, 2021), 86 FR 64254 (November 17, 2021) (SR-PEARL-2021-54); 93895 (January 4, 2022), 87 FR 1217 (January 10, 2022) (SR-PEARL-2021-59).

filings.[43] The Commission again suspended the proposed fees on February 18, 2022.[44] The Commission received one comment letter on that filing.[45] The Exchange then provided Trading Permits at the lower rates for the month of March 2022 and absorbed all associated costs with the lower rates.

On March 30, 2022, the Exchange withdrew the proposed rule change that was previously suspended by the Commission on February 18, 2022. After providing Trading Permits at the lower rates for the month of March 2022, on March 30, 2022, the Exchange submitted a revised proposal for effectiveness beginning April 1, 2022.[46] This revised proposal argued that the proposed fees were constrained by competition based on a similar filing for permit/membership fees by MEMX LLC ("MEMX").[47] The Commission received one comment letter on that filing.[48] The Exchange withdrew this revised proposal and submitted a further revised filing providing additional support for its competition based justification on May 17, 2022.

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43 See Letter from Richard J. McDonald, Susquehanna International Group, LLC ("SIG"), to Vanessa Countryman, Secretary, Commission, dated September 28, 2021 ("SIG Letter 1").

44 See Securities Exchange Act Release No. 94287 (February 18, 2022), 87 FR 10837 (February 25, 2022) (SR-PEARL-2022-05) ("Suspension Order 2").

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

46 See Securities Exchange Act Release No. 94696 (April 12, 20222), 87 FR 22987 (April 18, 2022) (SR-PEARL-2022-09).

47 See Securities Exchange Act Release No. 93927 (January 7, 2022), 87 FR 2191 (January 13, 2022) (SR-MEMX-2021-19) (proposal to adopt monthly membership fees).

48 See Letter from Brian Sopinsky, SIG, to Vanessa Countryman, Secretary, Commission, dated May 9, 2022 ("SIG Letter 3").

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[49] in general, and furthers the objectives of Section 6(b)(4) of the Act[50] in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act in that it is designed 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 is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The proposed changes to the pricing schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for order flow, which constrains its pricing determinations. The fact that the market for order flow is competitive has 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 order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market

[49] 15 U.S.C. 78f(b).

[50] 15 U.S.C. 78f(b)(4) and (5).

share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'…."[51]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention to determine prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, 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."[52]

Congress directed the Commission to "rely on 'competition, whenever possible, in meeting its regulatory responsibilities for overseeing the SROs and the national market system.'"[53] As a result, the Commission has historically relied on competitive forces to determine whether a fee proposal is equitable, fair, reasonable, and not unreasonably or unfairly discriminatory. "If competitive forces are operative, the self-interest of the exchanges themselves will work powerfully to constrain unreasonable or unfair behavior."[54] Accordingly, "the existence of significant competition provides a substantial basis for finding that the terms of an exchange's fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly

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

52 See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) ("Regulation NMS Adopting Release").

53 See NetCoalition, 615 F.3d at 534-35; see also H.R. Rep. No. 94-229 at 92 (1975) ("[I]t is the intent of the conferees that the national market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed.").

54 See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 Fed. Reg. 74,770 (December 9, 2008) (SR-NYSEArca-2006-21).

discriminatory."[55] In its 2019 guidance on fee proposals, Commission staff indicated that they would look at factors beyond the competitive environment, such as cost, only if a "proposal lacks persuasive evidence that the proposed fee is constrained by significant competitive forces."[56]

The Exchange believes that there are many factors that may cause a market participant to decide to become a member of a particular exchange including: (i) an exchange's available liquidity in options series; (ii) trading functionality offered on a particular market; (iii) product offerings; (iv) customer service on an exchange; and (v) transactional pricing. As discussed above, the Exchange believes that the decision to become a member of an exchange, particularly as a registered market maker, is a complex one that is not solely based on non-transactional costs assessed by an exchange. Market participants weigh the tradeoff between where they choose to deploy liquidity versus where trading opportunities exist. Of course, the cost of membership, ports and market data may factor into a decision to become a member of a certain exchange, but the Exchange believes it is by no means the only factor when comparing exchanges.

Market Makers

Market makers play an important role on options exchanges as they provide liquidity. In options markets, registered market makers are assigned options series[57] and are required to quote in those options series for a specified time period during the day.[58] Typically, a lead or primary

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55 Id.

56 See U.S. Securities and Exchange Commission, "Staff Guidance on SRO Rule filings Relating to Fees," (May 21, 2019), available at https://www.sec.gov/tm/staff-guidancesro-rule-filings-fees.

57 See Exchange Rule 602, Phlx, ISE, Nasdaq GEMX, Inc. ("GEMX"), Nasdaq MRX, Inc. ("MRX"), Nasdaq BX, Inc. ("BX") and Nasdaq Options Market ("NOM") Options 2, Section 3; Cboe Rule 5.50; BOX Exchange LLC ("BOX") Rule 8030; MIAX Rule 602; and NYSE Arca Rule 6.35-O.

58 See Exchange Rule 604, ISE, GEMX and MRX, Phlx, BX and NOM Options 2, Section 5; Cboe Rule 5.52; BOX Rule 8050; MIAX Rule 604; and NYSE Arca Rule 6.37A-O.

market maker[59] will be required to quote for a longer period of time during the day as compared to other market makers registered on an exchange.[60] Additionally, market makers are typically required to quote within a certain width on options markets.[61] Greater liquidity on options markets benefits all market participants by providing more trading opportunities and attracting greater participation by market makers. An increase in the activity of market makers in turn facilitates tighter spreads. Market participants are attracted to options markets that have ample liquidity and tighter spreads in options series.

Trading Functionality

An exchange's trading functionality attracts market participants who may elect, for example, to submit an order into a price improving auction,[62] enter a complex order,[63] or utilize a particular order type.[64] Different options exchanges offer different trading functionality to their members. For example, with respect to priority and allocation of an order book, some options exchanges have price/time allocation,[65] some have a size pro-rata allocation,[66] while other

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59 Options markets refer to the primary market maker on an exchange in several ways.

60 See Exchange Rule 604, BX Options 2, Section 4; ISE, GEMX and MRX, and Phlx Options 2, Section 5; BOX Rule 8055; MIAX Rule 604; and NYSE Arca Rule 6.37A-O.

61 See BX Options 2, Section 4; ISE, GEMX and MRX, Phlx and NOM Options 2, Section 5; and Cboe Rule 5.52; BOX Rule 8040.

62 See ISE, GEMX, MRX, Phlx and BX Options 3, Section 13; MIAX Rule 515A; Cboe Rule 5.37; and BOX Rules 7150 and 7245. The Exchange does not currently offer a price improving auction.

63 See Phlx and ISE Options 3, Section 14; MIAX Rule 518; Cboe Rule 5.33; BOX Rule 7240; and NYSE Arca Rule 6.91-O. The Exchange does not currently offer complex order functionality.

64 See Exchange Rule 516, ISE, GEMX, MRX, Phlx, BX and NOM Options 3, Section 7; MIAX Rule 516; Cboe Rule 5.6; BOX Rule 7110; and NYSE Arca Rule 6.62-O.

65 See Exchange Rule 514, Cboe Rule 5.85; BOX Rule 7130; and NYSE Arca Rule 6.76-O.

66 See Phlx, ISE, GEMX and MRX Options 3, Section 10; and BOX Rule 7135.

exchanges offer both allocation models.[67] The allocation methodology on a particular options exchange's order book may attract certain market participants. Also, the manner in which some options markets structure their solicitation auction,[68] or opening process,[69] may be attractive to certain market participants. Finally, some exchanges have trading floors[70] which may accommodate trading for certain market participants or trading firms.[71]

Product Offerings

Introducing new and innovative products to the marketplace designed to meet customer demands may attract market participants to a particular options venue. New products in the options industry may allow market participants greater trading and hedging opportunities, as well as new avenues to manage risks. The listing of new options products enhances competition among market participants by providing investors with additional investment vehicles, as well as

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67 See BX Options 3, Section 10. While BX's rule permits both price/time and size pro-rata allocation, all symbols on BX are currently designated as Price/Time. See also BOX Rules 7130 and 7135. MIAX's rule permits both Price-Time and Pro-Rata allocation. See also MIAX Rule 514.

68 See ISE, GEMX and MRX Options 3, Section 11; NYSE American Rules 971.1NY and 971.2NY; and Cboe Rule 5.39.

69 See Exchange Rule 503, ISE, GEMX, MRX, Phlx, BX and NOM Options 3, Section 8; Cboe Rule 5.31, MIAX Rule 503, BOX Rule 7070, and NYSE Arca Rule 6.64-O.

70 Today, Phlx, Cboe, BOX, NYSE Arca, and NYSE American LLC have a trading floor. Trading floors require an on-floor presence to execute options transactions.

71 There are certain features of open outcry trading that are difficult to replicate in an electronic trading environment. The Exchange has observed, and understands from various market participants, that they have had difficulty executing certain orders, such as larger orders and high-risk and complicated strategies, in an all-electronic trading configuration without the element of human interaction to negotiate pricing for these orders.

competitive alternatives, to existing investment products. An exchange's proprietary product offering may attract order flow to a particular exchange to trade a particular options product.[72]

Transaction Pricing

The pricing available on a particular exchange may impact a market participant's decision to submit order flow to a particular options venue. The options industry is competitive. Clear substitutes to the Exchange exist in the market for options security transaction services; the Exchange is only one of sixteen options exchanges to which market participants may direct their order flow and memberships. Within this environment, market participants can freely, and often do, shift their order flow and memberships among the Exchange and competing venues in response to changes in their respective pricing schedules.

Removal of Monthly Volume Credit and Trading Permit Fee Credit

The Exchange believes its proposal to remove the Monthly Volume Credit is reasonable, equitable and not unfairly discriminatory because all market participants will no longer be offered the ability to achieve the extra credits associated with the Monthly Volume Credit for submitting Priority Customer volume to the Exchange 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 remove the Monthly Volume Credit from the Fee Schedule for business and competitive reasons. The Exchange established the Monthly Volume Credit when it first launched operations to encourage members to increase their order flow by providing a credit to those that exceeded a volume threshold. The Exchange believes that the Exchange's existing Priority Customer rebates and fees will continue to allow the Exchange to remain highly

72 See, e.g., options on the Nasdaq-100 Index® available on ISE, GEMX and Phlx and Cboe's Market Volatility Index®. Currently, the Exchange does not list any proprietary products.

competitive and continue to attract order flow and maintain market share even without the Monthly Volume Credit.

The Exchange believes its proposal to remove the Trading Permit fee credit for Members that connect via both the MEO Interface and FIX Interface is reasonable, equitable and not unfairly discriminatory because all market participants will no longer be offered the ability to receive the credit 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 remove the Trading Permit fee credit for business and competitive reasons. The Exchange established the Trading Permit fee credit to lower the costs for Members that connect via the MEO Interface and/or FIX Interface as a means to attract order flow and memberships after the Exchange first launched operations. The Exchange now believes that it is appropriate to remove this credit in light of the current operating conditions and membership on the Exchange.

Trading Permit Fee Increase

The Exchange believes that there is value in being a Member of the Exchange, retaining that Membership as the Exchange's market share has grown, and that the proposed Trading Permit fees are reasonable because, as illustrated by the above table, they are in the range of similar types of membership fees charged to analogous categories of market participants by other exchanges with similar market share.[73] The proposed monthly Trading Permit fees are lower than or comparable to the membership and trading permit fees imposed by several other national securities exchanges that charge such fees.[74]

The Exchange believes that the proposed monthly Trading Permit fees are not unfairly

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73 See supra notes 33-39 and accompanying text.

74 See id.

discriminatory because they would be assessed equally across all Members or firms that seek to become Members. As discussed above, both the MEO Interface and FIX Interface are available to all Members and each Member may choose which interface to utilize based on their own business needs. The MEO Interface is primarily used by Market Makers due to its functionality, robustness, lower latency, and higher throughput and utilizes greater Exchange resources due to the increased volume of message traffic that travel through the MEO interface. Trading Permit fees for Members who connect through the MEO Interface are higher than the Trading Permit fees for Members who connect through the FIX Interface. The FIX Interface provides lower capacity and bandwidth and, therefore, utilizes less Exchange resources. The FIX Interface is primarily used by order flow providers, who tend to be less latency sensitive and submit less orders and messages than Market Makers.

Over the period from April 2021 until September 2021, the Exchange processed 3.15 billion messages via the FIX Interface (0.43% of total messages received). Over that same time period, the Exchange processed 731.4 billion messages (99.57% of total messages received) over the MEO Interface. This marked difference between the number of FIX and MEO messages processed, when mapped to servers, software, storage, and networking results in a much higher allocation of total capital and operational expense to support the MEO Interface. For one, the Exchange incurs greater expense in maintaining the resilience of the MEO Interface to ensure its ongoing operation in accordance with Regulation SCI. Another, the Exchange must purchase and expand its storage capacity to retain these increased messages in compliance with its record keeping obligations. The Exchange's membership application team reviews each new membership application for compliance with Exchange rules. The Exchange must also expend additional resources to surveil and ensure proper regulatory oversight of this increased message traffic. These pulls on Exchange resources have only increased since it first adopted the Trading Permit fee in March of 2018[75] when the Exchange's trading volume for that month averaged 3.94%.[76] Today, the Exchange's average daily trading volume for May 2022 is 4.56%.[77] This additional volume increases the costs to the Exchange to surveil and regulate its market while also procuring additional capacity to store and monitor those messages in compliance with its record keeping obligations under the Exchange Act. Therefore, the proposed monthly Trading Permit fees are not unfairly discriminatory because they would be assessed equally across all Members based on the type of interface and related usage of Exchange resources.

The Exchange believes that the proposed monthly Trading Permit fees are not unfairly discriminatory because no broker-dealer is required to become a Member of the Exchange. Instead, many market participants awaited the Exchange growing to a certain percentage of market share before they would join as a Member of the Exchange. In addition, many market participants still have not joined the Exchange despite the Exchange's growth in recent years to consistently be approximately 4-5% of the overall equity options market share. To illustrate, the Exchange currently has 41 Members.[78] However, based on publicly available information regarding a sample of the Exchange's competitors, NYSE American Options has 75 members,

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75 See supra note 7.

76 See "Market at a Glance", available at https://www.miaxoptions.com/ (last visited May 16, 2022).

77 Id.

78 See MIAX Pearl Options Exchange Member Directory, available at https://www.miaxoptions.com/exchange-members/pearl.

NYSE Arca Options has 71 members, and Cboe has 94 members.[79] Accordingly, the vigorous competition among national securities exchanges provides many alternatives for firms to voluntarily decide whether membership to the Exchange is appropriate and worthwhile, and no broker-dealer is required to become a member of the Exchange. Specifically, neither the trade-through requirements under Regulation NMS nor broker-dealers' best execution obligations require a broker-dealer to become a member of every exchange.

The Exchange acknowledges that competitive forces may require certain broker-dealers to be members of all equity options exchanges. However, the Exchange believes that the proposed fees are reasonable, equitably allocated and not unfairly discriminatory, even for a broker-dealer that deems it necessary to join the Exchange for business purposes, as those business reasons should presumably result in revenue capable of covering the proposed fees.

The decision to become a member of an exchange, particularly for registered market makers, is complex, and not solely based on the non-transactional costs assessed by an exchange. As noted above, specific factors include, but are not limited to: (i) an exchange's available liquidity in options series; (ii) trading functionality offered on a particular market; (iii) product offerings; (iv) customer service on an exchange; and (v) transactional pricing. Becoming a member of the exchange does not "lock" a potential member into a market or diminish the overall competition for exchange services. The decision to become a member of an exchange is

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79 See NYSE American Options Membership Directory, available at https://www.nyse.com/markets/american-options/membership (last visited March 9, 2022); NYSE Arca Options Membership Directory, available at https://www.nyse.com/markets/arca-options/membership (last visited March 9, 2022); Cboe Members and Sponsored Participants, Form 1 Amendment dated February 17, 2022, Exhibit M, available at https://www.sec.gov/Archives/edgar/vprr/2200/22000797.pdf (last visited March 9, 2022).

made at the beginning of the relationship, and is no less subject to competition than trading fees or market data.

In lieu of becoming a member at each options exchange, a market participant may join one exchange and elect to have their orders routed in the event that a better price is available on an away market. Nothing in the Order Protection Rule requires a firm to become a Member at the Exchange.[80] If the Exchange is not at the NBBO, the Exchange will route an order to any away market that is at the NBBO to prevent a trade-through and also ensure that the order was executed at a superior price.[81]

Some other broker-dealers may not deem it necessary to be a Member of the Exchange and may elect to access the Exchange through other means. In lieu of joining an exchange, a third-party may be utilized to execute an order on an exchange. For example, a third-party broker-dealer Member of MRX may be utilized by a retail investor to submit orders into an exchange. An institutional investor may utilize a broker-dealer, a service bureau,[82] or request sponsored access[83] through a member of an exchange in order to submit an order directly to an

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80 See Options Order Protection and Locked/Crossed Market Plan (August 14, 2009), available at https://www.theocc.com/getmedia/7fc629d9-4e54-4b99-9f11-c0e4db1a2266/options_order_protection_plan.pdf.

81 Exchange Members may elect to not route their orders by marking an order as "do-not-route." In this case, the order would not be routed.

82 Service bureaus provide access to market participants to submit and execute orders on an exchange. On the Exchange, a Service Bureau may be a Member. Some Members utilize a Service Bureau for connectivity and that Service Bureau may not be a Member. Some market participants utilize a Service Bureau who is a Member to submit orders. As noted herein only Members may submit orders or quotes through ports.

83 Sponsored Access is an arrangement whereby a member permits its customers to enter orders into an exchange's system that bypass the member's trading system and are routed directly to the Exchange, including routing through a service bureau or other third-party technology provider.

options exchange.[84] A market participant may either pay the costs associated with becoming a member of an exchange or, in the alternative, a market participant may elect to pay commissions to a broker-dealer, pay fees to a service bureau to submit trades, or pay a member to sponsor the market participant in order to submit trades directly to an exchange.[85] Market participants may elect any of the above models and weigh the varying costs when determining how to submit trades to an exchange. Depending on the number of orders to be submitted, technology, ability to control submission of orders, and projected revenues, a market participant may determine one model is more cost efficient as compared to the alternatives.

In June 2021, the month immediately preceding the initial implementation of this proposed fee change, the Exchange had 20 users of the MEO Interface and 28 users of the FIX Interface. These numbers remained stagnant until August 2021, where one Member that utilized the MEO Interface ceased utilizing the MEO Interface and again in December 2021 where one Member that utilized the FIX Interface ceased utilizing the FIX Interface. Also, the Exchange has not experienced any Member decreasing their trading activity on the Exchange in order to move to a lower tier and be charged the corresponding lower fee. In fact, between June 2021 and July 2021, one Member of the MEO Interface moved up from Tier 1 to Tier 3 due to increasing their trading volume on the Exchange The Exchange has not experienced a net decrease in subscribers due to the fee increase, because the Exchange believes numerous considerations are

[84] This may include utilizing a Floor Broker and submitting the trade to one of the five options trading floors.

[85] The Exchange notes that it does not have insight into the economics of such a relationship where a broker-dealer utilizes another entity to access the Exchanges. It is presumed that a third-party that provides access to an exchange does so on behalf of multiple broker-dealers and provides access to multiple exchanges. It is also presumed that any increased volume that might cause such third party to achieve a higher Trading Permit pricing tier maybe offset through achieving a higher rebate on the Exchange or other economic arrangement between the parties.

taken into account when deciding to be a member of an exchange, including, but not limited to: (i) an exchange's available liquidity in options series; (ii) trading functionality offered on a particular market; (iii) product offerings; (iv) customer service on an exchange; and (v) transactional pricing when socializing the change. Fees are not the sole consideration. As stated above, the Exchange socialized the proposed fee increase with Members prior to first implementing the change. During that process, some Members stated that they anticipated a potential increase due to the lower rates the Exchange historically charged.

Lastly, the Exchange believes the proposed tiered fees provide for an equitable allocation of reasonable dues, fees and other charges because it is similar to other tiered pricing structures on other options exchanges. The Exchange implemented the tiered pricing structure based on the type of interface and trading volume when it first adopted Trading Permit fees in 2018 and the Exchange does not propose to amend the volume requirements associated with each Tier. Rather, the Exchange simply seeks to amend the associated fees. The Exchange proposes to charge users of the FIX Interface monthly fees ranging from $500 to $1,500 based on trading volume. Users of the FIX Interface are primarily EEMs, which generally consist of order flow providers. Cboe charges monthly electronic trading permit fees based on the category of participant, such as $3,000 for Electronic Access Permit holders and $2,000 for Clearing TPH Permit holders (the Exchange notes that it only charges $250 per month for EEM Clearing Firms). Cboe's Electronic Access Permit fee is the analog to the Exchange's Trading Permit fee for Members that use the FIX Interface and is higher than the Exchange's proposed highest tier.

Under the Exchange's tiered structure, a Member may trade approximately 106,000 more contracts on the Exchange than on Cboe BZX Options and continue to qualify for the Exchange's lowest Tier. For example, a Member would qualify for Tier 1 of the Exchange's tiered pricing structure where that Member's total volume as a percentage of TCV is between 0.00% and 0.30%. Assuming an average of 37 million contracts are traded each day during a month, that Member would qualify for Tier 1 where that Member traded less than an ADV of 111,000 contracts and be charged $500 for the month, the same fee as Cboe BZX Options, where that Member connects via FIX.[86] On Cboe BZX Options, the Exchange understands that same member would no longer qualify for their lowest tier when their ADV equals or exceeds 5,000 contracts and be charged a fee of $1,000 for that month.[87]

The proposed Trading Rights Fee compare favorably with those of other options exchanges. The Exchange's proposed monthly Trading Permit Fees for users of the MEO Interface, which are primarily Market Makers, range from $2,500 to $6,000 based on trading volume. Basing such fees on trading volume is analogous to other options exchanges that base their similar fees charged to Market Makers based on the number of options classes traded. For example, NYSE Arca charges Market Makers a base fee of $6,000 and charges additional fees ranging from $1,000 to $5,000 on top of the base fee and depending on the options issues assigned, could result in monthly options trading permit fees ranging from $6,000 to $19,000 (or higher), which is higher than the Exchange's highest proposed tier of $6,000. NYSE American charges electronic Market Makers a base fee of $8,000 and charges additional fees ranging from $500 to $6,000 on top of the base fee and depending on the options issues assigned, which could

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86 See "Membership Fees" section of the Cboe BZX Options Fee Schedule, available at https://www.cboe.com/us/options/membership/fee_schedule/bzx (last visited April 13, 2022). The Exchange understands Cboe BZX Options charges the same Membership Fee to all of its Options Members.

87 The Exchange proposes to also charge a fee of $1,000 per month to Members that qualify for Tier 2, the same as BZX's highest tier. The Exchange acknowledges that the Exchange's Trading Permit fee would be higher than BZX where a Member qualifies for Tier 3.

result in monthly options trading permit fees ranging from $8,000 to $28,500 (or higher), also higher than the Exchange's highest proposed tier of $6,000.

Further, the tiered pricing structure does not raise any new competitive issues as it has been in place since 2018[88] and similar membership pricing structures are utilized at other exchanges. Basing membership pricing based on volume is not a new or novel concept as other exchanges employ similar volume requirements based on options classes traded or assigned.[89] The Exchange does not propose to amend its volume criteria, only the associated fees. The Exchange must consider Members ability to discontinue their memberships when considering any potential changes to its tiered volume requirements and that Members ability to transition to another exchange they view offers more attractive volume thresholds and pricing.

The proposed fees, therefore, represent the equitable allocation of reasonable dues, fees and other charges because the fees are generally lower than other exchanges and the proposed tiered fees are similar to other tiered pricing structures on other options exchanges.[90]

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

In accordance with Section 6(b)(8) of the Act, [91] the Exchange believes that the proposed rule change would not impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

The Exchange believes the removal of the Monthly Volume Credit and Trading Permit fee credit will not place certain market participants at a relative disadvantage to other market

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88 See supra note 7.

89 See supra notes 33-35.

90 The Exchange does not charge a separate fee to Market Makers for options assignments.

91 15 U.S.C. 78f(8).

participants because, in order to attract order flow when the Exchange first launched operations, the Exchange established these credits to lower the initial fixed cost for Members. The Exchange now believes that it is appropriate to remove this credit in light of the current operating conditions, including the Exchange's overall membership and the current type and amount of volume executed on the Exchange. The Exchange believes that the Exchange's rebates and fees will still allow the Exchange to remain highly competitive such that the Exchange should continue to attract order flow and maintain market share.

As described above, the Exchange's proposed Trading Permit fees are lower than or similar to the cost of membership and trading permits on other exchanges,[92] and therefore, may stimulate intramarket competition by attracting additional firms to become Members on the Exchange or at least should not deter interested participants from joining the Exchange. In addition, membership and trading permit fees are subject to competition from other exchanges. Accordingly, if the changes proposed herein are unattractive to market participants, it is likely the Exchange will see a decline in membership as a result. As stated above, the number of FIX and MEO Interface users remained stagnant until August 2021, where one Member that utilized the MEO Interface ceased utilizing that interface and again in December 2021, where one Member that utilized the FIX Interface ceased utilizing that interface.

The Exchange also does not believe charging different fees for MEO and FIX Interface users and basing the amount of such fees on trading volume would impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As discussed above, the FIX Interface is the uniform industry message protocol used by most exchanges and provides lower throughput and bandwidth than the MEO

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92 See supra notes 33-39.

Interface. Users are free to use either interface based on their business need and the pricing structure is aligned with the interface used, its pull on Exchange resources, and the Member's monthly trading volume. The tiered pricing structure is based on the type of interface and trading volume in place on the Exchange today and the Exchange does not propose to amend the volume requirements associated with each Tier. Rather, it is simply seeking to amend the associated fees. Basing such fees on trading volume would may also stimulate intramarket competition because it is analogous to other exchanges that base like fees on options classes traded or assigned. A Member may cease being a Member if they believe the tiered structure is not appropriate or that another exchange presents a better value. Likewise, a market participant that is not already a Member may cease membership on another exchange or become a Member of MIAX Pearl where they deem the Exchange's Trading Permit fee to be a better value based on its trading activity and business needs.

Inter-Market Competition

The Exchange operates in a highly competitive market in which market participants can readily favor one of the 15 competing options venues if they deem fee levels at a particular venue to be excessive. Based on publicly-available information, and excluding index-based options, no single exchange has more than approximately 16% market share. Therefore, no exchange possesses significant pricing power regarding memberships or in the execution of multiply-listed equity and ETF options order flow. Over the course of 2021, the Exchange's market share has fluctuated between approximately 3-6% of the U.S. equity options industry.[93] The Exchange is not aware of any evidence that a market share of approximately 3-6% provides the Exchange with anti-competitive pricing power when it comes to competition for

[93] See supra note 76.

memberships. The Exchange believes that the ever-shifting market share among exchanges from month to month demonstrates that market participants can discontinue memberships in response to fee changes. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract and retain memberships on the Exchange.

The proposed fee change will not impact intermarket competition because it will apply to all Members equally. Also, Members are free to use either the FIX or MEO Interface and may choose the interface that better meets their business needs based on their trading models and behavior. The Exchange operates in a highly competitive market in which market participants can determine whether or not to join the Exchange based on the value received compared to the cost of joining and maintaining membership on the Exchange.

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

As described above, the Commission initially received SIG Letter 1 on its initial proposal.[94] The Exchange responded to SIG Letter 1 in its subsequent filing. The Commission also received SIG Letter 2 on a later filing for the same proposal,[95] which the Exchange responded to in a prior filing. The Commission then received SIG Letter 3 on a later filing for the same proposal.[96] SIG Letter 3 does not raise any new issues regarding the proposal and simply repeats prior complaints.

The Exchange initially justified this proposal with cost-based justifications to support the proposed fee changes. In the Exchange's prior proposed rule changes, the Exchange determined to utilize a competition based approach to support the proposed fee changes. Because the SIG

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94 See supra note 43.

95 See supra note 45.

96 See supra note 48.

Letters are primarily focused on the Exchange's prior cost justifications, the Exchange believes SIG's assertions are no longer germane to the current filing as the Exchange no longer utilizes a cost justification to support the proposed fees.

Pursuant to the Guidance, Staff may consider whether a proposed fee is constrained by significant competitive forces in assessing the reasonableness of the proposed fee.[97] This is in line with a recent filing by MEMX, in which MEMX argued its proposed monthly membership fee was reasonable because it was constrained by competitive forces.[98] MEMX's monthly membership fee filing received no comment letters and remains in effect today, past the Commission's 60-day suspension deadline. The Exchange's trading permit fees are the conceptual equivalent of MEMX's "membership fee," BOX's "participant fee" and "market maker trading permit fee," and other exchanges' "access" fees: they are all fees to solely provide access and allow activity to the specific marketplace. These are all monthly fees assessed to members for trading on each particular exchange. The Exchange now argues that its proposed fees are constrained by competition in the same way MEMX's membership fees are constrained by competition.

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,[99] and Rule 19b-4(f)(2)[100] 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

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97 See supra note 56.

98 See supra note 47.

99 15 U.S.C. 78s(b)(3)(A)(ii).

100 17 CFR 240.19b-4(f)(2).

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 email to rule-comments@sec.gov. Please include File Number SR-PEARL-2022-23 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-2022-23. 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 (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-2022-23 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.[101]

J. Matthew DeLesDernier

Assistant Secretary

[101] 17 CFR 200.30-3(a)(12).