

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-92366; File No. SR-PEARL-2021-32)

July 9, 2021

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

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 July 1, 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 Options Fee Schedule (the “Fee Schedule”) to remove certain credits and amend the monthly Trading Permit³ fees for Exchange Members.⁴

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.

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.

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 remove certain credits and amend the monthly Trading Permit fees (“Proposed Access Fees”) for Exchange Members.

Remove “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 2018⁵ to encourage Members to send increased Priority Customer⁶ order flow to the Exchange, which the Exchange applied to the assessment of certain non-transaction rebates and fees for that Member. The Exchange applies a different Monthly Volume Credit depending on whether the Member connects to the Exchange

⁵ See Securities Exchange Act Release No. 82867 (March 13, 2018), 83 FR 12044 (March 19, 2018) (SR-PEARL-2018-07).

⁶ “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.

via the FIX Interface⁷ or MEO Interface.⁸ Currently, the Exchange assesses the Monthly Volume Credit to a Member whose executed Priority Customer volume along with that of its Affiliates,⁹ not including Excluded Contracts,¹⁰ is at least 0.30% of MIAX Pearl-listed Total Consolidated Volume (“TCV”),¹¹ as set forth in the following table:

⁷ “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.

⁸ “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.

⁹ “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.

¹⁰ “Excluded Contracts” means any contracts routed to an away market for execution. See the Definitions Section of the Fee Schedule.

¹¹ “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

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

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. The Monthly Volume Credit is a single, once-per-month credit towards the aggregate monthly total of non-transaction fees assessable to a Member.

The Exchange now proposes to amend 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 attract order flow by lowering the initial fixed cost for Members. The Monthly Volume Credit has achieved its purpose and the Exchange now believes it is appropriate to remove this credit. 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.

Remove 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. The Trading Permit fee credit is applicable to Members that connect via both the MEO and FIX Interfaces. Currently, Members who connect via both the MEO and FIX Interfaces are assessed the rates for both types of Trading Permits, but these Members receive a \$100 monthly credit towards the Trading Permit fees applicable to the MEO Interface use. The Exchange now proposes to remove the Trading Permit fee credit and delete footnote “*” from Section 3)b) of the Fee Schedule.

experiences an Exchange System Disruption (solely in the option classes of the affected Matching Engine). See the Definitions Section 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 both the MEO Interface and FIX Interface. The Trading Permit fee credit has achieved its purposes 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.

Amend Trading Permit Fees

The Exchange proposes to amend Section 3)b) of the Fee Schedule to increase the amount of the monthly Trading Permit fees. The Exchange issues Trading Permits to Members who are either Electronic Exchange Members¹² (“EEMs”) or Market Makers.¹³ 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”¹⁴ 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.

¹² 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.

¹³ 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 these Rules. See the Definitions Section of the Fee Schedule.

¹⁴ See the Definitions Section of the Fee Schedule for the monthly volume thresholds associated with each Tier.

Current Trading Permit Fees. Currently, each Member who connects to the System¹⁵ via the FIX Interface is 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 with the parameters of Tier 3 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.60%, \$450.

Each Member who connects to the System via the MEO Interface is 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 with the parameters of Tier 3 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.60%, \$500.

Proposed Trading Permit Fees. The Exchange now 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;

¹⁵ The term “System” means the automated trading system used by the Exchange for the trading of securities. See Exchange Rule 100.

- (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 with 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:

- (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 with the parameters of Tier 3 of the Non-Transaction Fees Volume-Based Tiers, \$6,000.

Members who use the MEO Interface may also connect to the System through the FIX Interface as well, and vice versa. The Exchange notes that the 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, since the FIX Interface utilizes less capacity and resources of the Exchange. The MEO Interface offers lower latency and higher throughput, which utilizes greater capacity and resources of the Exchange. The FIX Interface offers lower bandwidth requirements and an industry-wide uniform message format. Both EEMs and Market Makers may connect to the Exchange using either interface.

Trading Permits grant access to the Exchange, thus providing the ability to submit orders and trade on the Exchange, in the manner defined in the relevant Trading Permit. Without a Trading Permit, a Member cannot directly trade on the Exchange. Therefore, a Trading Permit is a means to directly access the Exchange (which offers meaningful value), and the Exchange now

proposes to increase its monthly fees since it has not done so since the fees were first adopted in 2018¹⁶ and are designed to recover a portion of the costs associated with directly accessing the Exchange. The Exchange notes that the its affiliates, Miami International Securities Exchange, LLC (“MIAX”) and MIAX Emerald, LLC (“MIAX Emerald”), charge a similar, fixed trading permit fee to certain users, and a similar, varying trading permit fee to other users, based upon the number of assignments of option classes or the percentage of volume in option classes.¹⁷ The Exchange notes that other options exchanges assess certain of their membership fees at different rates, based upon a member’s participation on that exchange,¹⁸ and, as such, this concept is not new or novel. The Exchange also notes that the proposed increased Trading Permit fees are in line with, or cheaper than, the trading permit fees or similar membership fees charged by other options exchanges.¹⁹

¹⁶ See Securities Exchange Act Release No. 82867 (March 13, 2018), 83 FR 12044 (March 19, 2018) (SR-PEARL-2018-07).

¹⁷ See the MIAX Fee Schedule, Section 3)b); MIAX Emerald Fee Schedule, Section 3)b).

¹⁸ See e.g., NYSE Arca Options Fees and Charges, p.1 (assessing market makers \$6,000 for up to 175 option issues, an additional \$5,000 for up to 350 option issues, an additional \$4,000 for up to 1,000 option issues, an additional \$3,000 for all option issues on the exchange, and an additional \$1,000 for the fifth trading permit and for each trading permit thereafter); NYSE American Options Fee Schedule, p. 23 (assessing market makers \$8,000 for up to 60 plus the bottom 45% of option issues, an additional \$6,000 for up to 150 plus the bottom 45% of option issues, an additional \$5,000 for up to 500 plus the bottom 45% of option issues, and additional \$4,000 for up to 1,100 plus the bottom 45% of option issues, an additional \$3,000 for all issues traded on the exchange, and an additional \$2,000 for 6th to 9th ATPs; plus an addition fee for premium products). See also Cboe BZX Options Exchange (“BZX Options”) assesses the Participant Fee, which is a membership fee, according to a member’s ADV. See Cboe BZX Options Exchange Fee Schedule under “Membership Fees”. The Participant Fee is \$500 if the member ADV is less than 5000 contracts and \$1,000 if the member ADV is equal to or greater than 5000 contracts. Id.

¹⁹ See id.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act²⁰ in general, and furthers the objectives of Section 6(b)(4) of the Act²¹ 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 Exchange believes that exchanges, in setting fees of all types, should meet very high standards of transparency to demonstrate why each new fee or fee increase meets the requirements of the Act that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among market participants. The Exchange believes this high standard is especially important when an exchange imposes various access fees for market participants to access an exchange's marketplace. The Exchange deems Trading Permit fees to be Access Fees. It records these fees as part of its "Access Fees" revenue in its financial statements. The Exchange believes that it is important to demonstrate that these fees are based on its costs and reasonable business needs. The Exchange believes the Proposed Access Fees will allow the Exchange to offset expenses the Exchange has and will incur, and that the Exchange is providing sufficient transparency (as described below) into how the

²⁰ 15 U.S.C. 78f(b).

²¹ 15 U.S.C. 78f(b)(4) and (5).

Exchange determined to charge such fees. Accordingly, the Exchange is providing an analysis of its revenues, costs, and profitability associated with the Proposed Access Fees. This analysis includes information regarding its methodology for determining the costs and revenues associated with the Proposed Access Fees.

In order to determine the Exchange's costs to provide the access services associated with the Proposed Access Fees, the Exchange conducted an extensive cost review in which the Exchange analyzed every expense item in the Exchange's general expense ledger to determine whether each such expense relates to the Proposed Access Fees, and, if such expense did so relate, what portion (or percentage) of such expense actually supports the access services. The sum of all such portions of expenses represents the total cost of the Exchange to provide the access services associated with the Proposed Access Fees. For the avoidance of doubt, no expense amount was allocated twice. The Exchange is also providing detailed information regarding the Exchange's cost allocation methodology – namely, information that explains the Exchange's rationale for determining that it was reasonable to allocate certain expenses described in this filing towards the cost to the Exchange to provide the access services associated with the Proposed Access Fees.

In order to determine the Exchange's projected revenues associated with the Proposed Access Fees, the Exchange analyzed the number of Members currently utilizing the Trading Permits, and, utilizing a recent monthly billing cycle representative of 2021 monthly revenue, extrapolated annualized revenue on a going-forward basis. The Exchange does not believe it is appropriate to factor into its analysis future revenue growth or decline into its projections for purposes of these calculations, given the uncertainty of such projections due to the continually changing access needs of market participants, discounts that can be achieved due to lower trading volume and vice versa, market participant consolidation, etc. Additionally, the Exchange

similarly does not factor into its analysis future cost growth or decline. The Exchange is presenting its revenue and expense associated with the Proposed Access Fees in this filing in a manner that is consistent with how the Exchange presents its revenue and expense in its Audited Unconsolidated Financial Statements. The Exchange's most recent Audited Unconsolidated Financial Statement is for 2020. However, since the revenue and expense associated with the Proposed Access Fees were not in place in 2020 or for the first two quarters of 2021, the Exchange believes its 2020 Audited Unconsolidated Financial Statement is not useful for analyzing the reasonableness of the total annual revenue and costs associated with the Proposed Access Fees. Accordingly, the Exchange believes it is more appropriate to analyze the Proposed Access Fees utilizing its 2021 revenue and costs, as described herein, which utilize the same presentation methodology as set forth in the Exchange's previously-issued Audited Unconsolidated Financial Statements. Based on this analysis, the Exchange believes that the Proposed Access Fees are fair and reasonable because they will not result in excessive pricing or supra-competitive profit when comparing the Exchange's total annual expense associated with providing the services associated with the Proposed Access Fees versus the total projected annual revenue the Exchange will collect for providing those services.

The Exchange notes that this is the same process utilized by the Exchange's affiliate, MIAX Emerald, in a filing recently noticed by the Commission when MIAX Emerald adopted its own trading permit fees.²²

* * * * *

²² See Securities Exchange Act Release No. 91033 (February 1, 2021), 86 FR 8455 (February 5, 2021) (SR-EMERALD-2021-03) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Adopt Monthly Trading Permit Fees).

On March 29, 2019, the Commission issued its Order Disapproving Proposed Rule Changes to Amend the Fee Schedule on the BOX Market LLC Options Facility to Establish BOX Connectivity Fees for Participants and Non-Participants Who Connect to the BOX Network (the “BOX Order”).²³ On May 21, 2019, the Commission issued the Staff Guidance on SRO Rule Filings Relating to Fees.²⁴ Accordingly, the Exchange believes that the Proposed Access Fees are consistent with the Act because they (i) are reasonable, equitably allocated, not unfairly discriminatory, and not an undue burden on competition; (ii) comply with the BOX Order and the Guidance; (iii) are supported by evidence (including comprehensive revenue and cost data and analysis) that they are fair and reasonable because they will not result in excessive pricing or supra-competitive profit; and (iv) utilize a cost-based justification framework that is substantially similar to a framework previously used by the Exchange, and its affiliates MIAX and MIAX Emerald, to establish or increase other non-transaction fees. Accordingly, the Exchange believes that the Commission should find that the Proposed Access Fees are consistent with the Act.

* * * * *

As of June 30, 2021, the Exchange had only a 5.31% market share of the U.S. equity options industry for the month of June 2021.²⁵ The Exchange is not aware of any evidence that a market share of approximately 5-6% provides the Exchange with anti-competitive pricing power.

²³ See Securities Exchange Act Release No. 85459 (March 29, 2019), 84 FR 13363 (April 4, 2019) (SR-BOX-2018-24, SR-BOX-2018-37, and SR-BOX-2019-04).

²⁴ See Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019), at <https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees> (the “Guidance”).

²⁵ See “The market at a glance”, available at www.miaxoptions.com (last visited June 30, 2021).

If the Exchange were to attempt to establish unreasonable pricing, then no market participant would join or connect, and existing market participants would disconnect.

Separately, the Exchange is not aware of any reason why market participants could not simply drop their access to an exchange (or not initially access an exchange) if an exchange were to establish prices for its non-transaction fees that, in the determination of such market participant, did not make business or economic sense for such market participant to access such exchange. No options market participant is required by rule, regulation, or competitive forces to be a Member of the Exchange. As evidence of the fact that market participants can and do drop their access to exchanges based on non-transaction fee pricing, R2G Services LLC (“R2G”) filed a comment letter after BOX’s proposed rule changes to increase its connectivity fees (SR-BOX-2018-24, SR-BOX-2018-37, and SR-BOX-2019-04). The R2G Letter stated, “[w]hen BOX instituted a \$10,000/month price increase for connectivity; we had no choice but to terminate connectivity into them as well as terminate our market data relationship. The cost benefit analysis just didn’t make any sense for us at those new levels.” Similarly, the Exchange’s affiliate, MIAX Emerald, noted in a recent filing that once MIAX Emerald issued a notice that it was instituting Trading Permit fees, among other non-transaction fees, one Member dropped its access to the Exchange as a result of those fees.²⁶ Accordingly, these examples show that if an exchange sets too high of a fee for connectivity and/or other non-transaction fees for its relevant marketplace, market participants can choose to drop their access to such exchange.

²⁶ See supra note 22.

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 because, in order to attract order flow when the Exchange first launched operations, the Exchange established the Monthly Volume Credit 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 and the current type and amount of Priority Customer volume executed on the Exchange. The Exchange believes that the Exchange's Priority Customer 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.

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 because, in order to attract order flow and membership after the Exchange first launched operations, the Exchange established the Trading Permit fee credit to lower the costs for Members that connect via both the MEO Interface and FIX Interface. 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 its proposal is consistent with Section 6(b)(4) of the Act because the Proposed Access Fees will not result in excessive pricing or supra-competitive profit. The Proposed Access Fees are also reasonable and equitable because they are in line with, or cheaper than, the trading permit fees or similar membership fees charged by other options exchanges.²⁷ The costs associated with providing access to Exchange Members and non-Members, as well as the general expansion of a state-of-the-art infrastructure, are extensive, have increased year-over-year, and are projected to increase year-over-year in the future.

The Exchange's high performance network solutions and supporting infrastructure (including employee support), provides unparalleled system throughput and the capacity to handle approximately 10.7 million order messages per second. On an average day, the Exchange handles over approximately 2.7 billion total messages. However, in order to achieve a consistent, premium network performance, the Exchange must build out and maintain a network that has the capacity to handle the message rate requirements of its most heavy network consumers. These billions of messages per day consume the Exchange's resources and significantly contribute to the overall expense for storage and network transport capabilities.

In order to provide more detail and to quantify the Exchange's costs associated with providing access to the Exchange in general, the Exchange notes that there are material costs associated with providing the infrastructure and headcount to fully-support access to the Exchange. The Exchange incurs technology expense related to establishing and maintaining Information Security services, enhanced network monitoring and customer reporting, as well as

²⁷ See supra note 18.

Regulation SCI mandated processes, associated with its network technology. While some of the expense is fixed, much of the expense is not fixed, and thus increases as the services associated with the Proposed Access Fees increase. For example, new Members to the Exchange may require the purchase of additional hardware to support those Members as well as enhanced monitoring and reporting of customer performance that the Exchange and its affiliates provide. Further, as the total number of Members increases, the Exchange and its affiliates may need to increase their data center footprint and consume more power, resulting in increased costs charged by their third-party data center provider. Accordingly, the cost to the Exchange and its affiliates to provide access to its Members is not fixed. The Exchange believes the Proposed Access Fees are reasonable in order to offset a portion of the costs to the Exchange associated with providing access to its network infrastructure.

The Exchange only has four primary sources of revenue: transaction fees, access fees (which includes the Proposed Access Fees), regulatory fees, and market data fees. Accordingly, the Exchange must cover all of its expenses from these four primary sources of revenue.

The Exchange believes that the Proposed Access Fees are fair and reasonable because they will not result in excessive pricing or supra-competitive profit, when comparing the total annual expense that the Exchange projects to incur in connection with providing these access services versus the total annual revenue that the Exchange projects to collect in connection with services associated with the Proposed Access Fees. For 2021²⁸, the total annual expense for providing the access services associated with the Proposed Access Fees for the Exchange is projected to be approximately \$844,741. The \$844,741 in projected total annual expense is

²⁸ The Exchange has not yet finalized its 2021 year end results.

comprised of the following, all of which are directly related to the access services associated with the Proposed Access Fees: (1) third-party expense, relating to fees paid by the Exchange to third-parties for certain products and services; and (2) internal expense, relating to the internal costs of the Exchange to provide the services associated with the Proposed Access Fees.²⁹ As noted above, the Exchange believes it is more appropriate to analyze the Proposed Access Fees utilizing its 2021 revenue and costs, which utilize the same presentation methodology as set forth in the Exchange’s previously-issued Audited Unconsolidated Financial Statements.³⁰ The \$844,741 in projected total annual expense is directly related to the access services associated with the Proposed Access Fees, and not any other product or service offered by the Exchange. It does not include general costs of operating matching systems and other trading technology, and no expense amount was allocated twice.

As discussed, the Exchange conducted an extensive cost review in which the Exchange analyzed every expense item in the Exchange’s general expense ledger (this includes over 150 separate and distinct expense items) to determine whether each such expense relates to the access services associated with the Proposed Access Fees, and, if such expense did so relate, what portion (or percentage) of such expense actually supports those services, and thus bears a

²⁹ The percentage allocations used in this proposed rule change may differ from past filings from the Exchange or its affiliates due to, among other things, changes in expenses charged by third-parties, adjustments to internal resource allocations, and different system architecture of the Exchange as compared to its affiliates.

³⁰ For example, the Exchange previously noted that all third-party expense described in its prior fee filing was contained in the information technology and communication costs line item under the section titled “Operating Expenses Incurred Directly or Allocated From Parent,” in the Exchange’s 2019 Form 1 Amendment containing its financial statements for 2018. See Securities Exchange Act Release No. 87876 (December 31, 2019), 85 FR 757 (January 7, 2020) (SR-PEARL-2019-36). Accordingly, the third-party expense described in this filing is attributed to the same line item for the Exchange’s 2021 Form 1 Amendment, which will be filed in 2022.

relationship that is, “in nature and closeness,” directly related to those services. The sum of all such portions of expenses represents the total cost of the Exchange to provide access services associated with the Proposed Access Fees.

For 2021, total third-party expense, relating to fees paid by the Exchange to third-parties for certain products and services for the Exchange to be able to provide the access services associated with the Proposed Access Fees, is projected to be \$188,815. This includes, but is not limited to, a portion of the fees paid to: (1) Equinix, for data center services, for the primary, secondary, and disaster recovery locations of the Exchange’s trading system infrastructure; (2) Zayo Group Holdings, Inc. (“Zayo”) for network services (fiber and bandwidth products and services) linking the Exchange’s office locations in Princeton, New Jersey and Miami, Florida, to all data center locations; (3) Secure Financial Transaction Infrastructure (“SFTI”)³¹, which supports connectivity and feeds for the entire U.S. options industry; (4) various other services providers (including Thompson Reuters, NYSE, Nasdaq, and Internap), which provide content, connectivity services, and infrastructure services for critical components of options connectivity and network services; and (5) various other hardware and software providers (including Dell and Cisco, which support the production environment in which Members connect to the network to trade, receive market data, etc.).

For clarity, only a portion of all fees paid to such third-parties is included in the third-party expense herein, and no expense amount is allocated twice. Accordingly, the Exchange

³¹ In fact, on October 22, 2019, the Exchange was notified by SFTI that it is again raising its fees charged to the Exchange by approximately 11%, without having to show that such fee change complies with the Act by being reasonable, equitably allocated, and not unfairly discriminatory. It is unfathomable to the Exchange that, given the critical nature of the infrastructure services provided by SFTI, that its fees are not required to be rule-filed with the Commission pursuant to Section 19(b)(1) of the Act and Rule 19b-4 thereunder. See 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b-4, respectively.

does not allocate its entire information technology and communication costs to the access services associated with the Proposed Access Fees. Further, the Exchange notes that, with respect to the MIAX Pearl expenses included herein, those expenses only cover the MIAX Pearl options market; expenses associated with the MIAX Pearl equities market are accounted for separately and are not included within the scope of this filing.

The Exchange believes it is reasonable to allocate such third-party expense described above towards the total cost to the Exchange to provide the access services associated with the Proposed Access Fees. In particular, the Exchange believes it is reasonable to allocate the identified portion of the Equinix expense because Equinix operates the data centers (primary, secondary, and disaster recovery) that host the Exchange's network infrastructure. This includes, among other things, the necessary storage space, which continues to expand and increase in cost, power to operate the network infrastructure, and cooling apparatuses to ensure the Exchange's network infrastructure maintains stability. Without these services from Equinix, the Exchange would not be able to operate and support the network and provide the access services associated with the Proposed Access Fees to its Members and their customers. The Exchange did not allocate all of the Equinix expense toward the cost of providing the access services associated with the Proposed Access Fees, only that portion which the Exchange identified as being specifically mapped to providing the access services associated with the Proposed Access Fees, approximately 8% of the total applicable Equinix expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the access services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.

The Exchange believes it is reasonable to allocate the identified portion of the Zayo expense because Zayo provides the internet, fiber and bandwidth connections with respect to

the network, linking the Exchange with its affiliates, MIAX and MIAX Emerald, as well as the data center and disaster recovery locations. As such, all of the trade data, including the billions of messages each day per exchange, flow through Zayo's infrastructure over the Exchange's network. Without these services from Zayo, the Exchange would not be able to operate and support the network and provide the access services associated with the Proposed Access Fees. The Exchange did not allocate all of the Zayo expense toward the cost of providing the access services associated with the Proposed Access Fees, only the portion which the Exchange identified as being specifically mapped to providing the Proposed Access Fees, approximately 4% of the total applicable Zayo expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the access services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.

The Exchange believes it is reasonable to allocate the identified portions of the SFTI expense and various other service providers' (including Thompson Reuters, NYSE, Nasdaq, and Internap) expense because those entities provide connectivity and feeds for the entire U.S. options industry, as well as the content, connectivity services, and infrastructure services for critical components of the network. Without these services from SFTI and various other service providers, the Exchange would not be able to operate and support the network and provide access to its Members and their customers. The Exchange did not allocate all of the SFTI and other service providers' expense toward the cost of providing the access services associated with the Proposed Access Fees, only the portions which the Exchange identified as being specifically mapped to providing the access services associated with the Proposed Access Fees, approximately 3% of the total applicable SFTI and other service providers' expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the access services associated with the Proposed Access Fees.

The Exchange believes it is reasonable to allocate the identified portion of the other hardware and software provider expense because this includes costs for dedicated hardware licenses for switches and servers, as well as dedicated software licenses for security monitoring and reporting across the network. Without this hardware and software, the Exchange would not be able to operate and support the network and provide access to its Members and their customers. The Exchange did not allocate all of the hardware and software provider expense toward the cost of providing the access services associated with the Proposed Access Fees, only the portions which the Exchange identified as being specifically mapped to providing the access services associated with the Proposed Access Fees, approximately 5% of the total applicable hardware and software provider expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the access services associated with the Proposed Access Fees.

For 2021, total projected internal expense, relating to the internal costs of the Exchange to provide the access services associated with the Proposed Access Fees, is projected to be \$655,925. This includes, but is not limited to, costs associated with: (1) employee compensation and benefits for full-time employees that support the access services associated with the Proposed Access Fees, including staff in network operations, trading operations, development, system operations, business, as well as staff in general corporate departments (such as legal, regulatory, and finance) that support those employees and functions (including an increase as a result of the higher determinism project); (2) depreciation and amortization of hardware and software used to provide the access services associated with the Proposed Access Fees, including equipment, servers, cabling, purchased software and internally developed software used in the production environment to support the network for trading; and (3) occupancy costs for leased office space for staff that provide the access services associated with

the Proposed Access Fees. The breakdown of these costs is more fully-described below. For clarity, only a portion of all such internal expenses are included in the internal expense herein, and no expense amount is allocated twice. Accordingly, the Exchange does not allocate its entire costs contained in those items to the access services associated with the Proposed Access Fees.

The Exchange believes it is reasonable to allocate such internal expense described above towards the total cost to the Exchange to provide the access services associated with the Proposed Access Fees. In particular, the Exchange's employee compensation and benefits expense relating to providing the access services associated with the Proposed Access Fees is projected to be \$549,834, which is only a portion of the \$9,163,894 total projected expense for employee compensation and benefits. The Exchange believes it is reasonable to allocate the identified portion of such expense because this includes the time spent by employees of several departments, including Technology, Back Office, Systems Operations, Networking, Business Strategy Development (who create the business requirement documents that the Technology staff use to develop network features and enhancements), Trade Operations, Finance (who provide billing and accounting services relating to the network), and Legal (who provide legal services relating to the network, such as rule filings and various license agreements and other contracts). As part of the extensive cost review conducted by the Exchange, the Exchange reviewed the amount of time spent by each employee on matters relating to the provision of access services associated with the Proposed Access Fees. Without these employees, the Exchange would not be able to provide the access services associated with the Proposed Access Fees to its Members and their customers. The Exchange did not allocate all of the employee compensation and benefits expense toward the cost of the access services associated with the Proposed Access Fees, only the portions which the Exchange identified as being specifically

mapped to providing the access services associated with the Proposed Access Fees, approximately 6% of the total applicable employee compensation and benefits expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the access services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.

The Exchange's depreciation and amortization expense relating to providing the access services associated with the Proposed Access Fees is projected to be \$66,316, which is only a portion of the \$1,326,325 total projected expense for depreciation and amortization. The Exchange believes it is reasonable to allocate the identified portion of such expense because such expense includes the actual cost of the computer equipment, such as dedicated servers, computers, laptops, monitors, information security appliances and storage, and network switching infrastructure equipment, including switches and taps that were purchased to operate and support the network and provide the access services associated with the Proposed Access Fees. Without this equipment, the Exchange would not be able to operate the network and provide the access services associated with the Proposed Access Fees to its Members and their customers. The Exchange did not allocate all of the depreciation and amortization expense toward the cost of providing the access services associated with the Proposed Access Fees, only the portion which the Exchange identified as being specifically mapped to providing the access services associated with the Proposed Access Fees, approximately 5% of the total applicable depreciation and amortization expense, as these access services would not be possible without relying on such. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the access services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.

The Exchange's occupancy expense relating to providing the access services associated with the Proposed Access Fees is projected to be \$39,775, which is only a portion of the \$497,180 total projected expense for occupancy. The Exchange believes it is reasonable to allocate the identified portion of such expense because such expense represents the portion of the Exchange's cost to rent and maintain a physical location for the Exchange's staff who operate and support the network, including providing the access services associated with the Proposed Access Fees. This amount consists primarily of rent for the Exchange's Princeton, NJ office, as well as various related costs, such as physical security, property management fees, property taxes, and utilities. The Exchange operates its Network Operations Center ("NOC") and Security Operations Center ("SOC") from its Princeton, New Jersey office location. A centralized office space is required to house the staff that operates and supports the network. The Exchange currently has approximately 150 employees. Approximately two-thirds of the Exchange's staff are in the Technology department, and the majority of those staff have some role in the operation and performance of the access services associated with the proposed Trading Permit fees. Without this office space, the Exchange would not be able to operate and support the network and provide the access services associated with the Proposed Access Fees to its Members and their customers. Accordingly, the Exchange believes it is reasonable to allocate the identified portion of its occupancy expense because such amount represents the Exchange's actual cost to house the equipment and personnel who operate and support the Exchange's network infrastructure and the access services associated with the Proposed Access Fees. The Exchange did not allocate all of the occupancy expense toward the cost of providing the access services associated with the Proposed Access Fees, only the portion which the Exchange identified as being specifically mapped to operating and supporting the network, approximately 8% of the total applicable occupancy expense. The Exchange believes this

allocation is reasonable because it represents the Exchange's cost to provide the access services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.

The Exchange notes that a material portion of its total overall expense is allocated to the provision of access services (including connectivity, ports, and trading permits). The Exchange believes this is reasonable and in line, as the Exchange operates a technology-based business that differentiates itself from its competitors based on its trading systems that rely on access to a high performance network, resulting in significant technology expense. Over two-thirds of Exchange staff are technology-related employees. The majority of the Exchange's expense is technology-based. As described above, the Exchange has only four primary sources of fees to recover its costs, thus the Exchange believes it is reasonable to allocate a material portion of its total overall expense towards access fees.

Accordingly, based on the facts and circumstances presented, the Exchange believes that its provision of the access services associated with the Proposed Access Fees will not result in excessive pricing or supra-competitive profit. To illustrate, on a going-forward, fully-annualized basis, the Exchange projects that its annualized revenue for providing the access services associated with the Proposed Access Fees would be approximately \$1,170,000 per annum, based on a recent billing cycle. The Exchange projects that its annualized expense for providing the access services associated with the Proposed Access Fees would be approximately \$844,741 per annum. Accordingly, on a fully-annualized basis, the Exchange believes its total projected revenue for providing the access services associated with the Proposed Access Fees will not result in excessive pricing or supra-competitive profit, as the Exchange will make only a 28% profit margin on the Proposed Access Fees (\$1,170,000 in revenue minus \$844,741 in expense = \$325,259 profit per annum). The Exchange notes that

the fees charged for Trading Permits can vary from month to month depending on the type of interface used and the Non-Transaction Fees Volume-Based Tier that is achieved for that month. As such, the revenue projection is not a static number, with monthly Trading Permit fees likely to fluctuate month to month.

For the avoidance of doubt, none of the expenses included herein relating to the access services associated with the Proposed Access Fees relate to the provision of any other services offered by the Exchange. Stated differently, no expense amount of the Exchange is allocated twice. The Exchange notes that, with respect to the MIAX Pearl expenses included herein, those expenses only cover the MIAX Pearl options market; expenses associated with the MIAX Pearl equities market and the Exchange's affiliate exchanges, MIAX and MIAX Emerald, are accounted for separately and are not included within the scope of this filing. Stated differently, no expense amount of the Exchange is also allocated to MIAX Pearl Equites, MIAX or MIAX Emerald.

The Exchange believes it is reasonable, equitable and not unfairly discriminatory to allocate the respective percentages of each expense category described above towards the total cost to the Exchange of operating and supporting the network, including providing the access services associated with the Proposed Access Fees because the Exchange performed a line-by-line item analysis of all the expenses of the Exchange, and has determined the expenses that directly relate to providing access to the Exchange. Further, the Exchange notes that, without the specific third-party and internal items listed above, the Exchange would not be able to provide the access services associated with the Proposed Access Fees to its Members and their customers. Each of these expense items, including physical hardware, software, employee compensation and benefits, occupancy costs, and the depreciation and amortization of equipment, have been identified through a line-by-line item analysis to be integral to providing

access services. The Proposed Access Fees are intended to recover the Exchange’s costs of providing access to Exchange Systems. Accordingly, the Exchange believes that the Proposed Access Fees are fair and reasonable because they do not result in excessive pricing or supra-competitive profit, when comparing the actual costs to the Exchange versus the projected annual revenue from the Proposed Access Fees.

The Exchange believes the proposed changes are reasonable, equitably allocated and not unfairly discriminatory, and do not result in a “supra-competitive”³² profit. Of note, the Guidance defines “supra-competitive profit” as profits that exceed the profits that can be obtained in a competitive market.³³ With the proposed changes, the Exchange anticipates it will have a profit margin of 28% for its Trading Permit fees. Based on the 2019 Audited Financial Statements of the competing options exchanges (since the 2020 Audited Financial Statements will likely not become publicly available until early July 2021, after the Exchange has submitted this filing), the Exchange’s profit margin is well below the operating profit margins of other competing exchanges. For example, Nasdaq ISE, LLC’s (“ISE”) operating profit margin, for all of 2019, was 83%.³⁴ ISE’s equity options market share for all of 2019 was 8.99%³⁵ while its access fees are as follows: \$500 per month for Electronic Access Members; \$5,000 per month for Primary Market Makers; and \$2,500 per month for Competitive Market Makers.³⁶ Nasdaq PHLX

³² See Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019), at <https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees> (the “Guidance”).

³³ See *id.*

³⁴ See PHLX Form 1, Exhibit D, filed June 30, 2020 available at <https://sec.report/Document/9999999997-20-003902/>.

³⁵ See <https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Volume-by-Exchange>.

³⁶ See Nasdaq ISE LLC Options 7 Pricing Schedule, Section 8.A. Access Services, at <https://listingcenter.nasdaq.com/rulebook/ise/rules/ISE%20Options%207>.

LLC's ("PHLX") operating profit margin, for all of 2019, was 67%.³⁷ PHLX's equity options market share for all of 2019 was 15.85%³⁸ while its permit fees are as follows: \$4,000 per month for Floor Brokers; \$6,000 per month for Floor Lead Market Makers and Floor Market Makers; and \$4,000 per month for Remote Lead Market Makers and Remote Market Makers.³⁹

The Exchange further believes its proposed fees are reasonable, equitably allocated and not unfairly discriminatory because the Exchange, and its affiliates, are still recouping the initial expenditures from building out their systems while the legacy exchanges have already paid for and built their systems.

The Exchange believes that the Proposed Access Fees are reasonable, equitable and not unfairly discriminatory because they are in line with, or cheaper than, the trading permit fees or similar membership fees charged by other options exchanges.⁴⁰ The Proposed Access Fees are fair and equitable and not unreasonably discriminatory because they apply equally to all Members regardless of type and access to the Exchange is offered on terms that are not unfairly discriminatory. The Exchange designed the fee rates in order to provide objective criteria for Trading Permit holders that connect via the MEO Interface of different sizes and business models that best matches their activity on the Exchange.

Finally, 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. In such an environment, the Exchange must continually adjust its fees for

³⁷ See ISE Form 1, filed June 29, 2020 available at [Form 1 - ISE - Final \(1\).pdf \(sec.gov\)](#).

³⁸ See *supra* note 33.

³⁹ See Nasdaq PHLX Options 7 Pricing Schedule, Section 8.A. Permit and Registration Fees, at <https://listingcenter.nasdaq.com/rulebook/phlx/rules/Phlx%20Options%207>.

⁴⁰ See *supra* note 18.

services and products, in addition to order flow, to remain competitive with other exchanges. The Exchange believes that the proposed changes reflect this competitive environment.

The Guidance provides that in determining whether a proposed fee is constrained by significant competitive forces, the Commission will consider whether there are reasonable substitutes for the product or service that is the subject of a proposed fee. As described below, the Exchange believes substitute products and services are available to market participants, including, among other things, other options exchanges that market participants may connect to in lieu of the Exchange, indirect connectivity to the Exchange via a third-party reseller and/or trading of any options products, including proprietary products, in the Over-the-Counter (“OTC”) markets. Indeed, there are currently 16 registered options exchanges that trade options, some of which have similar or lower connectivity fees.⁴¹ Based on publicly available information, no single options exchange has more than approximately 14-15% of the market share as of June 30, 2021.⁴²

There is also no regulatory requirement that any market participant connect to any one options exchange, that any market participant connect at a particular connection speed or act in a particular capacity on the Exchange, or trade any particular product offered on an exchange. Moreover, membership is not a requirement to participate on the Exchange. A market

⁴¹ See e.g., Phlx and ISE Rules, General Equity and Options Rules, General 8, Section 1(b). Phlx and ISE each charge a monthly fee of \$2,500 for each 1Gb connection, \$10,000 for each 10Gb connection and \$15,000 for each 10Gb Ultra connection, which the equivalent of the Exchange’s 10Gb ULL connection. See also NYSE American Fee Schedule, Section V.B, and Arca Fees and Charges, Co-Location Fees. NYSE American and Arca each charge a monthly fee of \$5,000 for each 1Gb circuit, \$14,000 for each 10Gb circuit and \$22,000 for each 10Gb LX circuit, which the equivalent of the Exchange’s 10Gb ULL connection.

⁴² See https://markets.cboe.com/us/options/market_statistics/.

participant may submit orders to the Exchange via a Sponsored User.⁴³ Indeed, the Exchange is unaware of any one options exchange whose membership includes every registered broker-dealer. Based on a recent analysis conducted by the Cboe Exchange, Inc. (“Cboe”), as of October 21, 2020, only three (3) of the broker-dealers, out of approximately 250 broker-dealers, were members of at least one exchange that lists options for trading and were members of all 16 options exchanges.⁴⁴ Additionally, the Cboe Fee Filing found that several broker-dealers were members of only a single exchange that lists options for trading and that the number of members at each exchange that trades options varies greatly.⁴⁵

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

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

Intra-Market Competition

The Exchange believes that the Proposed Access Fees do not place certain market participants at a relative disadvantage to other market participants because the Proposed Access Fees do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the fee rates are designed in order to provide objective criteria for

⁴³ See Exchange Rule 210. The Sponsored User is subject to the fees, if any, of the Sponsoring Member. The Exchange notes that the Sponsoring Member is not required to publicize, let alone justify or file with the Commission its fees, and as such could charge the Sponsored User any fees it deems appropriate, even if such fees would otherwise be considered supra-competitive, or otherwise potentially unreasonable or uncompetitive.

⁴⁴ See Securities Exchange Act Release No. 90333 (November 4, 2020), 85 FR 71666 (November 10, 2020) (SR-CBOE-2020-105) (the “Cboe Fee Filing”). The Cboe Fee Filing cited to the October 2020 Active Broker Dealer Report, provided by the Commission’s Office of Managing Executive, on October 8, 2020.

⁴⁵ Id.

users that connect via the MEO Interface of different sizes and business models that best matches their activity on the Exchange.

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 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.

Inter-Market Competition

The Exchange believes the Proposed Access Fees do not place an undue burden on competition on other options exchanges that is not necessary or appropriate. In particular, options market participants are not forced to become members of all options exchanges. The Exchange notes that it has far less Members as compared to the much greater number of members at other options exchanges. There are a number of large users that connect via the MEO Interface and broker-dealers that are members of other options exchange but not Members of the Exchange. The Exchange is also unaware of any assertion that its existing fee levels or the Proposed Access Fees would somehow unduly impair its competition with other options exchanges. To the contrary, if the fees charged are deemed too high by market participants, they can simply discontinue their membership with the Exchange.

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 16% market share. Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. As of June 30, 2021, the Exchange had a market share of approximately 5.31% of executed multiply-listed equity options⁴⁶ for the month of June 2021, and the Exchange believes that the ever-shifting market share among exchanges from month to month demonstrates that market participants can discontinue or reduce use of certain categories of products, or shift order flow, 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 order flow to the Exchange.

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,⁴⁷ and Rule 19b-4(f)(2)⁴⁸ 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.

⁴⁶ See supra note 25.

⁴⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴⁸ 17 CFR 240.19b-4(f)(2).

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](mailto:to-rule-comments@sec.gov). Please include File Number SR-PEARL-2021-32 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-2021-32. 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-2021-32 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.⁴⁹

J. Matthew DeLesDernier
Assistant Secretary

⁴⁹ 17 CFR 200.30-3(a)(12).