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SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549  
Form 19b-4

File No. \* SR 2023 - \* 73

Amendment No. (req. for Amendments \*)

Filing by MIAX PEARL, LLC

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
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Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>
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Rule

<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)
<input checked="" type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)
<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010  
Section 806(e)(1) \*

Section 806(e)(2) \*

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934  
Section 3C(b)(2) \*

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

**Description**

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

Proposal to amend the MIAX Pearl Equities Fee Schedule to 1) modify the NBBO Setter Plus Program and 2) remove the Step-Up Added Liquidity Rebate.

**Contact Information**

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name \* Michael Last Name \* Slade

Title \* AVP, Associate Counsel

E-mail \* mslade@miaxglobal.com

Telephone \* (609) 955-0460 Fax

**Signature**

Pursuant to the requirements of the Securities Exchange of 1934, MIAX PEARL, LLC has duty caused this filing to be signed on its behalf by the undersigned thereunto duty authorized.

Date 12/29/2023 (Title \*)

By Michael Slade AVP, Associate Counsel  
(Name \*)

NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

*Michael Slade* Date: 2023.12.28 15:50:13 -05'00'

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SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EDFS website.

**Form 19b-4 Information \***

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SR-PEARL-2023-73 - 19b4 (12-28-20)		

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

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SR-PEARL-2023-73 - Exhibit 1.docx		

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2- Notices, Written Comments, Transcripts, Other Communications**

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit Sent As Paper Document

**Exhibit 3 - Form, Report, or Questionnaire**

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit Sent As Paper Document

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

Add	Remove	View
SR-PEARL-2023-73 - Exhibit 5.docx		

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

## 1. **Text of the Proposed Rule Change**

(a) MIAX PEARL, LLC (“MIAX Pearl” or “Exchange”), pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> proposes to amend the fee schedule (the “Fee Schedule”) applicable to MIAX Pearl Equities, an equities trading facility of the Exchange.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1, and a copy of the applicable section of the Fee Schedule is attached hereto as Exhibit 5.

(b) Inapplicable.

(c) Inapplicable.

## 2. **Procedures of the Self-Regulatory Organization**

The proposed rule change was approved by the Chief Executive Officer of the Exchange or his designee pursuant to authority delegated by the MIAX Pearl Board of Directors on February 2, 2023. Exchange staff will advise the Board of Directors of any action taken pursuant to delegated authority. No other action by the Exchange is necessary for the filing of the proposed rule change.

Questions and comments on the proposed rule changes may be directed to Michael Slade, AVP, Associate Counsel, at (609) 955-0460.

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

a. Purpose

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

The Exchange proposes to amend the Fee Schedule to: (i) adopt two new tiers and corresponding rebates for the NBBO Setter Plus Program (referred to in this filing as the “NBBO Program”); (ii) remove the Step-Up Added Liquidity Rebate table and associated rebate;<sup>3</sup> and (iii) make corresponding changes to the Definitions section and NBBO Setter Plus Table to account for the removal of the Step-Up Added Liquidity Rebate.

#### Background – NBBO Program and Step-Up Added Liquidity Rebate

In general, the NBBO Program provides enhanced rebates for Equity Members<sup>4</sup> that add displayed liquidity (“Added Displayed Volume”) in securities priced at or above \$1.00 per share in all Tapes based on increasing volume thresholds and increasing market quality levels (described below), and provides an additive rebate<sup>5</sup> applied to orders that set the NBB or NBO<sup>6</sup> upon entry.<sup>7</sup> The NBBO Program was implemented beginning September 1, 2023.<sup>8</sup>

Pursuant to the NBBO Setter Plus Table in Section 1)c) of the Fee Schedule, the NBBO Program provides four volume tiers enhanced by three market quality levels to provide increasing rebates in this segment. The four volume tiers are achievable by greater volume from

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<sup>3</sup> See Fee Schedule, Section 1)f).

<sup>4</sup> The term “Equity Member” is a Member authorized by the Exchange to transact business on MIAX Pearl Equities. See Exchange Rule 1901.

<sup>5</sup> The Exchange does not propose to amend the NBBO Setter Additive Rebate, which is an additive rebate of (\$0.0003) per share for executions of orders in securities priced at or above \$1.00 per share that set the NBB or NBO on MIAX Pearl Equities with a minimum size of a round lot. See Fee Schedule, Section 1)c).

<sup>6</sup> With respect to the trading of equity securities, the term “NBB” shall mean the national best bid, the term “NBO” shall mean the national best offer, and the term “NBBO” shall mean the national best bid and offer. See Exchange Rule 1901.

<sup>7</sup> See Fee Schedule, Section 1)c).

<sup>8</sup> See Securities Exchange Act Release No. 98472 (September 21, 2023), 88 FR 66533 (September 27, 2023) (SR-PEARL-2023-45) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX Pearl Equities Fee Schedule To Adopt the NBBO Setter Plus Program and Eliminate Certain Other Rebates).

the best of three alternative methods. The three market quality levels are achievable by greater NBBO participation in a minimum number of specific securities.

MIAX Pearl Equities first determines the applicable NBBO Program tier based on three different volume calculation methods. The three volume-based methods to determine the Equity Member's tier for purposes of the NBBO Program are calculated in parallel in each month, and each Equity Member receives the highest tier achieved from any of the three methods each month. All three volume calculation methods are based on an Equity Member's respective ADAV<sup>9</sup> or NBBO Set Volume or ADV, each as a percent of industry TCV<sup>10</sup> as the denominator.

Under volume calculation Method 1, the Exchange provides tiered rebates based on an Equity Member's ADAV as a percentage of TCV. An Equity Member qualifies for the base rebates in Tier 1 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an ADAV of at least 0.00% and less than 0.08% of TCV. An Equity Member qualifies for the enhanced rebates in Tier 2 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an ADAV of at least 0.08% and less than 0.25% of TCV. An Equity Member qualifies for the enhanced rebates in Tier 3 for executions of orders in

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<sup>9</sup> "ADAV" means average daily added volume calculated as the number of shares added per day and "ADV" means average daily volume calculated as the number of shares added or removed, combined, per day. ADAV and ADV are calculated on a monthly basis. "NBBO Set Volume" means the ADAV in all securities of an Equity Member that sets the NBB or NBO on MIAX Pearl Equities. The Exchange excludes from its calculation of ADAV, ADV, and NBBO Set Volume shares added or removed on any day that the Exchange's system experiences a disruption that lasts for more than 60 minutes during regular trading hours, on any day with a scheduled early market close, and on the "Russell Reconstitution Day" (typically the last Friday in June). Routed shares are not included in the ADAV or ADV calculation. See the Definitions section of the Fee Schedule.

<sup>10</sup> "TCV" means total consolidated volume calculated as the volume in shares reported by all exchanges and reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply. The Exchange excludes from its calculation of TCV volume on any given day that the Exchange's system experiences a disruption that lasts for more than 60 minutes during Regular Trading Hours, on any day with a scheduled early market close, and on the "Russell Reconstitution Day" (typically the last Friday in June). See the Definitions section of the Fee Schedule.

securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an ADAV of at least 0.25% and less than 0.40% of TCV. Finally, an Equity Member qualifies for the enhanced rebates in Tier 4 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an ADAV of at least 0.40% of TCV.

Under volume calculation Method 2, the Exchange provides tiered rebates based on an Equity Member's NBBO Set Volume as a percentage of TCV. Under volume calculation Method 2, an Equity Member qualifies for the base rebates in Tier 1 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an NBBO Set Volume of at least 0.00% and less than 0.02% of TCV. An Equity Member qualifies for the enhanced rebates in Tier 2 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an NBBO Set Volume of at least 0.02% and less than 0.03% of TCV. An Equity Member qualifies for the enhanced rebates in Tier 3 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an NBBO Set Volume of at least 0.03% and less than 0.08% of TCV. An Equity Member qualifies for the enhanced rebates in Tier 4 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an NBBO Set Volume of at least 0.08% of TCV.

Under volume calculation Method 3, the Exchange provides tiered rebates based on an Equity Member's ADV as a percentage of TCV. An Equity Member qualifies for the base rebates in Tier 1 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an ADV of at least 0.00% and less than 0.20% of TCV. An Equity Member qualifies for the enhanced rebates in Tier 2 for executions of

orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an ADV of at least 0.20% and less than 0.60% of TCv. An Equity Member qualifies for the enhanced rebates in Tier 3 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an ADV of at least 0.60% and less than 1.00% of TCv. An Equity Member qualifies for the enhanced rebates in Tier 4 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an ADV of at least 1.00% of TCv.

After the volume calculation is performed to determine highest tier achieved by the Equity Member, the applicable rebate is calculated based on two different measurements based on the Equity Member's participation at the NBBO on the Exchange in certain securities (referenced below).

The Exchange provides one column of base rebates (referred to in the NBBO Program table as "Level A") and two columns of enhanced rebates (referred to in the NBBO Program table as "Level B" and "Level C")<sup>11</sup>, depending on the Equity Member's Percent Time at NBBO<sup>12</sup> on MIAX Pearl Equities in a certain amount of specified securities ("Market Quality Securities" or "MQ Securities").<sup>13</sup> The NBBO Setter Plus Table specifies the percentage of time

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<sup>11</sup> For the purpose of determining qualification for the rebates described in Level B and Level C of the Market Quality Tier columns in the NBBO Setter Plus Program, the Exchange will exclude from its calculation: (1) any trading day that the Exchange's system experiences a disruption that lasts for more than 60 minutes during regular trading hours; (2) any day with a scheduled early market close; and (3) the "Russell Reconstitution Day" (typically the last Friday in June). See the Definitions section of the Fee Schedule.

<sup>12</sup> "Percent Time at NBBO" means the aggregate of the percentage of time during regular trading hours where a Member has a displayed order of at least one round lot at the national best bid ("NBB") or national best offer ("NBO"). See the Definitions section of the Fee Schedule.

<sup>13</sup> "Market Quality Securities" or "MQ Securities" shall mean a list of securities designated as such, that are used for the purposes of qualifying for the rebates described in Level B and Level C of the Market Quality Tier columns in the NBBO Setter Plus Program. The universe of these securities will be determined by the Exchange and published on the Exchange's website. See the Definitions section of the Fee Schedule.

that the Equity Member must be at the NBBO on MIAX Pearl Equities in at least 200 symbols out of the full list of 1,000 MQ Securities (which symbols may vary from time to time based on market conditions). The list of MQ Securities is generally based on the top multi-listed 1,000 symbols by ADV across all U.S. securities exchanges. The list of MQ Securities is updated monthly by the Exchange and published on the Exchange's website.<sup>14</sup>

The base rebates ("Level A") are as follows: (\$0.00240) per share in Tier 1; (\$0.00310) per share in Tier 2; (\$0.00345) per share in Tier 3; and (\$0.00350) per share in Tier 4. Under Level B, the Exchange provides enhanced rebates for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes if the Equity Member's Percent Time at NBBO is at least 25% and less than 50% in at least 200 MQ Securities per trading day during the month. The Level B rebates are as follows: (\$0.00250) per share in Tier 1; (\$0.00315) per share in Tier 2; (\$0.00350) per share in Tier 3; and (\$0.00355) per share in Tier 4. Under Level C, the Exchange provides enhanced rebates for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes if the Equity Member's Percent Time at NBBO is at least 50% in at least 200 MQ Securities per trading day during the month. The Level C rebates are as follows: (\$0.00260) per share in Tier 1; (\$0.00320) per share in Tier 2; (\$0.00355) per share in Tier 3; and (\$0.00360) per share in Tier 4.

The Exchange also provides a volume-based pricing incentive, referred to as the "Step-Up Added Liquidity Rebate" that is separate from the NBBO Program, in which qualifying Equity Members receive an enhanced rebate of (\$0.0031) per share for executions of orders in

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<sup>14</sup> See MIAX Pearl Equities Exchange – Market Quality Securities (MQ Securities) List, effective December 1 through December 29, 2023, available at <https://www.miaxglobal.com/markets/us-equities/pearl-equities/fees> (last visited December 21, 2023).



securities priced at or above \$1.00 per share that add displayed liquidity to the Exchange.<sup>15</sup>

Equity Members qualify for the Step-Up Added Liquidity Rebate by achieving a “Step-Up ADAV as a % of TCV”<sup>16</sup> of at least 0.03% over the baseline month of May 2023. The Step-Up Added Liquidity Rebate is currently set to expire on December 31, 2023.<sup>17</sup>

#### Proposal to Adopt Two New Tiers and Corresponding Rebates for the NBBO Program

The Exchange proposes to amend the NBBO Setter Plus Table in Section 1)c) of the Fee Schedule to adopt two new tiers and corresponding rebates for the NBBO Program. The two new tiers will result in the NBBO Program now offering six different tiers pursuant to which Equity Members are able to achieve higher rebates based on the three different volume calculation methods.

The Exchange proposes that under volume calculation Method 1, an Equity Member will now qualify for the base rebates in Tier 1 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an ADAV of at least 0.00% and less than 0.035% of TCV. An Equity Member will qualify for the enhanced rebates in Tier 2 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an ADAV of at least 0.035% and less than 0.05% of TCV. An Equity Member will qualify for the enhanced rebates in Tier 3 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all

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<sup>15</sup> See Securities Exchange Act Release No. 95614 (August 26, 2022), 87 FR 53813 (September 1, 2022) (SR-PEARL-2022-33). The enhanced rebate provided by the Step-Up Added Liquidity Rebate applies to Liquidity Indicator Codes AA (adds liquidity, displayed order, Tape A), AB (adds liquidity, displayed order, Tape B) and AC (adds liquidity, displayed order, Tape C). See Fee Schedule, Section 1)f), Step-Up Added Liquidity Rebate, and Section 1)b), Liquidity Indicator Codes and Associated Fees.

<sup>16</sup> The term “Step-Up ADAV as a % of TCV” means ADAV as a percent of TCV in the relevant baseline month subtracted from the current month’s ADAV as a percent of TCV. See the Definitions Section of the Fee Schedule.

<sup>17</sup> See Fee Schedule, Section 1)f).

Tapes by achieving an ADAV of at least 0.05% and less than 0.08% of TCV. An Equity Member will qualify for the enhanced rebates in Tier 4 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an ADAV of at least 0.08% and less than 0.25% of TCV. An Equity Member will qualify for the enhanced rebates in Tier 5 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an ADAV of at least 0.25% and less than 0.40% of TCV. Finally, an Equity Member will qualify for the enhanced rebates in Tier 6 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an ADAV of at least 0.40% of TCV.

The Exchange proposes that under volume calculation Method 2, an Equity Member will now qualify for the base rebates in Tier 1 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an NBBO Set Volume of at least 0.00% and less than 0.01% of TCV. An Equity Member will qualify for the enhanced rebates in Tier 2 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an NBBO Set Volume of at least 0.01% and less than 0.015% of TCV. An Equity Member will qualify for the enhanced rebates in Tier 3 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an NBBO Set Volume of at least 0.015% and less than 0.02% of TCV. An Equity Member will qualify for the enhanced rebates in Tier 4 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an NBBO Set Volume of at least 0.02% and less than 0.03% of TCV. An Equity Member will qualify for the enhanced rebates in Tier 5 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed

Volume across all Tapes by achieving an NBBO Set Volume of at least 0.03% and less than 0.08% of TCV. Finally, an Equity Member will qualify for the enhanced rebates in Tier 6 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an NBBO Set Volume of at least 0.08% of TCV.

The Exchange proposes that under volume calculation Method 3, an Equity Member will now qualify for the base rebates in Tier 1 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an ADV of at least 0.00% and less than 0.15% of TCV. An Equity Member will qualify for the enhanced rebates in Tier 2 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an ADV of at least 0.15% and less than 0.18% of TCV. An Equity Member will qualify for the enhanced rebates in Tier 3 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an ADV of at least 0.18% and less than 0.20% of TCV. An Equity Member will qualify for the enhanced rebates in Tier 4 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an ADV of at least 0.20% and less than 0.60% of TCV. An Equity Member will qualify for the enhanced rebates in Tier 5 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an ADV of at least 0.60% and less than 1.00% of TCV. Finally, an Equity Member will qualify for the enhanced rebates in Tier 6 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an ADV of at least 1.00% of TCV.

With the addition of two tiers to the NBBO Program, the Exchange proposes to amend the corresponding rebates for each tier, described below. The Exchange proposes that the base

rebates (“Level A”) will now be as follows: (\$0.00240) per share in Tier 1; (\$0.00290) per share in Tier 2; (\$0.00300) per share in Tier 3; (\$0.00310) per share in Tier 4; (\$0.00345) per share in Tier 5; and (\$0.00350) per share in Tier 6.

Under Level B, the Exchange will continue to provide enhanced rebates for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes if the Equity Member’s Percent Time at NBBO is at least 25% and less than 50% in at least 200 MQ Securities per trading day during the month. The Exchange proposes that the Level B rebates will be as follows: (\$0.00250) per share in Tier 1; (\$0.00295) per share in Tier 2; (\$0.00305) per share in Tier 3; (\$0.00315) per share in Tier 4; (\$0.00350) per share in Tier 5; and (\$0.00355) per share in Tier 6.

Under Level C, the Exchange will continue to provide enhanced rebates for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes if the Equity Member’s Percent Time at NBBO is at least 50% in at least 200 MQ Securities per trading day during the month. The Exchange proposes that the Level C rebates will be as follows: (\$0.00260) per share in Tier 1; (\$0.00300) per share in Tier 2; (\$0.00310) per share in Tier 3; (\$0.00320) per share in Tier 4; (\$0.00355) per share in Tier 5; and (\$0.00360) per share in Tier 6.

The purpose of adding two new tiers and corresponding rebates to the NBBO Program is for business and competitive reasons in light of recent volume growth on the Exchange. The Exchange notes that with the addition of two interim tiers to the NBBO Program, the base rebates, enhanced rebates and volume requirements of the NBBO Program remain competitive with, or better than, the rebates and volume requirements provided by other exchanges for

executions of orders in securities priced at or above \$1.00 per share that add displayed liquidity to those exchanges.<sup>18</sup>

#### Proposal to Remove the Step-Up Added Liquidity Rebate

The Exchange proposes to remove the Step-Up Added Liquidity Rebate table and associated rebate in Section 1)f) of the Fee Schedule. The Step-Up Added Liquidity Rebate is currently set to expire on December 31, 2023, as set forth in the Fee Schedule. The Exchange has determined to not extend or modify the Step-Up Added Liquidity Rebate. Accordingly, the Exchange proposes to remove the Step-Up Added Liquidity Rebate table and associated rebate from the Fee Schedule. The purpose of this change is to provide clarity within the Fee Schedule that the expiring Step-Up Added Liquidity Rebate will no longer be available after December 31, 2023. The Exchange believes that the benefits of the NBBO Program – three volume calculation methods, higher base (Level A) rebates, and two market quality levels based on participation at the NBBO in order to obtain enhanced rebates – provide more opportunities for Equity Members to achieve higher rebates and will encourage the submission of increased order flow. The Exchange believes this will, in turn, benefit all Equity Members by providing greater execution opportunities on the Exchange and contribute to a deeper, more liquid market, to the benefit of all investors and market participants.

#### Corresponding Changes to the Fee Schedule

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<sup>18</sup> See Cboe BZX Equities Fee Schedule, NBBO Setter section and Add/Remove Volume Tiers section, available at [https://www.cboe.com/us/equities/membership/fee\\_schedule/bzx/](https://www.cboe.com/us/equities/membership/fee_schedule/bzx/) (providing a base rebate of (\$0.0016) per share and a top displayed liquidity tier rebate of (\$0.0031) per share for executions of added displayed volume in securities priced at or above \$1.00 per share, so long as the member meets all three volume requirements for the enhanced rebate); see also NYSE Arca Equities Fee Schedule, available at [https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE\\_Arca\\_Marketplace\\_Fees.pdf](https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf) (providing standard rebates of \$0.0020 per share (Tapes A and C) and \$0.0016 per share (Tape B) for adding displayed liquidity in securities priced at or above \$1.00 per share).

As mentioned above, with the removal of Step-Up Added Liquidity Rebate table and associated rebate, the Exchange proposes to amend the Definitions section of the Fee Schedule to delete the defined term “Step-Up ADAV as a % of TCV.” The Exchange also proposes to amend the NBBO Setter Plus Table in Section 1)c) of the Fee Schedule to delete footnote #4, which refers to the Step-Up Added Liquidity Rebate. The purpose of these changes is to provide consistency and clarity in the Fee Schedule in light of the proposed removal of the Step-Up Added Liquidity Rebate table and associated rebate.

#### Implementation

The proposed changes are effective beginning January 1, 2024.

#### b. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act<sup>19</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>20</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Equity Members and issuers and other persons using its facilities.

Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>21</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers or dealers.

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

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<sup>19</sup> 15 U.S.C. 78f(b).

<sup>20</sup> 15 U.S.C. 78f(b)(4).

<sup>21</sup> 15 U.S.C. 78f(b)(5).

systems and other off-exchange venues, to which market participants may direct their order flow. Based on publicly available information, no single registered equities exchange had more than approximately 15-16% of the total market share of executed volume of equities trading for the month of November 2023.<sup>22</sup> Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow, and the Exchange represented approximately 2.08% of the overall market share for the month of November 2023. The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and also recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>23</sup>

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

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<sup>22</sup> See the “Market Share” section of the Exchange’s website, available at <https://www.miaxglobal.com/> (last visited December 21, 2023).

<sup>23</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37499 (June 29, 2005).

enhance liquidity and market quality in both a broad manner and in a targeted manner with respect to the MQ Securities and the modified NBBO Program.

Proposal to Adopt Two New Tiers and Corresponding Rebates for the NBBO Program

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

The Exchange believes that its proposal to add two new tiers and corresponding rebates to the NBBO Program is reasonable and not unfairly discriminatory in light of recent volume growth on the Exchange. The Exchange notes that with the addition of two interim tiers to the NBBO Program, the base rebates, enhanced rebates and volume requirements of the NBBO Program remain competitive with, or better than, the rebates and volume requirements provided



by other exchanges for executions of orders in securities priced at or above \$1.00 per share that add displayed liquidity to those exchanges.<sup>24</sup>

Proposal to Remove the Step-Up Added Liquidity Rebate Table and Associated Rebate

The Exchange believes its proposal to remove the Step-Up Added Liquidity Rebate table and associated rebate in Section 1)f) of the Fee Schedule is reasonable, equitably allocated and not unfairly discriminatory. The Exchange adopted the Step-Up Added Liquidity Rebate for the purpose of encouraging Equity Members to increase their orders that add liquidity on the Exchange, thereby improving its market quality with respect to such securities and contributing to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Equity Members.

Further, the Step-Up Added Liquidity Rebate is currently set to expire on December 31, 2023, as set forth in the Fee Schedule. The Exchange has determined to not extend or modify the Step-Up Added Liquidity Rebate. Accordingly, the Exchange believes it is reasonable and not unfairly discriminatory to remove the expiring rebate from the Fee Schedule in order to provide clarity to Equity Members that this rebate is no longer available.

Proposal to Make Corresponding Changes to the Fee Schedule

The Exchange believes its proposal to amend the Definitions section of the Fee Schedule to delete the defined term “Step-Up ADAV as a % of TCV” and footnote #4 from the NBBO Setter Plus Table is reasonable because the Exchange will no longer offer the Step-Up Added Liquidity Rebate after December 31, 2023. The Exchange believes it is reasonable to provide clarity and consistency within the Fee Schedule by removing references to the Step-Up Added Liquidity Rebate, which will no longer be available.

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<sup>24</sup> See supra note 18.

#### 4. **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 that is not necessary or appropriate in furtherance of the purposes of the Act.

##### Intra-Market Competition

The Exchange believes the proposed rule change does not impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed new tiers to the NBBO Program will be eligible to all Equity Members equally in that all Equity Members have the opportunity to participate and therefore qualify for the proposed enhanced rebates. Furthermore, the Exchange believes that the NBBO Program, as modified by this proposal, will continue to incentivize Equity Members to submit additional aggressively priced displayed liquidity to the Exchange, and to increase their order flow on the Exchange generally, thereby contributing to a deeper and more liquid market and promoting price discovery and market quality on the Exchange to the benefit of all market participants and enhancing the attractiveness of the Exchange as a trading venue. The Exchange believes that this, in turn, would continue to encourage market participants to direct additional order flow to the Exchange. Greater liquidity benefits all Equity Members by providing more trading opportunities and encourages Equity Members to send additional orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants.

The proposal to remove the Step-Up Added Liquidity Rebate table and associated rebate from the Fee Schedule does not impose a burden on intra-market competition that is not in furtherance of the Act in that the proposed change applies to all Equity Members equally and Equity Members may still compete for the enhanced rebates provided in the NBBO Program

under volume calculation Method 1, which is similar to the expiring volume calculation provided for in the Step-Up Added Liquidity Rebate table.

The proposed changes to the Definitions section and NBBO Setter Plus table to remove references to the Step-Up Added Liquidity Rebate are similarly non-burdensome as they are intended to provide consistency and clarity within the Fee Schedule.

#### Intermarket Competition

The Exchange believes its proposal will benefit competition, and the Exchange notes that it operates in a highly competitive market. Equity Members have numerous alternative venues they may participate on and direct their order flow to, including fifteen other equities exchanges and numerous alternative trading systems and other off-exchange venues. As noted above, no single registered equities exchange currently had more than 15-16% of the total market share of executed volume of equities trading for the month of November 2023.<sup>25</sup> Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. Moreover, the Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow in response to new or different pricing structures being introduced to the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates generally, including with respect to executions of Added Displayed Volume, and market participants can readily choose to send their orders to other exchanges and off-exchange venues if they deem fee levels at those other venues to be more favorable.

Additionally, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities

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<sup>25</sup> See supra note 22.

markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>26</sup>

The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. circuit stated: “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possess a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’ . . .”<sup>27</sup>

Accordingly, the Exchange does not believe its proposed pricing changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

No written comments were either solicited or received.

**6. Extension of Time Period for Commission Action**

Not applicable.

**7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)**

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<sup>26</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

<sup>27</sup> *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSE-2006-21)).

Pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>28</sup> and Rule 19b-4(f)(2) thereunder<sup>29</sup> the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing. 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 under Section 19(b)(2)(B) of the Act to determine whether the proposed rule change should be approved or disapproved.<sup>30</sup>

**8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

Not applicable.

**9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act**

Not applicable.

**10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act**

Not applicable.

**11. Exhibits**

1. Completed notice of proposed rule change for publication in the Federal Register.
5. Copy of the applicable section of the Fee Schedule.

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<sup>28</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>29</sup> 17 CFR 240.19b-4.

<sup>30</sup> 15 U.S.C. 78s(b)(2)(B).

**EXHIBIT 1**SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-PEARL-2023-73)

December \_\_\_\_, 2023

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

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December \_\_\_\_, 2023, MIAX PEARL, LLC (“MIAX Pearl” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

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

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

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

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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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

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

1. Purpose

The Exchange proposes to amend the Fee Schedule to: (i) adopt two new tiers and corresponding rebates for the NBBO Setter Plus Program (referred to in this filing as the “NBBO Program”); (ii) remove the Step-Up Added Liquidity Rebate table and associated rebate;<sup>3</sup> and (iii) make corresponding changes to the Definitions section and NBBO Setter Plus Table to account for the removal of the Step-Up Added Liquidity Rebate.

Background – NBBO Program and Step-Up Added Liquidity Rebate

In general, the NBBO Program provides enhanced rebates for Equity Members<sup>4</sup> that add displayed liquidity (“Added Displayed Volume”) in securities priced at or above \$1.00 per share in all Tapes based on increasing volume thresholds and increasing market quality levels (described below), and provides an additive rebate<sup>5</sup> applied to orders that set the NBB or NBO<sup>6</sup> upon entry.<sup>7</sup> The NBBO Program was implemented beginning September 1, 2023.<sup>8</sup>

<sup>3</sup> See Fee Schedule, Section 1)f).

<sup>4</sup> The term “Equity Member” is a Member authorized by the Exchange to transact business on MIAX Pearl Equities. See Exchange Rule 1901.

<sup>5</sup> The Exchange does not propose to amend the NBBO Setter Additive Rebate, which is an additive rebate of (\$0.0003) per share for executions of orders in securities priced at or above \$1.00 per share that set the NBB or NBO on MIAX Pearl Equities with a minimum size of a round lot. See Fee Schedule, Section 1)c).

<sup>6</sup> With respect to the trading of equity securities, the term “NBB” shall mean the national best bid, the term “NBO” shall mean the national best offer, and the term “NBBO” shall mean the national best bid and offer. See Exchange Rule 1901.

<sup>7</sup> See Fee Schedule, Section 1)c).

<sup>8</sup> See Securities Exchange Act Release No. 98472 (September 21, 2023), 88 FR 66533 (September 27, 2023) (SR-PEARL-2023-45) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX Pearl Equities Fee Schedule To Adopt the NBBO Setter Plus Program and Eliminate Certain Other Rebates).

Pursuant to the NBBO Setter Plus Table in Section 1)c) of the Fee Schedule, the NBBO Program provides four volume tiers enhanced by three market quality levels to provide increasing rebates in this segment. The four volume tiers are achievable by greater volume from the best of three alternative methods. The three market quality levels are achievable by greater NBBO participation in a minimum number of specific securities.

MIAX Pearl Equities first determines the applicable NBBO Program tier based on three different volume calculation methods. The three volume-based methods to determine the Equity Member's tier for purposes of the NBBO Program are calculated in parallel in each month, and each Equity Member receives the highest tier achieved from any of the three methods each month. All three volume calculation methods are based on an Equity Member's respective ADAV<sup>9</sup> or NBBO Set Volume or ADV, each as a percent of industry TCV<sup>10</sup> as the denominator.

Under volume calculation Method 1, the Exchange provides tiered rebates based on an Equity Member's ADAV as a percentage of TCV. An Equity Member qualifies for the base rebates in Tier 1 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an ADAV of at least 0.00% and less than 0.08% of TCV. An Equity Member qualifies for the enhanced rebates in Tier 2 for

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<sup>9</sup> "ADAV" means average daily added volume calculated as the number of shares added per day and "ADV" means average daily volume calculated as the number of shares added or removed, combined, per day. ADAV and ADV are calculated on a monthly basis. "NBBO Set Volume" means the ADAV in all securities of an Equity Member that sets the NBB or NBO on MIAX Pearl Equities. The Exchange excludes from its calculation of ADAV, ADV, and NBBO Set Volume shares added or removed on any day that the Exchange's system experiences a disruption that lasts for more than 60 minutes during regular trading hours, on any day with a scheduled early market close, and on the "Russell Reconstitution Day" (typically the last Friday in June). Routed shares are not included in the ADAV or ADV calculation. See the Definitions section of the Fee Schedule.

<sup>10</sup> "TCV" means total consolidated volume calculated as the volume in shares reported by all exchanges and reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply. The Exchange excludes from its calculation of TCV volume on any given day that the Exchange's system experiences a disruption that lasts for more than 60 minutes during Regular Trading Hours, on any day with a scheduled early market close, and on the "Russell Reconstitution Day" (typically the last Friday in June). See the Definitions section of the Fee Schedule.



executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an ADAV of at least 0.08% and less than 0.25% of TCV. An Equity Member qualifies for the enhanced rebates in Tier 3 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an ADAV of at least 0.25% and less than 0.40% of TCV. Finally, an Equity Member qualifies for the enhanced rebates in Tier 4 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an ADAV of at least 0.40% of TCV.

Under volume calculation Method 2, the Exchange provides tiered rebates based on an Equity Member's NBBO Set Volume as a percentage of TCV. Under volume calculation Method 2, an Equity Member qualifies for the base rebates in Tier 1 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an NBBO Set Volume of at least 0.00% and less than 0.02% of TCV. An Equity Member qualifies for the enhanced rebates in Tier 2 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an NBBO Set Volume of at least 0.02% and less than 0.03% of TCV. An Equity Member qualifies for the enhanced rebates in Tier 3 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an NBBO Set Volume of at least 0.03% and less than 0.08% of TCV. An Equity Member qualifies for the enhanced rebates in Tier 4 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an NBBO Set Volume of at least 0.08% of TCV.

Under volume calculation Method 3, the Exchange provides tiered rebates based on an Equity Member's ADV as a percentage of TCV. An Equity Member qualifies for the base rebates in Tier 1 for executions of orders in securities priced at or above \$1.00 per share for

Added Displayed Volume across all Tapes by achieving an ADV of at least 0.00% and less than 0.20% of TCW. An Equity Member qualifies for the enhanced rebates in Tier 2 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an ADV of at least 0.20% and less than 0.60% of TCW. An Equity Member qualifies for the enhanced rebates in Tier 3 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an ADV of at least 0.60% and less than 1.00% of TCW. An Equity Member qualifies for the enhanced rebates in Tier 4 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an ADV of at least 1.00% of TCW.

After the volume calculation is performed to determine highest tier achieved by the Equity Member, the applicable rebate is calculated based on two different measurements based on the Equity Member's participation at the NBBO on the Exchange in certain securities (referenced below).

The Exchange provides one column of base rebates (referred to in the NBBO Program table as "Level A") and two columns of enhanced rebates (referred to in the NBBO Program table as "Level B" and "Level C")<sup>11</sup>, depending on the Equity Member's Percent Time at NBBO<sup>12</sup> on MIAX Pearl Equities in a certain amount of specified securities ("Market Quality Securities" or "MQ Securities").<sup>13</sup> The NBBO Setter Plus Table specifies the percentage of time

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<sup>11</sup> For the purpose of determining qualification for the rebates described in Level B and Level C of the Market Quality Tier columns in the NBBO Setter Plus Program, the Exchange will exclude from its calculation: (1) any trading day that the Exchange's system experiences a disruption that lasts for more than 60 minutes during regular trading hours; (2) any day with a scheduled early market close; and (3) the "Russell Reconstitution Day" (typically the last Friday in June). See the Definitions section of the Fee Schedule.

<sup>12</sup> "Percent Time at NBBO" means the aggregate of the percentage of time during regular trading hours where a Member has a displayed order of at least one round lot at the national best bid ("NBB") or national best offer ("NBO"). See the Definitions section of the Fee Schedule.

<sup>13</sup> "Market Quality Securities" or "MQ Securities" shall mean a list of securities designated as such, that are used for the purposes of qualifying for the rebates described in Level B and Level C of the Market Quality

that the Equity Member must be at the NBBO on MIAX Pearl Equities in at least 200 symbols out of the full list of 1,000 MQ Securities (which symbols may vary from time to time based on market conditions). The list of MQ Securities is generally based on the top multi-listed 1,000 symbols by ADV across all U.S. securities exchanges. The list of MQ Securities is updated monthly by the Exchange and published on the Exchange's website.<sup>14</sup>

The base rebates ("Level A") are as follows: (\$0.00240) per share in Tier 1; (\$0.00310) per share in Tier 2; (\$0.00345) per share in Tier 3; and (\$0.00350) per share in Tier 4. Under Level B, the Exchange provides enhanced rebates for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes if the Equity Member's Percent Time at NBBO is at least 25% and less than 50% in at least 200 MQ Securities per trading day during the month. The Level B rebates are as follows: (\$0.00250) per share in Tier 1; (\$0.00315) per share in Tier 2; (\$0.00350) per share in Tier 3; and (\$0.00355) per share in Tier 4. Under Level C, the Exchange provides enhanced rebates for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes if the Equity Member's Percent Time at NBBO is at least 50% in at least 200 MQ Securities per trading day during the month. The Level C rebates are as follows: (\$0.00260) per share in Tier 1; (\$0.00320) per share in Tier 2; (\$0.00355) per share in Tier 3; and (\$0.00360) per share in Tier 4.

The Exchange also provides a volume-based pricing incentive, referred to as the "Step-Up Added Liquidity Rebate" that is separate from the NBBO Program, in which qualifying

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Tier columns in the NBBO Setter Plus Program. The universe of these securities will be determined by the Exchange and published on the Exchange's website. See the Definitions section of the Fee Schedule.

<sup>14</sup> See MIAX Pearl Equities Exchange – Market Quality Securities (MQ Securities) List, effective December 1 through December 29, 2023, available at <https://www.miaxglobal.com/markets/us-equities/pearl-equities/fees> (last visited December 21, 2023).

Equity Members receive an enhanced rebate of (\$0.0031) per share for executions of orders in securities priced at or above \$1.00 per share that add displayed liquidity to the Exchange.<sup>15</sup>

Equity Members qualify for the Step-Up Added Liquidity Rebate by achieving a “Step-Up ADAV as a % of TCV”<sup>16</sup> of at least 0.03% over the baseline month of May 2023. The Step-Up Added Liquidity Rebate is currently set to expire on December 31, 2023.<sup>17</sup>

#### Proposal to Adopt Two New Tiers and Corresponding Rebates for the NBBO Program

The Exchange proposes to amend the NBBO Setter Plus Table in Section 1)c) of the Fee Schedule to adopt two new tiers and corresponding rebates for the NBBO Program. The two new tiers will result in the NBBO Program now offering six different tiers pursuant to which Equity Members are able to achieve higher rebates based on the three different volume calculation methods.

The Exchange proposes that under volume calculation Method 1, an Equity Member will now qualify for the base rebates in Tier 1 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an ADAV of at least 0.00% and less than 0.035% of TCV. An Equity Member will qualify for the enhanced rebates in Tier 2 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an ADAV of at least 0.035% and less than 0.05% of TCV. An Equity Member will qualify for the enhanced rebates in Tier 3 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all

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<sup>15</sup> See Securities Exchange Act Release No. 95614 (August 26, 2022), 87 FR 53813 (September 1, 2022) (SR-PEARL-2022-33). The enhanced rebate provided by the Step-Up Added Liquidity Rebate applies to Liquidity Indicator Codes AA (adds liquidity, displayed order, Tape A), AB (adds liquidity, displayed order, Tape B) and AC (adds liquidity, displayed order, Tape C). See Fee Schedule, Section 1)f), Step-Up Added Liquidity Rebate, and Section 1)b), Liquidity Indicator Codes and Associated Fees.

<sup>16</sup> The term “Step-Up ADAV as a % of TCV” means ADAV as a percent of TCV in the relevant baseline month subtracted from the current month’s ADAV as a percent of TCV. See the Definitions Section of the Fee Schedule.

<sup>17</sup> See Fee Schedule, Section 1)f).

Tapes by achieving an ADAV of at least 0.05% and less than 0.08% of TCV. An Equity Member will qualify for the enhanced rebates in Tier 4 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an ADAV of at least 0.08% and less than 0.25% of TCV. An Equity Member will qualify for the enhanced rebates in Tier 5 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an ADAV of at least 0.25% and less than 0.40% of TCV. Finally, an Equity Member will qualify for the enhanced rebates in Tier 6 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an ADAV of at least 0.40% of TCV.

The Exchange proposes that under volume calculation Method 2, an Equity Member will now qualify for the base rebates in Tier 1 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an NBBO Set Volume of at least 0.00% and less than 0.01% of TCV. An Equity Member will qualify for the enhanced rebates in Tier 2 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an NBBO Set Volume of at least 0.01% and less than 0.015% of TCV. An Equity Member will qualify for the enhanced rebates in Tier 3 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an NBBO Set Volume of at least 0.015% and less than 0.02% of TCV. An Equity Member will qualify for the enhanced rebates in Tier 4 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an NBBO Set Volume of at least 0.02% and less than 0.03% of TCV. An Equity Member will qualify for the enhanced rebates in Tier 5 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an NBBO Set Volume of at least 0.03% and less than

0.08% of TCV. Finally, an Equity Member will qualify for the enhanced rebates in Tier 6 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an NBBO Set Volume of at least 0.08% of TCV.

The Exchange proposes that under volume calculation Method 3, an Equity Member will now qualify for the base rebates in Tier 1 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an ADV of at least 0.00% and less than 0.15% of TCV. An Equity Member will qualify for the enhanced rebates in Tier 2 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an ADV of at least 0.15% and less than 0.18% of TCV. An Equity Member will qualify for the enhanced rebates in Tier 3 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an ADV of at least 0.18% and less than 0.20% of TCV. An Equity Member will qualify for the enhanced rebates in Tier 4 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an ADV of at least 0.20% and less than 0.60% of TCV. An Equity Member will qualify for the enhanced rebates in Tier 5 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an ADV of at least 0.60% and less than 1.00% of TCV. Finally, an Equity Member will qualify for the enhanced rebates in Tier 6 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an ADV of at least 1.00% of TCV.

With the addition of two tiers to the NBBO Program, the Exchange proposes to amend the corresponding rebates for each tier, described below. The Exchange proposes that the base rebates (“Level A”) will now be as follows: (\$0.00240) per share in Tier 1; (\$0.00290) per share

in Tier 2; (\$0.00300) per share in Tier 3; (\$0.00310) per share in Tier 4; (\$0.00345) per share in Tier 5; and (\$0.00350) per share in Tier 6.

Under Level B, the Exchange will continue to provide enhanced rebates for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes if the Equity Member's Percent Time at NBBO is at least 25% and less than 50% in at least 200 MQ Securities per trading day during the month. The Exchange proposes that the Level B rebates will be as follows: (\$0.00250) per share in Tier 1; (\$0.00295) per share in Tier 2; (\$0.00305) per share in Tier 3; (\$0.00315) per share in Tier 4; (\$0.00350) per share in Tier 5; and (\$0.00355) per share in Tier 6.

Under Level C, the Exchange will continue to provide enhanced rebates for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes if the Equity Member's Percent Time at NBBO is at least 50% in at least 200 MQ Securities per trading day during the month. The Exchange proposes that the Level C rebates will be as follows: (\$0.00260) per share in Tier 1; (\$0.00300) per share in Tier 2; (\$0.00310) per share in Tier 3; (\$0.00320) per share in Tier 4; (\$0.00355) per share in Tier 5; and (\$0.00360) per share in Tier 6.

The purpose of adding two new tiers and corresponding rebates to the NBBO Program is for business and competitive reasons in light of recent volume growth on the Exchange. The Exchange notes that with the addition of two interim tiers to the NBBO Program, the base rebates, enhanced rebates and volume requirements of the NBBO Program remain competitive with, or better than, the rebates and volume requirements provided by other exchanges for

executions of orders in securities priced at or above \$1.00 per share that add displayed liquidity to those exchanges.<sup>18</sup>

#### Proposal to Remove the Step-Up Added Liquidity Rebate

The Exchange proposes to remove the Step-Up Added Liquidity Rebate table and associated rebate in Section 1)f) of the Fee Schedule. The Step-Up Added Liquidity Rebate is currently set to expire on December 31, 2023, as set forth in the Fee Schedule. The Exchange has determined to not extend or modify the Step-Up Added Liquidity Rebate. Accordingly, the Exchange proposes to remove the Step-Up Added Liquidity Rebate table and associated rebate from the Fee Schedule. The purpose of this change is to provide clarity within the Fee Schedule that the expiring Step-Up Added Liquidity Rebate will no longer be available after December 31, 2023. The Exchange believes that the benefits of the NBBO Program – three volume calculation methods, higher base (Level A) rebates, and two market quality levels based on participation at the NBBO in order to obtain enhanced rebates – provide more opportunities for Equity Members to achieve higher rebates and will encourage the submission of increased order flow. The Exchange believes this will, in turn, benefit all Equity Members by providing greater execution opportunities on the Exchange and contribute to a deeper, more liquid market, to the benefit of all investors and market participants.

#### Corresponding Changes to the Fee Schedule

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<sup>18</sup> See Cboe BZX Equities Fee Schedule, NBBO Setter section and Add/Remove Volume Tiers section, available at [https://www.cboe.com/us/equities/membership/fee\\_schedule/bzx/](https://www.cboe.com/us/equities/membership/fee_schedule/bzx/) (providing a base rebate of (\$0.0016) per share and a top displayed liquidity tier rebate of (\$0.0031) per share for executions of added displayed volume in securities priced at or above \$1.00 per share, so long as the member meets all three volume requirements for the enhanced rebate); see also NYSE Arca Equities Fee Schedule, available at [https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE\\_Arca\\_Marketplace\\_Fees.pdf](https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf) (providing standard rebates of \$0.0020 per share (Tapes A and C) and \$0.0016 per share (Tape B) for adding displayed liquidity in securities priced at or above \$1.00 per share).



As mentioned above, with the removal of Step-Up Added Liquidity Rebate table and associated rebate, the Exchange proposes to amend the Definitions section of the Fee Schedule to delete the defined term “Step-Up ADAV as a % of TCV.” The Exchange also proposes to amend the NBBO Setter Plus Table in Section 1)c) of the Fee Schedule to delete footnote #4, which refers to the Step-Up Added Liquidity Rebate. The purpose of these changes is to provide consistency and clarity in the Fee Schedule in light of the proposed removal of the Step-Up Added Liquidity Rebate table and associated rebate.

### Implementation

The proposed changes are effective beginning January 1, 2024.

#### 2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act<sup>19</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>20</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Equity Members and issuers and other persons using its facilities.

Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>21</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers or dealers.

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

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<sup>19</sup> 15 U.S.C. 78f(b).

<sup>20</sup> 15 U.S.C. 78f(b)(4).

<sup>21</sup> 15 U.S.C. 78f(b)(5).

systems and other off-exchange venues, to which market participants may direct their order flow. Based on publicly available information, no single registered equities exchange had more than approximately 15-16% of the total market share of executed volume of equities trading for the month of November 2023.<sup>22</sup> Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow, and the Exchange represented approximately 2.08% of the overall market share for the month of November 2023. The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and also recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>23</sup>

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

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<sup>22</sup> See the “Market Share” section of the Exchange’s website, available at <https://www.miaxglobal.com/> (last visited December 21, 2023).

<sup>23</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37499 (June 29, 2005).

enhance liquidity and market quality in both a broad manner and in a targeted manner with respect to the MQ Securities and the modified NBBO Program.

Proposal to Adopt Two New Tiers and Corresponding Rebates for the NBBO Program

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

The Exchange believes that its proposal to add two new tiers and corresponding rebates to the NBBO Program is reasonable and not unfairly discriminatory in light of recent volume growth on the Exchange. The Exchange notes that with the addition of two interim tiers to the NBBO Program, the base rebates, enhanced rebates and volume requirements of the NBBO Program remain competitive with, or better than, the rebates and volume requirements provided

by other exchanges for executions of orders in securities priced at or above \$1.00 per share that add displayed liquidity to those exchanges.<sup>24</sup>

Proposal to Remove the Step-Up Added Liquidity Rebate Table and Associated Rebate

The Exchange believes its proposal to remove the Step-Up Added Liquidity Rebate table and associated rebate in Section 1)f) of the Fee Schedule is reasonable, equitably allocated and not unfairly discriminatory. The Exchange adopted the Step-Up Added Liquidity Rebate for the purpose of encouraging Equity Members to increase their orders that add liquidity on the Exchange, thereby improving its market quality with respect to such securities and contributing to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Equity Members.

Further, the Step-Up Added Liquidity Rebate is currently set to expire on December 31, 2023, as set forth in the Fee Schedule. The Exchange has determined to not extend or modify the Step-Up Added Liquidity Rebate. Accordingly, the Exchange believes it is reasonable and not unfairly discriminatory to remove the expiring rebate from the Fee Schedule in order to provide clarity to Equity Members that this rebate is no longer available.

Proposal to Make Corresponding Changes to the Fee Schedule

The Exchange believes its proposal to amend the Definitions section of the Fee Schedule to delete the defined term “Step-Up ADAV as a % of TCV” and footnote #4 from the NBBO Setter Plus Table is reasonable because the Exchange will no longer offer the Step-Up Added Liquidity Rebate after December 31, 2023. The Exchange believes it is reasonable to provide clarity and consistency within the Fee Schedule by removing references to the Step-Up Added Liquidity Rebate, which will no longer be available.

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<sup>24</sup> See supra note 18.

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 that is not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

The Exchange believes the proposed rule change does not impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed new tiers to the NBBO Program will be eligible to all Equity Members equally in that all Equity Members have the opportunity to participate and therefore qualify for the proposed enhanced rebates. Furthermore, the Exchange believes that the NBBO Program, as modified by this proposal, will continue to incentivize Equity Members to submit additional aggressively priced displayed liquidity to the Exchange, and to increase their order flow on the Exchange generally, thereby contributing to a deeper and more liquid market and promoting price discovery and market quality on the Exchange to the benefit of all market participants and enhancing the attractiveness of the Exchange as a trading venue. The Exchange believes that this, in turn, would continue to encourage market participants to direct additional order flow to the Exchange. Greater liquidity benefits all Equity Members by providing more trading opportunities and encourages Equity Members to send additional orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants.

The proposal to remove the Step-Up Added Liquidity Rebate table and associated rebate from the Fee Schedule does not impose a burden on intra-market competition that is not in furtherance of the Act in that the proposed change applies to all Equity Members equally and Equity Members may still compete for the enhanced rebates provided in the NBBO Program under volume calculation Method 1, which is similar to the expiring volume calculation provided for in the Step-Up Added Liquidity Rebate table.

The proposed changes to the Definitions section and NBBO Setter Plus table to remove references to the Step-Up Added Liquidity Rebate are similarly non-burdensome as they are intended to provide consistency and clarity within the Fee Schedule.

#### Intermarket Competition

The Exchange believes its proposal will benefit competition, and the Exchange notes that it operates in a highly competitive market. Equity Members have numerous alternative venues they may participate on and direct their order flow to, including fifteen other equities exchanges and numerous alternative trading systems and other off-exchange venues. As noted above, no single registered equities exchange currently had more than 15-16% of the total market share of executed volume of equities trading for the month of November 2023.<sup>25</sup> Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. Moreover, the Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow in response to new or different pricing structures being introduced to the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates generally, including with respect to executions of Added Displayed Volume, and market participants can readily choose to send their orders to other exchanges and off-exchange venues if they deem fee levels at those other venues to be more favorable.

Additionally, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current

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<sup>25</sup> See supra note 22.

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.”<sup>26</sup>

The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. circuit stated: “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possess a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’ . . .”<sup>27</sup> Accordingly, the Exchange does not believe its proposed pricing changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Written comments were neither solicited nor received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>28</sup> and Rule 19b-4(f)(2)<sup>29</sup> 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

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<sup>26</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

<sup>27</sup> *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSE-2006-21)).

<sup>28</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>29</sup> 17 CFR 240.19b-4(f)(2).

Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail [to rule-comments@sec.gov](mailto:to-rule-comments@sec.gov). Please include File Number SR-PEARL-2023-73 on the subject line.

Paper comments:

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

All submissions should refer to file number SR-PEARL-2023-73. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3



p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-PEARL-2023-73 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>30</sup>

Sherry R. Haywood,  
Assistant Secretary

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<sup>30</sup> 17 CFR 200.30-3(a)(12).

**Exhibit 5**

New text is underlined;

New text that contains “≥” is double underlined;

Deleted text is in [brackets]

### MIAX Pearl Equities Exchange Fee Schedule

\* \* \* \* \*

## Definitions

\* \* \* \* \*

[“Step-Up ADAV as a % of TCV” means ADAV as a percent of TCV in the relevant baseline month subtracted from the current month’s ADAV as a percent of TCV.]

\* \* \* \* \*

## 1) Transaction Rebates/Fees

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### c) NBBO Setter Plus Program

Equity Members will receive the rebates described in the NBBO Setter Plus table for executions of orders in securities priced at or above \$1.00 per share that add displayed liquidity to the Exchange across all Tapes, depending on (i) the tier achieved using three volume-based calculation methods, and (ii) participation at the NBBO on the Exchange in MQ Securities. The rebates provided for by the below table are applicable to the following Liquidity Indicator Codes: AA, AB and AC.

NBBO Setter Plus Table						
	Methods To Determine Tier Based On Volume			Market Quality Tiers and Applicable Rebate Levels		
	Method 1: ADAV as a % of TCV	Method 2: NBBO Set Volume as a % of TCV	Method 3: Total ADV as a % of TCV	Level A: Base Rebates	Level B: Equity Member Percent Time at the NBBO <u>≥</u> 25% and < 50%	Level C: Equity Member Percent Time at the NBBO <u>≥</u> 50%
Tier 1	<u>≥ 0.00%</u> and < [0.08] <u>0.035%</u>	<u>≥ 0.00%</u> and < [0.02] <u>0.01%</u>	<u>≥ 0.00%</u> and < [0.20] <u>0.15%</u>	(\$0.00240)	(\$0.00250)	(\$0.00260)

Tier 2	$\geq 0.035\%$ and $< 0.05\%$	$\geq 0.01\%$ and $< 0.015\%$	$\geq 0.15\%$ and $< 0.18\%$	(\$0.00290)	(\$0.00295)	(\$0.00300)
Tier 3	$\geq 0.05\%$ and $< 0.08\%$	$\geq 0.015\%$ and $< 0.02\%$	$\geq 0.18\%$ and $< 0.20\%$	(\$0.00300)	(\$0.00305)	(\$0.00310)
Tier [2]4	$\geq 0.08\%$ and $< 0.25\%$	$\geq 0.02\%$ and $< 0.03\%$	$\geq 0.20\%$ and $< 0.60\%$	(\$0.00310)	(\$0.00315)	(\$0.00320)
Tier [3]5	$\geq 0.25\%$ and $< 0.40\%$	$\geq 0.03\%$ and $< 0.08\%$	$\geq 0.60\%$ and $< 1.00\%$	(\$0.00345)	(\$0.00350)	(\$0.00355)
Tier [4]6	$\geq 0.40\%$	$\geq 0.08\%$	$\geq 1.00\%$	(\$0.00350)	(\$0.00355)	(\$0.00360)

**NBBO Setter Additive Rebate (additive rebate for executions of orders in securities priced at or above \$1.00 per share that set the NBB or NBO on MIAX Pearl Equities with a minimum size of a round lot): (\$0.0003)**

**Notes to NBBO Setter Plus Table**

1. MIAX Pearl Equities allows an Equity Member to qualify into a Tier using one of three methods, all of which are based on volume as a percentage of TCV. Qualifying into a Tier requires the Equity Member to satisfy only one of the three methods. The Equity Member is not required to fulfill multiple methods to qualify for that Tier.
  2. After qualifying into a particular Tier based on volume, the Equity Member has the ability to qualify for an enhanced rebate level based on their performance in the NBBO Setter Plus Program, which requires the Equity Member to meet specific 'Percent Time at NBBO' requirements in at least 200 securities in the entire list of MQ Securities, as noted in the table above. The list of MQ Securities is determined by MIAX Pearl Equities and is listed on the MIAX Pearl Equities website. The list of MQ Securities will be updated each time a security is added or removed from the list.
  3. Retail Orders are not eligible for the NBBO Setter Additive Rebate as it applies only to Liquidity Indicator Codes AA, AB and AC.
- [4. The Step-Up Added Liquidity Rebate will continue to be available, and Equity Members will receive the better of the Step-Up Added Liquidity Rebate or the rebate achieved pursuant to the NBBO Setter Plus Program.]

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**[f) Step-Up Added Liquidity Rebate**

Tier	Required Criteria	Securities Priced at or Above \$1.00
1	Step-Up ADAV as a % of TCV from May 2023 $\geq 0.03\%$ of the TCV. This criteria will expire no later than December 31, 2023.	(\$0.0031)

The rebate provided for by the above table is applicable to the following fee codes: AA, AB, and AC.]