SR–CboeBZX–2024–029 and should be submitted on or before May 14, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

Vanessa A. Countryman,

Secretary.

[FR Doc. 2024–08572 Filed 4–22–24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99982; File No. SR–PEARL–2024–18]

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

April 17, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 4, 2024, MIAX PEARL, LLC (''MIAX Pearl'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the 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 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: (1) modify certain rebates and volume thresholds for the NBBO Setter Plus Program (referred to in this filing as the ''NBBO Program''); [3] (2) modify the NBBO Setter Additive Rebate under the NBBO Program; (3) establish a new NBBO First Joiner Additive Rebate under the NBBO Program; and (4) establish a new Step-Up Rebate. The Exchange initially filed proposal on March 28, 2024 (SR–PEARL–2024–16). On April 4, 2024, the Exchange withdrew SR–PEARL–2024–16 and refiled this proposal.

Background of the NBBO Program

In general, the NBBO Program provides enhanced rebates for Equity Members [4] 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 [5] applied to orders that set the NBB or NBO [6] upon entry.[7] The NBBO Program was implemented beginning September 1, 2023 and subsequently amended when the Exchange adopted two additional tiers of rebates, effective January 1, 2024.[8] The NBBO Program was further amended when the Exchange adopted an alternative method for Equity Members to achieve the enhanced rebate for Tier 5, Level C, effective March 1, 2024 (described below).[9]

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

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,[10] NBBO Set Volume, or ADV, each as a percent of industry TCV [11] 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 0.035% 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 0.035% and less than 0.05% of TCV. An Equity Member qualifies for the enhanced

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[37] 17 CFR 200.30–3(a)(12), (59).

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

[2] 17 CFR 240.19b–4.

[3] *See, generally,* Fee Schedule, Section 1)c).

[4] The term ''Equity Member'' is a Member authorized by the Exchange to transact business on MIAX Pearl Equities. *See* Exchange Rule 1901.

[5] *See* Fee Schedule, Section 1)c), NBBO Setter Additive Rebate.

[6] 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.

[7] *See supra* note 3.

[8] *See* Securities Exchange Act Release Nos. 98472 (September 21, 2023), 88 FR 66533 (September 27, 2023) (SR–PEARL–2023–45) *and* 99318 (January 11, 2024), 89 FR 3488 (January 18, 2024) (SR–PEARL–2023–73).

[9] *See* Securities Exchange Act Release No. 99695 (March 8, 2024), 89 FR 18694 (March, 14, 2024) (SR–PEARL–2024–11).

[10] ''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.

[11] ''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 id.*

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 0.05% 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 ADAV of at least 0.08% and less than 0.25% of TCV. An Equity Member qualifies 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 qualifies 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.

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 0.01% 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 0.01% and less than 0.015% 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 0.015% and less than 0.02% 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 0.02% and less than 0.03% of TCV. An Equity Member qualifies 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 qualifies 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.

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 0.15% 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 0.15% and less than 0.18% 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 0.18% and less than 0.20% 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 0.20% and less than 0.60% of TCV. An Equity Member qualifies 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 qualifies 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.

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

The Exchange provides one column of base rebates (referred to in the NBBO Setter Plus Table as ''Level A'') and two columns of enhanced rebates (referred to in the NBBO Setter Plus Table as ''Level B'' and ''Level C''),[12] depending on the Equity Member's Percent Time at NBBO [13] on MIAX Pearl Equities in a certain amount of specified securities (''Market Quality Securities'' or ''MQ Securities'').[14] The NBBO Setter Plus Table specifies the percentage of time that the Equity Member must be at the NBB or NBO on MIAX Pearl Equities in at least 200 symbols out of the full list of 1,000 MQ Securities (which symbols may vary from time to time based on market conditions). The list of MQ Securities is generally based on the top multi-listed 1,000 symbols by ADV across all U.S. securities exchanges. The list of MQ Securities is updated monthly by the Exchange and published on the Exchange's website.[15]

The base rebates (''Level A'') are as follows: ($0.00240) [16] 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 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; ($0.00295) 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 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:

[12] 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.

[13] ''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 id.*

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

[15] *See e.g,* MIAX Pearl Equities Exchange—Market Quality Securities (MQ Securities) List, effective April 1 through April 30, 2024, *available at https://www.miaxglobal.com/markets/us-equities/pearl-equities/fees* (last visited April 4, 2024).

[16] Rebates are indicated by parentheses. *See* the General Notes section of the Fee Schedule.

($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. As referenced above, Equity Members may also qualify for the Tier 5, Level C enhanced rebate via an alternative method by satisfying the following three requirements in the relevant month: (1) Midpoint ADAV[17] of at least 2,500,000 shares; (2) Displayed ADAV of at least 10,000,000 shares; and (3) Percent Time at the NBB or NBO of at least 50% in 200 or more symbols from the list of MQ Securities.[18]

The Exchange also offers an 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.[19]

Proposal To Amend Certain Volume Thresholds and Rebates for the NBBO Program

The Exchange proposes to amend the NBBO Setter Plus Table in Section 1)c) of the Fee Schedule to: (1) amend the volume threshold requirements for Tiers 4 and 5 of volume calculation Method 1 of the NBBO Program; and (2) decrease the rebates applicable to Tier 1, Tier 5 and Tier 6 for all rebate Levels of the NBBO Program.

First, the Exchange proposes to reduce the minimum volume threshold by 0.05% for Tier 5 of volume calculation Method 1 and make the corresponding change to reduce the maximum volume threshold by 0.05% for Tier 4 of volume calculation Method 1 of the NBBO Program. Accordingly, with the proposed changes to volume calculation Method 1, 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 0.20% of TCV. Further, 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 0.20% and less than 0.40% of TCV. The Exchange does not propose to change any other volume calculation thresholds for the NBBO Program.

Next, the Exchange proposes to slightly decrease the rebates applicable to Tier 1, Tier 5 and Tier 6 for all rebate Levels of the NBBO Program. With the proposed changes, the Level A rebates will be as follows for Tiers 1, 5 and 6: ($0.00220) per share in Tier 1; ($0.00335) per share in Tier 5; and ($0.00340) per share in Tier 6. The Exchange does not propose to amend the rebate amounts applicable to Level A, Tiers 2, 3 and 4. With the proposed changes, the Level B rebates will be as follows for Tiers 1, 5 and 6: ($0.00225) per share in Tier 1; ($0.00340) per share in Tier 5; and ($0.00345) per share in Tier 6. The Exchange does not propose to amend the rebate amounts applicable to Level B, Tiers 2, 3 and 4. With the proposed changes, the Level C rebates will be as follows for Tiers 1, 5 and 6: ($0.00230) per share in Tier 1; ($0.00345) per share in Tier 5; and ($0.00350) per share in Tier 6. The Exchange does not propose to amend the rebate amounts applicable to Level C, Tiers 2, 3 and 4.

The purpose of these changes is for business and competitive reasons in light of recent volume growth on the Exchange. The Exchange notes that, even with the proposed changes, 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.[20]

Corresponding Changes to the Standard Rates Table and Liquidity Indicator Codes and Associated Fees Table

In connection with the proposed changes to the Level A, Tier 1 (Base) rebate of the NBBO Program described above, the Exchange proposes to amend the Standard Rates table in Section 1)a) of the Fee Schedule for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume in all Tapes and the Liquidity Indicator Codes and Associated Fees table in Section 1)b) of the Fee Schedule. In particular, the Exchange proposes to amend the Standard Rates table in Section 1)a) of the Fee Schedule to show the reduced standard rebate from ($0.0024) to now be ($0.0022) per share for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume in all Tapes. Further, the Exchange proposes to amend the Liquidity Indicator Codes and Associated Fees table in Section 1)b) of the Fee Schedule to amend Liquidity Indicator Codes ''AA,'' ''AB,'' and ''AC'' to show the reduced standard from ($0.0024) to now be ($0.0022) per share for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume in all Tapes. The purpose of these corresponding changes is to ensure the Fee Schedule is accurate and clear in light of the change to the base rebate amount in Level A, Tier 1 of the NBBO Setter Plus Table. The Exchange notes that despite the modest base rebate reduction proposed herein for executions of securities priced at or above $1.00 per share for Added Displayed Volume in all Tapes, the proposed standard rebate—($0.0022) per share—remains higher than, and competitive with, the standard rebates provided by other exchanges for executions of orders in securities priced at or above $1.00 per share that add displayed liquidity.[21]

Proposal To Amend the NBBO Setter Additive Rebate

The Exchange proposes to amend the NBBO Setter Additive Rebate in the

[17] Midpoint ADAV means the ADAV for the current month consisting of Midpoint Peg Orders in securities priced at or above $1.00 per share that execute at the midpoint of the Protected NBBO and add liquidity to the Exchange. A Midpoint Peg Order is a non-displayed Limit Order that is assigned a working price pegged to the midpoint of the PBBO. A Midpoint Peg Order receives a new timestamp each time its working price changes in response to changes in the midpoint of the PBBO. *See* Exchange Rule 2614(a)(3). With respect to the trading of equity securities, the term ''the term ''Protected NBB'' or ''PBB'' shall mean the national best bid that is a Protected Quotation, the term ''Protected NBO'' or ''PBO'' shall mean the national best offer that is a Protected Quotation, and the term ''Protected NBBO'' or ''PBBO'' shall mean the national best bid and offer that is a Protected Quotation. *See* Exchange Rule 1901.

[18] *See* Fee Schedule, Section 1)c), Notes to NBBO Setter Plus Table, note 4.

[19] *See* Fee Schedule, Section 1)c).

[20] *See* Cboe BZX Equities Fee Schedule, Add/Remove Volume Tiers section, *available at https://www.cboe.com/us/equities/membership/fee_schedule/bzx/* (providing an enhanced rebate in Tier 4 of ($0.0028) 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 requirements, including minimum NBBO Time and NBBO Size requirements from a list of specified securities and minimum requirement of ADAV as a percentage of TCV); *see also* NYSE Arca Equities Fee Schedule, *available at 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).

[21] *See e.g.,* MEMX LLC (''MEMX'') Equities Fee Schedule, Transaction Fees section, *available at https://info.memxtrading.com/equities-trading-resources/us-equities-fee-schedule/* (providing a standard rebate $0.0015 per share for added displayed volume in securities priced at or above $1.00 per share); *see also* Cboe EDGX Exchange, Inc. (''Cboe EDGX'') Equities Fee Schedule, Standard Rates section, *available at https://www.cboe.com/us/equities/membership/fee_schedule/edgx/* (providing a standard rebate of $0.0016 per share for added displayed volume in securities priced at or above $1.00 per share).

NBBO Setter Plus Table in Section 1)c) of the Fee Schedule. Currently, the Exchange provides an NBBO Setter Additive Rebate of ($0.0003) per share, which applies only to executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume (other than Retail Orders [22]) that set the NBB or NBO on MIAX Pearl Equities with a minimum size of a round lot. The Exchange now proposes to increase the NBBO Setter Additive Rebate from ($0.0003) to ($0.0004) per share for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume (other than Retail Orders) [23] that set the NBB or NBO on MIAX Pearl Equities with a minimum size of a round lot. The purpose of the proposed increase to the NBBO Setter Additive Rebate is to continue to provide an additional incentive for Equity Members to contribute Added Displayed Volume in securities priced at or above $1.00 per share that sets the NBB or NBO on MIAX Pearl Equities, which should 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.

Proposal To Establish NBBO First Joiner Additive Rebate

The Exchange proposes to amend the NBBO Setter Plus Table in Section 1)c) of the Fee Schedule to establish the new ''NBBO First Joiner Additive Rebate.'' In particular, the Exchange proposes that the NBBO First Joiner Additive Rebate will be an additive rebate of ($0.0002) per share for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume (other than Retail Orders) [24] for the *first* Equity Member that brings MIAX Pearl Equities to the established NBB or NBO with a minimum size of a round lot. The Exchange notes the NBBO First Joiner Additive Rebate will not apply to executions of orders in securities priced at or above $1.00 per share that join the NBB or NBO on MIAX Pearl Equities with a minimum size of a round lot *after* the first Equity Member's order that brings MIAX Pearl Equities to the established NBB or NBO with a minimum size of a round lot.

The purpose of adopting the NBBO First Joiner Additive Rebate is to further attract aggressively priced displayed liquidity to the Exchange. The Exchange believes that such change will encourage the submission of orders that join the established NBB or NBO on the Exchange that matches the NBB or NBO first established on an away market, in order to receive the additive rebate on such executions and the Exchange believes that the resulting increased submission of such aggressively priced displayed liquidity would enhance market quality by increasing execution opportunities, tightening spreads, encouraging depth, and promoting price discovery on the Exchange. The Exchange notes that NBBO First Joiner Additive Rebate is comparable to other volume-based incentives and discounts, which have been widely adopted by exchanges, and that the Exchange's proposal to provide an additive rebate for an Equity Member's transaction that brings MIAX Pearl Equities to the established NBB or NBO with a minimum size of a round lot is similar in construct to pricing incentives that have been adopted by other exchanges.[25]

Proposal To Establish the Step-Up Rebate

The Exchange proposes to amend the NBBO Setter Plus Table in Section 1)c) of the Fee Schedule to establish a new ''Step-Up Rebate,'' which will be labelled as Note 4 in the Notes section of the NBBO Setter Plus Table.[26] In particular, the Exchange proposes that the Step-Up Rebate will provide an additional rebate of ($0.0001) per share for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume (other than Retail Orders) [27] for Equity Members that satisfy the following requirements in the relevant month: (1) minimum Displayed ADAV of 0.35% of TCV; and (2) increase in the percentage of Displayed ADAV of at least 0.05% of TCV as compared to the Equity Member's February 2024 [28] Displayed ADAV percentage.[29] The Exchange proposes that the Step-Up Rebate will expire no later than August 31, 2024 (referred to herein as the ''sunset period''),[30] which will be stated in the Fee Schedule. The Exchange will issue an alert to market participants should the Exchange determine that the Step-Up Rebate will expire earlier than August 31, 2024 or if the Exchange determines to amend the criteria or rate applicable to the Step-Up Rebate prior to the end of the sunset period. The Exchange notes other competing equities exchanges offer an enhanced or additive rebate utilizing a volume comparison of the current month to a prior baseline month with a similar ''sunset period.'' [31]

The purpose of this proposed change is to provide an incentive for Equity Members to strive for higher ADAV on the Exchange (above their ADAV in the baseline month of February 2024) to receive the additive Step-Up Rebate for

[22] A ''Retail Order'' is an agency or riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person and is submitted to the Exchange by a Retail Member Organization, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. *See* Exchange Rule 2626(a)(2).

[23] The Exchange excludes Retail Orders from participating in the NBBO Setter Additive Rebate because executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume in Retail Orders already receive an enhanced rebate of ($0.0037) per share. *See* Fee Schedule, Section 1)b), Liquidity Indicator Code ''AR''.

[24] The Exchange proposes to exclude Retail Orders from participating in the NBBO First Joiner Additive Rebate because executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume in Retail Orders already receive an enhanced rebate of ($0.0037) per share. *See* Fee Schedule, Section 1)b), Liquidity Indicator Code ''AR''.

[25] *See, e.g.,* Securities Exchange Act Release No. 96471 (December 9, 2022), 87 FR 76648 (December 15, 2022) (SR–MEMX–2022–33) (establishing NBBO Setter/Joiner Tiers with an additive rebate for member's orders that establish the NBBO or establish a new best bid or offer on MEMX that matched the NBBO first established on an away market).

[26] In connection with this change and numbering the proposed Step-Up Rebate as Note 4, the Exchange proposes to renumber Notes 3 and 4 as currently provided for in the Notes section of the NBBO Setter Plus Table, as described further below in this filing.

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

[28] The Exchange will use a baseline ADAV of 0.00% of TCV for firms that become Equity Members of the Exchange after February 2024 for the purpose of the Step-Up Rebate calculation.

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

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

[31] *See* MEMX Equities Fee Schedule, Liquidity Provision Tiers, Tier 2, *available at https://info.memxtrading.com/equities-trading-resources/us-equities-fee-schedule/* (providing enhanced rebate of ($0.0032) per share if the equity member meets a minimum displayed ADAV requirement in the current month compared to its displayed ADAV of the TCV from September 2023 with a sunset period of March 31, 2024); *see also* Cboe BZX Equities Fee Schedule, Step-Up Tiers section, *available at https://www.cboe.com/us/equities/membership/fee_schedule/bzx/* (providing enhanced rebate of ($0.0032) per share if the equity member meets certain added displayed volume requirements in Tiers 2 or 3 in the current month compared its added displayed volume from May 2019 or January 2022).

qualifying executions of Added Displayed Volume in securities priced at or above $1.00 per share in all Tapes. The Exchange believes that the proposed Step-Up Rebate will encourage the submission of additional Added Displayed Volume to the Exchange, thereby promoting price discovery and contributing to a deeper and more liquid market, which benefits all market participants and enhances the attractiveness of the Exchange as a trading venue. The purpose of including the proposed sunset period in the Fee Schedule is to provide clarity to Equity Members that, unless the Exchange determines to amend or otherwise modify the Step-Up Rebate, the Step-Up Rebate will expire at the end of the sunset period.

Proposed Changes to Notes Section of NBBO Setter Plus Table

The Exchange proposes to make several changes to the notes section of the NBBO Setter Plus Table in Section 1)c) of the Fee Schedule in light of the proposed changes described above. Note 3 currently provides that ''Retail Orders are not eligible for the NBBO Setter Additive Rebate as it applies only to Liquidity Indicator Codes AA, AB and AC.'' The Exchange proposes to move Note 3 to the end of the notes section, renumber it as new ''Note 5,'' and add text that in addition to the NBBO Setter Additive Rebate, Retail Orders will also not be eligible for the proposed NBBO First Joiner Additive Rebate and the Step-Up Rebate. Accordingly, new Note 5 will provide as follows: ''Retail Orders are not eligible for the NBBO Setter Additive Rebate, the NBBO First Joiner Additive Rebate, or the Step-Up Rebate as these rebates only apply to Liquidity Indicator Codes AA, AB and AC.''

Next, in connection with the proposed change to establish the Step-Up Rebate as Note 4 (described above), the Exchange proposes to renumber current Note 4 to now be numbered as Note 3. The Exchange does not propose to amend any of the text of current Note 4 (proposed renumbered Note 3). The purpose of all of these changes is to provide clarity within the Fee Schedule in connection with all of the changes proposed herein.

Implementation

The proposed changes are immediately effective.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [32] in general, and furthers the objectives of Section 6(b)(4) of the Act [33] 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) [34] 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 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 February 2024.[35] 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 1.73% of the overall market share for the month of February 2024. 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.'' [36]

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 enhance liquidity and market quality in both a broad manner and in a targeted manner with respect to the NBBO Program, in particular, and Added Displayed Volume in securities priced at or above $1.00 per share, in general.

Proposal To Amend Certain Volume Thresholds and Rebates for the NBBO Program

The Exchange believes its proposal to reduce the volume threshold requirement for Tier 5 (and adjacently Tier 4) of volume calculation Method 1 and decrease the rebates applicable to Tier 1, Tier 5 and Tier 6 for all rebate Levels of the NBBO Program 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 NBB or NBO, and the introduction of higher volumes of orders into the price and volume discovery process. The Exchange believes the proposal is equitable and not unfairly discriminatory because it is designed to incentivize the entry of aggressively priced displayed liquidity that will create tighter spreads, thereby promoting price discovery and market quality on the Exchange to the benefit of all Equity Members and public investors.

In addition, the Exchange believes its proposal to reduce the volume threshold requirement for Tier 5 (and adjacently Tier 4) of volume calculation Method 1 and decrease the rebates applicable to Tier 1, Tier 5 and Tier 6 for all rebate Levels of the NBBO Program is reasonable because, even with the proposed changes, the base rebates,

[32] 15 U.S.C. 78f(b).

[33] 15 U.S.C. 78f(b)(4).

[34] 15 U.S.C. 78f(b)(5).

[35] *See* the ''Market Share'' section of the Exchange's website, *available at https://www.miaxglobal.com/* (last visited March 26, 2024).

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

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.[37]

Corresponding Changes to the Standard Rates Table and Liquidity Indicator Codes and Associated Fees Table

The Exchange believes its proposal to amend the Standard Rates table and Liquidity Indicator Codes and Associated Fees table to show the reduced standard rebate of ($0.0022) per share for Added Displayed Volume in securities priced at or above $1.00 per share in all Tapes is reasonable because these corresponding changes are to ensure the Fee Schedule is accurate and clear in light of the change to the base rebate amount in Level A, Tier 1 of the NBBO Setter Plus Table. The Exchange believes that even with the proposed reduced standard rebate for Added Displayed Volume in securities priced at or above $1.00 per share in all Tapes, the proposal is reasonable, equitably allocated and not unfairly discriminatory because the proposed standard rebate—($0.0022) per share—remains higher than, and competitive with, the standard rebates provided by other exchanges for executions of orders in securities priced at or above $1.00 per share that add displayed liquidity.[38]

Proposal To Amend the NBBO Setter Additive Rebate

The Exchange believes its proposal to increase the NBBO Setter Additive Rebate to ($0.0004) per share for Added Displayed Volume (other than Retail Orders) 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 is reasonable, equitably allocated and not unfairly discriminatory because the Exchange believes it will continue to provide an additional incentive for Equity Members to contribute Added Displayed Volume in securities priced at or above $1.00 per share that sets the NBB or NBO on MIAX Pearl Equities. In turn, this should 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. Further, the NBBO Setter Additive Rebate is available to all Equity Members of the Exchange that transact in securities priced at or above $1.00 per share in all Tapes. The Exchange believes it is reasonable and not unfairly discriminatory to continue to exclude Retail Orders from participating in the NBBO Setter Additive Rebate because executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume in Retail Orders already receive an enhanced rebate of ($0.0037) per share.[39]

Proposal To Establish the NBBO First Joiner Additive Rebate

The Exchange believes its proposal to establish the NBBO First Joiner Additive Rebate is reasonable because it should attract aggressively priced displayed liquidity to the Exchange, which will encourage the submission of orders that join the established NBB or NBO on the Exchange. This should result in increased orders of aggressively priced displayed liquidity, which would enhance the Exchange's market quality by increasing execution opportunities, tightening spreads, and promoting price discovery on the Exchange to the benefit of all market participants. The Exchange believes its proposal to establish the NBBO First Joiner Additive Rebate is equitably allocated and not unfairly discriminatory because it will be available to all Equity Members and is comparable to other volume-based incentives and discounts, which have been widely adopted by exchanges.[40] The Exchange believes it is reasonable and not unfairly discriminatory to exclude Retail Orders from participating in the NBBO First Joiner Additive Rebate because executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume in Retail Orders already receive an enhanced rebate of ($0.0037) per share.[41]

Proposal To Establish the Step-Up Rebate

The Exchange believes that the proposed Step-Up Rebate is comparable to other incentives currently offered by other exchanges,[42] and is reasonable, equitable and not unfairly discriminatory for these same reasons, as it provides Equity Members with an additional incentive to achieve a certain volume threshold on the Exchange. Further, the proposed Step-Up Rebate will be available to all Equity Members and is designed to encourage Equity Members to increase their orders of Added Displayed Volume in order to qualify for the additive rebate for qualifying executions, which, in turn, the Exchange believes would encourage the submission of additional Added Displayed Volume to the Exchange, thereby promoting price discovery and contributing to a deeper and more liquid market to the benefit of all market participants. The Exchange believes it is reasonable and not unfairly discriminatory to continue to exclude Retail Orders from participating in the Step-Up Rebate because executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume in Retail Orders already receive an enhanced rebate of ($0.0037) per share.[43]

Proposed Changes to Notes Section of NBBO Setter Plus Table

The Exchange believes its proposal to renumber and amend the Notes section of the NBBO Setter Plus Table is reasonable because it will provide additional clarity within the Fee Schedule. In particular, the Exchange believes it is reasonable to set forth in new Note 5 that Retail Orders will note be eligible for the NBBO Setter Additive Rebate, the NBBO First Joiner Additive Rebate, or the Step-Up Rebate as these rebates only apply to Liquidity Indicator Codes AA, AB and AC, which will provide clarity to Equity Members about the applicability of such rebates.

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 does not believe that the proposal will impose any burden on intra-market competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes its proposed changes to the NBBO Program, increase to the NBBO Setter Additive Rebate, adoption of the NBBO First Joiner Additive Rebate, and adoption of the Step-Up Rebate would incentivize Equity Members to submit additional orders that add liquidity to the Exchange, thereby contributing to a deeper and more liquid market and promoting price discovery and market quality on the Exchange to the benefit of all market participants and enhancing

[37] *See supra* note 20.

[38] *See supra* note 21.

[39] *See* Fee Schedule, Section 1)b), Liquidity Indicator Code "AR".

[40] *See supra* note 25.

[41] *See* Fee Schedule, Section 1)b), Liquidity Indicator Code "AR".

[42] *See supra* note 31.

[43] *See* Fee Schedule, Section 1)b), Liquidity Indicator Code "AR".

the attractiveness of the Exchange as a trading venue, which the Exchange believes, in turn, would continue to encourage market participants to direct additional order flow to the Exchange. Greater liquidity benefits all Members by providing more trading opportunities and encourages Equity Members to send additional orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants. As described above, the opportunity to qualify for the proposed new NBBO First Joiner Additive Rebate, Step-Up Rebate, or increased NBBO Setter Additive Rebate, and thus receive the proposed rebates or additive rebates for qualifying executions of Added Displayed Volume, would be available to all Equity Members that meet the associated requirements, and the Exchange believes the proposed changes provide such incentives is reasonably related to the enhanced market quality that they are designed to promote. As such the Exchange does not believe the proposed changes would impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purpose of the Act.

Intermarket Competition

The Exchange believes the proposed changes 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 February 2024.[44] 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. As described above, the proposed changes are competitive proposals through which the Exchange seeks to encourage certain order flow to the Exchange and to promote market quality through pricing incentives that are similar in structure and purpose to pricing programs at other Exchanges, including the incentives with a sunset period such as the Step-Up Rebate.[45] Accordingly, the Exchange believes the proposal would not burden, but rather promote, intermarket competition by enabling it to better compete with other exchanges that offer similar incentives to market participants that enhance market quality.

Additionally, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and self-regulatory organization ("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." [46] 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' . . .".[47] 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,[48] and Rule 19b–4(f)(2) [49] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments

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

• Send an email to *rule-comments@sec.gov*. Please include file number SR–PEARL–2024–18 on the subject line.

Paper Comments

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

All submissions should refer to file number SR–PEARL–2024–18. 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

[44] *See supra* note 31 [*sic*].

[45] *See supra* notes 20, 25, and 31.

[46] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

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

[48] 15 U.S.C. 78s(b)(3)(A)(ii).

[49] 17 CFR 240.19b–4(f)(2).

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–PEARL–2024–18 and should be submitted on or before May 14, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[50]

Vanessa A. Countryman,

Secretary.

[FR Doc. 2024–08574 Filed 4–22–24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99974; File No. SR–NYSE–2024–22]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 123D

April 17, 2024.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on April 11, 2024, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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 proposes to amend Rule 123D (Halts in Trading) to set forth specific requirements for halting and resuming trading in a security that is subject to a reverse stock split. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, 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 self-regulatory organization 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

In conjunction with the increase in overall reverse stock splits in recent years, the Exchange proposes to amend Rule 123D (Halts in Trading) to set forth specific requirements for halting and resuming trading in a security that is subject to a reverse stock split.

Background

The Commission recently approved a proposal filed by The Nasdaq Stock Exchange (''Nasdaq'') providing for a regulatory halt at the end of trading on the day immediately before the market effective date of a reverse stock split and a delayed opening of the security on the market effective date of the reverse stock split.[4] In its filing, Nasdaq noted that it had observed a recent increase in reverse stock split activity in the current market environment.

The Exchange has not itself experienced the increase in the number of reverse stock splits that Nasdaq described in its filings. Nevertheless, the Exchange proposes to adopt similar changes at the request of market participants who say that they would benefit from a consistent approach across exchanges with respect to regulatory halt rules around reverse stock splits. The Exchange believes that harmonizing its rules with Nasdaq's in this area would enhance investor protection and maintain fair and orderly markets by minimizing the chance that market participants might make erroneous trades in a security because they were unaware that it had undergone a reverse stock split.

Accordingly, the Exchange proposes to adopt amendments to its trading halt rules to require the Exchange to declare a regulatory halt in trading before the end of after-hours trading on the day immediately before the market effective date of a reverse stock split, and to open the security on the market effective date of a reverse stock split with a Trading Halt Auction[5] starting at 9:30 a.m., at the start of the Exchange's Core Trading Session.[6] This proposed change is modeled on the recently-approved Nasdaq rule.

This change would help reduce the potential for market participants' misunderstanding of the impact on the value of the issuer' securities resulting from investors' lack of advance knowledge of the reverse stock split, as well as errors resulting in a material effect on the market resulting from market participants' processing of the reverse stock split, including incorrect adjustment or entry of orders.

Proposed Amendment to Rule 123D

The Exchange currently processes reverse stock splits overnight, with the security available for trading on other markets at 4:00 a.m.[7] on a split-adjusted basis. Market participants have recently expressed concerns with allowing trading on an adjusted basis during those early trading sessions, noting that it is not optimal because system errors or problems with orders may go unnoticed for a period of time when a security that has undergone a reverse stock split opens for trading with the other thousands of securities. These errors have the potential to adversely affect investors, market participants, and the issuer. For example, problems

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[50] 17 CFR 200.30–3(a)(12).

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

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 98878 (November 7, 2023) (SR–NASDAQ–2023–036) (approving halt provisions with respect to reverse stock splits).

[5] The term ''Trading Halt Auction'' is defined in Rule 7.35(a)(1)(B) as an auction ''that reopens trading following a trading halt or pause.'' The Trading Halt Auction would be effectuated by the security's designated market maker (''DMM'') pursuant to Rule 7.35A (DMM-Facilitated Core Open and Trading Halt Auctions). An Exchange-listed security that opens trading for the day with a Trading Halt Auction would not undergo a Core Open Auction (defined in Rule 7.35(a)(1)(A)).

[6] The term ''Core Trading Session'' is defined in Rule 7.34(a)(2).

[7] All times referred to in this filing are Eastern Time.