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SECURITIES AND EXCHANGE COMMISSION
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March 13, 2018

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

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 28, 2018, MIAX PEARL, LLC (“MIAX PEARL” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange is filing a proposal to amend the MIAX PEARL Fee Schedule (the “Fee Schedule”) to establish certain non-transaction rebates and fees applicable to participants trading options on and/or using services provided by MIAX PEARL.

MIAX PEARL commenced operations as a national securities exchange registered under Section 6 of the Act³ on February 6, 2017.⁴ The Exchange adopted its transaction fees and certain of its non-transaction fees in its filing SR-PEARL-2017-10.⁵

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78f.

⁴ See Securities Exchange Act Release No. 79543 (December 13, 2016), 81 FR 92901 (December 20, 2016) (File No. 10-227) (order approving application of MIAX PEARL, LLC for registration as a national securities exchange).

⁵ See Securities Exchange Act Release No. 80061 (February 17, 2017), 82 FR 11676 (February 24, 2017) (SR-PEARL-2017-10).

The text of the proposed rule change is available on the Exchange's website at <http://www.miaxoptions.com/rule-filings/pearl> at MIAX PEARL's principal office, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The purpose of the proposed rule change is to establish certain non-transaction rebates and fees applicable to certain market participants trading options on and/or using certain services provided by the Exchange. The Exchange introduced the structure of certain non-transaction rebates and fees in its filing SR-PEARL-2017-10 (without proposing actual fee amounts), but also explicitly waived the assessment of any such fees for the period of time which the Exchange defined as the "Waiver Period."⁶ The Exchange now proposes to adopt certain non-transaction fees as described below, and thereby terminate the Waiver Period applicable to such non-

⁶ "Waiver Period" means, for each applicable fee, the period of time from the initial effective date of the MIAX PEARL Fee Schedule until such time that the Exchange has an effective fee filing establishing the applicable fee. The Exchange will issue a Regulatory Circular announcing the establishment of an applicable fee that was subject to a Waiver Period at least fifteen (15) days prior to the termination of the Waiver Period and effective date of any such applicable fee. See the Definitions Section of the Fee Schedule.

transaction fees. In general, the Exchange proposes to amend the Fee Schedule to: add certain definitions; adopt monthly trading permit fees; adopt port fees; adopt certain market data fees; as well as to adopt a fee waiver for new Members,⁷ as applicable to Members and non-Members using certain services provided by MIAX PEARL.

Definitions

The Exchange proposes to amend the “Definitions” section of the Fee Schedule to add the following new definitions: “New Member Non-Transaction Fee Waiver;” “Non-Transaction Fees Volume-Based Tiers;” and “Monthly Volume Credit” which are applicable to the assessment of certain non-transaction rebates and fees.

“New Member Non-Transaction Fee Waiver” has the meaning described below under “New Member Non-Transaction Fee Waiver.”

“Non-Transaction Fees Volume-Based Tiers” means the tier structure that is applicable to determine certain non-transaction fees, including Monthly Trading Permit Fees and Full Service MEO Port Fees. The monthly volume thresholds associated with each Tier shall be calculated as the total volume executed by a Member and its Affiliates⁸ on the Exchange across all origin

⁷ “Member” means an individual or organization that is registered with the Exchange pursuant to Chapter II of the Exchange Rules for purposes of trading on the Exchange as an “Electronic Exchange Member” or “Market Maker.” Members are deemed “members” under the Exchange Act. See Exchange Rule 100.

⁸ “Affiliate” means (i) an affiliate of a Member of at least 75% common ownership between the firms as reflected on each firm’s Form BD, Schedule A, or (ii) the Appointed Market Maker of an Appointed EEM (or, conversely, the Appointed EEM of an Appointed Market Maker). An “Appointed Market Maker” is a MIAX PEARL Market Maker (who does not otherwise have a corporate affiliation based upon common ownership with an EEM) that has been appointed by an EEM and an “Appointed EEM” is an EEM (who does not otherwise have a corporate affiliation based upon common ownership with a MIAX PEARL Market Maker) that has been appointed by a MIAX PEARL Market Maker, pursuant to the process described in the Fee Schedule. See the Definitions Section of the Fee Schedule.

types, not including Excluded Contracts,⁹ as compared to the TCV¹⁰ in all MIAX PEARL-listed options as set forth below:

Tier	Total Volume by Member as a Percentage of MIAX PEARL-listed TCV
1	0.00% - 0.30%
2	Above 0.30% - 0.60%
3	Above 0.60%

“Monthly Volume Credit” means a credit assessable to a Member whose executed Priority Customer¹¹ volume along with that of its Affiliates, not including Excluded Contracts, is at least 0.30% of MIAX PEARL-listed TCV, as set forth below:

Type of Member Connection	Monthly Volume Credit
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⁹ “Excluded Contracts” means any contracts routed to an away market for execution. See the Definitions Section of the Fee Schedule.

¹⁰ “TCV” means total consolidated volume calculated as the total national volume in those classes listed on MIAX PEARL for the month for which the fees apply, excluding consolidated volume executed during the period time in which the Exchange experiences an “Exchange System Disruption” (solely in the option classes of the affected Matching Engine (as defined below)). The term Exchange System Disruption, which is defined in the Definitions section of the Fee Schedule, means an outage of a Matching Engine or collective Matching Engines for a period of two consecutive hours or more, during trading hours. The term Matching Engine, which is also defined in the Definitions section of the Fee Schedule, is a part of the MIAX PEARL electronic system that processes options orders and trades on a symbol-by-symbol basis. Some Matching Engines will process option classes with multiple root symbols, and other Matching Engines may be dedicated to one single option root symbol (for example, options on SPY may be processed by one single Matching Engine that is dedicated only to SPY). A particular root symbol may only be assigned to a single designated Matching Engine. A particular root symbol may not be assigned to multiple Matching Engines. The Exchange notes that the term “Exchange System Disruption” and its meaning have no applicability outside of the Fee Schedule, as it is used solely for purposes of calculating volume for the threshold tiers in the Fee Schedule. See the Definitions Section of the Fee Schedule.

¹¹ “Priority Customer” means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial accounts(s). See Exchange Rule 100, including Interpretations and Policies .01.

Member that connects via the FIX Interface	\$250
Member that connects via the MEO Interface*	\$1,000

* If a Member connects via both the MEO Interface and FIX Interface, and qualifies for the Monthly Volume Credit based upon its Priority Customer Volume, the greater Monthly Volume Credit shall apply to such Member. The Monthly Volume Credit is a single, once-per-month credit towards the aggregate monthly total of non-transaction fees assessable to a Member.

The Exchange proposes the Monthly Volume Credit to be a single, once-per-month credit towards the aggregate monthly total of non-transaction fees assessable to a Member. If a Member connects via both the MEO Interface and FIX Interface, and qualifies for the Monthly Volume Credit based upon its Priority Customer Volume, the greater Monthly Volume Credit shall apply to such Member.

Monthly Trading Permit Fees

The Exchange previously introduced the structure of Trading Permit fees (but without proposing the actual fee amounts), but also explicitly waived the assessment of any such fees for the Waiver Period. Trading Permits are issued to Members who are either Electronic Exchange Members (“EEMs”) or Market Makers.¹² MIAX PEARL now proposes to assess fees for such Trading Permits. Members issued Trading Permits during a calendar month will be assessed monthly Trading Permit Fees. The Exchange notes that the Exchange’s affiliate, Miami International Securities Exchange, LLC (“MIAX Options”), charges trading permit fees as well to its members which are based upon the number of assignments of option classes or the percentage of volume in option classes.¹³ However, the Exchange’s proposed structure for its Trading Permit fees is not identical [sic] the structure of MIAX Options since the market model

¹² “Market Maker” means a Member registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange. See Exchange Rule 100.

¹³ See the MIAX Options Fee Schedule, Section 3)b).

of the Exchange is not identical to the market model of MIAX Options. The Exchange operates a price time, order-driven marketplace. MIAX Options operates a traditional, pro-rata, quote-driven marketplace, with market makers having affirmative quoting obligations in their assigned classes. However, while the market models are not identical, the Exchange's proposed fee structure shares a similar characteristic with the structure of MIAX Options, wherein both generally provide that, the more active user the Member (i.e., the greater number / greater national ADV of classes assigned to quote), the higher the Trading Permit fee.

The Exchange proposes to charge its Members Trading Permit fees which are based upon the monthly total volume executed by the Member and its Affiliates on the Exchange across all origin types, not including Excluded Contracts, as compared to the TCV in all MIAX PEARL-listed options. Specifically, the Exchange proposes to adopt a tier-based fee structure based upon the volume-based tiers detailed in the proposed definition of "Non-Transaction Fees Volume-Based Tiers" described above.

The Exchange proposes to charge such Trading Permit fees based upon the type of interface used by the Member to connect to the Exchange – the FIX Interface¹⁴ and/or the MEO Interface.¹⁵ Any Member (whether EEM or Market Maker) can select either type of interface (either FIX Interface or MEO Interface). Each Member who uses the FIX Interface to connect to the System¹⁶ will be assessed Trading Permit fees according to the volume-based tier that it

¹⁴ "FIX Interface" means the Financial Information Exchange interface for certain order types as set forth in Exchange Rule 516. See Exchange Rule 100. See the Definitions Section of the Fee Schedule.

¹⁵ "MEO Interface" means a binary order interface for certain order types as set forth in Rule 516 into the MIAX PEARL System. See Exchange Rule 100. See the Definitions Section of the Fee Schedule.

¹⁶ The term "System" means the automated trading system used by the Exchange for the trading of securities. See Exchange Rule 100.

achieves along with that of its Affiliates. Specifically, Members who use the FIX Interface will be assessed the following Trading Permit fees each month: (i) if its volume falls within the parameters of Tier 1 of the Non-Transaction Fees Volume-Based Tiers, or volume up to 0.30%, \$250, (ii) if its volume falls within the parameters of Tier 2 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.30% up to 0.60%, \$350, and (iii) if its volume falls with the parameters of Tier 3 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.60%, \$450.

Each Member who uses the MEO Interface to connect to the System will be assessed Trading Permit fees according to the volume-based tier thresholds that it achieves along with that of its Affiliates. Specifically, Members who use the MEO Interface will be assessed the following Trading Permit fees each month: (i) if its volume falls within the parameters of Tier 1 of the Non-Transaction Fees Volume-Based Tiers, or volume up to 0.30%, \$300, (ii) if its volume falls within the parameters of Tier 2 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.30% up to 0.60%, \$400, and (iii) if its volume falls with the parameters of Tier 3 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.60%, \$500. Members who use the MEO Interface may also connect to the System through the FIX Interface as well, and vice versa. The Exchange notes that the Trading Permit fees for Members who connect through the MEO Interface are higher than the Trading Permit fees for Members who connect through the FIX Interface, since the FIX Interface utilizes less capacity and resources of the Exchange. The MEO Interface offers lower latency and higher throughput, which utilizes greater capacity and resources of the Exchange, and is typically a requirement for market makers. The Fix Interface offers lower bandwidth requirements and an industry-wide uniform

message format, which is typically favored by EEMs. Both EEMs and Market Makers may connect to the Exchange using either interface.

The Exchange notes that other exchanges assess their membership fees at different rates based upon a member's participation on that exchange.¹⁷

The Exchange proposes that Members who use the MEO Interface and who also use the FIX Interface will be assessed the rates for both types of Trading Permits set forth above but will receive a \$100 monthly credit towards the Trading Permit fees applicable to such Member for MEO Interface use. For example, a Member who reaches Tier 3 in the Non-Transaction fees Volume-Based Tiers, and who connects via a FIX interface and a MEO Interface, would be assessed Trading Permit fees of \$450 for FIX Interface and \$500 for MEO Interface. Since they connect via both interfaces, they will also receive a \$100 monthly credit for total cost of \$850 (\$450+\$500-\$100). The monthly credit will not exceed the Trading Permit fees.

Below is the proposed fee table for Trading Permit fees:

Type of Trading Permit	Monthly MIAx PEARL Trading Permit Fee
Member that connects via the FIX Interface	Tier 1 \$250 Tier 2 \$350 Tier 3 \$450
Member that connects via the MEO Interface*	Tier 1 \$300 Tier 2 \$400 Tier 3 \$500

*Members who connect via the MEO Interface and that also connect via the FIX Interface will be assessed the rates for both types of Trading Permits set forth above, but will receive a \$100 credit towards the Trading Permit Fees set forth above for MEO Interface use.

Port Fees

¹⁷ Cboe BZX Options Exchange ("BZX Options") assesses the Participant Fee, which is a membership fee, according to a member's ADV. See Cboe BZX Options Exchange Fee Schedule under "Membership Fees". The Participant Fee is \$500 if the member ADV is under 5000 and \$1,000 if the member ADV is equal to or over 5000. Id.

MIAX PEARL proposes to assess fees for access and services used by Members via connections known as “Ports”. MIAX PEARL provides five (5) Port types, including (i) the Financial Information Exchange (“FIX”) Port, which allows Members to electronically send orders in all products traded on the Exchange; (ii) the MIAX Express Network (“MEO”) Port, which allows EEMs and Market Makers to submit electronic orders in all products to the Exchange; (iii) the Clearing Trade Drop (“CTD”) Port, which provides real-time per-trade clearing information to the participants on MIAX PEARL and to the participants’ respective clearing firms; (iv) FIX Drop Copy (“FXD”) Port, which provides a copy of real-time trade execution, correction, and cancellation information through a FIX Port to any number of FIX Ports designated by a Member to receive such messages; and (v) the MEO Purge Port, which is used as a dedicated port for sending purge messages to the Exchange.

MIAX PEARL has Primary and Secondary Facilities and a Disaster Recovery Facility. Each type of Port provides access to all three facilities for a single fee. The Exchange notes that, unless otherwise specifically set forth in the Fee Schedule, the Port fees include the information communicated through the Port. That is, unless otherwise specifically set forth in the Fee Schedule, there is no additional charge for the information that is communicated through the Port apart from what the user is assessed for each Port.¹⁸

The Exchange currently offers different options of MEO Ports depending on the services required by the Member, including a Full Service MEO Port-Bulk,¹⁹ a Full Service MEO Port-

¹⁸ One such example of an additional charge is a charge for certain fee-liable market data feed products to which the Member subscribes.

¹⁹ “Full Service MEO Port -- Bulk” means an MEO port that supports all MEO input message types and binary bulk order entry. See the Definitions Section of the Fee Schedule.

Single,²⁰ and a Limited Service MEO Port.²¹ A Member may be allocated two (2) Full-Service MEO Ports of either type, Bulk and/or Single, per Matching Engine, and up to eight (8) Limited Service MEO Ports, per Matching Engine. The two (2) Full-Service MEO Ports that may be allocated per Matching Engine to a Member currently may consist of: (a) two (2) Full Service MEO Ports – Bulk; or (b) two (2) Full Service MEO Ports – Single. The Exchange proposes to add a third option, option (c), which permits a Member to have one (1) Full Service MEO Port – Bulk, and one (1) Full Service MEO Port – Single. If a Member selects option (c), the Exchange will assess the rates applicable to Full Service MEO Port – Bulk in the Fee Schedule, described below. The Exchange proposes to add option (c) in order to provide Members greater flexibility and granularity in their available Port connection alternatives.

MIAX PEARL proposes to assess Members Full Service MEO Port Fees, either for a Full Service MEO Port - Bulk and/or for a Full Service MEO Port - Single, based upon the monthly total volume executed by a Member and its Affiliates on the Exchange across all origin types, not including Excluded Contracts, as compared to the TCV in all MIAX PEARL-listed options. Specifically, the Exchange proposes to adopt a tier-based fee structure based upon the volume-based tiers detailed in the proposed definition of “Non-Transaction Fees Volume-Based Tiers” described above. MIAX PEARL proposes to assess these and other monthly Port fees on Members in each month the market participant is credentialed to use a Port in the production environment. MIAX PEARL proposes the following Monthly Port Fees table:

²⁰ “Full Service MEO Port – Single” means an MEO port that supports all MEO input message types and binary order entry on a single order-by-order basis, but not bulk orders. See the Definitions Section of the Fee Schedule.

²¹ “Limited Service MEO Port” means an MEO port that supports all MEO input message types, but does not support bulk order entry and only supports limited order types, as specified by the Exchange via Regulatory Circular. See the Definitions Section of the Fee Schedule.

Type of Port	Monthly Port Fees Includes Connectivity to the Primary, Secondary and Disaster Recovery Data Centers
FIX Port [^]	Per Port: 1 st \$275, 2 nd to 5 th \$175, 6 th or more \$75
Full Service MEO Port – Bulk*	Tier 1 \$3,000 Tier 2 \$4,500 Tier 3 \$5,000
Full Service MEO Port – Single*	Tier 1 \$2,000 Tier 2 \$3,375 Tier 3 \$3,750
Limited Service MEO Port**	1 st to 2 nd \$0, 3 rd to 4 th \$200, 5 th to 6 th \$300, 7 th to 8 th \$400
MEO Purge Port***	\$750
CTD Port [^]	Per Port: \$450
FXD Port [^]	Per Port: \$250

*The rates set forth above for Full Service MEO Ports, both Bulk and/or Single, entitle a Member to two (2) such Ports for each Matching Engine for a single port fee. If a Member selects at least one Full Service MEO Port – Bulk as part of their two (2) Ports, i.e. option (c) described below, the rates applicable to Full Service MEO Port – Bulk set forth above apply.

**Each Limited Service MEO Port fee entitles a Member to one (1) such port for each Matching Engine. For example, the purchase of 4 Limited Service MEO Ports will allow the Member to access 4 ports per Matching Engine.

***The MEO Purge Port fee entitles a Member to two (2) such ports for each Matching Engine for a single port fee.

[^]Each port will have access to all Matching Engines.

Other exchanges, including MIAX Options, charge a fee for similar services to Members.²² The Exchange’s proposed structure for some of its Port fees is similar to the structure of MIAX Options, subject to a few differences as discussed below. First, the Exchange proposes to have two primary types of Full Service MEO Port Fees (Bulk and Single), whereas MIAX Options only has one type of full service port fee (MEI Port Fee). Second, MIAX

²² See Nasdaq Phlx LLC (“Phlx”) Fee Schedule, Section VII “Other Member Fees”, B “Port Fees”.

Options charges for its MEI port fees based on the options class assignments, or as measured by the national volume. Since the market model of the Exchange is not identical to the market model of MIAX Options, the Exchange therefore proposes to assess its MEO Port fees in a different manner than is assessed by MIAX Options for its MEI Port fees. The Exchange operates a price time, order-driven marketplace. MIAX Options operates a traditional, pro-rata, quote-driven marketplace, with market makers having affirmative quoting obligations in their assigned classes. However, while the market modes [sic] are not identical, the Exchange's proposed structure shares a similar characteristic with the structure of MIAX Options wherein both generally provide that, the more active user the Member (i.e., the greater number / greater national ADV of classes assigned to quote), the higher the Port fee. Third, the amount of the CTD Port fee assessed by MIAX Options is based on the per executed contract side volume of the MIAX Options member. The Exchange proposes to assess its CTD Port fee as a monthly per Port fee, not tied to per executed contract side volume of the Member. The CTD fee structure is the same structure in place at Nasdaq PHLX with respect to its Clearing Trade Interface ("CTI") port fees.²³ Finally, the amount of the Fix Drop Copy Port fee assessed by MIAX Options, which is a similar fee to the FXD Port fee, is a flat monthly fee whereas the Exchange proposes that the FXD Port fee is per Port like it is proposing to charge for the MEO Purge Ports and CTD Ports and not a flat fee.

Finally, the Exchange proposes to no longer offer Ports to non-Members. There are no current non-Members that connect to the Exchange via Ports, and, based on the Exchange's market model, it does not envision that non-Members would require connectivity to the

²³ Id.

Exchange via Ports in the future. Accordingly, the Exchange proposes to remove all references to non-Members from Section 5)d) (Port Fees) of the Fee Schedule.

Market Data Fees

The Exchange proposes to assess fees for its market data products, MIAX PEARL Top of Market (“ToM”) and MIAX PEARL Liquidity Feed (“PLF”). A more detailed description of the ToM and PLF products can be found in the Market Data Product Filing.²⁴ To summarize, ToM provides market participants with a direct data feed that includes the Exchange’s best bid and offer, with aggregate size, and last sale information, based on displayable order and quoting interest on the Exchange. The ToM data feed includes data that is identical to the data sent to the processor for the Options Price Reporting Authority (“OPRA”). ToM also contains a feature that provides the number of Priority Customer contracts that are included in the size associated with the Exchange’s best bid and offer.

PLF is a real-time full order book data feed that provides information for orders on the MIAX PEARL order book. PLF provides real-time information to enable users to keep track of the simple order book for all symbols listed on MIAX PEARL. PLF provides the following real-time data to its users with respect to each order for the entire order book: origin, limit price, side, size, and time-in-force (e.g., day, GTC). It is a compilation of data for orders residing on the Exchange’s order book for options traded on the Exchange that the Exchange provides through a real-time multi-cast data feed. The Exchange believes the PLF is a valuable tool that subscribers can use to gain comprehensive insight into the limit order book in a particular option.

The Exchange proposes to charge monthly fees to Distributors of the ToM and/or PLF market data products. MIAX PEARL will assess market data fees applicable to the market data

²⁴ See Securities Exchange Act Release No. 79913 (February 1, 2017), 82 FR 9617 (February 7, 2017) (SR-PEARL-2017-01).

products to Internal and External Distributors in each month the Distributor is credentialed to use the applicable market data product in the production environment. A “Distributor” of MIAX PEARL data is any entity that receives a feed or file of data either directly from MIAX PEARL or indirectly through another entity and then distributes it either internally (within that entity) or externally (outside that entity). All Distributors are required to execute a MIAX PEARL Distributor Agreement. Market data fees for ToM and PLF will be reduced for new Distributors for the first month during which they subscribe to the applicable market data product, based on the number of trading days that have been held during the month prior to the date on which they have been credentialed to use the applicable market data product in the production environment. Such new Distributors will be assessed a pro-rata percentage of the fees described above, which is the percentage of the number of trading days remaining in the affected calendar month as of the date on which they have been credentialed to use the applicable market data product in the production environment, divided by the total number of trading days in the affected calendar month.

Specifically, the Exchange proposes to assess Internal Distributors \$500 per month and External Distributors \$750 per month for the ToM market data feed. The Exchange additionally proposes to assess Internal Distributors \$1,250 per month and External Distributors \$1,500 per month for the PLF market data feed. The Exchange notes that its data feed prices are generally lower than most other options exchanges’ data feed prices for their comparable data feed products.²⁵

New Member Fee Waiver

²⁵ See NASDAQ Phlx Pricing Schedule, Section IX, Proprietary Data Feed Fees.

The Exchange proposes to waive the assessment of the foregoing non-transaction fees to a new Member of the Exchange for the first calendar month during which they are approved as a Member and are credentialed to use the System in the production environment, and for the two (2) subsequent calendar months thereafter. The Exchange proposes to define this waiver as the “New Member Non-Transaction Fee Waiver” and to add it to the Definitions section of the Fee Schedule accordingly. In the first month, certain of such Members’ non-transaction fees specified by the Exchange will not be assessed and thereby waived for the trading days remaining in such month after the date that the Member was accepted by the Exchange. Then the specified non-transaction fees for the following two (2) calendar months will also be waived by the Exchange for the new Member. For example, if Member A is approved as a Member and credentialed to use the Exchange’s System in the production environment on April 2, 2018, Member A will not be assessed any Trading Permit, Port, or Market Data fees for the remaining days in April, and will not be assessed any such fees for the calendar months of May and June of 2018. For the avoidance of doubt, a “new Member” shall mean any Member who has not previously been approved by the Exchange and credentialed to use the Exchange’s System in the production environment. The Exchange believes that this fee waiver will provide incentive for prospective applicants to apply for membership, and may consequently result in increasing potential order flow and liquidity for the Exchange. The Exchange will submit a rule filing with the Commission prior to terminating the Exchange’s waiver of such fees assessable to new Members.

The proposed rule changes will become operative March 1, 2018. Except as set forth above, all other fees of the Exchange remain as set forth in the Fee Schedule.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act²⁶ in general, and furthers the objectives of Section 6(b)(4) of the Act²⁷ in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

Definitions

The Exchange believes that the proposed new definition “New Member Non-Transaction Fee Waiver” is consistent with Section 6(b)(4) of the Act in that it is fair, equitable and not unreasonably discriminatory and should improve market quality for the Exchange’s market participants. The definition applies equally to all potential Members and is intended to add transparency to the Exchange’s marketplace by clarifying how the waiver of certain specified non-transaction fees will apply to new Members.

The Exchange believes that the proposed new definition “New Member Non-Transaction Fee Waiver” is consistent with Section 6(5) of the Act in that it promotes equitable access to the Exchange for all market participants. To the extent that new Members are encouraged to apply to the Exchange as a result of the waiver of certain specified non-transaction fees for a limited period of time, the resulting increased volume and liquidity from such new Members will benefit all Exchange participants by providing more trading opportunities and tighter spreads.

²⁶ 15 U.S.C. 78f(b).

²⁷ 15 U.S.C. 78f(b)(4) and (5).

The Exchange believes that the proposed new definition “Non-Transaction Fees Volume-Based Tiers” and the associated volume-based tier structure applicable to certain specified non-transaction fees is consistent with Section 6(b)(4) of the Act in that it is fair, equitable and not unreasonably discriminatory and should improve market quality for the Exchange’s market participants. The proposed tier structure is fair and equitable and not unreasonably discriminatory because the volume calculations and thresholds are applied equally to all MIAX PEARL Members. All similarly situated MIAX PEARL Members are subject to the volume thresholds, and access to the Exchange is offered on terms that are not unfairly discriminatory.

The Exchange believes that the proposed new definition “Non-Transaction Fees Volume-Based Tiers” and the associated volume-based tier structure applicable to certain non-transaction fees is consistent with Section 6(b)(5) of the Act in that it promotes equitable access to the Exchange for all market participants. To the extent that Member volume is increased by the proposal, the resulting increased volume and liquidity will benefit all Exchange participants by providing more trading opportunities and tighter spreads.

The Exchange believes that by determining certain fees upon volume will permit Member firms to have the same access to the Exchange but pay fees which are proportionate to their usage of the Exchange. The fees based upon the same volume threshold will also be assessed to Members on an equal basis since they are assessed based upon the same volume and access type provided. The specific volume thresholds of the “Non-Transaction Fees Volume-Based Tiers” were set based upon business determinations and an analysis of current volume levels. The Exchange believes that the proposed new definition of “Non-Transaction Fees Volume-Based Tiers” and the associated volume-based tier structure applicable to certain non-transaction fees should provide incentives for market participants to join and trade on the Exchange.

The Exchange believes that the proposed new definition “Monthly Volume Credit” and the associated monthly credit for Priority Customer volume applicable to certain non-transaction fees is fair, equitable and not unreasonably discriminatory, because it applies equally to all Members. The proposed volume credit for Priority Customer orders is reasonably designed because it will encourage Members to send increased Priority Customer order flow to the Exchange in order to receive the applicable monthly credit. The Exchange thus believes that the proposed new credit should improve market quality for all market participants by providing more execution opportunities. All Members who qualify will receive the same credit, or the greater of credits for Members who use both FIX and MEO, for Priority Customer volume according to the interface that they select to use to connect to the Exchange.

The Exchange believes that the proposed new definition “Monthly Volume Credit” and the associated monthly credit for Priority Customer volume is consistent with Section 6(b)(5) of the Act and it is not discriminatory since it is available to all Members who transact Priority Customer volume at the specified levels. To the extent that MIAX PEARL Priority Customer volume is increased by the proposal, market participants may increasingly compete for the opportunity to trade on the Exchange including sending more orders that are narrower and larger-sized. The resulting increased volume and liquidity will benefit all Exchange participants by providing more trading opportunities and tighter spreads.

Monthly Trading Permit Fees

The Exchange believes that the assessment of Trading Permit fees is reasonable, equitable, and not unfairly discriminatory. The assessment of Trading Permit fees is done by the Exchange’s affiliate, MIAX Options, and is commonly done by other exchanges as described in the Purpose section above. The Exchange also believes that the proposed tier structure is fair

and equitable and not unreasonably discriminatory because the volume calculations and thresholds are applied equally to all MIAX PEARL Members. All similarly situated MIAX PEARL Members are subject to the volume thresholds, and access to the Exchange is offered on terms that are not unfairly discriminatory.

The Exchange believes that the proposed Trading Permit Fees are consistent with Section 6(b)(5) of the Act in that they promote equitable access to the Exchange for all market participants. To the extent that Member volume is increased by the proposal, the resulting increased volume and liquidity will benefit all Exchange participants by providing more trading opportunities and tighter spreads.

The specific volume thresholds of the Trading Permit Fees were set based upon business determinations and an analysis of current volume levels. The Exchange believes that by basing certain fees upon volume, this will permit Member firms to have the same access to the Exchange but pay fees which are proportionate to their usage of the Exchange. The same fees based upon the same volume will also be assessed to Members on an equal basis since they are assessed based upon the same volume of order flow provided.

Port Fees

MIAX PEARL believes it is reasonable, equitable and not unfairly discriminatory to assess Port fees on Members who use such services. In particular, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to assess Port fees on Members since the Ports enable Members to submit orders and to receive information regarding transactions. Specifically, the FIX Port and the various MEO Ports enable Members to submit orders electronically to the Exchange for processing. The Exchange believes that its proposed fees are

reasonable in that other exchanges offer similar ports with similar services and charge fees for the use of such ports, including MIAX Options.

The Exchange believes that its fees for Ports are reasonable, equitable, and not unfairly discriminatory in that they apply to all Members using the following ports: FIX, MEO, MEO Purge, CTD or FXD equally and allow the Exchange to recover operational and administrative costs in developing and maintaining such services. The Exchange believes that assessing a per Port fee for some Ports while assessing a flat fee, which in the case of Full Service MEO Ports is tiered according to the Member's volume, for other Ports is reasonable and not discriminatory since different Ports provide different information and utility to Members. For example, the MEO Interface offers greater connectivity, lower latency and higher throughput which is beneficial to Market Maker activities and while both EEMs and Market Makers may connect through either the FIX or MEO Interfaces, Market Makers generally elect to connect through the MEO Interface for the greater benefits of its connectivity which requires a MEO Port. The Exchange expends considerable resources to provide Port access to its Members and certain Ports are more costly to provide such as the Full Service MEO Port - Bulk. The Exchange must assess fees in order to recoup the costs involved with providing the appropriate access required by the Member. The Exchange believes that its proposed fees are reasonable in that other exchanges charge fees for similar services, including MIAX Options, subject to the differences discussed above, which the Exchange believes are reasonable given the different market structure between the Exchange and MIAX Options.

The Exchange also believes the proposed Port Fees are consistent with Section 6(b)(5) of the Act are non-discriminatory because they will apply uniformly to all Members. The use and choice of Ports are completely voluntary and no user is required, nor are the Members under any

regulatory obligation, to utilize them. All Members have the option to select any connectivity option, and fees, when charged, are charged uniformly for the services offered by the Exchange.

The Exchange believes that by basing certain fees upon volume, this will permit Member firms to have the same access to the Exchange but pay fees which are proportionate to their usage of the Exchange. The same fees based upon the same volume will also be assessed to Members on an equal basis since they are assessed based upon the same volume and access type provided.

Market Data Fees

The Exchange believes that its proposal to assess Market Data Fees is consistent with the provisions of Section 6(b)(4) of the Act in that it provides an equitable allocation of reasonable fees among distributors of ToM and PLF, because all Distributors in each of the respective category of Distributor (i.e., Internal and External) will be assessed the same fees as other Distributors in their category for the applicable market data product.

In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data:

“[E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.”²⁸

²⁸ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

By removing “unnecessary regulatory restrictions” on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether proprietary data is sold to broker-dealers at all, it follows that the price at which such data is sold should be set by the market as well.

In July, 2010, Congress adopted H.R. 4173, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”), which amended Section 19 of the Act. Among other things, Section 916 of the Dodd-Frank Act amended paragraph (A) of Section 19(b)(3) of the Act by inserting the phrase “on any person, whether or not the person is a member of the self-regulatory organization” after “due, fee or other charge imposed by the self-regulatory organization.” As a result, all SRO rule proposals establishing or changing dues, fees or other charges are immediately effective upon filing regardless of whether such dues, fees or other charges are imposed on members of the SRO, non-members, or both. Section 916 further amended paragraph (C) of Section 19(b)(3) of the Act to read, in pertinent part, “At any time within the 60-day period beginning on the date of filing of such a proposed rule change in accordance with the provisions of paragraph (1) [of Section 19(b)], the Commission summarily may temporarily suspend the change in the rules of the self-regulatory organization made thereby, 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 this title. If the Commission takes such action, the Commission shall institute proceedings under paragraph (2)(B) [of Section 19(b)] to determine whether the proposed rule should be approved or disapproved.”

The Exchange believes that these amendments to Section 19 of the Act reflect Congress's intent to allow the Commission to rely upon the forces of competition to ensure that fees for market data are reasonable and equitably allocated. Although Section 19(b) had formerly authorized immediate effectiveness for a "due, fee or other charge imposed by the self-regulatory organization," the Commission adopted a policy and subsequently a rule stating that fees for data and other products available to persons that are not members of the self-regulatory organization must be approved by the Commission after first being published for comment. At the time, the Commission supported the adoption of the policy and the rule by pointing out that unlike members, whose representation in self-regulatory organization governance was mandated by the Act, non-members should be given the opportunity to comment on fees before being required to pay them, and that the Commission should specifically approve all such fees. MIAX PEARL believes that the amendment to Section 19 reflects Congress's conclusion that the evolution of self-regulatory organization governance and competitive market structure have rendered the Commission's prior policy on non-member fees obsolete. Specifically, many exchanges have evolved from member-owned, not-for-profit corporations into for-profit, investor-owned corporations (or subsidiaries of investor-owned corporations). Accordingly, exchanges no longer have narrow incentives to manage their affairs for the exclusive benefit of their members, but rather have incentives to maximize the appeal of their products to all customers, whether members or non-members, so as to broaden distribution and grow revenues. Moreover, the Exchange believes that the change also reflects an endorsement of the Commission's determinations that reliance on competitive markets is an appropriate means to ensure equitable and reasonable prices. Simply put, the change reflects a presumption that all fee changes should be permitted to take effect immediately, since the level of all fees are constrained by competitive

forces. The Exchange therefore believes that the assessment of fees for the use of ToM and PLF is proper for non-member Distributors.

The decision of the United States Court of Appeals for the District of Columbia Circuit in NetCoalition v. SEC, No. 09-1042 (D.C. Cir. 2010), although reviewing a Commission decision made prior to the effective date of the Dodd-Frank Act, upheld the Commission's reliance upon competitive markets to set reasonable and equitably allocated fees for market data:

“In fact, the legislative history indicates that the Congress intended that the market system ‘evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed’ and that the SEC wield its regulatory power ‘in those situations where competition may not be sufficient,’ such as in the creation of a ‘consolidated transactional reporting system.’”²⁹

The court's conclusions about Congressional intent are therefore reinforced by the Dodd-Frank Act amendments, which create a presumption that exchange fees, including Market Data Fees, may take effect immediately, without prior Commission approval, and that the Commission should take action to suspend a fee change and institute a proceeding to determine whether the fee change should be approved or disapproved only where the Commission has concerns that the change may not be consistent with the Act.

MIAX PEARL believes that the assessment of the proposed Market Data Fees for ToM and PLF is fair and equitable in accordance with Section 6(b)(4) of the Act, and not unreasonably discriminatory in accordance with Section 6(b)(5) of the Act. As described above, Market Data Fees are assessed by other exchanges, including MIAX Options.³⁰ The Exchange notes that proposed Market Data Fees for ToM are considerably lower than those assessed for a

²⁹ NetCoalition, at 15 (quoting H.R. Rep. No. 94-229, at 92 (1975), as reprinted in 1975 U.S.C.C.A.N. 321, 323).

³⁰ See supra note 25.

similar MIAX Options market data product but believes that a lower ToM Market Data Fee is fair and reasonable given the recent entrance of MIAX PEARL.

Moreover, the decision as to whether or not to subscribe to ToM or PLF is entirely optional to all parties. Potential subscribers are not required to purchase the ToM or PLF market data feed, and MIAX PEARL is not required to make the ToM or PLF market data feed available without a fee. Subscribers can discontinue their use at any time and for any reason, including due to their assessment of the reasonableness of fees charged. The allocation of fees among subscribers is fair and reasonable because, if the market deems the proposed fees to be unfair or inequitable, firms can diminish or discontinue their use of this data.

New Member Non-Transaction Fee Waiver

MIAX PEARL believes that the New Member Non-Transaction Fee Waiver is consistent with Section 6(4) of the Act in that it is fair, reasonable and equitable and it is consistent with Section 6(5) of the Act in that it is not unreasonably discriminatory to waive the non-transaction fees assessable to new Members who are approved by the Exchange and credentialed to use the System in the production environment for a limited period since the waiver of such fees provides incentives to interested applicants to apply for MIAX PEARL membership. This in turn provides MIAX PEARL with potential new order flow and liquidity providers as it continues to grow its marketplace. The waiver will apply equally to new Members for the specified limited period.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must establish fees that are competitive with other exchanges. For the reasons described above,

the Exchange believes that the proposed fees in the MIAX PEARL Fee Schedule appropriately reflect this competitive environment.

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

MIAX PEARL does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Unilateral action by MIAX PEARL in the assessment of certain non-transaction fees for services provided to its Members and others using its facilities will not have an impact on competition. As a more recent entrant in the already highly competitive environment for equity options trading, MIAX PEARL does not have the market power necessary to set prices for services that are unreasonable or unfairly discriminatory in violation of the Act. The Exchange believes that the proposed definitions would increase both intermarket and intramarket competition by encouraging Members to direct their order flow to the Exchange, which should enhance the quality of quoting and increase the volume of contracts traded on MIAX PEARL. MIAX PEARL's proposed non-transaction fee levels, as described herein, are comparable to fee levels charged by other options exchanges for the same or similar services, including those fees assessed by its affiliate, MIAX Options. Further, the Exchange believes that its waiver of the assessment of such non-transaction fees for new Members for the limited period specified above will not impose any burden on competition and in fact will encourage competition. The Exchange believes that by offering competitive fee rates based upon objective criteria like volume and quoting activity on the Exchange it will increase competition and attract firms of different sizes and business models to become Members and participate on the Exchange.

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

Written comments were neither solicited nor received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,³¹ and Rule 19b-4(f)(2)³² thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-PEARL-2018-07 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-2018-07. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

³¹ 15 U.S.C. 78s(b)(3)(A)(ii).

³² 17 CFR 240.19b-4(f)(2).

comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-PEARL-2018-07 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³³

Eduardo A. Aleman
Assistant Secretary

³³ 17 CFR 200.30-3(a)(12).

