SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-98472; File No. SR-PEARL-2023-45)

September 21, 2023

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 to Adopt the NBBO Setter Plus Program and Eliminate Certain Other Rebates

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 September 11, 2023, MIAX PEARL, LLC ("MIAX Pearl" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

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

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

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

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

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

2 17 CFR 240.19b-4.

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

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

1. Purpose

The Exchange proposes to amend the Fee Schedule to: (i) adopt a new incentive program called the "NBBO Setter Plus Program" (referred to in this filing as the "NBBO Program") that, in general, provides enhanced rebates for Equity Members'[3] added 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), as well as an additive rebate applied to orders that set the NBBO[4] upon entry; (ii) reduce the standard rebate for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume in all Tapes and make the corresponding changes to the Liquidity Indicator Codes and Associated Fees table[5]; (iii) eliminate the Add Volume Tiers table[6] and associated rebates and make corresponding changes to rename Section 1)c) to now be titled "NBBO Setter Plus Program"; (iv) eliminate the Market Quality Tiers table[7] and associated rebates; (v) renumber Section 1)g), Step-Up Added Liquidity Rebate, to now be Section 1)f), Step-Up Added Liquidity Rebate; and (vi) amend the Definitions section to include a definition for the term "NBBO Set Volume" (described below). All of the proposed changes relate to the adoption of

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

[4] 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.

[5] See Fee Schedule, Section 1)b), Liquidity Indicator Codes AA, AB and AC.

[6] See Fee Schedule, Section 1)c).

[7] See Fee Schedule, Section 1)f).

the proposed NBBO Program, which incorporates certain concepts from the current Add Volume Tiers and Market Quality Tiers programs.

The Exchange originally filed this proposal on August 31, 2023 (SR-PEARL-2023-42). On September 11, 2023, the Exchange withdrew SR-PEARL-2023-42 and refiled this proposal.

Background of Current Rebate Programs Impacted by this Proposal

Section 1)a) of the Fee Schedule sets forth the Exchange's standard rebates and fees for adding, removing or routing orders (displayed and non-displayed) in all Tapes. The Exchange provides different rebates and fees depending on whether (i) the execution is for an order where the securities are priced at or above $1.00 per share, or (ii) the execution is for an order where the securities are priced below $1.00 per share. Relevant for the purposes of this proposal, the Exchange currently provides a standard rebate of ($0.0027)[8] per share for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume across all Tapes.[9]

Section 1)b) of the Fee Schedules provides a list of the liquidity indicator codes and associated rebates or fees that are applied to a transaction so that each Equity Member that enters an order is able to understand the fee or rebate that is applied to the execution. Each side of a trade is assigned a liquidity indicator code in order to identify the scenario under which the trade occurred.

Section 1)c) of the Fee Schedule provides a volume-based tier structure, referred to as the Add Volume Tiers, in which the Exchange provides enhanced rebates for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume for Equity Members

8 The Exchange indicates rebates in parentheses in the Fee Schedule. See the General Notes Section of the Fee Schedule.

9 See Fee Schedule, Section 1)a). See also Fee Schedule, Section 1)b), Liquidity Indicator Codes AA, AB, and AC.

that meet specified volume thresholds on the Exchange. In particular, an Equity Member that qualifies for Add Volume Tier 1 will receive an enhanced rebate of ($0.0032) per share 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[10] of at least 0.07% of TCV.[11] An Equity Member that qualifies for Add Volume Tier 2 will receive an enhanced rebate of ($0.0035) per share 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 0.10% of TCV. An Equity Member that qualifies for Add Volume Tier 3 will receive an enhanced rebate of ($0.0036) per share 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 0.30% of TCV. The enhanced rebates provided by the Add Volume Tiers are provided instead of the standard rebate of ($0.0027) per share applicable to executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume across all Tapes.

Section 1)f) of the Fee Schedule sets forth a separate tiered pricing incentive structure, referred to as the Market Quality Tiers, which provides enhanced rebates for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume for Equity

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10 The term "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. The Exchange excludes from its calculation of ADAV and ADV shares added or removed on any day that the Exchange's system experiences a disruptions that lasts for more than 60 minutes during regular trading hours ("Exchange System Disruption"), 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 The term "TCV" means total consolidated volume calculated as the volume in shares reported by all exchanges and reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply. The Exchange excludes from its calculation of TCV volume on any given day that the Exchange's system experiences a disruption that lasts for more than 60 minutes during Regular Trading Hours. On any day with a scheduled early market close, and on the "Russell Reconstitution Day" (typically the last Friday in June). See the Definitions Section of the Fee Schedule.

Members that meet certain minimum quoting requirements across a specified number of securities. In particular, the Exchange provides an enhanced rebate of ($0.0032) per share in Market Quality Tier 1 for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume if the Equity Member's Percent Time at NBBO[12] is at least 25% in an average of at least 250 securities, at least 50 of which must be Market Quality Securities[13], per trading day during the month. The Exchange also provides an enhanced rebate of ($0.0035) per share in Market Quality Tier 2 for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume if the Equity Member's Percent Time at NBBO is at least 25% in an average of at least 1,000 securities, at least 100 of which must be MQ Securities, per trading day during the month. The list of MQ Securities is published on the Exchange's website.[14]

Proposal to Adopt the NBBO Setter Plus Program

The Exchange proposes to adopt a new incentive program called the "NBBO Setter Plus Program" (referred to in this filing as the "NBBO Program"), which is designed to incentivize market quality and quoting on the Exchange. Certain elements of the NBBO Program will be similar to the incentives and volume calculations for the current Add Volume Tiers and Market Quality Tiers programs. In connection with the establishment of the NBBO Program, the

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12 The term "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 the national best offer ("NBO"). See the Definitions Section of the Fee Schedule.

13 Pursuant to this proposal, and as described further below, the Exchange proposes to slightly amend the term "Market Quality Securities" or "MQ Securities" as currently defined in the Fee Schedule in order to account for the changes to the Market Quality Tiers program and newly proposed NBBO Setter Plus Program. Currently, the term "Market Quality Securities" or "MQ Securities" means a list of securities designated as such, that are used for the purposes of qualifying for the Market Quality Tiers. The universe of these securities will be determined by the Exchange and published on the Exchange's website. See the Definitions Section of the Fee Schedule. The proposed changes are described below.

14 See https://www.miaxglobal.com/markets/us-equities/pearl-equities/fees (last visited August 21, 2023).

Exchange proposes to remove the Add Volume Tiers and Market Quality Tiers sections from the Fee Schedule (described further below), with Section 1)c) being re-titled "NBBO Setter Plus Program."

The Exchange proposes to add a new table in Section 1)c) of the Fee Schedule titled "NBBO Setter Plus Table." The NBBO Setter Plus Table will provide enhanced rebates for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume across all Tapes (applicable to Liquidity Indicator Codes AA, AB and AC). Conceptually, the NBBO Program provides four volume tiers enhanced by three market quality levels to provide increasing rebates in this segment. The four volume tiers are achievable by greater volume from the best of three alternative methods. The three market quality levels are achievable by greater NBBO participation in a minimum number of specific securities. Additionally, there is an additive rebate for trades the set the NBBO, described further below.

First, MIAX Pearl Equities will determine the applicable 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 will be calculated in parallel in each month, and each Equity Member will receive the highest tier achieved from any of the three methods each month. All three volume calculation methods will be based on an Equity Member's respective ADAV or NBBO Set Volume or ADV as a percent of industry TCV as the denominator.

Under volume calculation Method 1, the Exchange proposes to provide tiered rebates based on an Equity Member's ADAV as a percentage of TCV. In particular, an Equity Member will qualify for the base rebates in Tier 1 for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume across all Tapes by achieving an ADAV of at least

0.00% and less than 0.08% of TCV. An Equity Member will qualify for the enhanced rebates in Tier 2 for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume across all Tapes by achieving an ADAV of at least 0.08% and less than 0.25% of TCV. An Equity Member will qualify for the enhanced rebates in Tier 3 for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume across all Tapes by achieving an ADAV of at least 0.25% and less than 0.40% of TCV. Finally, an Equity Member will qualify for the enhanced rebates in Tier 4 for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume across all Tapes by achieving an ADAV of at least 0.40% of TCV.

Under volume calculation Method 2, the Exchange proposes to provide tiered rebates based on an Equity Member's NBBO Set Volume as a percentage of TCV. In connection with this proposed volume calculation method, the Exchange proposes to adopt a definition for the term "NBBO Set Volume," which will be included in the Definitions section of the Fee Schedule. The Exchange proposes that the term NBBO Set Volume means the ADAV in all securities of an Equity Member that sets the NBB or NBO on MIAX Pearl Equities. Pursuant to proposed Method 2, an Equity Member will qualify for the base rebates in Tier 1 for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume across all Tapes by achieving an NBBO Set Volume of at least 0.00% and less than 0.02% of TCV. An Equity Member will qualify for the enhanced rebates in Tier 2 for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume across all Tapes by achieving an NBBO Set Volume of at least 0.02% and less than 0.03% of TCV. An Equity Member will qualify for the enhanced rebates in Tier 3 for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume across all Tapes by achieving an

NBBO Set Volume of at least 0.03% and less than 0.08% of TCV. An Equity Member will qualify for the enhanced rebates in Tier 4 for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume across all Tapes by achieving an NBBO Set Volume of at least 0.08% of TCV.

Under volume calculation Method 3, the Exchange proposes to provide tiered rebates based on an Equity Member's ADV as a percentage of TCV. In particular, an Equity Member will qualify for the base rebates in Tier 1 for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume across all Tapes by achieving an ADV of at least 0.00% and less than 0.20% of TCV. An Equity Member will qualify for the enhanced rebates in Tier 2 for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume across all Tapes by achieving an ADV of at least 0.20% and less than 0.60% of TCV. An Equity Member will qualify for the enhanced rebates in Tier 3 for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume across all Tapes by achieving an ADV of at least 0.60% and less than 1.00% of TCV. An Equity Member will qualify for the enhanced rebates in Tier 4 for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume across all Tapes by achieving an ADV of at least 1.00% of TCV.

After the volume calculation is performed to determine highest tier achieved by the Equity Member, the applicable rebate will be 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 proposes to provide one column of base rebates (referred to in the NBBO Program table as "Level A") and two columns of enhanced rebates (referred to in the NBBO

Program table as "Level B" and "Level C"), depending on the Equity Member's Percent Time at NBBO on MIAX Pearl Equities in a certain amount of specified securities ("Market Quality Securities" or "MQ Securities," defined below). The Fee Schedule will specify the percentage of time that the Equity Member must be at the NBBO on MIAX Pearl Equities in at least 200 symbols out of the full list of 1,000 MQ Securities (which may vary from time to time based on market conditions). The list of MQ Securities will be generally based on the top multi-listed 1,000 symbols by ADV across all U.S. securities exchanges. The list of MQ Securities will be updated monthly by the Exchange and published on the Exchange's website. The Exchange notes that at least one other competing exchange provides enhanced rebates for executions of orders in certain securities priced at or above $1.00 per share submitted by members that set or join the NBBO on that exchange.[15]

The Exchange proposes that, for the purpose of determining qualification for the rebates described in Level B and Level C of 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). The Exchange proposes to describe this exclusion in the General Notes section of the Fee Schedule. The Exchange believes that these types of Exchange

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15 See Cboe BZX Equities Fee Schedule, NBBO Setter section and Add/Remove Volume Tiers section, available at https://www.cboe.com/us/equities/membership/fee_schedule/bzx/ (providing an additional rebate of ($0.0007) per share to the top displayed liquidity tier rebate of ($0.0031) per share for executions of added displayed volume in securities priced at or above $1.00 per share that establish a new Setter NBBO in NBBO Setter Securities on Cboe BZX). For purposes of the Cboe BZX Fee Schedule, the term "Setter NBBO" means a quotation of at least 100 shares that is better than the NBBO or a quotation of a notional size of at least $10,000.00 that is better than the NBBO. Further, the term "NBBO Setter Securities" means a list of securities included in the Cboe BZX NBBO Setter Program, the universe of which will be determined by Cboe BZX and published in a notice distributed to Cboe BZX members and on the Cboe BZX website. See id.

system disruptions could preclude Equity Members from participating on the Exchange to the extent that they might have otherwise participated on such days, and thus, the Exchange believes it is appropriate to exclude such days when determining whether an Equity Member meets the applicable Percent Time at NBBO during a month to avoid penalizing Equity Members that might otherwise have met such requirements.

Additionally, the Exchange believes that scheduled early market closures, which typically are the day before, or the day after, a holiday, may preclude some Equity Members from participating on the Exchange at the same level that they might otherwise. For similar reasons, the Exchange believes it is appropriate to exclude the Russell Reconstitution Day in the same manner, as the Exchange believes that the Russell Reconstitution Day typically has extraordinarily high, and abnormally distributed, trading volumes and the Exchange believes this change to normal activity may affect an Equity Member's ability to meet the quoting requirement across various MQ Securities on that day. The Exchange notes that the exclusion of any day during which the Exchange's system experiences a disruption that lasts for more than 60 minutes during Regular Trading Hours, any day with a scheduled early market close, and the Russell Reconstitution Day is consistent with the methodologies used by other exchanges when calculating certain member trading and other volume metrics for purposes of determining whether those members qualify for certain pricing incentives, and the Exchange believes application of this methodology is similarly appropriate for the proposed Percent Time at NBBO requirements under the proposed NBBO Program.[16]

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16 See e.g., Cboe BZX Equities Fee Schedule, available at https://www.cboe.com/us/equities/membership/fee_schedule/bzx/; Cboe EDGX Exchange, Inc. ("Cboe EDGX") Equities Fee Schedule, available at https://www.cboe.com/us/equities/membership/fee_schedule/edgx/; and MEMX, LLC ("MEMX") Fee Schedule, available at https://info.memxtrading.com/fee-schedule/.

The Exchange proposes that the base rebates ("Level A") will be as follows: ($0.00240) per share in Tier 1; ($0.00310) per share in Tier 2; ($0.00345) per share in Tier 3; and ($0.00350) per share in Tier 4.[17]

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

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

The Exchange notes that the introduction of the NBBO Setter Plus Program will be available to all Equity Members and will provide Equity Members several different opportunities to receive enhanced rebates utilizing three different volume calculation methodologies and different participation levels at the NBBO. The proposed changes are designed to encourage Equity Members that provide Added Displayed Volume in securities priced at or above $1.00 per

17 The Exchange notes that the proposed ($0.00240) per share will be the base standard rebate for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume across all Tapes, which is a decrease from the current standard rebate of ($0.0027) per share, listed in Section 1)a) of the Fee Schedule and attributable to Liquidity Indicator Codes AA, AB and AC. The purpose and rationale for the proposed decrease in the standard rebate for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume across all Tapes is discussed below.

share across all Tapes to the Exchange to increase such order flow, which would 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.

NBBO Setter Additive Rebate

The Exchange proposes to provide an additional rebate as part of the NBBO Program, which will be included as a line item at the bottom of the NBBO Setter Plus table. In particular, the Exchange proposes to provide an "NBBO Setter Additive Rebate" of ($0.0003) per share, which will be applicable only to executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume (other than Retail Orders[18]) that set the NBB or NBO on MIAX Pearl Equities with a minimum size of a round lot. The purpose of the proposed NBBO Setter Additive Rebate is 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 NBBO 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. Additionally, other U.S. equity exchanges have adopted similar pricing incentives applicable to executions of orders that establish the NBBO, with the Exchange's proposed top tier rebate, coupled with the NBBO Setter Additive Rebate, being higher than competing exchanges' top rebates for similar executions (providing additive rebate of ($0.0003) per share to the top displayed liquidity tier rebate of ($0.0036) per share for executions of added displayed volume (other than retail orders) in securities priced at or above

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[18] 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).

$1.00 per share that establish the NBBO on the Exchange, for a total "enhanced" rebate of ($0.0039) per share).[19]

Corresponding Changes to the Fee Schedule

Proposal to Reduce the Standard Rebate for Executions of Orders in Securities Priced at or above $1.00 Per Share for Added Displayed Volume (All Tapes) and Corresponding Changes to Liquidity Indicator Codes

In connection with the proposed NBBO Setter Plus Program, the Exchange proposes to reduce the standard rebate for executions of orders in securities priced at or above $1.00 per share that add displayed liquidity to the Exchange across all Tapes (as mentioned above). Currently, the Exchange provides a standard rebate of ($0.0027) per share for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume in all Tapes. The Exchange now proposes to reduce the standard rebate from ($0.0027) to ($0.0024) per share for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume across all Tapes. Accordingly, the Exchange proposes to amend Section 1)a), Standard Rates, to reflect this proposed change and amend Section 1)b), Liquidity Indicator Codes and Associated Fees, to reflect the corresponding changes to the applicable Liquidity Indicator Codes, AA, AB and AC.

The purpose of reducing the standard rebate for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume across all Tapes is due to the Exchange's proposal to adopt the NBBO Program, which provides multiple volume calculation

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19 See MEMX Fee Schedule, NBBO Setter/Joiner Tiers Section (providing additional rebate of ($0.0004) per share to the top displayed liquidity tier rebate of ($0.0033) per share for executions of added displayed volume (other than retail orders) in securities priced at or above $1.00 per share that establish the NBBO or establish a new BBO on MEMX that matches the NBBO first established on an away market, for a total "enhanced" rebate of ($0.0037) per share); and Cboe BZX Fee Schedule, NBBO Setter section and Add/Remove Volume Tiers section (providing additional rebate of ($0.0007) per share to the top displayed liquidity tier rebate of ($0.0031) per share for executions of added displayed volume in securities priced at or above $1.00 per share that establish a new Setter NBBO in NBBO Setter Securities on Cboe BZX, for a total "enhanced" rebate of ($0.0038) per share).

methods for Equity Members to receive enhanced rebates compared to the standard rate. The Exchange notes that despite the modest reduction proposed herein, the proposed standard rebate of ($0.0024) per share for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume across all Tapes remains competitive with, and higher than, the standard rebates provided by other exchanges for similar executions.[20]

Proposal to Eliminate the Add Volume Tiers Table and Associated Rebates

In connection with the NBBO Setter Plus Program, the Exchange proposes to eliminate the Add Volume Tiers table and associated rebates in Section 1)c) of the Fee Schedule and rename Section 1)c) as the NBBO Setter Plus Program. As mentioned above, the Add Volume Tiers provided enhanced rebates for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume so long as the Equity Member met specified ADAV thresholds on the Exchange. The Exchange adopted the Add Volume Tiers rebates for the purpose of encouraging Equity Members to increase their orders that add liquidity on the Exchange, thereby improving its market quality with respect to such securities and contributing to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Equity Members.[21] The Exchange now proposes to eliminate the Add Volume Tiers table and associated rebates as the NBBO Program incorporates similar aspects and rebate amounts, including, under volume calculation Method 1, tiered rebates based on an Equity Member's

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20 See e.g., 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); see also Cboe BZX Equities Fee Schedule, available at https://www.cboe.com/us/equities/membership/fee_schedule/bzx/ (providing a standard rebate of $0.0016 per share for adding displayed liquidity in securities priced at or above $1.00 per share).

21 See Securities Exchange Act Release No. 93979 (January 14, 2022), 87 FR 3151 (January 20, 2022) (SR-PEARL-2022-01).

ADAV as a percentage of TCV. The Exchange notes that the NBBO Program does have slightly lower rebates for the corresponding Add Volume Tier thresholds; however, the Exchange believes that the benefits of the NBBO Program – three volume calculation methods and two market quality levels based on participation at the NBBO in order to obtain enhanced rebates – provides more opportunities for Equity Members to achieve higher rebates and will encourage the submission of increased order flow. The Exchange believes this will, in turn benefit all Equity Members by providing greater execution opportunities on the Exchange and contribute to a deeper, more liquid market, to the benefit of all investors and market participants.

Proposal to Eliminate the Market Quality Tiers Table and Associated Rebates

In connection with the NBBO Setter Plus Program, the Exchange proposes to eliminate the Market Quality Tiers table and associated rebate in Section 1)f) of the Fee Schedule. As mentioned above, the Market Quality Tiers provided enhanced rebates for Equity Members that met certain minimum quoting requirements across a specified number of securities. The Exchange adopted the Market Quality Tiers for the purpose of encouraging executions of Added Displayed Volume for qualifying Equity Members as a means of recognizing the value of market participants that consistently quote at the NBBO in a large number of securities generally, and in the specified MQ Securities, in particular.[22] The Exchange now proposes to eliminate the Market Quality Tiers table and associated rebates as the NBBO Program incorporates similar aspects, rebate amounts, and calculation methodologies based on an Equity Member's Percent Time at NBBO in certain MQ Securities under Level B and Level C.

Proposal to Renumber Fee Schedule Section 1)g), Step-Up Added Liquidity Rebate, as Section 1)f)

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[22] See Securities Exchange Act Release No. 94929 (May 17, 2022), 87 FR 31269 (May 23, 2022) (SR-PEARL-2022-21).

As described above, the Exchange proposes to eliminate the Market Quality Tiers table and associated rebates currently described in Section 1)f) of the Fee Schedule. Accordingly, the Exchange proposes to renumber Section 1)g), Step-Up Added Liquidity Rebate, as Section 1)f). The purpose of this change is to provide consistency and clarity in the Fee Schedule.

Proposed Changes to the Definitions and General Notes Sections of the Fee Schedule

As mentioned above, with the adoption of the NBBO Program, the Exchange proposes to make several corresponding changes to the Definitions and General Notes sections of the Fee Schedule. First, the Exchange proposes to amend the paragraphs describing "ADAV" in the Definition section to include the definition of "NBBO Set Volume." In particular, the term "NBBO Set Volume" will mean the ADAV in all securities of an Equity Member that sets the NBB or NBO on MIAX Pearl Equities. Further, the Exchange proposes that an Equity Member's NBBO Set Volume will be excluded from the calculation of the NBBO Program in certain instances. The Exchange proposes to amend the second paragraph related to ADAV in the Definitions section to include NBBO Set Volume as excluded volume. With the proposed changes, the paragraphs describing ADAV in the Definitions section will read as follows:

> "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).

Next, the Exchange proposes to amend the definition for "Market Quality Securities" or "MQ Securities." Since the Exchange proposes to eliminate the Market Quality Tiers and associated rebates, which are based on an Equity Member's participation at the NBBO in the currently-defined MQ Securities, the Exchange will amend this definition to fit within the NBBO Program. As described above, Level B and Level C enhanced rebates in the NBBO Program will be partly based on an Equity Member's Percent Time at NBBO on MIAX Pearl Equities in a certain amount of MQ Securities. The Exchange proposes to amend the definition of MQ Securities to reflect the elimination of the Market Quality Tiers and adoption of the NBBO Program. Accordingly, with the proposed changes, the definition for Market Quality Securities will be as follows:

> "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.

In connection with the proposed revised definition for MQ Securities, the Exchange also proposes to amend the corresponding paragraph in the General Notes section regarding when the Exchange excludes certain Market Quality security volume. With the proposed changes, the exclusion paragraph will read as follows:

> For the purpose of determining qualification for the rebates described in Level B and Level C of 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).

The purpose of all these changes is to provide consistency and clarity in the Fee Schedule in light of the proposed adoption of the NBBO Program and corresponding elimination of other rebate programs.

<u>Implementation</u>

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[23] in general, and furthers the objectives of Section 6(b)(4) of the Act[24] 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)[25] 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. As of August 23, 2023, based on publicly available information, no single registered equities exchange currently has more than approximately 13-14% of the total market share of executed volume of equities trading for the month of August 2023.[26] 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 currently represents approximately 1.86% of the overall market share. The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the

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23 15 U.S.C. 78f(b).

24 15 U.S.C. 78f(b)(4).

25 15 U.S.C. 78f(b)(5).

26 See the "Market Share" section of the Exchange's website, available at https://www.miaxglobal.com/ (last visited August 23, 2023).

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."[27]

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 to 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 MQ Securities and the NBBO Program.

NBBO Setter Plus Program

The Exchange believes that the proposed NBBO Setter Plus Program, in general, is a reasonable means 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. As noted above, aspects of the proposed NBBO Program are comparable to other volume-based incentives currently in place at the Exchange and competing exchanges, which have been

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27 See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37499 (June 29, 2005).

widely adopted.[28] The Exchange believes the proposed NBBO Program is 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 to the Exchange's market quality associated with greater order flow by Equity Members that set the NBBO, and the introduction of higher volumes of orders into the price and volume discovery process. The Exchange believes the proposed NBBO Program is equitable and not unfairly discriminatory because it is designed to incentivize the entry of aggressively priced displayed liquidity that will create tighter spreads, thereby promoting price discovery and market quality on the Exchange to the benefit of all Equity Members and public investors.

The Exchange believes the proposal to have three different volume calculation methods to determine the Equity Member's tier for purposes of the NBBO Program is reasonable, equitably allocated, and not unfairly discriminatory because the three methods will be calculated in parallel in each month, and each Equity Member will receive the tier associated with the highest tier achieved each month. This allows market participants with various trading strategies to participate in the NBBO Program, including, among others, Equity Members with liquidity providing strategies, aggressive order adding strategies that attempt to set the NBBO, as well as Equity Members acting as an agency for customers.

The Exchange believes the proposed Market Quality Tiers applicable to the enhanced rebates in the NBBO Program, which are dependent upon the Equity Member's Percent Time at NBBO in MQ Securities, are reasonable, equitably allocated and not unfairly discriminatory. This is because the Market Quality Tiers of the NBBO Program are intended to encourage

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28 See, generally, Fee Schedule, Section 1)c) and Section 1)f); see also Cboe BZX Equities Fee Schedule, NBBO Setter Section and Add/Remove Volume Tiers Section and MEMX Fee Schedule, NBBO Setter/Joiner Tiers Section.

Equity Members to promote price discovery and market quality by quoting at the NBBO for a significant portion of each day in a large number of securities generally, and in MQ Securities in particular, thereby benefiting the Exchange and other investors by providing improved trading conditions for all market participants through narrower bid-ask spreads and increasing the depth of liquidity available at the NBBO in a broad base of highly liquid securities. As noted above, Cboe BZX provides an enhanced rebate based on increased member participation in a defined list of securities (called the NBBO Setter Securities on Cboe BZX) that set the NBBO on that exchange.[29]

The Exchange believes the proposed enhanced rebates in Level B[30] and Level C[31] of the Market Quality Tiers of the NBBO Program are reasonable in that they do not reflect disproportionate increases above the standard rebates of ($0.00250) per share for Level B and ($0.00260) per share for Level C, but reflect the value added value to the Exchange's market quality from Equity Members that meet the required Percent Time at NBBO in the minimum number of MQ Securities, which should incentivize the entry of aggressively priced displayed liquidity that will create tighter spreads, promote price discovery and market quality on the Exchange to the benefit of all Equity Members and public investors.

The Exchange further believes that the proposed criteria to achieve the enhanced rebates provided in Level B and Level C of the Market Quality Tiers of the NBBO Program is reasonable and not unfairly discriminatory because the proposed criteria for Level C rebates is incrementally more difficult to achieve than that of Level B, and thus Level C appropriately offers higher rebates commensurate with the corresponding higher Percent Time at NBBO by

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29 See supra note 15.

30 Proposed tiered rebates ranging from ($0.00250) in Tier 1 to ($0.00355) in Tier 4.

31 Proposed tiered rebates ranging from ($0.00260) in Tier 1 to ($0.00360) in Tier 4.

Equity Members in the minimum number of MQ Securities. Therefore, the Exchange believes that the Market Quality Tiers of the NBBO Program, as proposed, are consistent with an equitable allocation of fees and rebates, as the more stringent criteria correlates with the corresponding higher tiers' enhanced rebates.

In addition, the Exchange believes that it is reasonable and consistent with an equitable allocation of fees to pay higher rebates for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume to Equity Members that qualify for one of the Market Quality Tiers of the NBBO Program because of the additional commitment to market quality reflected in the associated Percent Time at NBBO requirements. Such Equity Members benefit all investors by promoting price discovery and increasing the depth of liquidity available at the NBBO and benefit the Exchange itself by enhancing its competitiveness as a market center that attracts actionable orders. Further, the Exchange notes that the proposed Market Quality Tiers of the NBBO Program offer incentives on the Exchange that would apply uniformly to all Equity Members, and any Equity Member may choose to qualify for one of those tiers by meeting the associated requirements in any month. The Exchange believes that the requirements are attainable for many market participants who do actively quote on the Exchange and are reasonably related to the enhanced market quality that the NBBO Program is designed to promote.

The Exchange also believes that including in the proposed Market Quality Tiers of the NBBO Program a quoting requirement for certain specified securities (i.e., the MQ Securities), is equitable and not unfairly discriminatory because the Exchange has identified the MQ Securities as securities in which it would like to inject additional quoting competition, which the Exchange believes will generally act to narrow spreads, increase size at the NBBO, and increase liquidity depth in such securities, thereby increasing the attractiveness of the Exchange as a destination venue with respect to such securities. Accordingly, the Exchange believes that this aspect of the proposal is reasonable, equitably allocated, and not unfairly discriminatory because it is consistent with the overall goals of enhancing market quality.

As noted above, the proposed Market Quality Tiers of the NBBO Program are similar in structure and purpose to pricing programs in place on least one other exchange that is designed to enhance market quality.[32] Specifically, this program provides a higher rebate for executions of liquidity-adding displayed orders for members that achieve minimum quoting standards, including minimum quoting at the NBBO in a large number of securities generally, or certain designated securities in particular.[33] The Exchange also notes that the proposed Market Quality Tiers of the NBBO Program are not dissimilar from volume-based rebates and fees which have been widely adopted by exchanges[34] and are equitable and not unfairly discriminatory because they are generally open to all Equity Members on an equal basis and provide higher rebates that are reasonably related to the value of an exchange's market quality. Much like volume-based tiers are designed to incentivize higher levels of liquidity provision, the proposed Market Quality Tiers portion of the NBBO Program is designed to incentivize enhanced market quality on the Exchange through tighter spreads, greater size at the NBBO, and greater quoting depth in a large number of securities generally, and in MQ Securities specifically, through the provision of an enhanced rebate, where such rebate will in turn incentivize higher levels of displayed liquidity provision in a general manner. Accordingly, the Exchange believes that the proposed NBBO

32 See supra note 16.

33 Id.

34 Id.

Program, in general, promotes the principles discussed in Sections 6(b)(4) and 6(b)(5) of the Act.[35]

NBBO Setter Additive Rebate

The Exchange believes the proposed NBBO Setter Additive Rebate is reasonable, equitably allocated and not unfairly discriminatory because is available to all Equity Members and 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. As such, the Exchange believes the NBBO Setter Additive Rebate for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume (other than Retail Orders) that sets the NBB or NBO on the Exchange is reasonably related to the market quality benefits that such additional enhanced rebate is designed to promote. Additionally, other U.S. equity exchanges have adopted similar pricing incentives applicable to executions of orders that establish the NBBO, with the Exchange's proposed top tier rebate, coupled with the NBBO Setter Additive Rebate, being higher than competing exchanges' top rebates for similar executions.[36]

Reduce Standard Rebate for Executions of Orders in Securities Priced at or above $1.00 per share for Added Displayed Volume (All Tapes) and Corresponding Changes to Liquidity Indicator Codes

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35 15 U.S.C. 78f(b)(4) and (5).

36 See MEMX Fee Schedule, NBBO Setter/Joiner Tiers Section (providing additional rebate of ($0.0004) per share to the top displayed liquidity tier rebate of ($0.0033) per share for executions of added displayed volume (other than retail orders) in securities priced at or above $1.00 per share that establish the NBBO or establish a new BBO on MEMX that matches the NBBO first established on an away market, for a total "enhanced" rebate of ($0.0037) per share); and Cboe BZX Equities Fee Schedule, NBBO Setter section and Add/Remove Volume Tiers section (providing additional rebate of ($0.0007) per share to the top displayed liquidity tier rebate of ($0.0031) per share for executions of added displayed volume in securities priced at or above $1.00 per share that establish a new Setter NBBO in NBBO Setter Securities on Cboe BZX, for a total "enhanced" rebate of ($0.0038) per share).

The Exchange believes that the proposal to reduce the standard rebate from ($0.0027) to ($0.0024) per share for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume is reasonable, equitably allocated and not unfairly discriminatory because it represents a modest decrease from the current standard rebate and competitive with, and higher than, the standard rebates provided by other exchanges for similar executions.[37] The Exchange further believes that the proposed reduced standard rebate for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume is equitably allocated and not unfairly discriminatory because the standard rebate will apply equally to all Equity Members. The Exchange also believes its proposal to amend Section 1)b), Liquidity Indicator Codes and Associated Fees, to reflect the proposed decreased rebate for Added Displayed Volume in the corresponding Liquidity Indicator Codes AA, AB and AC is reasonable because it provides uniformity and clarity in the Fee Schedule.

Proposal to Eliminate the Add Volume Tiers Table and Associated Rebates and the Market Quality Tiers Table and Associated Rebates

The Exchange believes its proposal to eliminate the Add Volume Tiers table and associated rebates in Section 1)c) of the Fee Schedule and rename Section 1)c) as the NBBO Setter Plus Program in connection with the NBBO Program, is reasonable, equitably allocated and not unfairly discriminatory. The Exchange adopted the Add Volume Tiers rebates for the purpose of encouraging Equity Members to increase their orders that add liquidity on the Exchange, thereby improving its market quality with respect to such securities and contributing to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Equity Members. The Exchange's proposal to eliminate the Add Volume Tiers table and

[37] See supra note 20.

associated rebates is reasonable because the NBBO Program incorporates similar aspects and rebate amounts, including, under volume calculation Method 1, tiered rebates based on an Equity Member's ADAV as a percentage of TCV. The Exchange notes that the NBBO Program does have slightly lower rebates for the corresponding Add Volume Tier thresholds; however, the Exchange believes that the benefits of the NBBO Program, i.e., several volume calculation methods to obtain enhanced rebates, provides more opportunities for Equity Members to achieve higher rebates and will encourage the submission of increased order flow, which would 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.

Similarly, the Exchange believes its proposal to eliminate the Market Quality Tiers table and associated rebate in Section 1)f) of the Fee Schedule is reasonable, equitably allocated and not unfairly discriminatory. The Exchange adopted the Market Quality Tiers for the purpose of encouraging executions of Added Displayed Volume for qualifying Equity Members as a means of recognizing the value of market participants that consistently quote at the NBBO in a large number of securities generally, and in the specified MQ Securities, in particular. The Exchange's proposal to eliminate the Market Quality Tiers table and associated rebates is reasonable as the NBBO Program incorporates similar aspects, rebate amounts calculation methodologies based on an Equity Member's Percent Time at NBBO in certain MQ Securities under Level B and Level C, which should provide more opportunities for Equity Members to achieve higher rebates and will encourage the submission of increased order flow to the benefit of all Equity Members. This should provide greater execution opportunities on the Exchange and contribute to a more liquid market, to the benefit of all investors and market participants.

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

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

Intra-Market Competition

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

The proposed decrease to the standard rebate for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume does not impose a burden on intramarket competition that is not in furtherance of the Act in that the proposed change applies to all Equity Members equally and the proposed reduced rate is still competitive with, or higher than, rebates offered by competing exchanges for similar executions.[38]

The proposed non-substantive changes to the Definitions section of the Fee Schedule are similarly non-burdensome as they are intended to provide clear descriptions of the terms applicable to the proposed NBBO Program.

In general, the Exchange believes all of the proposed changes are intended to enhance market quality on the Exchange in a large number of securities generally, and in the MQ Securities specifically, and to encourage Equity Members to maintain or increase their order flow on the Exchange, thereby promoting price discovery and contributing to a deeper and more liquid market to the benefit of all market participants. As a result, the Exchange believes the proposal would enhance its competitiveness as a market that attracts actionable orders, thereby making it a more desirable destination venue for its customers. For these reasons, the Exchange believes that the proposal furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."[39]

Intermarket Competition

The Exchange believes its proposal will benefit competition, and the Exchange notes that it operates in a highly competitive market. Equity Members have numerous alternative venues they may participate on and direct their order flow to, including fifteen other equities exchanges and numerous alternative trading systems and other off-exchange venues. As noted above, no single registered equities exchange currently has more than 13-14% of the total market share of

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38 See supra note 20.

39 See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 47396 (June 29, 2005).

executed volume of equities trading.[40] 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 proposal is designed to enhance market quality on the Exchange and to encourage additional order flow and quoting activity on the Exchange and to promote market quality through pricing incentives that are comparable to, and competitive with, pricing programs in place at other exchanges with respect to executions of Added Displayed Volume.[41] Accordingly, the Exchange believes the proposal would not be a burden on, but rather promote, intermarket competition by enabling the Exchange to better compete with other exchanges that offer similar incentives to market participants that enhance market quality and/or achieve certain volume criteria and thresholds.

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

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[40] See supra note 26.

[41] See supra note 19.

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."[42] 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' . . .".[43] 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,[44] and Rule 19b-4(f)(2)[45] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the

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42 See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

43 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)).

44 15 U.S.C. 78s(b)(3)(A)(ii).

45 17 CFR 240.19b-4(f)(2).

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

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's internet comment form (https://www.sec.gov/rules/sro.shtml); or
- Send an email to rule-comments@sec.gov. Please include file number SR-PEARL-2023-45 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-2023-45. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (https://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F

Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-PEARL-2023-45 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[46]

Sherry R. Haywood,

Assistant Secretary.

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[46] 17 CFR 200.30-3(a)(12).