

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-88554; File No. SR-PEARL-2020-05)

April 3, 2020

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend 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 March 31, 2020, 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”).

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

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 Add/Remove Tiered Rebates/Fees set forth in Section 1)a) of the Fee Schedule to: (i) increase Taker (as defined below) fees in certain Tiers for options transactions in Penny classes (including SPY, QQQ, and IWM options classes) and non-Penny classes (as defined below) for Priority Customers³; (ii) increase Taker fees in certain Tiers for options transactions in Penny and non-Penny classes for MIAX PEARL Market Makers⁴; and (iii) increase Taker fees in certain Tiers for options transactions in Penny and non-Penny classes for Non-Priority Customers, Firms, Broker-Dealers and Non-MIAX PEARL Market Makers (collectively herein “Professional Members”).

Background

The Exchange currently assesses transaction rebates and fees to all market participants which are based upon the total monthly volume executed by the Member⁵ on MIAX PEARL in

³ “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 account(s). See Exchange Rule 100, including Interpretation and Policy .01.

⁴ “Market Maker” means a Member registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange. See the Definitions Section of the Fee Schedule and Exchange Rule 100.

⁵ “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 the Definitions Section of the Fee Schedule and Exchange Rule 100.

the relevant, respective origin type (not including Excluded Contracts)⁶ expressed as a percentage of TCV.⁷ In addition, the per contract transaction rebates and fees are applied retroactively to all eligible volume for that origin type once the respective threshold tier (“Tier”) has been reached by the Member. The Exchange aggregates the volume of Members and their Affiliates.⁸ Members that place resting liquidity, i.e., orders resting on the book of the MIAX

⁶ “Excluded Contracts” means any contracts routed to an away market for execution. See the Definitions Section of the Fee Schedule.

⁷ “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 believes that it is reasonable and appropriate to select two consecutive hours as the amount of time necessary to constitute an Exchange System Disruption, as two hours equates to approximately 1.4% of available trading time per month. 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.

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.

PEARL System,⁹ are paid the specified “maker” rebate (each a “Maker”), and Members that execute against resting liquidity are assessed the specified “taker” fee (each a “Taker”). For opening transactions and ABBO uncrossing transactions, per contract transaction rebates and fees are waived for all market participants. Finally, Members are assessed lower transaction fees and receive lower rebates for order executions in standard option classes in the Penny Pilot Program¹⁰ (“Penny classes”) than for order executions in standard option classes which are not in the Penny Pilot Program (“non-Penny classes”), where Members are assessed higher transaction fees and receive higher rebates.

Transaction rebates and fees in Section 1)a) of the Fee Schedule are currently assessed according to the following tables:

			Per Contract Rebates/Fees for Penny Classes				Per Contract Rebates/Fees for Non-Penny Classes	
Origin	Tier	Volume Criteria	Maker	Taker*	SPY Taker	QQQ, IWM Taker	Maker	Taker
Priority Customer	1	0.00% - 0.10%	(\$0.25)	\$0.48	\$0.43	\$0.44	(\$0.85)	\$0.84
	2	Above 0.10% - 0.35%	(\$0.40)	\$0.48	\$0.43	\$0.44	(\$0.95)	\$0.84
	3	Above 0.35% - 0.50%	(\$0.45)	\$0.46	\$0.42	\$0.44	(\$1.00)	\$0.84
	4	Above 0.50% - 0.75%	(\$0.51)	\$0.45	\$0.41	\$0.43	(\$1.03)	\$0.84
	5	Above 0.75% - 1.25%	(\$0.52)	\$0.44	\$0.40	\$0.42	(\$1.04)	\$0.84
	6	Above 1.25%	(\$0.52)	\$0.43	\$0.38	\$0.40	(\$1.04)	\$0.84

* For all Penny Classes other than SPY, QQQ, and IWM.

⁹ The term “System” means the automated trading system used by the Exchange for the trading of securities. See Exchange Rule 100.

¹⁰ See Securities Exchange Act Release No. 84865 (December 19, 2018), 83 FR 66813 (December 27, 2018)(SR-PEARL-2018-26).

			Per Contract Rebates/Fees for Penny Classes				Per Contract Rebates/Fees for Non-Penny Classes	
Origin	Tier	Volume Criteria	Maker (Contra Origins ex Priority Customer)	Maker (Contra Priority Customer Origin)	Taker (Contra Origins ex Priority Customer)	Taker (Contra Priority Customer Origin)	Maker*	Taker*
All MIAX PEARL Market Makers	1	0.00% - 0.15%	(\$0.25)	(\$0.23)	\$0.50	\$0.50	(\$0.30)	\$1.10
	2	Above 0.15% - 0.40% or Above 0.45% in SPY/QQQ/IWM	(\$0.40)	(\$0.38)	\$0.50	\$0.50	(\$0.30)	\$1.10
	3	Above 0.40% - 0.65%	(\$0.40)	(\$0.38)	\$0.49	\$0.50	(\$0.60)	\$1.09
	4	Above 0.65% - 1.00% or Above 2.25% in SPY	(\$0.47)	(\$0.45)	\$0.48	\$0.49	(\$0.65)	\$1.08
	5	Above 1.00% - 1.40%	(\$0.48)	(\$0.46)	\$0.46	\$0.47	(\$0.70)	\$1.07
	6	Above 1.40%	(\$0.48)	(\$0.47)	\$0.45	\$0.46	(\$0.85)	\$1.06

			Per Contract Rebates/Fees for Penny Classes				Per Contract Rebates/Fees for Non-Penny Classes	
Origin	Tier	Volume Criteria	Maker [^] (Contra Origins ex Priority Customer)	Maker [^] (Contra Priority Customer Origin)	Taker [◇] (Contra Origins ex Priority Customer)	Taker (Contra Priority Customer Origin)	Maker ^{**} ^	Taker [*] *
Non-Priority Customer, Firm, BD, and Non-MIAX PEARL Market Makers	1	0.00% – 0.15%	(\$0.25)	(\$0.23)	\$0.50	\$0.50	(\$0.30)	\$1.10
	2	Above 0.15% – 0.40%	(\$0.40)	(\$0.38)	\$0.50	\$0.50	(\$0.30)	\$1.10
	3	Above 0.40% – 0.65%	(\$0.40)	(\$0.38)	\$0.49	\$0.50	(\$0.60)	\$1.10
	4	Above 0.65% – 1.00%	(\$0.47)	(\$0.45)	\$0.49	\$0.50	(\$0.65)	\$1.09
	5	Above 1.00% – 1.40%	(\$0.48)	(\$0.46)	\$0.48	\$0.50	(\$0.70)	\$1.08
	6	Above 1.40%	(\$0.48)	(\$0.46)	\$0.48	\$0.50	(\$0.85)	\$1.07

** Members may qualify for the Maker Rebate and the Taker Fee associated with the highest Tier for transactions in Non-Penny classes if the Member executes more than 0.30% volume in Non-Penny classes, not including Excluded Contracts, as compared to the TCV in all MIAX PEARL listed option classes. For purposes of qualifying for such rates, the Exchange will aggregate the volume transacted by Members and their Affiliates in the following Origin types in Non-Penny classes: MIAX PEARL Market Makers, and Non-Priority Customer, Firm, BD, and Non-MIAX PEARL Market Makers.

^ Members may qualify for Maker Rebates equal to the greater of: (A) (\$0.40) for Penny Classes and (\$0.65) for Non-Penny Classes, or (B) the amount set forth in the applicable Tier reached by the Member in the relevant Origin, if the Member and their Affiliates execute at least 2.00% volume in the relevant month, in Priority Customer Origin type, in all options classes, not including Excluded Contracts, as compared to the TCV in all MIAX PEARL listed option classes.

◇ Members may qualify for Taker Fees of \$0.48 for Penny classes for their Firm Origin when trading against Origins not Priority Customer if the Member and their Affiliates execute at least 2.00% of TCV in the relevant month in the Priority Customer Origin type, in all options classes, not including Excluded Contracts, as compared to TCV in all MIAX PEARL listed option classes.

Except as otherwise set forth herein, the Volume Criteria is calculated based on the total monthly volume executed by the Member in all options classes on MIAX PEARL in the relevant Origin type, not including Excluded Contracts, (as the numerator) expressed as a percentage of (divided by) TCV (as the denominator).

In Tier 2 for MIAX PEARL Market Makers, the alternative Volume Criteria (above 0.45% in SPY/QQQ/IWM) is calculated based on the total monthly volume executed by the Market Maker collectively in SPY, QQQ, and IWM options on MIAX PEARL in the relevant Origin type, not including Excluded Contracts, (as the numerator) expressed as a percentage of (divided by) SPY/QQQ/IWM TCV (as the denominator). In Tier 4 for MIAX PEARL Market Makers, the alternative Volume Criteria (above 2.25% in SPY) is calculated based on the total monthly volume executed by the Market Maker solely in SPY options on MIAX PEARL in the relevant Origin type, not including Excluded Contracts, (as the numerator) expressed as a percentage of (divided by) SPY TCV (as the denominator). The per contract transaction rebates and fees shall be applied retroactively to all eligible volume once the threshold has been reached by Member. The Exchange aggregates the volume of Members and their Affiliates in the Add/Remove Tiered Fees. The per contract transaction rebates and fees shall be waived for transactions executed during the opening and for transactions that uncross the ABBO.

Priority Customer Taker Fees

The Exchange proposes to increase Taker fees in certain Tiers for options transactions in Penny classes (including SPY, QQQ, and IWM options classes) and non-Penny classes for Priority Customers. Specifically, the Exchange proposes to increase the Taker fees for Priority Customer orders in options in certain Penny classes (excluding SPY, QQQ, and IWM) in Tier 1 from \$0.48 to \$0.50, in Tier 2 from \$0.48 to \$0.50, in Tier 3 from \$0.46 to \$0.48, in Tier 4 from \$0.45 to \$0.47, in Tier 5 from \$0.44 to \$0.46, and in Tier 6 from \$0.43 to \$0.45. The Exchange next proposes to increase the Taker fees for Priority Customer orders for SPY options in Tier 1 from \$0.43 to \$0.46, in Tier 2 from \$0.43 to \$0.46, in Tier 3 from \$0.42 to \$0.45, in Tier 4 from \$0.41 to \$0.44, in Tier 5 from \$0.40 to \$0.43, and in Tier 6 from \$0.38 to \$0.42. The Exchange next proposes to increase the Taker fees for Priority Customer orders for QQQ and IWM options in Tier 1 from \$0.44 to \$0.50, in Tier 2 from \$0.44 to \$0.50, in Tier 3 from \$0.44 to \$0.48, in Tier 4 from \$0.43 to \$0.47, in Tier 5 from \$0.42 to \$0.46, and in Tier 6 from \$0.40 to \$0.45. The Exchange next proposes to increase the Taker fees for Priority Customer orders in options in non-Penny classes in Tiers 1-6 from \$0.84 to \$0.85.

Market Maker Taker Fees

Next, the Exchange proposes to increase Taker fees in certain Tiers for options transactions in Penny and non-Penny classes for Market Makers. Specifically, the Exchange proposes to increase the Taker fees for Market Makers for orders contra Origins ex Priority Customer in Penny classes in Tier 3 from \$0.49 to \$0.50, in Tier 4 from \$0.48 to \$0.49, in Tier 5 from \$0.46 to \$0.47, and in Tier 6 from \$0.45 to \$0.46. The Exchange next proposes to increase the Taker fees for Market Makers for orders contra Priority Customer in Penny classes in Tier 4 from \$0.49 to \$0.50, in Tier 5 from \$0.47 to \$0.48, and in Tier 6 from \$0.46 to \$0.47. The Exchange next proposes to increase the Taker fees for Market Maker orders in options in non-Penny classes in Tier 3 from \$1.09 to \$1.10, in Tier 4 from \$1.08 to \$1.09, in Tier 5 from \$1.07 to \$1.08, and in Tier 6 from \$1.06 to \$1.07.

Professional Customer Taker Fees

Next, the Exchange proposes to increase Taker fees in certain Tiers for options transactions in Penny and non-Penny classes for Professional Members. Specifically, the Exchange proposes to increase the Taker fees for Professional Members for orders contra Origins ex Priority Customer in Penny classes in Tier 3 from \$0.49 to \$0.50, in Tier 4 from \$0.49 to \$0.50, in Tier 5 from \$0.48 to \$0.49, and in Tier 6 from \$0.48 to \$0.49. The Exchange next proposes to increase the Taker fees for Professional Member orders in options in non-Penny classes in Tier 4 from \$1.09 to \$1.10, in Tier 5 from \$1.08 to \$1.09, and in Tier 6 from \$1.07 to \$1.09.

The purpose of the proposed changes to adjust the specified Taker fees is for business and competitive reasons. In order to attract order flow, the Exchange initially set its Taker fees so that they were meaningfully lower than other options exchanges that operate comparable

maker/taker pricing models.¹¹ The Exchange now believes that it is appropriate to further adjust these specified Taker fees so that they are more in line with other exchanges, but will still remain highly competitive such that they should enable the Exchange to continue to attract order flow and maintain market share.¹²

With all proposed changes, Section 1)a) of the Fee Schedule shall be the following:

			Per Contract Rebates/Fees for Penny Classes				Per Contract Rebates/Fees for Non-Penny Classes	
Origin	Tier	Volume Criteria	Maker	Taker*	SPY Taker	QQQ, IWM Taker	Maker	Taker
Priority Customer	1	0.00% - 0.10%	(\$0.25)	\$0.50	\$0.46	\$0.50	(\$0.85)	\$0.85
	2	Above 0.10% - 0.35%	(\$0.40)	\$0.50	\$0.46	\$0.50	(\$0.95)	\$0.85
	3	Above 0.35% - 0.50%	(\$0.45)	\$0.48	\$0.45	\$0.48	(\$1.00)	\$0.85
	4	Above 0.50% - 0.75%	(\$0.51)	\$0.47	\$0.44	\$0.47	(\$1.03)	\$0.85
	5	Above 0.75% - 1.25%	(\$0.52)	\$0.46	\$0.43	\$0.46	(\$1.04)	\$0.85
	6	Above 1.25%	(\$0.52)	\$0.45	\$0.42	\$0.45	(\$1.04)	\$0.85

* For all Penny Classes other than SPY, QQQ, and IWM.

¹¹ See Securities Exchange Act Release Nos. 80915 (June 13, 2017), 82 FR 27912 (June 19, 2017)(SR-PEARL-2017-29); 80914 (June 13, 2017), 82 FR 27910 (June 19, 2017)(SR-PEARL-2017-30).

¹² See Cboe BZX Options Exchange Fee Schedule, under “Transaction Fees.”

			Per Contract Rebates/Fees for Penny Classes				Per Contract Rebates/Fees for Non-Penny Classes	
Origin	Tier	Volume Criteria	Maker (Contra Origins ex Priority Customer)	Maker (Contra Priority Customer Origin)	Taker (Contra Origins ex Priority Customer)	Taker (Contra Priority Customer Origin)	Maker**	Taker**
All MIAX PEARL Market Makers	1	0.00% - 0.15%	(\$0.25)	(\$0.23)	\$0.50	\$0.50	(\$0.30)	\$1.10
	2	Above 0.15% - 0.40% or Above 0.45% in SPY/QQQ/IWM	(\$0.40)	(\$0.38)	\$0.50	\$0.50	(\$0.30)	\$1.10
	3	Above 0.40% - 0.65%	(\$0.40)	(\$0.38)	\$0.50	\$0.50	(\$0.60)	\$1.10
	4	Above 0.65% - 1.00% or Above 2.25% in SPY	(\$0.47)	(\$0.45)	\$0.49	\$0.50	(\$0.65)	\$1.09
	5	Above 1.00% - 1.40%	(\$0.48)	(\$0.46)	\$0.47	\$0.48	(\$0.70)	\$1.08
	6	Above 1.40%	(\$0.48)	(\$0.47)	\$0.46	\$0.47	(\$0.85)	\$1.07

			Per Contract Rebates/Fees for Penny Classes				Per Contract Rebates/Fees for Non-Penny Classes	
Origin	Tier	Volume Criteria	Maker [^] (Contra Origins ex Priority Customer)	Maker [^] (Contra Priority Customer Origin)	Taker [◇] (Contra Origins ex Priority Customer)	Taker (Contra Priority Customer Origin)	Maker ^{**^}	Taker ^{**}
Non- Priority Customer, Firm, BD, and Non- MIAX PEARL Market Makers	1	0.00% – 0.15%	(\$0.25)	(\$0.23)	\$0.50	\$0.50	(\$0.30)	\$1.10
	2	Above 0.15% – 0.40%	(\$0.40)	(\$0.38)	\$0.50	\$0.50	(\$0.30)	\$1.10
	3	Above 0.40% – 0.65%	(\$0.40)	(\$0.38)	\$0.50	\$0.50	(\$0.60)	\$1.10
	4	Above 0.65% – 1.00%	(\$0.47)	(\$0.45)	\$0.50	\$0.50	(\$0.65)	\$1.10
	5	Above 1.00% – 1.40%	(\$0.48)	(\$0.46)	\$0.49	\$0.50	(\$0.70)	\$1.09
	6	Above 1.40%	(\$0.48)	(\$0.46)	\$0.49	\$0.50	(\$0.85)	\$1.09

****** Members may qualify for the Maker Rebate and the Taker Fee associated with the highest Tier for transactions in Non-Penny classes if the Member executes more than 0.30% volume in Non-Penny classes, not including Excluded Contracts, as compared to the TCV in all MIAX PEARL listed option classes. For purposes of qualifying for such rates, the Exchange will aggregate the volume transacted by Members and their Affiliates in the following Origin types in Non-Penny classes: MIAX PEARL Market Makers, and Non-Priority Customer, Firm, BD, and Non-MIAX PEARL Market Makers.

^ Members may qualify for Maker Rebates equal to the greater of: (A) (\$0.40) for Penny Classes and (\$0.65) for Non-Penny Classes, or (B) the amount set forth in the applicable Tier reached by the Member in the relevant Origin, if the Member and their Affiliates execute at least 2.00% volume in the relevant month, in Priority Customer Origin type, in all options classes, not including Excluded Contracts, as compared to the TCV in all MIAX PEARL listed option classes.

◇ Members may qualify for Taker Fees of \$0.48 for Penny classes for their Firm Origin when trading against Origins not Priority Customer if the Member and their Affiliates execute at least 2.00% of TCV in the relevant month in the Priority Customer Origin type, in all options classes, not including Excluded Contracts, as compared to TCV in all MIAX PEARL listed option classes.

Except as otherwise set forth herein, the Volume Criteria is calculated based on the total monthly volume executed by the Member in all options classes on MIAX PEARL in the relevant Origin type, not including Excluded Contracts, (as the numerator) expressed as a percentage of (divided by) TCV (as the denominator).

In Tier 2 for MIAX PEARL Market Makers, the alternative Volume Criteria (above 0.45% in SPY/QQQ/IWM) is calculated based on the total monthly volume executed by the Market Maker collectively in SPY, QQQ, and IWM options on MIAX PEARL in the relevant Origin type, not including Excluded Contracts, (as the

numerator) expressed as a percentage of (divided by) SPY/QQQ/IWM TCV (as the denominator). In Tier 4 for MIAX PEARL Market Makers, the alternative Volume Criteria (above 2.25% in SPY) is calculated based on the total monthly volume executed by the Market Maker solely in SPY options on MIAX PEARL in the relevant Origin type, not including Excluded Contracts, (as the numerator) expressed as a percentage of (divided by) SPY TCV (as the denominator). The per contract transaction rebates and fees shall be applied retroactively to all eligible volume once the threshold has been reached by Member. The Exchange aggregates the volume of Members and their Affiliates in the Add/Remove Tiered Fees. The per contract transaction rebates and fees shall be waived for transactions executed during the opening and for transactions that uncross the ABBO.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹³

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than approximately 15% market share.¹⁴ Therefore, no exchange possesses significant pricing power. More specifically, as of March 24, 2020, the Exchange had an approximately 4.03% market share of executed volume of multiply-listed equity and exchange traded fund (“ETF”) options for the month of March 2020.¹⁵ The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can discontinue or reduce use of certain categories of products and services, terminate an existing membership or determine

¹³ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

¹⁴ The Options Clearing Corporation (“OCC”) publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: <https://www.theocc.com/market-data/volume/default.jsp>.

¹⁵ See *id.*

to not become a new member, and/or shift order flow, in response to transaction fee changes. For example, on February 28, 2019, the Exchange filed with the Commission a proposal to increase Taker fees in certain Tiers for options transactions in certain Penny classes for Priority Customers and decrease Maker rebates in certain Tiers for options transactions in Penny classes for Priority Customers (which fee was to be effective March 1, 2019).¹⁶ The Exchange experienced a decrease in total market share for the month of March 2019, after the proposal went into effect. Accordingly, the Exchange believes that the March 1, 2019 fee change, to increase certain transaction fees and decrease certain transaction rebates, may have contributed to the decrease in the Exchange's market share and, as such, the Exchange believes competitive forces constrain MIAX PEARL's, and other options exchanges, ability to set transaction fees and market participants can shift order flow based on fee changes instituted by the exchanges.

The proposed changes are scheduled to become operative April 1, 2020.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act¹⁷ in general, and furthers the objectives of Section 6(b)(4) of the Act,¹⁸ in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members and issuers and other persons using its facilities, and 6(b)(5) of the Act,¹⁹ in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating

¹⁶ See Securities Exchange Act Release No. 85304 (March 13, 2019), 84 FR 10144 (March 19, 2019) (SR-PEARL-2019-07).

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(4).

¹⁹ 15 U.S.C. 78f(b)(1) and (b)(5).

transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes its proposal to increase Taker fees in certain Tiers for options transactions in Penny classes (including SPY, QQQ, and IWM options classes) and non-Penny classes for Priority Customers, increase Taker fees in certain Tiers for options transactions in Penny and non-Penny classes for Market Makers, and increase Taker fees in certain Tiers for options transactions in Penny and non-Penny classes for Professional Members provides for the equitable allocation of reasonable dues and fees and is not unfairly discriminatory for the following reasons. The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”²⁰ There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than approximately 15% of the market share of executed volume of multiply-listed equity and ETF options trades as of March 24, 2020, for the month of March 2020.²¹ Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, as of March 24, 2020, the Exchange had an

²⁰ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

²¹ See supra note 15.

approximately 4.03% market share of executed volume of multiply-listed equity and ETF options for the month of March 2020.²²

The Exchange believes that the ever-shifting market shares among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to transaction and/or non-transaction fee changes. For example, on February 28, 2019, the Exchange filed with the Commission a proposal to increase Taker fees in certain Tiers for options transactions in certain Penny classes for Priority Customers and decrease Maker rebates in certain Tiers for options transactions in Penny classes for Priority Customers (which fee was to be effective March 1, 2019).²³ The Exchange experienced a decrease in total market share between the months of February and March of 2019, after the fees were in effect. Accordingly, the Exchange believes that the March 1, 2019 fee change may have contributed to the decrease in the Exchange's market share and, as such, the Exchange believes competitive forces constrain options exchange transaction fees and market participants can shift order flow based on fee changes instituted by the exchanges.

The Exchange believes that its proposal to increase Taker fees in certain Tiers for options transactions in Penny classes (including SPY, QQQ, and IWM options classes) and non-Penny classes for Priority Customers, increase Taker fees in certain Tiers for options transactions in Penny and non-Penny classes for Market Makers, and increase Taker fees in certain Tiers for options transactions in Penny and non-Penny classes for Professional Members is reasonable, equitably allocated and not unfairly discriminatory because these changes are for business and competitive reasons. The Exchange cannot predict with certainty the number of market

²² See id.

²³ See supra note 16.

participants that would qualify for the higher Taker fees for each of the proposed changes as Members may continually shift among the different Tiers from month to month. The Exchange further believes that it is appropriate to increase the Taker fees for Priority Customers in SPY, QQQ and IWM options classes because these select products are generally more liquid than other options classes.

Further, the Exchange believes the proposed Taker fee adjustments in certain specified Tiers applicable to certain orders submitted by Priority Customers in Penny classes and non-Penny classes, Market Makers in Penny classes and non-Penny classes, and Professional Members in Penny classes and non-Penny classes are reasonable, equitable and not unfairly discriminatory because all similarly situated market participants in the same Origin type are subject to the same tiered Taker fees and access to the Exchange is offered on terms that are not unfairly discriminatory. For competitive and business reasons, the Exchange initially set its Taker fees for such orders generally lower than certain other options exchanges that operate comparable maker/taker pricing models.²⁴ The Exchange now believes that it is appropriate to further increase those specified Taker fees so that they are more in line with other exchanges, and will still remain highly competitive such that they should enable the Exchange to continue to attract order flow and maintain market share. The Exchange believes for these reasons that increasing certain Taker fees for transactions in the specified Tiers is equitable, reasonable and not unfairly discriminatory, and thus consistent with the Act.

Furthermore, the proposed adjustments to the Taker fees promotes just and equitable principles of trade, fosters cooperation and coordination with persons engaged in facilitating transactions in securities, and protects investors and the public interest, because even with the

²⁴ See supra notes 11 and 12.

increases to Taker fees, the Exchange's proposed Taker fees for such orders still remain highly competitive with certain other options exchanges offering comparable pricing models, and should enable the Exchange to continue to attract order flow and maintain market share.²⁵ The Exchange believes that the amount of such fees, as proposed to be adjusted, will continue to encourage those market participants to send orders to the Exchange.

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

The Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed changes in the specified Taker fees for the applicable market participants should continue to encourage the provision of liquidity that enhances the quality of the Exchange's market and increases the number of trading opportunities on the Exchange for all participants who will be able to compete for such opportunities. The proposed rule changes should enable the Exchange to continue to attract and compete for order flow with other exchanges. However, this competition does not create an undue burden on competition but rather offers all market participants the opportunity to receive the benefit of competitive pricing.

The proposed Taker fee adjustments are intended to keep the Exchange's fees highly competitive with those of other exchanges, and to encourage liquidity and should enable the Exchange to continue to attract and compete for order flow with other exchanges. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its rebates and fees to remain competitive with other exchanges and to attract order flow. The Exchange believes that the proposed rule

²⁵ See id.

changes reflect this competitive environment because they modify the Exchange's fees in a manner that encourages market participants to continue to provide liquidity and to send order flow to the Exchange.

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

Written comments were neither solicited nor received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,²⁶ and Rule 19b-4(f)(2)²⁷ 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-2020-05 on the subject line.

²⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁷ 17 CFR 240.19b-4(f)(2).

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-2020-05. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All

submissions should refer to File Number SR-PEARL-2020-05, 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.²⁸

J. Matthew DeLesDernier
Assistant Secretary

²⁸ 17 CFR 200.30-3(a)(12).