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

File No. * SR 2022 - * 40

Amendment No. (req. for Amendments *)

Filing by MIAX PEARL, LLC

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

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

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

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

Section 806(e)(2) *

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

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

Description

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

Proposal to amend the MIAX Pearl Options Fee Schedule to (1) modify the Maker rebates in all Tiers for transactions in Penny Classes for Market Makers, Non-Priority Customers, Firms, Broker-Dealers and Non-MIAX Pearl Market Makers; and (2) provide additional, separate Maker rebates for Market Makers and EEMs for certain transactions in Non-Penny Classes.

Contact Information

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

First Name * Michael Last Name * Slade

Title * AVP, Associate Counsel

E-mail * mslade@miami-holdings.com

Telephone * (609) 897-8499 Fax

Signature

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

Date 09/14/2022

(Title *)

By Michael Slade

AVP, Associate Counsel

(Name *)

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

Michael Slade Date: 2022.09.14 09:44:50 -04'00'

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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

Exhibit 1 - Notice of Proposed Rule Change *

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SR-PEARL-2022-40 - Exhibit 1.docx

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

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

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

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

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

Exhibit Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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

Exhibit Sent As Paper Document

Exhibit 4 - Marked Copies

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

Exhibit 5 - Proposed Rule Text

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SR-PEARL-2022-40 - Exhibit 5.docx

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

Partial Amendment

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

1. Text of the Proposed Rule Change

(a) MIAX PEARL, LLC (“MIAX Pearl” or “Exchange”), pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² proposes to amend the MIAX Pearl Options Fee Schedule (the “Fee Schedule”).

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

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Chief Executive Officer of the Exchange or his or her designee pursuant to authority delegated by the MIAX Pearl Board of Directors on June 16, 2022. Exchange staff will advise the Board of Directors of any action taken pursuant to delegated authority. No other action by the Exchange is necessary for the filing of the proposed rule change.

Questions and comments on the proposed rule change may be directed to Michael Slade, Assistant Vice President, Associate Counsel, at (609) 897-8499.

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

The Exchange proposes to amend the Add/Remove Tiered Rebates/Fees set forth in Section 1)a) of the Fee Schedule to: (1) modify the Maker rebates (defined below) in all Tiers for

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

transactions in Penny Classes (defined below) for MIAX Pearl Market Makers,³ Non-Priority Customers, Firms, Broker-Dealers and Non-MIAX Pearl Market Makers; and (2) provide for additional, separate Maker rebates for Market Makers and Electronic Exchange Member (“EEM”)⁴ Professional origins (defined below) for certain transactions in Non-Penny Classes (defined below). The Exchange originally filed this proposal on September 1, 2022 (SR-PEARL-2022-38). On September 14, 2022, the Exchange withdrew SR-PEARL-2022-38 and resubmitted this proposal.

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 the relevant, respective origin type (not including Excluded Contracts)⁶ (as the numerator) expressed as a percentage of (divided by) TCV⁷ (as the denominator). In addition, the per contract

³ “Market Maker” means a Member registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VI of Exchange Rules. See the Definitions Section of the Fee Schedule and Exchange Rule 100.

⁴ “Electronic Exchange Member” or “EEM” means the holder of a Trading Permit who is a Member representing as agent Public Customer Orders or Non-Customer Orders on the Exchange and those non-Market Maker Members conducting proprietary trading. Electronic Exchange Members are deemed “members” under the Exchange Act. 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 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.

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

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,

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 following process. A MIAX PEARL Market Maker appoints an EEM and an EEM appoints a MIAX PEARL Market Maker, for the purposes of the Fee Schedule, by each completing and sending an executed Volume Aggregation Request Form by email to membership@miaxoptions.com no later than 2 business days prior to the first business day of the month in which the designation is to become effective. Transmittal of a validly completed and executed form to the Exchange along with the Exchange’s acknowledgement of the effective designation to each of the Market Maker and EEM will be viewed as acceptance of the appointment. The Exchange will only recognize one designation per Member. A Member may make a designation not more than once every 12 months (from the date of its most recent designation), which designation shall remain in effect unless or until the Exchange receives written notice submitted 2 business days prior to the first business day of the month from either Member indicating that the appointment has been terminated. Designations will become operative on the first business day of the effective month and may not be terminated prior

i.e., orders resting on the book of the MIAX 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 ABBO¹⁰ 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 Interval Program¹¹ (“Penny Classes”) than for order executions in standard option classes which are not in the Penny Interval Program (“Non-Penny Classes”), where Members are assessed higher transaction fees and receive higher rebates.

Proposal to Modify the Maker Rebates in all Tiers for Transactions in Penny Classes for Market Makers and Non-Priority Customer, Firm, BD and Non-MIAX Pearl Market Maker Origins

The Exchange proposes to amend the Fee Schedule for the Exchange’s options market to modify the Maker rebates in all Tiers for options transactions in Penny Classes for Market Makers and Non-Priority Customer, Firm, BD and Non-MIAX Pearl Market Maker origins’ respective rate tables. Currently, the Exchange provides different Maker rebates for options transactions in Penny Classes for Market Makers and Non-Priority Customer, Firm, BD and Non-MIAX Pearl Market Maker origins depending on whether the Member is trading against the

to the end of the month. Execution data and reports will be provided to both parties. See the Definitions Section of the Fee Schedule.

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

¹⁰ “ABBO” means the best bid(s) or offer(s) disseminated by other Eligible Exchanges (defined in Exchange Rule 1400(g)) and calculated by the Exchange based on market information received by the Exchange from OPRA. See the Definitions Section of the Fee Schedule and Exchange Rule 100.

¹¹ See Securities Exchange Act Release No. 88992 (June 2, 2020), 85 FR 35142 (June 8, 2020) (SR-PEARL-2020-06).

Priority Customer¹² origin or another origin type. In particular, the Exchange provides the following Maker rebates for Market Makers for options transactions in Penny Classes when trading against the Priority Customer origin: (\$0.23) in Tier 1, (\$0.38) in Tier 2, (\$0.38) in Tier 3, (\$0.45) in Tier 4, (\$0.46) in Tier 5, and (\$0.47) in Tier 6. The Exchange provides the following Maker rebates for Non-Priority Customer, Firm, BD and Non-MIAX Pearl Market Maker origins for options transactions in Penny Classes when trading against the Priority Customer origin: (\$0.23) in Tier 1, (\$0.38) in Tier 2, (\$0.38) in Tier 3, (\$0.45) in Tier 4, (\$0.46) in Tier 5, and (\$0.46) in Tier 6.

The Exchange now proposes to lower the Maker rebates by \$0.01 in all Tiers for options transactions in Penny Classes for Market Makers and Non-Priority Customer, Firm, BD and Non-MIAX Pearl Market Maker origins, respectively, when trading against the Priority Customer origin. Accordingly, with the proposed changes, the Exchange will provide the following Maker rebates for Market Makers for options transactions in Penny Classes when trading against the Priority Customer origin: (\$0.22) in Tier 1, (\$0.37) in Tier 2, (\$0.37) in Tier 3, (\$0.44) in Tier 4, (\$0.45) in Tier 5, and (\$0.46) in Tier 6. The Exchange will provide the following Maker rebates for Non-Priority Customer, Firm, BD and Non-MIAX Pearl Market Maker origins for options transactions in Penny Classes when trading against the Priority Customer origin: (\$0.22) in Tier 1, (\$0.37) in Tier 2, (\$0.37) in Tier 3, (\$0.44) in Tier 4, (\$0.45) in Tier 5, and (\$0.45) in Tier 6.

¹² The term “Priority Customer” means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial accounts(s). The number of orders shall be counted in accordance with Interpretation and Policy .01 of Exchange Rule 100. See the Definitions Section of the Fee Schedule and Exchange Rule 100, including Interpretation and Policy .01.

The purpose of adjusting the specified Maker rebates is for business and competitive reasons. In order to attract order flow, the Exchange initially set its Maker rebates so that they were higher than other options exchanges that operate comparable maker/taker pricing models.¹³ The Exchange believes that it is appropriate to adjust these specified Maker rebates so that they are more in line with other exchanges, but will remain highly competitive such that they should enable the Exchange to continue to attract order flow and maintain market share.¹⁴

Proposal to Adopt Additional, Separate Maker rebates for Market Makers and Non-Priority Customer, Firm, BD and Non-MIAX Pearl Market Maker Origins for Certain Transactions in Non-Penny Classes

The Exchange proposes to amend the Fee Schedule for the Exchange's options market to adopt additional separate Maker rebates for Market Makers and Non-Priority Customer, Firm, BD and Non-MIAX Pearl Market Maker origins for options transactions in Non-Penny Classes in Tiers 1 through 4. Currently, the Exchange provides the following Maker rebates for Market Makers and Non-Priority Customer, Firm, BD and Non-MIAX Pearl Market Maker origins for options transactions in Non-Penny Classes: (\$0.30) in Tier 1, (\$0.30) in Tier 2, (\$0.60) in Tier 3, (\$0.65) in Tier 4, (\$0.70) in Tier 5, and (\$0.85) in Tier 6.¹⁵

¹³ See Securities Exchange Act Release Nos. 80061 (February 17, 2017), 82 FR 11676 (February 24, 2017) (SR-PEARL-2017-10) (establishing the Exchange's fee schedule with Market Maker and Professional Member Maker Penny Class rebates ranging from (\$0.25) in Tier 1 to (\$0.48) in Tier 4, the highest Tier at that time).

¹⁴ See, generally, The Nasdaq Stock Market, Options 7 Pricing Schedule, Section 2 (Market Maker and Professional Member rebates ranging from \$0.20 in Tier 1 to \$0.48 in Tier 6); Box Options Fee Schedule, Section IV. Electronic Transaction Fees, Section A (Market Maker rebate of \$0.50 when trading contra to a BOX Public Customer for options transactions in Penny Classes); Cboe BZX Options Fee Schedule, Standard Rates (Market Maker rebates for Penny Class securities ranging from \$0.29 to \$0.46 for adding liquidity; Professional rebates for Penny Class securities ranging from \$0.25 to \$0.48 for adding liquidity; and Firm, Broker-Dealer, Joint Back Office rebates for Penny Class securities ranging from \$0.25 to \$0.46 for adding liquidity).

¹⁵ The Exchange notes that the current Maker rebates for Market Makers and Non-Priority Customer, Firm, BD and Non-MIAX Pearl Market Maker origins for options transactions

The Exchange now proposes to adopt additional, separate Maker rebates for Market Makers for options transactions in Non-Penny Classes in Tiers 1 through 4. In particular, the Exchange proposes that Market Makers may qualify for additional, separate rebates for options transactions in Non-Penny classes in Tiers 1 through 4 if the Market Maker increases their Non-Penny Class Maker TCV by 100% or more as compared to that Market Maker's Non-Penny Class TCV for the month of July 2022,¹⁶ which will be the Market Maker's baseline Non-Penny Class Maker TCV. Market Makers that qualify for the additional Non-Penny Class Maker rebate will receive the following additional, separate rebates: (\$0.40) in Tier 1; (\$0.40) in Tier 2; (\$0.10) in Tier 3; and (\$0.05) in Tier 4. Market Makers with no volume in the Non-Penny Class Maker segment for the month of July 2022 will have any new volume considered as added volume. Stated another way, the Exchange proposes that Market Makers who did not have any volume in the Non-Penny Class Maker segment for the month of July 2022, will receive the proposed additional separate Maker rebates for any new Non-Penny Class Maker volume in each subsequent month. The Exchange proposes to denote the additional Maker rebates in Non-Penny Classes for Market Makers by adopting new footnote "■" following the tables of fees and rebates in Section 1)a) of the Fee Schedule. For example, if a Market Maker has specific Non-Penny Class Maker volume of 0.050% TCV for the month of July 2022, then that Market Maker

in Non-Penny Classes are similar to non-penny class maker rebates for similar origins at competing options exchanges. See, e.g., NYSE Arca Options Fee Schedule, Non-Customer, Non-Penny Posting Credit Tiers, Page 8 (providing base non-customer, non-penny maker rebates ranging from (\$0.32) to (\$0.82)); Cboe BZX Options Fee Schedule, Standard Rates (providing firm, broker dealer and joint back office non-penny program securities maker rebates ranging from (\$0.30) to (\$0.82) and market maker non-penny program securities maker rebates ranging from (\$0.40) to (\$0.88)).

¹⁶ The Exchange determined to use the month of July 2022 as the baseline month because, at the time of the original filing (SR-PEARL-2022-38), July was the most recent previous full month of trading. For purposes of consistency with the original filing, the Exchange proposes to continue to use the month of July 2022 as the baseline month.

would need Non-Penny Class Maker volume equal to or greater than 0.100% TCV in the relevant month to receive the additional proposed rebates. The purpose of this change is for business and competitive reasons in order to attract additional Non-Penny Class volume from Market Makers, which should benefit all Exchange participants by providing more trading opportunities and tighter spreads.¹⁷

The Exchange also proposes to adopt an additional, separate Maker rebate for EEM Professional origins (which includes, collectively, Non-Priority Customer, Firm, BD and Non-MIAX Pearl Market Maker origins), for options transactions in Non-Penny Classes in Tiers 1 through 4. In particular, the Exchange proposes that EEMs may qualify for additional separate rebates for options transactions in Non-Penny classes in Tiers 1 through 4 if the EEM increases their Professional origin Non-Penny Class Maker TCV by 100% or more as compared to that EEM's Professional origin Non-Penny Class TCV for the month of July 2022,¹⁸ which will be EEM's Professional origin baseline Non-Penny Class Maker TCV. EEMs that qualify for the additional Non-Penny Class Maker rebate will receive the following additional, separate rebates: (\$0.40) in Tier 1; (\$0.40) in Tier 2; (\$0.10) in Tier 3; and (\$0.05) in Tier 4.¹⁹ EEMs with no

¹⁷ See supra note 15. The Exchange notes that NYSE American, LLC has a similar “step-up” incentive for its Professional Customer, Broker Dealer, Non-NYSE American Options Market Maker and Firm ranges, whereby those market participants are able to decrease their fees for transactions in non-penny classes by increasing their volume by specified percentages of TCADV over their August 2019 volume. See NYSE American Options Fee Schedule, Section I.A. and Section I.H. (charging an \$0.85 fee to Professional Customer, Broker Dealer, Non-NYSE American Options Market Maker and Firm ranges for transactions in non-penny classes and decreased fees of either \$0.65 or \$0.55 for transactions in on-penny classes depending on the amount of increased volume by specified percentages of TCADV over their August 2019 volume). See id., Key Terms and Definitions Section for definitions of Professional Customer, Broker Dealer, Non-NYSE American Options Market Maker, Firm and TCADV.

¹⁸ See supra note 16.

¹⁹ With the proposed additional rebates, the Exchange's Non-Penny Class Maker rebates in Tiers 1 through 4 for Market Makers and EEM Professional origins will be in line with,

Professional origin volume in the Non-Penny Class Maker segment for the month of July 2022 will have any new volume considered as added volume. Stated another way, the Exchange proposes that EEM Professional origins that did not have any volume in the Non-Penny Class Maker segment for the month of July 2022, will receive the proposed additional separate Maker rebates for any new Non-Penny Class Maker volume in each subsequent month. The Exchange proposes to denote the additional Maker rebates in Non-Penny Classes for EEMs by adopting new footnote “□” following the tables of fees and rebates in Section 1)a) of the Fee Schedule. For example, if an EEM has specific Professional origin Non-Penny Class Maker volume of 0.050% TCV for the month of July 2022, then that EEM would need Professional origin Non-Penny Class Maker volume equal to or greater than 0.100% TCV in the relevant month to receive the additional proposed rebates. The purpose of this change is for business and competitive reasons in order to attract additional Non-Penny Class volume from EEMs, which should benefit all Exchange participants by providing more trading opportunities and tighter spreads.²⁰

Implementation

The proposed changes are immediately effective.

b. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act²¹ in general, and furthers the objectives of Section 6(b)(4) of the Act,²² in

or higher than (for lower tiers), similar rebates from competing options exchanges depending on the tier achieved by the particular member. See supra note 15.

²⁰ See supra notes 15 and 17.

²¹ 15 U.S.C. 78f(b).

²² 15 U.S.C. 78f(b)(4).

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,²³ 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 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 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.”²⁴

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, as of September 13, 2022, no single exchange has more than approximately 11-13% equity options market share for the month of September 2022.²⁵ Therefore, no exchange possesses significant pricing power. More specifically, as of September 13, 2022, the Exchange has a market share of approximately 4.34% of executed volume of multiply-listed equity options for the month of September 2022.²⁶

²³ 15 U.S.C. 78f(b)(1) and (b)(5).

²⁴ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

²⁵ See “The market at a glance,” (last visited September 13, 2022), available at <https://www.miaxoptions.com/>.

²⁶ See id.

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 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).²⁷ 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 its March 1, 2019, fee change, to increase certain transaction fees and decrease certain transaction rebates, may have contributed to the decrease in MIAX Pearl's market share and, as such, the Exchange believes competitive forces constrain the Exchange'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 Exchange believes its proposal to modify the Maker rebates in all Tiers for options transactions in Penny classes for Market Makers and Non-Priority Customer, Firm, BD and Non-MIAX Pearl Market Maker origins when trading against Priority Customer origin is reasonable, equitable and not unfairly discriminatory because all similarly situated market participants in the same origin type are subject to the same tiered Maker rebates and access to the Exchange is offered on terms that are not unfairly discriminatory. For competitive and business reasons, the Exchange initially set its Maker rebates for such orders generally higher than certain other

²⁷ See Securities Exchange Act Release No. 85304 (March 13, 2019), 84 FR 10144 (March 19, 2019) (SR-PEARL-2019-07).

options exchanges that operate comparable maker/taker pricing models. The Exchange now believes that it is appropriate to modify those specified Maker rebates so that they are more in line with other exchanges, and will remain highly competitive such that they should enable the Exchange to continue to attract order flow and maintain market share.²⁸

The Exchange believes its proposal is not unfairly discriminatory because, with the proposed changes, the Maker rebates for Market Makers and Non-Priority Customer, Firm, BD and Non-MIAX Pearl Market Maker origins will be nearly the same as the Maker rebates for all other origin types except for Priority Customer origin orders. The Exchange believes that it is equitable and not unfairly discriminatory to assess lower Maker rebates to Market Makers and EEM Professional origins than to Priority Customer origin orders. A Priority Customer is by definition not a broker or dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).²⁹ This limitation does not apply to participants on the Exchange whose behavior is substantially similar to that of market professionals, including non-Priority Customers, Non-MIAX Pearl Market Makers, Firms, and Broker-Dealers, who will generally submit a higher number of orders (many of which do not result in executions) than Priority Customers.

The Exchange believes its proposal to adopt additional, separate Maker rebates for options transactions in Non-Penny Classes in Tiers 1 through 4 for Market Makers and EEM Professional origins is reasonable, equitable and not unfairly discriminatory because all similarly situated market participants in the same origin type are subject to the same tiered Maker rebates and access to the Exchange is offered on terms that are not unfairly discriminatory. The

²⁸ See supra note 14.

²⁹ See supra note 12.

Exchange believes its proposal to offer an additional Non-Penny Class Maker rebates in Tiers 1 through 4 for Market Makers and EEM Professional origins will incentivize Market Makers and EEMs to improve their posted liquidity to the benefit of the entire market, which will increase order flow sent to the Exchange, benefiting all market participants through increased liquidity, tighter markets and order interaction. The Exchange believes it is reasonable and not unfairly discriminatory to offer higher additional Non-Penny Class Maker rebates for Tiers 1 and 2, as compared to Tiers 3 and 4, because the Exchange believes that the prospect of obtaining the higher rebates for Tiers 1 and 2 will attract Non-Penny Class Maker volume from new market participants. This anticipated new Non-Penny Class Maker volume should benefit all Exchange participants by providing more trading opportunities and tighter spreads. Further, with the proposed additional rebates, the Exchange's Non-Penny Class Maker rebates in Tiers 1 through 4 for Market Makers and EEM Professional origins will be in line with, or higher than (for Tiers 1 and 2) similar rebates from competing options exchanges.³⁰

The Exchange believes it is reasonable, equitable and not unfairly discriminatory to consider any new Non-Penny Class Maker volume as added volume for Market Makers with no volume in the Non-Penny Class Maker segment for the month of July 2022 in order for those Market Makers to receive the proposed additional rebate because this should attract additional Non-Penny Class Maker volume from Market Makers. In turn, this additional volume should benefit all Exchange participants by providing more trading opportunities and tighter spreads. Similarly, the Exchange believes it is reasonable, equitable and not unfairly discriminatory to consider any new Non-Penny Class Maker volume as added volume for EEMs with no Professional origin volume in the Non-Penny Class Maker segment for the month of July 2022 in

³⁰ See supra note 15.

order for those EEMs to receive the proposed additional rebate because this should attract additional Non-Penny Class volume from EEMs, which should benefit all Exchange participants by providing more trading opportunities and tighter spreads.

4. 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 Maker rebates 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 Maker rebate adjustments are intended to keep the Exchange's rebates 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 changes reflect this competitive environment because the proposal modifies the Exchange's fees in a manner that encourages market participants to continue to provide liquidity and to send order flow to the Exchange.

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

No written comments were either solicited or received.

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

Not applicable.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,³¹ and Rule 19b-4(f)(2) thereunder³² the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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

Not applicable.

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

Not applicable.

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

Not applicable.

11. **Exhibits**

1. Notice of proposed rule for publication in the Federal Register.

5. Applicable section of the Fee Schedule.

³¹ 15 U.S.C. 78s(b)(3)(A)(ii).

³² 17 CFR 240.19b-4.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-PEARL-2022-40)

September ____, 2022

Self-Regulatory Organizations: Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by MIAX PEARL, LLC to Amend the MIAX Pearl Options 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 _____, 2022, 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 Options 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: (1) modify the Maker rebates (defined below) in all Tiers for transactions in Penny Classes (defined below) for MIAX Pearl Market Makers,³ Non-Priority Customers, Firms, Broker-Dealers and Non-MIAX Pearl Market Makers; and (2) provide for additional, separate Maker rebates for Market Makers and Electronic Exchange Member (“EEM”)⁴ Professional origins (defined below) for certain transactions in Non-Penny Classes (defined below). The Exchange originally filed this proposal on September 1, 2022 (SR-PEARL-2022-38). On September 14, 2022, the Exchange withdrew SR-PEARL-2022-38 and resubmitted this proposal.

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 the

³ “Market Maker” means a Member registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VI of Exchange Rules. See the Definitions Section of the Fee Schedule and Exchange Rule 100.

⁴ “Electronic Exchange Member” or “EEM” means the holder of a Trading Permit who is a Member representing as agent Public Customer Orders or Non-Customer Orders on the Exchange and those non-Market Maker Members conducting proprietary trading. Electronic Exchange Members are deemed “members” under the Exchange Act. 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 Exchange Rules for purposes of trading on the Exchange as an “Electronic Exchange Member” or “Market Maker.” Members are deemed “members”

relevant, respective origin type (not including Excluded Contracts)⁶ (as the numerator) expressed as a percentage of (divided by) TCV⁷ (as the denominator). 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,

under the Exchange Act. See the Definitions Section of the Fee Schedule and Exchange Rule 100.

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 following process. A MIAX PEARL Market Maker appoints an EEM and an EEM appoints a MIAX PEARL Market Maker, for the

i.e., orders resting on the book of the MIAX 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 ABBO¹⁰ 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 Interval Program¹¹ (“Penny Classes”) than for order executions in standard option classes which are not in the Penny Interval Program (“Non-Penny Classes”), where Members are assessed higher transaction fees and receive higher rebates.

Proposal to Modify the Maker Rebates in all Tiers for Transactions in Penny Classes for Market Makers and Non-Priority Customer, Firm, BD and Non-MIAX Pearl Market Maker Origins

purposes of the Fee Schedule, by each completing and sending an executed Volume Aggregation Request Form by email to membership@miaxoptions.com no later than 2 business days prior to the first business day of the month in which the designation is to become effective. Transmittal of a validly completed and executed form to the Exchange along with the Exchange’s acknowledgement of the effective designation to each of the Market Maker and EEM will be viewed as acceptance of the appointment. The Exchange will only recognize one designation per Member. A Member may make a designation not more than once every 12 months (from the date of its most recent designation), which designation shall remain in effect unless or until the Exchange receives written notice submitted 2 business days prior to the first business day of the month from either Member indicating that the appointment has been terminated. Designations will become operative on the first business day of the effective month and may not be terminated prior to the end of the month. Execution data and reports will be provided to both parties. See the Definitions Section of the Fee Schedule.

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

¹⁰ “ABBO” means the best bid(s) or offer(s) disseminated by other Eligible Exchanges (defined in Exchange Rule 1400(g)) and calculated by the Exchange based on market information received by the Exchange from OPRA. See the Definitions Section of the Fee Schedule and Exchange Rule 100.

¹¹ See Securities Exchange Act Release No. 88992 (June 2, 2020), 85 FR 35142 (June 8, 2020) (SR-PEARL-2020-06).

The Exchange proposes to amend the Fee Schedule for the Exchange's options market to modify the Maker rebates in all Tiers for options transactions in Penny Classes for Market Makers and Non-Priority Customer, Firm, BD and Non-MIAX Pearl Market Maker origins' respective rate tables. Currently, the Exchange provides different Maker rebates for options transactions in Penny Classes for Market Makers and Non-Priority Customer, Firm, BD and Non-MIAX Pearl Market Maker origins depending on whether the Member is trading against the Priority Customer¹² origin or another origin type. In particular, the Exchange provides the following Maker rebates for Market Makers for options transactions in Penny Classes when trading against the Priority Customer origin: (\$0.23) in Tier 1, (\$0.38) in Tier 2, (\$0.38) in Tier 3, (\$0.45) in Tier 4, (\$0.46) in Tier 5, and (\$0.47) in Tier 6. The Exchange provides the following Maker rebates for Non-Priority Customer, Firm, BD and Non-MIAX Pearl Market Maker origins for options transactions in Penny Classes when trading against the Priority Customer origin: (\$0.23) in Tier 1, (\$0.38) in Tier 2, (\$0.38) in Tier 3, (\$0.45) in Tier 4, (\$0.46) in Tier 5, and (\$0.46) in Tier 6.

The Exchange now proposes to lower the Maker rebates by \$0.01 in all Tiers for options transactions in Penny Classes for Market Makers and Non-Priority Customer, Firm, BD and Non-MIAX Pearl Market Maker origins, respectively, when trading against the Priority Customer origin. Accordingly, with the proposed changes, the Exchange will provide the following Maker rebates for Market Makers for options transactions in Penny Classes when trading against the Priority Customer origin: (\$0.22) in Tier 1, (\$0.37) in Tier 2, (\$0.37) in Tier

¹² The term "Priority Customer" means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial accounts(s). The number of orders shall be counted in accordance with Interpretation and Policy .01 of Exchange Rule 100. See the Definitions Section of the Fee Schedule and Exchange Rule 100, including Interpretation and Policy .01.

3, (\$0.44) in Tier 4, (\$0.45) in Tier 5, and (\$0.46) in Tier 6. The Exchange will provide the following Maker rebates for Non-Priority Customer, Firm, BD and Non-MIAX Pearl Market Maker origins for options transactions in Penny Classes when trading against the Priority Customer origin: (\$0.22) in Tier 1, (\$0.37) in Tier 2, (\$0.37) in Tier 3, (\$0.44) in Tier 4, (\$0.45) in Tier 5, and (\$0.45) in Tier 6.

The purpose of adjusting the specified Maker rebates is for business and competitive reasons. In order to attract order flow, the Exchange initially set its Maker rebates so that they were higher than other options exchanges that operate comparable maker/taker pricing models.¹³ The Exchange believes that it is appropriate to adjust these specified Maker rebates so that they are more in line with other exchanges, but will remain highly competitive such that they should enable the Exchange to continue to attract order flow and maintain market share.¹⁴

Proposal to Adopt Additional, Separate Maker rebates for Market Makers and Non-Priority Customer, Firm, BD and Non-MIAX Pearl Market Maker Origins for Certain Transactions in Non-Penny Classes

The Exchange proposes to amend the Fee Schedule for the Exchange's options market to adopt additional separate Maker rebates for Market Makers and Non-Priority Customer, Firm, BD and Non-MIAX Pearl Market Maker origins for options transactions in Non-Penny Classes

¹³ See Securities Exchange Act Release Nos. 80061 (February 17, 2017), 82 FR 11676 (February 24, 2017) (SR-PEARL-2017-10) (establishing the Exchange's fee schedule with Market Maker and Professional Member Maker Penny Class rebates ranging from (\$0.25) in Tier 1 to (\$0.48) in Tier 4, the highest Tier at that time).

¹⁴ See, generally, The Nasdaq Stock Market, Options 7 Pricing Schedule, Section 2 (Market Maker and Professional Member rebates ranging from \$0.20 in Tier 1 to \$0.48 in Tier 6); Box Options Fee Schedule, Section IV. Electronic Transaction Fees, Section A (Market Maker rebate of \$0.50 when trading contra to a BOX Public Customer for options transactions in Penny Classes); Cboe BZX Options Fee Schedule, Standard Rates (Market Maker rebates for Penny Class securities ranging from \$0.29 to \$0.46 for adding liquidity; Professional rebates for Penny Class securities ranging from \$0.25 to \$0.48 for adding liquidity; and Firm, Broker-Dealer, Joint Back Office rebates for Penny Class securities ranging from \$0.25 to \$0.46 for adding liquidity).

in Tiers 1 through 4. Currently, the Exchange provides the following Maker rebates for Market Makers and Non-Priority Customer, Firm, BD and Non-MIAX Pearl Market Maker origins for options transactions in Non-Penny Classes: (\$0.30) in Tier 1, (\$0.30) in Tier 2, (\$0.60) in Tier 3, (\$0.65) in Tier 4, (\$0.70) in Tier 5, and (\$0.85) in Tier 6.¹⁵

The Exchange now proposes to adopt additional, separate Maker rebates for Market Makers for options transactions in Non-Penny Classes in Tiers 1 through 4. In particular, the Exchange proposes that Market Makers may qualify for additional, separate rebates for options transactions in Non-Penny classes in Tiers 1 through 4 if the Market Maker increases their Non-Penny Class Maker TCV by 100% or more as compared to that Market Maker's Non-Penny Class TCV for the month of July 2022,¹⁶ which will be the Market Maker's baseline Non-Penny Class Maker TCV. Market Makers that qualify for the additional Non-Penny Class Maker rebate will receive the following additional, separate rebates: (\$0.40) in Tier 1; (\$0.40) in Tier 2; (\$0.10) in Tier 3; and (\$0.05) in Tier 4. Market Makers with no volume in the Non-Penny Class Maker segment for the month of July 2022 will have any new volume considered as added volume. Stated another way, the Exchange proposes that Market Makers who did not have any volume in the Non-Penny Class Maker segment for the month of July 2022, will receive the

¹⁵ The Exchange notes that the current Maker rebates for Market Makers and Non-Priority Customer, Firm, BD and Non-MIAX Pearl Market Maker origins for options transactions in Non-Penny Classes are similar to non-penny class maker rebates for similar origins at competing options exchanges. See, e.g., NYSE Arca Options Fee Schedule, Non-Customer, Non-Penny Posting Credit Tiers, Page 8 (providing base non-customer, non-penny maker rebates ranging from (\$0.32) to (\$0.82)); Cboe BZX Options Fee Schedule, Standard Rates (providing firm, broker dealer and joint back office non-penny program securities maker rebates ranging from (\$0.30) to (\$0.82) and market maker non-penny program securities maker rebates ranging from (\$0.40) to (\$0.88)).

¹⁶ The Exchange determined to use the month of July 2022 as the baseline month because, at the time of the original filing (SR-PEARL-2022-38), July was the most recent previous full month of trading. For purposes of consistency with the original filing, the Exchange proposes to continue to use the month of July 2022 as the baseline month.

proposed additional separate Maker rebates for any new Non-Penny Class Maker volume in each subsequent month. The Exchange proposes to denote the additional Maker rebates in Non-Penny Classes for Market Makers by adopting new footnote “■” following the tables of fees and rebates in Section 1)a) of the Fee Schedule. For example, if a Market Maker has specific Non-Penny Class Maker volume of 0.050% TCV for the month of July 2022, then that Market Maker would need Non-Penny Class Maker volume equal to or greater than 0.100% TCV in the relevant month to receive the additional proposed rebates. The purpose of this change is for business and competitive reasons in order to attract additional Non-Penny Class volume from Market Makers, which should benefit all Exchange participants by providing more trading opportunities and tighter spreads.¹⁷

The Exchange also proposes to adopt an additional, separate Maker rebate for EEM Professional origins (which includes, collectively, Non-Priority Customer, Firm, BD and Non-MIAX Pearl Market Maker origins), for options transactions in Non-Penny Classes in Tiers 1 through 4. In particular, the Exchange proposes that EEMs may qualify for additional separate rebates for options transactions in Non-Penny classes in Tiers 1 through 4 if the EEM increases their Professional origin Non-Penny Class Maker TCV by 100% or more as compared to that

¹⁷ See supra note 15. The Exchange notes that NYSE American, LLC has a similar “step-up” incentive for its Professional Customer, Broker Dealer, Non-NYSE American Options Market Maker and Firm ranges, whereby those market participants are able to decrease their fees for transactions in non-penny classes by increasing their volume by specified percentages of TCADV over their August 2019 volume. See NYSE American Options Fee Schedule, Section I.A. and Section I.H. (charging an \$0.85 fee to Professional Customer, Broker Dealer, Non-NYSE American Options Market Maker and Firm ranges for transactions in non-penny classes and decreased fees of either \$0.65 or \$0.55 for transactions in on-penny classes depending on the amount of increased volume by specified percentages of TCADV over their August 2019 volume). See id., Key Terms and Definitions Section for definitions of Professional Customer, Broker Dealer, Non-NYSE American Options Market Maker, Firm and TCADV.

EEM's Professional origin Non-Penny Class TCV for the month of July 2022,¹⁸ which will be EEM's Professional origin baseline Non-Penny Class Maker TCV. EEMs that qualify for the additional Non-Penny Class Maker rebate will receive the following additional, separate rebates: (\$0.40) in Tier 1; (\$0.40) in Tier 2; (\$0.10) in Tier 3; and (\$0.05) in Tier 4.¹⁹ EEMs with no Professional origin volume in the Non-Penny Class Maker segment for the month of July 2022 will have any new volume considered as added volume. Stated another way, the Exchange proposes that EEM Professional origins that did not have any volume in the Non-Penny Class Maker segment for the month of July 2022, will receive the proposed additional separate Maker rebates for any new Non-Penny Class Maker volume in each subsequent month. The Exchange proposes to denote the additional Maker rebates in Non-Penny Classes for EEMs by adopting new footnote "□" following the tables of fees and rebates in Section 1)a) of the Fee Schedule. For example, if an EEM has specific Professional origin Non-Penny Class Maker volume of 0.050% TCV for the month of July 2022, then that EEM would need Professional origin Non-Penny Class Maker volume equal to or greater than 0.100% TCV in the relevant month to receive the additional proposed rebates. The purpose of this change is for business and competitive reasons in order to attract additional Non-Penny Class volume from EEMs, which should benefit all Exchange participants by providing more trading opportunities and tighter spreads.²⁰

Implementation

¹⁸ See supra note 16.

¹⁹ With the proposed additional rebates, the Exchange's Non-Penny Class Maker rebates in Tiers 1 through 4 for Market Makers and EEM Professional origins will be in line with, or higher than (for lower tiers), similar rebates from competing options exchanges depending on the tier achieved by the particular member. See supra note 15.

²⁰ See supra notes 15 and 17.

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 Act²¹ in general, and furthers the objectives of Section 6(b)(4) of the Act,²² 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,²³ 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 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 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.”²⁴

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, as of September 13, 2022, no single exchange has more than approximately 11-13% equity options market share for the month

²¹ 15 U.S.C. 78f(b).

²² 15 U.S.C. 78f(b)(4).

²³ 15 U.S.C. 78f(b)(1) and (b)(5).

²⁴ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

of September 2022.²⁵ Therefore, no exchange possesses significant pricing power. More specifically, as of September 13, 2022, the Exchange has a market share of approximately 4.34% of executed volume of multiply-listed equity options for the month of September 2022.²⁶

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 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).²⁷ 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 its March 1, 2019, fee change, to increase certain transaction fees and decrease certain transaction rebates, may have contributed to the decrease in MIAX Pearl's market share and, as such, the Exchange believes competitive forces constrain the Exchange'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 Exchange believes its proposal to modify the Maker rebates in all Tiers for options transactions in Penny classes for Market Makers and Non-Priority Customer, Firm, BD and Non-MIAX Pearl Market Maker origins when trading against Priority Customer origin is reasonable,

²⁵ See "The market at a glance," (last visited September 13, 2022), [available at https://www.miaxoptions.com/](https://www.miaxoptions.com/).

²⁶ See id.

²⁷ See Securities Exchange Act Release No. 85304 (March 13, 2019), 84 FR 10144 (March 19, 2019) (SR-PEARL-2019-07).

equitable and not unfairly discriminatory because all similarly situated market participants in the same origin type are subject to the same tiered Maker rebates and access to the Exchange is offered on terms that are not unfairly discriminatory. For competitive and business reasons, the Exchange initially set its Maker rebates for such orders generally higher than certain other options exchanges that operate comparable maker/taker pricing models. The Exchange now believes that it is appropriate to modify those specified Maker rebates so that they are more in line with other exchanges, and will remain highly competitive such that they should enable the Exchange to continue to attract order flow and maintain market share.²⁸

The Exchange believes its proposal is not unfairly discriminatory because, with the proposed changes, the Maker rebates for Market Makers and Non-Priority Customer, Firm, BD and Non-MIAX Pearl Market Maker origins will be nearly the same as the Maker rebates for all other origin types except for Priority Customer origin orders. The Exchange believes that it is equitable and not unfairly discriminatory to assess lower Maker rebates to Market Makers and EEM Professional origins than to Priority Customer origin orders. A Priority Customer is by definition not a broker or dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).²⁹ This limitation does not apply to participants on the Exchange whose behavior is substantially similar to that of market professionals, including non-Priority Customers, Non-MIAX Pearl Market Makers, Firms, and Broker-Dealers, who will generally submit a higher number of orders (many of which do not result in executions) than Priority Customers.

The Exchange believes its proposal to adopt additional, separate Maker rebates for options transactions in Non-Penny Classes in Tiers 1 through 4 for Market Makers and EEM

²⁸ See supra note 14.

²⁹ See supra note 12.

Professional origins is reasonable, equitable and not unfairly discriminatory because all similarly situated market participants in the same origin type are subject to the same tiered Maker rebates and access to the Exchange is offered on terms that are not unfairly discriminatory. The Exchange believes its proposal to offer an additional Non-Penny Class Maker rebates in Tiers 1 through 4 for Market Makers and EEM Professional origins will incentivize Market Makers and EEMs to improve their posted liquidity to the benefit of the entire market, which will increase order flow sent to the Exchange, benefiting all market participants through increased liquidity, tighter markets and order interaction. The Exchange believes it is reasonable and not unfairly discriminatory to offer higher additional Non-Penny Class Maker rebates for Tiers 1 and 2, as compared to Tiers 3 and 4, because the Exchange believes that the prospect of obtaining the higher rebates for Tiers 1 and 2 will attract Non-Penny Class Maker volume from new market participants. This anticipated new Non-Penny Class Maker volume should benefit all Exchange participants by providing more trading opportunities and tighter spreads. Further, with the proposed additional rebates, the Exchange's Non-Penny Class Maker rebates in Tiers 1 through 4 for Market Makers and EEM Professional origins will be in line with, or higher than (for Tiers 1 and 2) similar rebates from competing options exchanges.³⁰

The Exchange believes it is reasonable, equitable and not unfairly discriminatory to consider any new Non-Penny Class Maker volume as added volume for Market Makers with no volume in the Non-Penny Class Maker segment for the month of July 2022 in order for those Market Makers to receive the proposed additional rebate because this should attract additional Non-Penny Class Maker volume from Market Makers. In turn, this additional volume should benefit all Exchange participants by providing more trading opportunities and tighter spreads.

³⁰ See supra note 15.

Similarly, the Exchange believes it is reasonable, equitable and not unfairly discriminatory to consider any new Non-Penny Class Maker volume as added volume for EEMs with no Professional origin volume in the Non-Penny Class Maker segment for the month of July 2022 in order for those EEMs to receive the proposed additional rebate because this should attract additional Non-Penny Class volume from EEMs, which should benefit all Exchange participants by providing more trading opportunities and tighter spreads.

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 Maker rebates 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 Maker rebate adjustments are intended to keep the Exchange's rebates 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 changes reflect this competitive environment because the proposal modifies 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,³¹ and Rule 19b-4(f)(2)³² thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>);

or

- Send an e-mail [to rule-comments@sec.gov](mailto:to-rule-comments@sec.gov). Please include File Number SR-PEARL-2022-40 on the subject line.

³¹ 15 U.S.C. 78s(b)(3)(A)(ii).

³² 17 CFR 240.19b-4(f)(2).

Paper comments:

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

All submissions should refer to File Number SR-PEARL-2022-40. 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 Web site (<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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-PEARL-2022-40 and should be submitted on or before [insert date 21 days from publication in the Federal Register]. For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³³

Vanessa Countryman
Secretary

³³ 17 CFR 200.30-3(a)(12).

Exhibit 5

New text is underlined;
 Deleted text is in [brackets]

MIAX Pearl Options Exchange Fee Schedule

* * * * *

1) Transaction Rebates/Fees

a) Exchange Rebates/Fees – Add/Remove Tiered Rebates/Fees

* * * * *

Origin	Tier	Volume Criteria	Per Contract Rebates/Fees for Penny Classes				Per Contract Rebates/Fees for Non-Penny Classes	
			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% – 0.20%	(\$0.25)	[(0.23)] <u>[(0.22)]</u>	\$0.50	\$0.50	(\$0.30) [■]	\$1.10
	2	Above 0.20% - 0.50% or Above 0.75% in SPY/QQQ/IWM	(\$0.40)	[(0.38)] <u>[(0.37)]</u>	\$0.50	\$0.50	(\$0.30) [■]	\$1.10
	3	Above 0.50% - 0.85% or Above 1.10% in SPY when Adding Liquidity [♦]	(\$0.40)	[(0.38)] <u>[(0.37)]</u>	\$0.50	\$0.50	(\$0.60) [■]	\$1.10
	4	Above 0.85% - 1.25% or Above 2.50% in SPY	(\$0.47)	[(0.45)] <u>[(0.44)]</u>	\$0.50	\$0.50	(\$0.65) [■]	\$1.09
	5	Above 1.25% - 1.50%	(\$0.48)	[(0.46)] <u>[(0.45)]</u>	\$0.50	\$0.50	(\$0.70)	\$1.08
	6	Above 1.50%	(\$0.48)	[(0.47)] <u>[(0.46)]</u>	\$0.50	\$0.50	(\$0.85)	\$1.07

Origin	Tier	Volume Criteria	Per Contract Rebates/Fees for Penny Classes				Per Contract Rebates/Fees for Non-Penny Classes	
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			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% – 0.20%	(\$0.25)	[\$(\$0.23)] <u>[\$0.22]</u>	\$0.50	\$0.50	(\$0.30) [□]	\$1.10
	2	Above 0.20% – 0.50%	(\$0.40)	[\$(\$0.38)] <u>[\$0.37]</u>	\$0.50	\$0.50	(\$0.30) [□]	\$1.10
	3	Above 0.50% – 0.85%	(\$0.40)	[\$(\$0.38)] <u>[\$0.37]</u>	\$0.50	\$0.50	(\$0.60) [□]	\$1.10
	4	Above 0.85% – 1.25%	(\$0.47)	[\$(\$0.45)] <u>[\$0.44]</u>	\$0.50	\$0.50	(\$0.65) [□]	\$1.10
	5	Above 1.25% – 1.50%	(\$0.48)	[\$(\$0.46)] <u>[\$0.45]</u>	\$0.50	\$0.50	(\$0.70)	\$1.09
	6	Above 1.50%	(\$0.48)	[\$(\$0.46)] <u>[\$0.45]</u>	\$0.50	\$0.50	(\$0.85)	\$1.09

** No change.

^ No change.

◇ No change.

◆ No change.

■ Market Makers may qualify for additional separate rebates for transactions in Non-Penny classes in Tiers 1 through 4 if the Market Maker increases their Non-Penny Class Maker TCV by 100% or more as compared to that Market Maker’s TCV for the month of July 2022, which will be the Market Maker’s baseline Non-Penny Class Maker TCV. Market Makers that qualify will receive the following additional rebates: (\$0.40) in Tier 1; (\$0.40) in Tier 2; (\$0.10) in Tier 3; and (\$0.05) in Tier 4. Market Makers with no volume in the Non-Penny Class Maker segment for the month of July 2022 will have any new volume considered as added volume.

□ EEMs may qualify for additional separate rebates for transactions in Non-Penny classes in Tiers 1 through 4 if the EEM Professional Origins, which include Non-Priority Customer, Firm, BD, and Non-MIAX Pearl Market Makers collectively, increases their Non-Penny Class Maker TCV by 100% or more as compared to that EEM’s TCV for the month of July 2022, which will be the EEM’s Professional Origins baseline Non-Penny Class Maker TCV. EEMs Professional Origins who qualify will receive the following additional rebates: (\$0.40) in Tier 1; (\$0.40) in Tier 2; (\$0.10) in Tier 3; and (\$0.05) in Tier 4. EEMs with no Professional Origins volume in the Non-Penny Class Maker segment for the month of July 2022 will have any new volume considered as added volume.

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