

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 filings also will be available for inspection and copying at the principal office of each 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 Numbers SR-MIAX-2021-59 and SR-PEARL-2021-57 and should be submitted on or before February 23, 2022. Rebuttal comments should be submitted by March 9, 2022.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(3)(C) of the Act,⁵⁹ that File Numbers SR-MIAX-2021-59 and SR-PEARL-2021-57 be, and hereby are, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule changes should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶⁰

J. Matthew DeLesDernier,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-94086; File No. SR-NYSEAMER-2022-06]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the NYSE American Options Fee Schedule

January 27, 2022.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on January 21, 2022, NYSE American LLC ("NYSE

American" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend the NYSE American Options Fee Schedule (the "Fee Schedule") regarding the Floor Broker Fixed Cost Prepayment Incentive Program. The Exchange proposes to implement the fee change effective January 21, 2022.⁴ The proposed change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

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

1. Purpose

The purpose of this filing is to modify the Floor Broker Fixed Cost Prepayment Incentive Program (the "FB Prepay Program"), a prepayment incentive program that allows Floor Broker organizations (each, a "Floor Broker") to prepay certain of their annual Eligible Fixed Costs in exchange for volume rebates, as set forth in the Fee Schedule.⁵

⁴ The Exchange originally filed to amend the Fee Schedule on December 29, 2021 (SR-NYSEAmer-2021-50), with an effective date of January 3, 2022, then withdrew such filing and amended the Fee Schedule on January 12, 2022 (SR-NYSEAmer-2022-02), which latter filing the Exchange withdrew on January 21, 2022.

⁵ See Fee Schedule, Section III.E.1, Floor Broker Fixed Cost Prepayment Incentive Program (the "FB Prepay Program"), available here: <https://>

Currently, the FB Prepay Program offers participating Floor Brokers an opportunity to qualify for rebates by achieving growth in billable manual volume by a certain percentage as measured against one of two benchmarks (the "Percentage Growth Incentive"). Specifically, the Percentage Growth Incentive is designed to encourage Floor Brokers to increase their average daily volume ("ADV") in billable manual contract sides to qualify for a Tier; each Tier of the FB Prepay Program corresponds to an annual rebate equal to the greater of the "Total Percentage Reduction of pre-paid annual Eligible Fixed Costs" or the annualization of the monthly "Alternative Rebate."⁶ In either case, participating Floor Brokers receive their annual rebate amount in the following January.⁷ Floor Brokers that wish to participate in the FB Prepay Program for the following calendar year must notify the Exchange no later than the last business day of December in the current year.⁸

As further described below, the Exchange proposes to modify the qualifying benchmarks, growth percentage requirements, and rebate amounts for the FB Prepay Program, and further proposes to offer Floor Brokers that participate in the FB Prepay Program additional per contract credits for certain QCC trades. The Exchange also proposes to adjust the basis for the calculation of a participating Floor Broker's Eligible Fixed Costs for the following calendar year.

The Exchange proposes to implement the fee changes effective January 21, 2022.

Proposed Rule Change

The Exchange proposes to modify the benchmarks that Floor Brokers that participate in the FB Prepay Program must meet to qualify for the Percentage Growth Incentive. Currently, to qualify for the Percentage Growth Incentive, a Floor Broker must increase their ADV for the calendar year above the greater

www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf. "Eligible Fixed Costs" include monthly ATP Fees, the Floor Access Fee, and certain monthly Floor communication, connectivity, equipment and booth or podia fees, as set forth in the table in Section III.E.1.

⁶ See *id.* The Percentage Growth Incentive excludes Customer volume, Firm Facilitation trades, and QCCs. Any volume calculated to achieve the Firm Monthly Fee Cap and the Strategy Execution Fee Cap, regardless of whether either of these caps is achieved, will likewise be excluded from the Percentage Growth Incentive because fees on such volume are already capped and therefore do not increase billable manual volume. See *id.*

⁷ See Fee Schedule, Section III.E.1.

⁸ See *id.*

⁵⁹ 15 U.S.C. 78s(b)(3)(C).

⁶⁰ 17 CFR 200.30-3(a)(57) and (58).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

of (1) 20,000 contract sides in billable manual ADV, or (2) 105% of the Floor Broker's total billable manual ADV in contract sides during the second half of 2017.⁹ The Exchange proposes to modify each of the minimum thresholds to qualify for the Percentage Growth Incentive. Specifically, the Exchange proposes to (1) modify the first benchmark to increase the requisite minimum contract sides in billable manual ADV from 20,000 to 30,000, and (2) modify the second benchmark from 105% of the Floor Broker's total billable manual ADV in contract sides during the second half of 2017 (*i.e.*, July through December 2017) to the Floor Broker's total billable manual ADV in contract sides during the second half of 2020 (*i.e.*, July through December 2020).¹⁰

The Exchange believes that 30,000 ADV is a reasonable minimum threshold above which a participating Floor Broker would need to increase volume to earn a rebate under the FB Prepay Program, particularly in light of the increased options volume executed by Floor Brokers in the past year. The

Exchange notes that Floor Brokers that are new to the Exchange would also be eligible to qualify for the Percentage Growth Incentive based on this minimum threshold. For Floor Brokers that exceed 30,000 ADV in growth, the Exchange believes that it is reasonable to continue to use each Floor Broker's historical volume as a benchmark against which to measure growth and also believes that updating the benchmark to account for the Floor Broker's more recent activity on the Exchange is reasonable. The Exchange further believes that, in light of the market volatility in the first half of 2020 and the unusually high volumes observed in 2021, Floor Broker activity in the second half of 2020 would be an appropriate benchmark against which to measure volume for purposes of the FB Prepay Program. All Floor Brokers that aim to achieve the rebate would still be required to increase volume executed on the Exchange, and the total annual rebate available for achieving each Tier would continue to be the same regardless of whether the Floor Broker qualifies based on growth over 30,000

ADV contract sides or its second half of 2020 volume, as proposed.

The Exchange also proposes to modify the growth requirement for Tier 2 to decrease the requirement from 30% to 20%. The Exchange further proposes to increase the Alternative Rebate amounts for all Tiers, as set forth in the table below. Finally, the Exchange proposes to eliminate Tier 4. The Exchange believes eliminating this Tier is reasonable in light of the proposed changes described above, including because Tier 3, as modified, would offer participating Floor Brokers an Alternative Rebate amount greater than the amount currently offered by Tier 4. The Exchange believes the proposed modifications would continue to incentivize Floor Brokers to participate in the FB Prepay Program by making Tier 2 more achievable and by enhancing the rebate amount available across all Tiers through the Alternative Rebate.

The following table reflects the proposed changes (with deletions in brackets and new text in *italics*):

FB PREPAYMENT PROGRAM INCENTIVES

[Based on annual ADV in contract sides for the calendar year]

Tier	Percentage growth incentive	Total percentage reduction of pre-paid annual eligible fixed costs	Alternative rebate
Tier 1	5	10	[\$2,000] <i>\$8,000/month.</i>
Tier 2	[30] <i>20</i>	50	[\$4,000] <i>\$16,000/month.</i>
Tier 3	50	80	[\$8,000] <i>\$24,000/month.</i>
[Tier 4	100	100	<i>\$16,000/month]</i>

Thus, as proposed, a participating Floor Broker would qualify for the Percentage Growth Incentive by executing ADV growth in manual billable contract sides that is 5%, 20%, 50%, or 100% over the greater of (1) 30,000 contract sides ADV, or (2) 100% of their ADV during the second half of 2020 (*i.e.*, July through December 2020). A Floor Broker that participates in the FB Prepay Program and achieves a Percentage Growth Incentive Tier, as modified, will continue to be eligible for an annual rebate that is the greater of the "Total Percentage Reduction of pre-paid annual Eligible Fixed Costs" or the "Alternative Rebate" based on the Tier achieved. A Floor Broker that is new to the Exchange (or one that did not execute at least 30,000 contract sides in billable manual ADV in the second half

of 2020) would continue to have the ability to qualify for the Percentage Growth Incentive by executing at least 30,000 contract sides in manual billable ADV, increased by the specified percentages during the year. The total rebate available for achieving each Tier would be the same regardless of whether the Floor Broker qualifies based on 100% of its second half of 2020 volume or the minimum 30,000 ADV contract sides benchmark.

The Exchange also proposes to provide participants in the FB Prepay Program with the opportunity to qualify for enhanced credits on QCC transactions. Specifically, Floor Brokers that participate in the FB Prepay Program and increase their QCC credit eligible contracts in a month by at least 20% over the greater of their second half

of 2021 average monthly QCC credit eligible volume or 1,500,000 contracts will receive an additional credit of \$0.04 per contract on the first 300,000 QCC credit eligible QCC trades and an additional credit of \$0.01 per contract on all QCC credit eligible QCC trades above 300,000, subject to the monthly maximum credit per Floor Broker firm. The Exchange believes that the proposed credits would provide an additional incentive for Floor Brokers to participate in the FB Prepay Program.

Finally, the Exchange proposes to modify the date it will use for the calculation of a Floor Broker's Eligible Fixed Costs for the following calendar year. The FB Prepay Program currently specifies that a Floor Broker that commits to the program will be invoiced in January for Eligible Fixed Costs,

⁹ See Fee Schedule, Section III.E.1, FLOOR BROKER FIXED COST PREPAYMENT INCENTIVE PROGRAM (the "FB Prepay Program").

¹⁰ See proposed Fee Schedule, FLOOR BROKER FIXED COST PREPAYMENT INCENTIVE PROGRAM (the "FB Prepay Program").

based on annualizing their Eligible Fixed Costs incurred in the previous November.¹¹ The Exchange proposes to modify the Fee Schedule to specify that the annualization of Eligible Fixed Costs would be based on costs incurred in November 2020. The Exchange believes that Floor Brokers' costs as of November 2020 would more accurately reflect Eligible Fixed Costs for the coming calendar year based on anticipated fixed costs in 2022.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,¹³ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Rule Change Is Reasonable

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."¹⁴

¹¹ The Fee Schedule currently provides that the "Exchange will not issue any refunds in the event that a Floor Broker organization's prepaid Eligible Fixed Costs exceeds such actual annual costs, except that the Exchange will refund certain of the prepaid Eligible Fixed costs that were waived for Qualifying Firms, as defined, and set forth in, Sections III.B and IV." See Fee Schedule, Section III.E.1, FLOOR BROKER FIXED COST PREPAYMENT INCENTIVE PROGRAM (the "FB Prepay Program"). The Exchange proposes clarifying changes to (1) delete the word "such" from the description of actual Eligible Fixed Costs, and (2) delete the reference to the circumstances under which the Exchange would refund certain prepaid Eligible Fixed Costs, as the Fee Schedule no longer provides for a waiver to Qualifying Firms in connection with COVID-19 related considerations. See Securities Exchange Act Release No. 92559 (August 4, 2021), 86 FR 43700 (August 10, 2021) (SR-NYSEAmex-2021-34) (removing language from the Fee Schedule associated with COVID-19 related fee waivers).

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(4) and (5).

¹⁴ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7-10-04) ("Reg NMS Adopting Release").

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 16% of the market share of executed volume of multiply-listed equity and ETF options trades.¹⁵ Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in November 2021, the Exchange had less than 8% market share of executed volume of multiply-listed equity and ETF options trades.¹⁶

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain options exchange transaction fees. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

The Exchange believes the proposed modifications to the FB Prepay Program are reasonable because participation in the program is optional, and Floor Brokers can elect to participate and seek to qualify for the Percentage Growth Incentive as they see fit. The Exchange also believes that the proposed change is reasonably designed to encourage Floor Brokers to provide liquidity on the Exchange, to continue to incent Floor Brokers to participate in the FB Prepay Program, and to ensure that Floor Brokers that are new to the Exchange (or Floor Brokers that did not execute more than 30,000 ADV in contract sides) could also participate in the program, including by continuing to offer two alternative means to achieve the same rebate at each Tier. The Exchange believes that 30,000 ADV is a reasonable minimum threshold above which a participating Floor Broker would need to increase volume in order to realize the proposed Percentage Growth Incentive (and is on a similar playing field with Floor Brokers that exceeded this volume requirement in 2020). For Floor Brokers that exceeded 30,000 ADV

¹⁵ The 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/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics>.

¹⁶ Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, see *id.*, the Exchange's market share in equity-based options was 9.09% for the month of November 2020 and 7.06% for the month of November 2021.

in the second half of 2020, the Exchange believes it is reasonable to use each Floor Broker's historical volume as a benchmark against which to measure future growth to achieve the Percentage Growth Incentive and further believes that activity in the second half of 2020 would provide an appropriate updated benchmark in light of the market volatility in the first half of 2020 and the unusually high volumes observed in 2021.

In addition, the Exchange believes that the proposed changes to the Percentage Growth Incentive are reasonable because they are designed to continue to incent Floor Broker participation in the FB Prepay Program by making Tier 2 more achievable and by offering increased rebate amounts and therefore are designed to encourage increased executions by Floor Brokers on the Exchange, which activity would benefit all market participants.

Moreover, the proposed change to offer participants in the FB Prepay Program credits on QCC transactions is reasonable because it would provide Floor Brokers with the opportunity to earn additional credits that they otherwise would not receive, based on their QCC trading activity. The Exchange believes that such credits would encourage Floor Brokers to increase both their billable volume and their QCC transactions executed on the Exchange, which would benefit all market participants by expanding liquidity and providing more trading opportunities, including to non-Floor Broker market participants (as well as participating Floor Brokers who do not reach the volume thresholds, as proposed).

The Exchange also believes that the proposed change with respect to the date used for the calculation of Eligible Fixed Costs is reasonable because it expects Floor Broker organizations' November 2020 costs to provide a more accurate basis for annualizing Eligible Fixed Costs for the coming calendar year based on anticipated fixed costs in 2022.

Finally, to the extent the proposed change continues to attract greater volume and liquidity to the Exchange Floor, the Exchange believes the proposed change would improve the Exchange's overall competitiveness and strengthen its market quality for all market participants. In the backdrop of the competitive environment in which the Exchange operates, the proposed rule change is a reasonable attempt by the Exchange to increase the depth of its market and improve its market share relative to its competitors.

The Proposed Rule Change Is an Equitable Allocation of Credits and Fees

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits. The proposal is based on the amount and type of business that Floor Brokers transact on the Exchange, and Floor Brokers are not obligated to participate in the FB Prepay Program or attempt to trade sufficient volume to qualify for one of the Percentage Growth Incentive Tiers. In addition, all participating Floor Brokers have the opportunity to qualify for the same rebate at each Tier through two alternatives means (*i.e.*, growth over the greater of at least 30,000 contract sides in billable ADV or the Floor Broker's total billable manual ADV in the second half of 2020). The Exchange also notes that the proposed changes are designed to encourage Floor Brokers that have previously enrolled in the FB Prepay Program to reenroll for the upcoming year, as well as to attract Floor Brokers that have not yet participated in the program.

Moreover, the Exchange believes that the proposed modifications to the FB Prepay Program are an equitable allocation of fees and credits because they would apply to participating Floor Brokers equally and are intended to encourage the important role performed by Floor Brokers in facilitating the execution of orders via open outcry and providing opportunities to obtain price improvement, a function which the Exchange wishes to support for the benefit of all market participants. The Exchange further believes that the proposed change with respect to the calculation of Eligible Fixed Costs is equitable because it would continue to be based on each Floor Broker organization's annualized costs and because the November 2020 basis for annualizing costs would provide a more accurate reflection of Eligible Fixed Costs for the coming calendar year based on anticipated fixed costs in 2022.

To the extent that the proposed change continues to incent Floor Brokers to participate in the FB Prepay Program and achieve the volume required to qualify for the Percentage Growth Incentive, the increased order flow would continue to make the Exchange a more competitive venue for, among other things, order execution. Similarly, to the extent the proposed change, and, in particular, the proposed additional credit for QCC transactions, encourages Floor Brokers to participate in a greater variety of transactions on the Exchange, the resulting increased order flow would likewise continue to make the Exchange a more competitive

venue for order execution. Thus, the Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange thereby improving market-wide quality and price discovery.

The Proposed Rule Change Is Not Unfairly Discriminatory

The Exchange believes the proposed modifications to the FB Prepay Program are not unfairly discriminatory because they would apply to all similarly-situated Floor Brokers. The proposal is based on the amount and type of business transacted on the Exchange, and Floor Brokers are not obligated to participate in the FB Prepay Program or try to achieve any of the Percentage Growth Incentive Tiers.

The Exchange also believes that the proposed change is not unfairly discriminatory to non-Floor Brokers because it is intended to encourage Floor Brokers to continue facilitating the execution of orders via open outcry and providing opportunities to obtain price improvement, a function that benefits all market participants.

To the extent that the proposed change continues to attract participation in the FB Prepay Program and incent Floor Brokers to increase volume to qualify for the Percentage Growth Incentive, the increased order flow would continue to make the Exchange a more competitive venue for, among other things, order execution. Thus, the Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange thereby improving market-wide quality and price discovery.

In addition, to the extent that the proposed change attracts a variety of transactions to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for order execution. Thus, the Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange Floor, thereby improving market-wide quality and price discovery. The resulting increased volume and liquidity would provide more trading opportunities and tighter spreads to all market participants and thus would promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in

general, protect investors and the public interest.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

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

In accordance with Section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all market participants. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."¹⁷

Intramarket Competition. The Exchange believes the proposed change will continue to incent Floor Brokers to participate in the FB Prepay Program and encourage order flow to be directed to the Exchange Floor, which would enhance the quality of quoting and may increase the volumes of contracts traded on the Exchange. To the extent that the proposed change imposes an additional competitive burden on non-Floor Brokers, the Exchange believes that any such burden would be appropriate because of Floor Brokers' important role in facilitating the execution of orders via open outcry and providing opportunities for price improvement, and the Exchange believes the proposed change is designed to encourage and support that function.

In addition, to the extent that the proposed change in fact encourages Floor Broker volume, all market participants should benefit from the improved market liquidity. Enhanced market quality and increased transaction volume that results from the anticipated increase in order flow directed to the Exchange will benefit all market participants and improve competition on the Exchange.

Intermarket Competition. The Exchange believes that the proposed change would promote competition

¹⁷ See Reg NMS Adopting Release, *supra* note 14, at 37499.

between the Exchange and other execution venues by encouraging additional orders to be sent to the Exchange Floor for execution. The proposed modifications to the FB Prepay Program are designed to continue to incent Floor Broker participation in the program, including by making the incentives more achievable and increasing the amounts of the rebates available. The Exchange thus believes that the proposed change would continue to encourage Floor Brokers to execute orders on the Floor of the Exchange, which would increase volume and liquidity, to the benefit of all market participants by providing more trading opportunities and tighter spreads.

Given the robust competition for volume among options markets, implementing programs to attract order flow, such as the proposed modifications to the FB Prepay Program, are consistent with the above-mentioned goals of the Act.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

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

No written comments were solicited or received with respect to the proposed rule change.

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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)¹⁸ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁹ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such 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 under Section 19(b)(2)(B)²⁰ of the Act to determine whether the proposed rule change 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 email to rule-comments@sec.gov. Please include File Number SR-NYSEAMER-2022-06 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-NYSEAMER-2022-06. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<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-NYSEAMER-2022-06, and should be submitted on or before February 23, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

J. Matthew DeLesDernier,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-94089; File No. SR-EMERALD-2021-42]

Self-Regulatory Organizations; MIAX Emerald, LLC; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Change To Amend the MIAX Emerald Fee Schedule To Adopt a Tiered Pricing Structure for Certain Connectivity Fees

January 27, 2022.

I. Introduction

On December 1, 2021, MIAX Emerald, LLC ("MIAX Emerald" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change (File Number SR-EMERALD-2021-42) to amend the Exchange's Fee Schedule ("Fee Schedule") to adopt a tiered pricing structure for certain connectivity fees. The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.³ The proposed rule change was published for comment in the **Federal Register** on December 20, 2021.⁴ Under Section 19(b)(3)(C) of the Act,⁵ the Commission is hereby: (i) Temporarily suspending File Number SR-EMERALD-2021-42; and (ii) instituting proceedings to determine whether to approve or disapprove File Number SR-EMERALD-2021-42.

²¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as "establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization." 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ See Securities Exchange Act Release No. 93776 (December 14, 2021), 86 FR 71983 ("Notice").

⁵ 15 U.S.C. 78s(b)(3)(C).

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 17 CFR 240.19b-4(f)(2).

²⁰ 15 U.S.C. 78s(b)(2)(B).