

The Exchange believes its proposal is reasonable, equitable and not unfairly discriminatory because all similarly situated market participants in the same origin type (MIAX Pearl Market Makers) 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 will incentivize Market Makers to increase their posted liquidity in SPY/QQQ/IWM options 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.

#### *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 change should continue to encourage the provision of liquidity in SPY/QQQ/IWM options 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 change to the threshold criteria for the alternative volume criteria in Tier 2 for the Market Maker origin is 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,<sup>22</sup> and Rule 19b-4(f)(2)<sup>23</sup> 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-PEARL-2023-02 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to File Number SR-PEARL-2023-02. 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 such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-PEARL-2023-02 and should be submitted on or before March 7, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>24</sup>

**Sherry R. Haywood,**  
*Assistant Secretary.*

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#### **SECURITIES AND EXCHANGE COMMISSION**

[**Securities Act of 1933, Release No. 11155/February 8, 2023; Securities Exchange Act of 1934, Release No. 96851/February 8, 2023**]

#### **Order Regarding Review of FASB Accounting Support Fee for 2023 Under the Sarbanes-Oxley Act of 2002**

The Sarbanes-Oxley Act of 2002 ("SOX" or the "Act") provides that the Securities and Exchange Commission (the "Commission") may recognize, as generally accepted for purposes of the securities laws, any accounting principles established by a standard-setting body that meets certain criteria.<sup>1</sup> Section 109 of SOX provides that all of the budget of such a standard-setting body shall be payable from an annual accounting support fee assessed and collected against each issuer, as may be necessary or appropriate to pay for the budget and provide for the expenses of the standard-setting body, and to provide for an independent, stable source of funding, subject to review by the Commission. Under section 109(f) of the Act, the amount of fees collected for a fiscal year shall not exceed the

<sup>22</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>23</sup> 17 CFR 240.19b-4(f)(2).

<sup>24</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> See 15 U.S.C. 7201 *et seq.*

“recoverable budget expenses” of the standard-setting body. Section 109(i) of SOX amends section 13(b)(2) of the Securities Exchange Act of 1934 to require issuers to pay the allocable share of a reasonable annual accounting support fee or fees, determined in accordance with section 109 of the Act.

On April 25, 2003, the Commission issued a policy statement concluding that the Financial Accounting Standards Board (“FASB”) and its parent organization, the Financial Accounting Foundation (“FAF”), satisfied the criteria for an accounting standard-setting body under the Act, and recognizing the FASB’s financial accounting and reporting standards as “generally accepted” under section 108 of the Act.<sup>2</sup> Accordingly, the Commission undertook a review of the FASB’s accounting support fee for calendar year 2023.<sup>3</sup> In connection with its review, the Commission also reviewed the budget for the FAF and the FASB for calendar year 2023.

Section 109 of SOX provides that, in addition to the accounting support fee, the standard-setting body can have additional sources of revenue for its activities, such as earnings from sales of publications, provided that each additional source of revenue shall not jeopardize, in the judgment of the Commission, the actual or perceived independence of the standard setter. In this regard, the Commission also considered the interrelation of the operating budgets of the FAF, the FASB, and the Governmental Accounting Standards Board (“GASB”), the FASB’s sister organization, which sets accounting standards used by state and local government entities. The Commission has been advised by the FAF that neither the FAF, the FASB, nor the GASB accept contributions from the accounting profession.

The Commission understands that the Office of Management and Budget (“OMB”) has determined the FASB’s spending of the 2023 accounting support fee is sequestrable under the Budget Control Act of 2011.<sup>4</sup> So long as sequestration is applicable, we anticipate that the FAF will work with

the Commission and Commission staff as appropriate regarding its implementation of sequestration.

After its review, the Commission determined that the 2023 annual accounting support fee for the FASB is consistent with section 109 of the Act. Accordingly,

*It is ordered*, pursuant to section 109 of SOX, that the FASB may act in accordance with this determination of the Commission.

By the Commission.

**Vanessa A. Countryman,**  
*Secretary.*

[FR Doc. 2023-03077 Filed 2-13-23; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-96840; File No. SR-MSRB-2023-01]

### Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of a Proposed Rule Change Consisting of Amendments to MSRB Rule G-40, on Advertising by Municipal Advisors, and MSRB Rule G-8, on Books and Records

February 8, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 31, 2023, the Municipal Securities Rulemaking Board (“MSRB” or “Board”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. 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 MSRB filed with the Commission a proposed rule change consisting of amendments to MSRB Rule G-40, on advertising by municipal advisors. Specifically, the proposed rule change consists of amendments to MSRB Rule G-40 to (i) permit municipal advisors to use testimonials in advertisements, subject to certain conditions; (ii) specify additional supervisory obligations with respect to the use of testimonials; (iii) modify the definition of municipal

advisory client to better align with MSRB Rule G-38, on solicitation of municipal securities business; (iv) specify the obligation to keep a record of any payment for a testimonial; and (v) create a conforming obligation under MSRB Rule G-8, on books and records to be made by brokers, dealers, municipal securities dealers and municipal advisors, to include records to correspond with the current obligation under MSRB Rule G-40 to maintain records relating to the supervision of advertisements as well as the proposed obligation to maintain records of any payments for a testimonial (together “the proposed rule change”). The MSRB requests that the proposed rule change be approved with an implementation date to be announced by the MSRB in a regulatory notice published no later than one month following the Commission approval date, which implementation date shall be no later than three months following the Commission approval date.

The text of the proposed rule change is available on the MSRB’s website at <https://msrb.org/2023-SEC-Filings>, at the MSRB’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 MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB 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

Consistent with the MSRB’s strategic goal to modernize the MSRB Rulebook, the proposed rule change would amend MSRB Rule G-40 to allow municipal advisors to use testimonials in certain circumstances, which would better align MSRB Rule G-40 with, to the extent appropriate, the principles of MSRB Rule G-21, on advertising by brokers, dealers or municipal securities, as well as Rule 206(4)-1<sup>3</sup> under the Investment

<sup>2</sup> See Commission Statement of Policy Reaffirming the Status of the FASB as a Designated Private-Sector Standard Setter, Release No. 33-8221 (April 25, 2003) [68 FR 23333 (May 1, 2003)].

<sup>3</sup> The Financial Accounting Foundation’s Board of Trustees approved the FASB’s budget on November 15, 2022. The FAF submitted the approved budget to the Commission on November 21, 2022.

<sup>4</sup> See OMB Report to the Congress on the BBEDCA 251A Sequestration for Fiscal Year 2023, available at [https://www.whitehouse.gov/wp-content/uploads/2022/03/BBEDCA\\_251A\\_Sequestration\\_Report\\_FY2023.pdf](https://www.whitehouse.gov/wp-content/uploads/2022/03/BBEDCA_251A_Sequestration_Report_FY2023.pdf).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 17 CFR 275.206(4)-1.