and the [Plan participants] have agreed to the heightened requirements set forth in the OPRA Plan (which have been approved by the Commission).'' [48]

A group of affiliated OPRA Plan participants similarly requested that the Commission disapprove the Proposed Amendment.[49] Stating that ''Rule 608(c) under Regulation NMS provides that, 'Each self-regulatory organization shall comply with the terms of any effective national market system plan of which it is a sponsor or a participant,' '' and that ''the [Proposed] Amendment did not receive the affirmative vote of all of the members of the OPRA Plan pursuant to Section 10.3 of the OPRA Plan,'' the commenter states that ''Cboe's submission of the [Proposed] Amendment violated Rule 608(c).'' [50] The commenter further states that

> Cboe's reading of Rule 608(a)(1)—that it alone can move to amend the OPRA Plan without regard to the views of other OPRA members—is nonsensical, contrary to Rule 608 as a whole, and, if accepted by the Commission, would undermine the ability of all national market system plans to govern themselves. Cboe is contending, in effect, that any two SROs disappointed in the outcome in any NMS plan deliberations should be able to file their proposal with the Commission and rehash the same debate in a different forum. This will inject uncertainty in all NMS plan operations, and unnecessarily complicate the plan amendment process.[51]

Cboe cannot use Rule 608(a)(1) to bypass the requirements of the OPRA Plan. The Plan participants have included a clear and specific amendment clause in the OPRA Plan (Article X, Section 10.3) to govern the process of amending the Plan by the Plan participants. This amendment clause provides the specific requirements for amendments of the Plan and is more stringent than the requirements of Rule 608(a)(1). That is, the Plan requires unanimous participant approval for plan amendments, and the Commission approved the OPRA Plan with that unanimous consent amendment requirement.[52] Such provisions are not uncommon, as other NMS Plans contain requirements to amend that are more restrictive than Rule 608 [53] though some contain no general amendment provision.[54] Rule 608(a)(1) provides the minimum for plan amendments, but the Commission has approved many NMS Plans that include additional criteria that must be met for plan amendments to be filed with the Commission.[55]

Rule 608 permits the inclusion in NMS Plans of more stringent requirements for plan amendments that go beyond the ''any two or more SROs acting jointly'' minimum requirement in Rule 608. Specifically, the Rule states that any NMS Plan or amendment filed with the Commission must be accompanied by certain statements and representations, including ''[i]n the case of a proposed amendment, a statement that such amendment has been approved by the sponsors in accordance with the terms of the plan.'' [56] In Cboe's Proposed Amendment, it stated ''Not Applicable'' in response to that requirement,[57] though an applicable provision does exist and was not satisfied. As stated by OPRA, Cboe has not complied with the terms of Section 10.3 of the OPRA Plan in that it failed to obtain the affirmative vote of all Plan participants to amend the OPRA Plan as required by the OPRA Plan.[58]

When reviewing amendments to an NMS Plan pursuant to Rule 608(b), the Commission evaluates whether a proposed amendment ''is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.'' [59]

The terms of the OPRA Plan are applicable to Cboe as Plan participants, and therefore unanimous agreement was needed for the amendment. Accordingly, the Commission cannot make a finding that the Proposed Amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.[60]

IV. Conclusion

For the reasons set forth above, the Commission does not find, pursuant to Section 11A of the Act, and Rule 608 thereunder, that the Proposed Amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.

It is therefore ordered, pursuant to Section 11A of the Act, and Rule 608(b)(2) thereunder, that the Proposed Amendment (File No. 8–420) be, and hereby is, disapproved.

By the Commission.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2024–26959 Filed 11–18–24; 8:45 am]

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[48] *Id.*

[49] *See* Letter from Greg Ferrari, Vice President, U.S. Options, Nasdaq, dated Feb. 12, 2024 (''Nasdaq Letter''), at 2.

[50] *Id.* at 2.

[51] *Id.*

[52] *See* Securities Exchange Act Release No. 17638 (Mar. 18, 1981), 22 SEC. Docket 484 (Mar. 31, 1981). *See also* OPRA Plan, Article X, Section 10.3 (Amendments).

[53] *See, e.g.,* Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis, Article XVI (Modifications to the Plan), *available at https://www.utpplan.com/utp_plan.*

[54] *See, e.g.,* Plan for the Purpose of Developing and Implementing Procedures to Facilitate the Listing and Trading of Standardized Options, *available at https://www.theocc.com/getmedia/198bfc93-5d51-443c-9e5b-fd575a0a7d0f/options_listing_procedures_plan.pdf.*

[55] Rule 608 would, however, apply where an NMS Plan is silent on the topic and does not provide a specific voting clause to govern amendments.

[56] *See* 17 CFR 242.608(a)(4)(ii)(E).

[57] Notice, *supra* note 3, 89 FR 3967.

[58] *See* 17 CFR 242.608(c) (''Each [SRO] shall comply with the terms of any effective national market system plan of which it is a sponsor or a participant.'').

[59] 15 U.S.C. 78k–1(b)(2).

[60] In light of Cboe's failure to obtain the required affirmative vote for the Proposed Amendment, the Commission need not make a determination on the merits of the proposal.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101611; File No. SR–PEARL–2024–50]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX Pearl Equities Fee Schedule

November 13, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 31, 2024, 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.

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

[2] 17 CFR 240.19b–4.

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

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

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

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

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

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

1. Purpose

The Exchange proposes to amend the Fee Schedule to decrease the rebates for executions of orders in securities priced at or above $1.00 per share that add displayed liquidity (''Added Displayed Volume'') to the Exchange across all Tapes.

Background

Currently, the Exchange offers a standard rebate of ($0.0022) [3] per share for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume across all Tapes.[4] The Exchange also offers enhanced rebates pursuant to the NBBO Setter Plus Program (referred to in this filing as the ''NBBO Program'') [5] for Equity Members [6] that add displayed liquidity in securities priced at or above $1.00 per share in all Tapes based on increasing volume thresholds and increasing market quality levels (described below). The NBBO Program was implemented beginning September 1, 2023 and subsequently amended several times.[7]

Pursuant to the NBBO Setter Plus Table in Section 1)c) of the Fee Schedule, the NBBO Program provides six volume tiers enhanced by three market quality levels to provide increasing rebates in this segment. The six volume tiers are achievable by greater volume from the best of four alternative methods. The three market quality levels are achievable by greater NBBO participation in a minimum number of specific securities (described below).

MIAX Pearl Equities first determines the applicable NBBO Program tier based on four different volume calculation methods. The four volume-based methods to determine the Equity Member's tier for purposes of the NBBO Program are calculated in parallel in each month, and each Equity Member receives the highest tier achieved from any of the four methods each month. All four volume calculation methods are based on an Equity Member's respective ADAV,[8] NBBO Set Volume, or ADV, each as a percent of industry TCV [9] as the denominator.

Under volume calculation Method 1, the Exchange provides tiered rebates based on an Equity Member's ADAV as a percentage of TCV. An Equity Member qualifies for the base rebates in Tier 1 for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume across all Tapes by achieving an ADAV of at least 0.00% and less than 0.035% of TCV. An Equity Member qualifies for the enhanced rebates in Tier 2 for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume across all Tapes by achieving an ADAV of at least 0.035% and less than 0.05% of TCV. An Equity Member qualifies for the enhanced rebates in Tier 3 for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume across all Tapes by achieving an ADAV of at least 0.05% and less than 0.08% of TCV. An Equity Member qualifies for the enhanced rebates in Tier 4 for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume across all Tapes by achieving an ADAV of at least 0.08% and less than 0.20% of TCV. An Equity Member qualifies for the enhanced rebates in Tier 5 for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume across all Tapes by achieving an ADAV of at least 0.20% and less than 0.40% of TCV. Finally, an Equity Member qualifies for the enhanced rebates in Tier 6 for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume across all Tapes by achieving an ADAV of at least 0.40% of TCV.

Under volume calculation Method 2, the Exchange provides tiered rebates based on an Equity Member's NBBO Set Volume as a percentage of TCV. Under volume calculation Method 2, an Equity Member qualifies for the base rebates in Tier 1 for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume across all Tapes by achieving an NBBO Set Volume of at least 0.00% and less than 0.01% of TCV. An Equity Member qualifies for the enhanced rebates in Tier 2 for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume across all Tapes by achieving an NBBO Set Volume of at least 0.01% and less than 0.015% of TCV. An Equity Member qualifies for the enhanced rebates in Tier 3 for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume across all Tapes by achieving an NBBO Set Volume of at least 0.015% and less than 0.02% of TCV. An Equity Member qualifies for the enhanced rebates in Tier 4 for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume across all Tapes by achieving an NBBO

[3] Rebates are indicated by parentheses. *See* the General Notes section of the Fee Schedule.

[4] *See* Fee Schedule, Section 1)a); *see also* Fee Schedule, Section 1)b), Liquidity Indicator Codes ''AA'', ''AB'', and ''AC''.

[5] *See, generally,* Fee Schedule, Section 1)c).

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

[7] *See, e.g.,* Securities Exchange Act Release Nos. 98472 (September 21, 2023), 88 FR 66533 (September 27, 2023) (SR–PEARL–2023–45); 99318 (January 11, 2024), 89 FR 3488 (January 18, 2024) (SR–PEARL–2023–73); 99695 (March 8, 2024), 89 FR 18694 (March, 14, 2024) (SR–PEARL–2024–11).

[8] ''ADAV'' means average daily added volume calculated as the number of shares added per day and ''ADV'' means average daily volume calculated as the number of shares added or removed, combined, per day. ADAV and ADV are calculated on a monthly basis. ''NBBO Set Volume'' means the ADAV in all securities of an Equity Member that sets the NBB or NBO on MIAX Pearl Equities. *See* the Definitions section of the Fee Schedule. The Exchange excludes from its calculation of ADAV, ADV, and TCV, and for the purpose of determining qualification for the rebates described in all Levels of the Market Quality Tier columns in the NBBO Setter Plus Program: (1) any trading day that the Exchange's system experiences a disruption that lasts for more than 60 minutes during regular trading hours; (2) any day with a scheduled early market close; (3) the ''Russell Reconstitution Day'' (typically the last Friday in June); (4) any day that the MSCI Equities Indexes are rebalanced (*i.e.,* on a quarterly basis); and (5) any day that the S&P 400, S&P 500, and S&P 600 Indexes are rebalanced (*i.e.,* on a quarterly basis). *See* the General Notes section of the Fee Schedule.

[9] ''TCV'' means total consolidated volume calculated as the volume in shares reported by all exchanges and reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply. *See* the Definitions section of the Fee Schedule.

Set Volume of at least 0.02% and less than 0.03% of TCV. An Equity Member qualifies for the enhanced rebates in Tier 5 for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume across all Tapes by achieving an NBBO Set Volume of at least 0.03% and less than 0.08% of TCV. Finally, an Equity Member qualifies for the enhanced rebates in Tier 6 for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume across all Tapes by achieving an NBBO Set Volume of at least 0.08% of TCV.

Under volume calculation Method 3, the Exchange provides tiered rebates based on an Equity Member's ADV as a percentage of TCV. An Equity Member qualifies for the base rebates in Tier 1 for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume across all Tapes by achieving an ADV of at least 0.00% and less than 0.15% of TCV. An Equity Member qualifies for the enhanced rebates in Tier 2 for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume across all Tapes by achieving an ADV of at least 0.15% and less than 0.18% of TCV. An Equity Member qualifies for the enhanced rebates in Tier 3 for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume across all Tapes by achieving an ADV of at least 0.18% and less than 0.20% of TCV. An Equity Member qualifies for the enhanced rebates in Tier 4 for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume across all Tapes by achieving an ADV of at least 0.20% and less than 0.60% of TCV. An Equity Member qualifies for the enhanced rebates in Tier 5 for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume across all Tapes by achieving an ADV of at least 0.60% and less than 1.00% of TCV. Finally, an Equity Member qualifies for the enhanced rebates in Tier 6 for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume across all Tapes by achieving an ADV of at least 1.00% of TCV.

Under volume calculation Method 4, the Exchange provides tiered rebates based on an Equity Member's ADAV as a percentage of TCV, excluding executions of orders in securities priced below $1.00 per share across all Tapes from the calculation of both the numerator (ADAV) and denominator (TCV). An Equity Member qualifies for the base rebates in Tier 1 for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume across all Tapes by achieving an ADAV of at least 0.00% and less than 0.035% of TCV, exclusive of executions of orders in securities priced below $1.00 per share across all Tapes. An Equity Member qualifies for the enhanced rebates in Tier 2 for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume across all Tapes by achieving an ADAV of at least 0.035% and less than 0.05% of TCV, exclusive of executions of orders in securities priced below $1.00 per share across all Tapes. An Equity Member qualifies for the enhanced rebates in Tier 3 for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume across all Tapes by achieving an ADAV of at least 0.05% and less than 0.08% of TCV, exclusive of executions of orders in securities priced below $1.00 per share across all Tapes. An Equity Member qualifies for the enhanced rebates in Tier 4 for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume across all Tapes by achieving an ADAV of at least 0.08% and less than 0.20% of TCV, exclusive of executions of orders in securities priced below $1.00 per share across all Tapes. An Equity Member qualifies for the enhanced rebates in Tier 5 for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume across all Tapes by achieving an ADAV of at least 0.20% and less than 0.40% of TCV, exclusive of executions of orders in securities priced below $1.00 per share across all Tapes. Finally, an Equity Member qualifies for the enhanced rebates in Tier 6 for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume across all Tapes by achieving an ADAV of at least 0.40% of TCV, exclusive of executions of orders in securities priced below $1.00 per share across all Tapes.

After the volume calculation is performed to determine highest tier achieved by the Equity Member, the applicable rebate is calculated based on two different measurements based on the Equity Member's participation at the NBBO on the Exchange in certain securities (referenced below).

The Exchange provides one column of base rebates (referred to in the NBBO Program table as ''Level A'') and two columns of enhanced rebates (referred to in the NBBO Program table as ''Level B'' and ''Level C''),[10] depending on the Equity Member's Percent Time at NBBO[11] on MIAX Pearl Equities in a certain amount of specified securities (''Market Quality Securities'' or ''MQ Securities'').[12] The NBBO Setter Plus Table specifies the percentage of time that the Equity Member must be at the NBB or NBO on MIAX Pearl Equities in at least 200 symbols out of the full list of 1,000 MQ Securities (which symbols may vary from time to time based on market conditions). The list of MQ Securities is generally based on the top multi-listed 1,000 symbols by ADV across all U.S. securities exchanges. The list of MQ Securities is updated monthly by the Exchange and published on the Exchange's website.[13]

The base rebates (''Level A'') are as follows: ($0.00220) per share in Tier 1; ($0.00290) per share in Tier 2; ($0.00300) per share in Tier 3; ($0.00310) per share in Tier 4; ($0.00335) per share in Tier 5; and ($0.00340) per share in Tier 6. Under Level B, the Exchange provides enhanced rebates for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume across all Tapes if the Equity Member's Percent Time at NBBO is at least 25% and less than 50% in at least 200 MQ Securities per trading day during the month. The Level B rebates are as follows: ($0.00225) per share in Tier 1; ($0.00295) per share in Tier 2; ($0.00305) per share in Tier 3; ($0.00315) per share in Tier 4; ($0.00340) per share in Tier 5; and ($0.00345) per share in Tier 6. Under Level C, the Exchange provides enhanced rebates for executions of

[10] The Exchange excludes from its calculation of ADAV, ADV, and TCV, and for the purpose of determining qualification for the rebates described in all Levels of the Market Quality Tier columns in the NBBO Setter Plus Program: (1) any trading day that the Exchange's system experiences a disruption that lasts for more than 60 minutes during regular trading hours; (2) any day with a scheduled early market close; (3) the ''Russell Reconstitution Day'' (typically the last Friday in June); (4) any day that the MSCI Equities Indexes are rebalanced (*i.e.,* on a quarterly basis); and (5) any day that the S&P 400, S&P 500, and S&P 600 Indexes are rebalanced (*i.e.,* on a quarterly basis). *See* the General Notes section of the Fee Schedule.

[11] ''Percent Time at NBBO'' means the aggregate of the percentage of time during regular trading hours where a Member has a displayed order of at least one round lot at the national best bid (''NBB'') or national best offer (''NBO''). *See* the Definitions section of the Fee Schedule.

[12] ''Market Quality Securities'' or ''MQ Securities'' shall mean a list of securities designated as such, that are used for the purposes of qualifying for the rebates described in Level B and Level C of the Market Quality Tier columns in the NBBO Setter Plus Program. The universe of these securities will be determined by the Exchange and published on the Exchange's website. *See id.*

[13] *See e.g.,* MIAX Pearl Equities Exchange—Market Quality Securities (MQ Securities) List, effective October 1 through October 31, 2024, *available at https://www.miaxglobal.com/markets/us-equities/pearl-equities/fees* (last visited October 30, 2024).

orders in securities priced at or above $1.00 per share for Added Displayed Volume across all Tapes if the Equity Member's Percent Time at NBBO is at least 50% in at least 200 MQ Securities per trading day during the month. The Level C rebates are as follows: ($0.00230) per share in Tier 1; ($0.00300) per share in Tier 2; ($0.00310) per share in Tier 3; ($0.00320) per share in Tier 4; ($0.00345) per share in Tier 5; [14] and ($0.00350) per share in Tier 6.

The Exchange offers an NBBO Setter Additive Rebate,[15] which is an additive rebate of ($0.0004) per share for executions of orders in securities priced at or above $1.00 per share that set the NBB or NBO [16] upon entry on MIAX Pearl Equities with a minimum size of a round lot.[17] The Exchange also offers an NBBO First Joiner Rebate, which is an additive rebate of ($0.0002) per share for executions of orders in securities priced at or above $1.00 per share that bring MIAX Pearl Equities to the established NBB or NBO with a minimum size of a round lot.[18]

Proposal

The Exchange proposes to reduce the standard rebate for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume across all Tapes. Currently, the Exchange provides a standard rebate of ($0.0022) per share for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume across all Tapes. The Exchange now proposes to reduce the standard rebate for executions of Added Displayed Volume in securities priced at or above $1.00 per share from ($0.0022) to ($0.0021) per share for all Tapes.[19] Accordingly, the Exchange proposes to amend Section 1)a), Standard Rates, to reflect this proposed change and amend Section 1)b), Liquidity Indicator Codes and Associated Fees, to reflect the corresponding changes to the applicable Liquidity Indicator Codes, AA, AB and AC.

Next, the Exchange proposes to amend the NBBO Setter Plus Table in Section 1)c) of the Fee Schedule to decrease the rebates for all tiers by ($0.0001) per share for all rebate levels of the NBBO Program. With the proposed changes, the Level A rebates will be as follows: ($0.00210) per share in Tier 1; ($0.00280) per share in Tier 2; ($0.00290) per share in Tier 3; ($0.00300) per share in Tier 4; ($0.00325) per share in Tier 5; and ($0.00330) per share in Tier 6. The Level B rebates will be as follows: ($0.00215) per share in Tier 1; ($0.00285) per share in Tier 2; ($0.00295) per share in Tier 3; ($0.00305) per share in Tier 4; ($0.00330) per share in Tier 5; and ($0.00335) per share in Tier 6. The Level C rebates will be as follows: ($0.00220) per share in Tier 1; ($0.00290) per share in Tier 2; ($0.00300) per share in Tier 3; ($0.00310) per share in Tier 4; ($0.00335) per share in Tier 5; and ($0.00340) per share in Tier 6.

The Exchange does not propose to amend any of volume calculation methods used to determine the Equity Member's tier for purposes of the NBBO Program, which will continue to be calculated in parallel in each month, and each Equity Member will continue to receive the highest tier achieved from any of the four methods each month.[20] The Exchange also does not propose to amend the different measurements to calculate an Equity Member's participation at the NBBO on the Exchange in Market Quality Securities under the NBBO Program.

The purpose of reducing the standard rebate for executions of Added Displayed Volume is for business and competitive reasons in light of recent volume growth on the Exchange. The Exchange notes that despite the modest reduction proposed herein, the proposed standard rebate for executions of Added Displayed Volume (*i.e.,* ($0.0021) per share) remains higher than, and competitive with, the standard rebates provided by other exchanges for executions of orders in securities priced at or above $1.00 per share that add displayed liquidity to those exchanges.[21]

The purpose of reducing the enhanced rebates for executions of Added Displayed Volume for all tiers and market quality levels of the NBBO Program is for business and competitive reasons in light of recent volume growth on the Exchange. The Exchange notes that, even with the proposed decrease in the NBBO Program rebates, the base rebates and enhanced rebates of the NBBO Program remain competitive with, or higher than, the rebates provided by other exchanges for executions of orders in securities priced at or above $1.00 per share that add displayed liquidity to those exchanges.[22]

Implementation

The proposed changes are effective beginning November 1, 2024.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [23] in general, and furthers the objectives of Section 6(b)(4) of the Act [24] in

[14] Equity Members may also qualify for the Tier 5, Level C enhanced rebate via an alternative method by satisfying the following three requirements in the relevant month: (1) Midpoint ADAV of at least 2,500,000 shares; (2) Displayed ADAV of at least 10,000,000 shares; and (3) Percent Time at the NBB or NBO of at least 50% in 200 or more symbols from the list of MQ Securities. *See* Fee Schedule, Section 1)c), Notes to NBBO Setter Plus Table, note 3. Midpoint ADAV means the ADAV for the current month consisting of Midpoint Peg Orders in securities priced at or above $1.00 per share that execute at the midpoint of the Protected NBBO and add liquidity to the Exchange. A Midpoint Peg Order is a non-displayed Limit Order that is assigned a working price pegged to the midpoint of the PBBO. A Midpoint Peg Order receives a new timestamp each time its working price changes in response to changes in the midpoint of the PBBO. *See* Exchange Rule 2614(a)(3). With respect to the trading of equity securities, the term "the term "Protected NBB" or "PBB" shall mean the national best bid that is a Protected Quotation, the term "Protected NBO" or "PBO" shall mean the national best offer that is a Protected Quotation, and the term "Protected NBBO" or "PBBO" shall mean the national best bid and offer that is a Protected Quotation. *See* Exchange Rule 1901.

[15] *See* Fee Schedule, Section 1)c), NBBO Setter Additive Rebate.

[16] With respect to the trading of equity securities, the term "NBB" shall mean the national best bid, the term "NBO" shall mean the national best offer, and the term "NBBO" shall mean the national best bid and offer. *See* Exchange Rule 1901.

[17] *See* Fee Schedule, Section 1)c).

[18] *See* Fee Schedule, Section 1)c), NBBO First Joiner Additive Rebate.

[19] *See* Fee Schedule, Section 1)a), Standard Rates, for the standard pricing for executions of Added Displayed Volume, among other rates.

[20] The Exchange does not propose to amend the alternative volume calculation method for Equity Members to quality for the Tier 5, Level C enhanced rebate, as proposed to be reduced.

[21] *See e.g.,* MEMX LLC Equities Fee Schedule, Transaction fees (last visited October 22, 2024), *available at https://info.memxtrading.com/equities-trading-resources/us-equities-fee-schedule/* (providing standard rebate of ($0.0015) per share for executions of orders in securities priced at or above $1.00 per share across all tapes); *see also* Cboe BZX Equities Fee Schedule, *available at https://www.cboe.com/us/equities/membership/fee_schedule/bzx/* (providing a standard rebate of ($0.0016) per share for adding displayed liquidity in securities priced at or above $1.00 per share).

[22] *See* Cboe BZX Equities Fee Schedule, Add/Remove Volume Tiers section, *available at https://www.cboe.com/us/equities/membership/fee_schedule/bzx/* (providing an enhanced rebates ranging from ($0.0020) to ($0.0032) per share for executions of added displayed volume in securities priced at or above $1.00 per share, so long as the member meets certain volume requirements, including, for tier 4, minimum NBBO Time and NBBO Size requirements from a list of specified securities and minimum requirement of ADAV as a percentage of TCV); *see also* Cboe EDGX Equities Fee Schedule, Add/Remove Volume Tiers section, *available at https://www.cboe.com/us/equities/membership/fee_schedule/edgx/* (providing an enhanced rebates ranging from ($0.0020) to ($0.0034) per share for executions of added displayed volume in securities priced at or above $1.00 per share, so long as the member meets certain volume requirements).

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

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

particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Equity Members and issuers and other persons using its facilities. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [25] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers or dealers.

The Exchange operates in a highly fragmented and competitive market in which market participants can readily direct their order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of sixteen registered equities exchanges, and there are a number of alternative trading systems and other off-exchange venues, to which market participants may direct their order flow. Based on publicly available information, no single registered equities exchange had more than approximately 15–16% of the total market share of executed volume of equities trading for the month of September 2024.[26] Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow, and the Exchange represented approximately 1.71% of the overall market share for the month of September 2024. The Commission and the courts have repeatedly expressed their 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.'' [27]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue or reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. The Exchange believes the proposal reflects a reasonable and competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance liquidity and market quality in both a broad manner and in a targeted manner with respect to the NBBO Program, in particular, and Added Displayed Volume in securities priced at or above $1.00 per share, in general.

The Exchange believes its proposal to reduce the rebates for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume across all Tapes is reasonable because the Exchange's standard rebate and enhanced rebates will remain competitive with, or higher than, the rebates provided by other exchanges for executions of orders in securities priced at or above $1.00 per share that add displayed liquidity to those exchanges.[28] The Exchange believes that the enhanced rebates under the NBBO Program, as modified by this proposal, continue to be equitable and not unfairly discriminatory because the NBBO Program is open to all Equity Members on an equal basis and provides enhanced rebates that are reasonably related to the value of the Exchange's market quality associated with greater order flow by Equity Members that set the NBB or NBO, and the introduction of higher volumes of orders into the price and volume discovery process. The Exchange believes the proposal is equitable and not unfairly discriminatory because the Exchange's pricing structure, as modified by this proposal, continues to be designed to incentivize the entry of aggressively priced displayed liquidity that may create tighter spreads, thereby promoting price discovery and market quality on the Exchange to the benefit of all Equity Members and public investors.

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

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

Intra-Market Competition

The Exchange does not believe that the proposal will impose any burden on intra-market competition not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange believes that its proposal to reduce the standard and enhanced rebates provided for in the NBBO Program, for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume will not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because these changes are for business and competitive reasons in light of recent volume growth on the Exchange. The Exchange notes that despite the modest reduction proposed herein of ($0.0001) per share for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume, the Exchange's standard and enhanced rebates remain competitive with, or higher than, the standard and enhanced rebates provided by other exchanges for executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume on those exchanges.[29]

The Exchange believes that, even with the proposed decrease to the standard and enhanced Added Displayed Volume rebates, the Exchange's rebate structure for such orders will continue to incentivize market participants to direct order flow to the Exchange, thereby contributing to a deeper and more liquid market to the benefit of all market participants and enhancing the attractiveness of the Exchange as a trading venue. The Exchange believes that this, in turn, will continue to encourage market participants to direct additional orders in securities priced at or above $1.00 per share to the Exchange. Greater liquidity benefits all Equity Members by providing more trading opportunities and encourages Equity Members to send orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants.

Intermarket Competition

The Exchange believes the proposed changes will benefit competition, and the Exchange notes that it operates in a highly competitive market. Equity Members have numerous alternative venues they may participate on and direct their order flow to, including sixteen equities exchanges and numerous alternative trading systems and other off-exchange venues. As noted above, no single registered equities exchange currently had more than 15–16% of the total market share of executed volume of equities trading for

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

[26] *See* the ''Market Share'' section of the Exchange's website, *available at https://www.miaxglobal.com/* (last visited October 25, 2024).

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

[28] *See supra* notes 21 and 22.

[29] *See supra* notes 21 and 22.

the month of September 2024.[30] Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow.

Moreover, the Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow in response to new or different pricing structures being introduced to the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates generally, including with respect to executions of orders in securities priced at or above $1.00 per share for Added Displayed Volume, and market participants can readily choose to send their orders to other exchanges and off-exchange venues if they deem fee levels at those other venues to be more favorable.

Additionally, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and self-regulatory organization (''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.'' [31] The fact that this market is competitive has also long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the DC circuit stated: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possess a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers' . . .''.[32] Accordingly, the Exchange does not believe its proposed pricing changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Written comments were neither solicited nor received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[33] and Rule 19b–4(f)(2) [34] 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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–PEARL–2024–50 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–2024–50. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–PEARL–2024–50 and should be submitted on or before December 10, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–26870 Filed 11–18–24; 8:45 am]

BILLING CODE 8011–01–P

[30] *See supra* note 26.

[31] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[32] *See NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSE–2006–21)).

[33] 15 U.S.C. 78s(b)(3)(A)(ii).

[34] 17 CFR 240.19b–4(f)(2).

[35] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101605; File No. SR–PEARL–2024–49]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX Pearl Options Fee Schedule

November 13, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 31, 2024, 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.

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

[2] 17 CFR 240.19b–4.