

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 No. SR-EMERALD-2022-19 and should be submitted on or before June 7, 2022. Rebuttal comments should be submitted by June 21, 2022.

## VI. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(3)(C) of the Act,<sup>106</sup> that File No. SR-EMERALD-2022-19 be, and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule change should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>107</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-94890; File No. SR-MIAX-2022-20]

### Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing of a Proposed Rule Change To Amend Its Fee Schedule To Increase Certain Connectivity Fees and Adopt a Tiered-Pricing Structure for Additional Limited Service MIAX Express Interface Ports; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

May 11, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 2, 2022, Miami International Securities Exchange, LLC (“MIAX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I and II 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 and is, pursuant to Section 19(b)(3)(C) of the

Act, hereby: (i) Temporarily suspending the proposed rule change; and (ii) instituting proceedings to determine whether to approve or disapprove the proposed rule change.

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

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule (the “Fee Schedule”) to amend certain connectivity and port fees.

The text of the proposed rule change is available on the Exchange's website at <http://www.miaxoptions.com/rule-filings>, at MIAX'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 [sic] 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 its Fee Schedule to increase the fees for a 10 gigabit (“Gb”) ultra-low latency (“ULL”) fiber connection and adopt a tiered-pricing structure for Limited Service MIAX Express Interface (“MEI”) Ports<sup>3</sup> available to Market Makers.<sup>4</sup> The Exchange last increased the fees for its 10Gb ULL fiber connections in a filing that became effective beginning January 1, 2021 (subsequently withdrawn and refiled one time).<sup>5</sup> In that fee change, the Exchange increased the fee for 10Gb ULL fiber connections from \$9,300 to \$10,000 per month.

Also, in connection with that fee change, the Exchange's affiliate, MIAX

PEARL, LLC (“MIAX Pearl Options”), increased its 10Gb ULL connectivity fee to \$10,000 per month.<sup>6</sup> The Exchange and MIAX Pearl Options shared a combined cost analysis in those filings. In those filings, the Exchange and MIAX Pearl Options allocated a combined total of \$17.9 million in expenses to providing 10Gb ULL fiber connectivity.

Since the time of that filing, the Exchange and MIAX Pearl Options have experienced an increase in expenses, particularly regarding internal expenses. For example, from January 2021 to March 2022 expenses related to employee compensation for 10Gb ULL connectivity increased from a combined \$6,892,689 to \$7,063,801 and occupancy increased from \$560,408 to \$701,437. In addition, from January 2021 to March 2022, the Exchange's third party related expense increased as well. In January 2021, the Exchange and MIAX Pearl Options allocated a combined \$4,079,910 of their shared third party expenses to providing the 10Gb ULL fiber connectivity. As described more fully below, the Exchange and MIAX Pearl Options are now allocating \$4,382,307 of their shared third party expense to 10Gb ULL fiber connectivity, which represents only a portion of the total combined third party expense of \$7,575,888. As discussed more fully below, the Exchange and MIAX Pearl Options recently calculated the combined annual aggregate costs for providing 10Gb ULL connectivity, plus the cost of providing Limited Service MEI Ports (on MIAX only) to be \$21,407,728, or \$1,783,977 per month. The Exchange now proposes to amend the Fee Schedule to amend the fees for 10Gb ULL connectivity to recoup these ongoing costs and as a result of the increase in expenses described above.<sup>7</sup>

The same is true for its proposal to amend its fees for Limited Service MEI Ports. Beginning with a series of filings first filed on April 9, 2021 (with the final filing made May 10, 2021), the Exchange removed the cap on the number of additional Limited Service MEI Ports available to Market Makers from the Fee Schedule.<sup>8</sup> In that filing, the Exchange sought only to remove the cap on the number of Limited Service MEI Ports a Market Maker may purchase from its Fee Schedule. Although the Exchange did not modify the fees for

<sup>3</sup> MIAX Express Interface is a connection to MIAX systems that enables Market Makers to submit simple and complex electronic quotes to MIAX. See Fee Schedule, note 26.

<sup>4</sup> The term “Market Makers” refers to Lead Market Makers (“LMMs”), Primary Lead Market Makers (“PLMMs”), and Registered Market Makers (“RMMs”) collectively. See Exchange Rule 100.

<sup>5</sup> See Securities Exchange Act Release No. 90980 (January 25, 2021), 86 FR 7602 (January 29, 2021) (SR-MIAX-2021-02).

<sup>6</sup> See Securities Exchange Act Release No. 90981 (January 25, 2021), 86 FR 7582 (January 29, 2021) (SR-PEARL-2021-01).

<sup>7</sup> The Exchange notes that MIAX Pearl Options will make a similar filing to increase its 10Gb ULL connectivity fees.

<sup>8</sup> See Securities Exchange Act Release No. 91857 (May 12, 2021), 86 FR 26973 (May 18, 2021) (SR-MIAX-2021-19).

<sup>106</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>107</sup> 17 CFR 200.30-3(a)(12), (57) and (58).

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

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

Limited Service MEI Ports in that filing, the Exchange did provide a cost analysis showing the cost to the Exchange to add two Limited Service MEI Ports to its System. That filing contained lower allocation percentages and allocated expenses than included herein because that cost analysis focused solely on the providing two Limited Service MEI Ports and not all Limit Service MEI Ports generally as is the case in this proposed fee change. Since the time of that April 2021 filing, the Exchange's expenses have increased, leading to the increased fees for Limited Service MEI Ports proposed herein. For example, in April 2021, the Exchange set forth a total internal expense of \$14,957,861 as part of its cost analysis to provide two additional Limited Service MEI Ports. As described below, the Exchange's total internal expenses have increased since April 2021 and are now \$19,862,263, of which the Exchange is now allocating \$1,281,113 of to providing Limited Service MEI Ports generally.

First, the Exchange proposes to amend the Fee Schedule to increase the fees for Members<sup>9</sup> and non-Members to access the Exchange's System Networks<sup>10</sup> via a 10Gb ULL fiber connection. Specifically, the Exchange proposes to amend Sections 5)a)–b) of the Fee Schedule to increase the 10Gb ULL connectivity fee for Members and non-Members from \$10,000 per month to \$12,000 per month ("10Gb ULL Fee"). Prior to the proposed fee change, the Exchange assessed Members and non-Members a flat monthly fee of \$10,000 per 10Gb ULL connection for access to the Exchange's primary and secondary facilities.<sup>11</sup>

The Exchange will continue to assess monthly Member and non-Member network connectivity fees for connectivity to the primary and secondary facilities in any month the Member or non-Member is credentialed to use any of the Exchange APIs or market data feeds in the production environment. The Exchange proposes to pro-rate the fees when a Member or non-Member makes a change to the connectivity (by adding or deleting connections) with such pro-rated fees based on the number of trading days

that the Member or non-Member has been credentialed to utilize any of the Exchange APIs or market data feeds in the production environment through such connection, divided by the total number of trading days in such month multiplied by the applicable monthly rate. The Exchange will continue to assess monthly Member and non-Member network connectivity fees for connectivity to the disaster recovery facility in each month during which the Member or non-Member has established connectivity with the disaster recovery facility.

The Exchange's MIA Express Network Interconnect ("MENI") can be configured to provide Members and non-Members of the Exchange network connectivity to the trading platforms, market data systems, test systems, and disaster recovery facilities of both the Exchange and its affiliate, MIAX Pearl Options, via a single, shared connection. Members and non-Members utilizing the MENI to connect to the trading platforms, market data systems, test systems, and disaster recovery facilities of the Exchange and MIAX Pearl Options via a single, shared connection will continue to only be assessed one monthly connectivity fee per connection, regardless of the trading platforms, market data systems, test systems, and disaster recovery facilities accessed via such connection.

Second, the Exchange proposes to amend Section 5)d) of the Fee Schedule to adopt a tiered-pricing structure for Limited Service MEI Ports available to Market Makers. The Exchange allocates two (2) Full Service MEI Ports<sup>12</sup> and two (2) Limited Service MEI Ports<sup>13</sup> per matching engine<sup>14</sup> to which each

<sup>12</sup> Full Service MEI Ports provide Market Makers with the ability to send Market Maker quotes, eQuotes, and quote purge messages to the MIAX System. Full Service MEI Ports are also capable of receiving administrative information. Market Makers are limited to two Full Service MEI Ports per matching engine. See Fee Schedule, Section 5)d)ii), note 27.

<sup>13</sup> Limited Service MEI Ports provide Market Makers with the ability to send eQuotes and quote purge messages only, but not Market Maker Quotes, to the MIAX System. Limited Service MEI Ports are also capable of receiving administrative information. Market Makers initially receive two Limited Service MEI Ports per matching engine. See Fee Schedule, Section 5)d)ii), note 28.

<sup>14</sup> A "matching engine" is a part of the MIAX electronic system that processes options quotes and trades on a symbol-by-symbol basis. Some matching engines will process option classes with multiple root symbols, and other matching engines will be dedicated to one single option root symbol (for example, options on SPY will be processed by one single matching engine that is dedicated only to SPY). A particular root symbol may only be assigned to a single designated matching engine. A particular root symbol may not be assigned to multiple matching engines. See Fee Schedule, Section 5)d)ii), note 29.

Market Maker connects. Market Makers may also request additional Limited Service MEI Ports for each matching engine to which they connect. The Full Service MEI Ports and Limited Service MEI Ports all include access to the Exchange's primary and secondary data centers and its disaster recovery center. Market Makers may request additional Limited Service MEI Ports. Prior to the proposed fee change, Market Makers were assessed a \$100 monthly fee for each Limited Service MEI Port for each matching engine above the first two Limited Service MEI Ports that are included for free. This fee was unchanged since 2016.<sup>15</sup> The Exchange now proposes to move from a flat monthly fee per Limited Service MEI Port for each matching engine to a tiered-pricing structure for Limited Service MEI Ports for each matching engine under which the monthly fee would vary depending on the number of Limited Service MEI Ports each Market Maker elects to purchase. Specifically, the Exchange will continue to provide the first and second Limited Service MEI Ports for each matching engine free of charge. For Limited Service MEI Ports, the Exchange proposes to adopt the following tiered-pricing structure: (i) The third and fourth Limited Service MEI Ports for each matching engine will increase from the current flat monthly fee of \$100 to \$150 per port; (ii) the fifth and sixth Limited Service MEI Ports for each matching engine will increase from the current flat monthly fee of \$100 to \$200 per port; and (iii) the seventh or more Limited Service MEI Ports will increase from the current monthly flat fee of \$100 to \$250 per port. The Exchange believes a tiered-pricing structure will encourage Market Makers to be more efficient when determining how to connect to the Exchange. This should also enable the Exchange to better monitor and provide access to the Exchange's network to ensure sufficient capacity and headroom in the System<sup>16</sup> in accordance with its fair access requirements under Section 6(b)(5) of the Act.<sup>17</sup>

The Exchange believes that other exchanges' connectivity and port fees

<sup>15</sup> See Securities Exchange Act Release No. 79666 (December 22, 2016), 81 FR 96133 (December 29, 2016) (SR-MIAX-2016-47).

<sup>16</sup> The term "System" means the automated trading system used by the Exchange for the trading of securities. See the Definitions Section of the Fee Schedule and Exchange Rule 100.

<sup>17</sup> See 15 U.S.C. 78f(b). The Exchange may offer access on terms that are not unfairly discriminatory among its Members, and ensure sufficient capacity and headroom in the System. The Exchange monitors the System's performance and makes adjustments to its System based on market conditions and Member demand.

<sup>9</sup> The term "Member" means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed "members" under the Exchange Act. See Exchange Rule 100.

<sup>10</sup> The Exchange's System Networks consist of the Exchange's extranet, internal network, and external network.

<sup>11</sup> The Exchange notes that it employed a tiered pricing structure for 10Gb ULL connectivity from August 2021 through March 2022. See *infra* notes 27–29.

are useful examples and provides the following table for comparison purposes only to show how the Exchange's proposed fees compare to fees currently

charged by other options exchanges for similar connectivity and port access. As shown by the below table, the Exchange's proposed fees are similar to

or less than fees charged for similar access to other options exchanges.

Exchange	Type of connection or port	Monthly fee (per connection or per port)
MIAX (as proposed) (equity options market share of 5.67% as of April 29, 2022 for the month of April) <sup>18</sup> .	10Gb ULL connection ..... Limited Service MEI Port .....	\$12,000. 1–2 ports. FREE (not changed in this proposal). 3–4 ports. \$150. 5–6 ports. \$200. 7 or more ports. \$250.
The NASDAQ Stock Market LLC (“NASDAQ”) <sup>19</sup> ..... (equity options market share of 8.47% as of April 29, 2022 for the month of April) <sup>20</sup> .	10Gb Ultra fiber connection ..... SQF Port .....	\$15,000. 1–5 ports. \$1,500. 6–20 ports. \$1,000. 21 or more ports. \$500.
Nasdaq ISE LLC (“ISE”) <sup>21</sup> (equity options market share of 5.48% as of April 29, 2022 for the month of April) <sup>22</sup> .	10Gb Ultra fiber connection ..... SQF Port .....	\$15,000. \$1,100.
NYSE American LLC (“NYSE American”) <sup>23</sup> (equity options market share of 8.13% as of April 29, 2022 for the month of April) <sup>24</sup> .	10Gb LX LCN connection ..... Order/Quote Entry Port .....	\$22,000. Ports 1–40. \$450. Ports 41 and greater. \$150.
Nasdaq GEMX, LLC (“GEMX”) <sup>25</sup> (equity options market share of 2.36% as of April 29, 2022 for the month of April) <sup>26</sup> .	10Gb Ultra connection ..... SQF Port .....	\$15,000. \$1,250.

## Implementation and Procedural History

The proposed rule change will be effective May 2, 2022. The Exchange initially filed proposals to adopt tiered-pricing structures for the 10Gb ULL connections and Limited Service MEI Ports, with the proposed fees being effective beginning August 1, 2021. Between August 2021 and February 2022, the Exchange withdrew and refiled the proposed rule changes, each time to meaningfully attempt to provide additional justification for the proposed fee changes, provide enhanced details regarding the Exchange's cost methodology, and address questions contained in the Commission's suspension orders. The Exchange received six comment letters from three separate commenters on the filings.<sup>27</sup>

<sup>18</sup> See “The market at a glance,” available at <https://www.miaxoptions.com/> (last visited April 29, 2022).

<sup>19</sup> See NASDAQ Pricing Schedule, Options 7, Section 3, Ports and Other Services and NASDAQ Rules, General 8: Connectivity, Section 1. Co-Location Services.

<sup>20</sup> See *supra* note 18.

<sup>21</sup> See ISE Pricing Schedule, Options 7, Section 7, Connectivity Fees and ISE Rules, General 8: Connectivity.

<sup>22</sup> See *supra* note 18.  
<sup>23</sup> See NYSE American Options Fee Schedule, Section V.A. Port Fees and Section V.B. Co-Location Fees.

<sup>24</sup> See *supra* note 18.

<sup>25</sup> See GEMX Pricing Schedule, Options 7, Section 6, Connectivity Fees and GEMX Rules, General 8: Connectivity.

<sup>26</sup> See *supra* note 18.

<sup>27</sup> See letters from Richard J. McDonald, Susquehanna International Group, LLC (“SIG”), to Vanessa Countryman, Secretary, Commission, dated September 7, 2021, October 1, 2021, October 26, 2021, and March 15, 2022 (“SIG Letters”). See also letter from Tyler Gellach, Executive Director, Healthy Markets Association (“HMA”), to Hon. Gary Gensler, Chair, Commission, dated October 29, 2021 (“HMA Letter”); and letter from Ellen Green, Managing Director, Equity and Options Market

This revised proposal provided additional details regarding the Exchange's cost methodology, revenue projections, and responded to various questions and requests for information contained in the Commission's suspension orders.<sup>28</sup> On April 1, 2022, the Exchange submitted revised proposals to provide additional clarity regarding the Exchange's cost justification and those proposals were subsequently suspended by the Commission.<sup>29</sup> The Exchange withdrew those revised proposals and submitted this filing on May 2, 2022. This newest revised filing builds upon the additional details regarding the Exchange's cost methodology and revenue projections, as well as the Exchange's responses to various questions and requests for information contained in the Commission's suspension orders.

## 2. Statutory Basis

The Exchange believes that the proposed fees are consistent with Section 6(b) of the Act<sup>30</sup> in general, and furthers the objectives of Section 6(b)(4)

Structure, Securities Industry and Financial Markets Association (“SIFMA”), to Vanessa Countryman, Secretary, Commission, dated November 26, 2021 (“SIFMA Letter”).

<sup>28</sup> See Securities Exchange Act Release Nos. 92643 (August 11, 2021), 86 FR 46034 (August 17, 2021) (SR–MIAX–2021–35); 93165 (September 28, 2021), 86 FR 54750 (October 4, 2021) (SR–MIAX–2021–41); 93639 (November 22, 2021), 86 FR 67758 (November 29, 2021) (SR–MIAX–2021–41); 93775 (December 14, 2021), 86 FR 71996 (December 20, 2021) (SR–MIAX–2021–59); 94088 (January 27, 2022), 87 FR 5901 (February 2, 2022) (SR–MIAX–2021–59); and 94256 (February 15, 2022), 87 FR 9711 (February 22, 2022) (SR–MIAX–2022–07).

<sup>29</sup> See Securities Exchange Act Release Nos. 94720 (April 14, 2022), 87 FR 23586 (April 20, 2022) (SR–MIAX–2022–16) and 94719 (April 14, 2022), 87 FR 23600 (April 20, 2022) (SR–MIAX–2022–14).

<sup>30</sup> 15 U.S.C. 78f(b).

of the Act<sup>31</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Members and other persons using any facility or system which the Exchange operates or controls. The Exchange also believes the proposed fees further the objectives of Section 6(b)(5) of the Act<sup>32</sup> in that they are designed to 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 and are not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes that the information provided to justify the proposed fees meets or exceeds the amount of detail required in respect of proposed fee changes as set forth in recent Commission and Commission Staff guidance. On March 29, 2019, the Commission issued an Order disapproving a proposed fee change by the BOX Market LLC Options Facility to establish connectivity fees for its BOX Network (the “BOX Order”).<sup>33</sup> On May 21, 2019, the Commission Staff issued guidance “to assist the national securities exchanges and FINRA . . . in preparing Fee Filings that meet their burden to demonstrate that proposed fees are consistent with the requirements of the Securities Exchange

<sup>31</sup> 15 U.S.C. 78f(b)(4).

<sup>32</sup> 15 U.S.C. 78f(b)(5).

<sup>33</sup> See Securities Exchange Act Release No. 85459 (March 29, 2019), 84 FR 13363 (April 4, 2019) (SR–BOX–2018–24, SR–BOX–2018–37, and SR–BOX–2019–04) (Order Disapproving Proposed Rule Changes to Amend the Fee Schedule on the BOX Market LLC Options Facility to Establish BOX Connectivity Fees for Participants and Non-Participants Who Connect to the BOX Network).

Act.”<sup>34</sup> Based on both the BOX Order and the Guidance, the Exchange believes that the proposed fees are consistent with the Act because they are: (i) Reasonable, equitably allocated, not unfairly discriminatory, and not an undue burden on competition; (ii) comply with the BOX Order and the Guidance; and (iii) supported by evidence (including comprehensive revenue and cost data and analysis) that they are fair and reasonable and will not result in excessive pricing or supra-competitive profit.

#### The Proposed Fees Will Not Result in a Supra-Competitive Profit

The Exchange believes that exchanges, in setting fees of all types, should meet very high standards of transparency to demonstrate why each new fee or fee amendment meets the requirements of the Act that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among market participants. The Exchange believes this high standard is especially important when an exchange imposes various fees for market participants to access an exchange's marketplace.

In the Guidance, the Commission Staff states that, “[a]s an initial step in assessing the reasonableness of a fee, staff considers whether the fee is constrained by significant competitive forces.”<sup>35</sup> The Guidance further states that, “. . . even where an SRO cannot demonstrate, or does not assert, that significant competitive forces constrain the fee at issue, a cost-based discussion may be an alternative basis upon which to show consistency with the Exchange Act.”<sup>36</sup> In the Guidance, the Commission Staff further states that, “[i]f an SRO seeks to support its claims that a proposed fee is fair and reasonable because it will permit recovery of the SRO's costs, or will not result in excessive pricing or supra-competitive profit, specific information, including quantitative information, should be provided to support that argument.”<sup>37</sup> The Exchange does not assert that the proposed fees are constrained by competitive forces. Rather, the Exchange asserts that the proposed fees are reasonable because they will permit recovery of the Exchange's costs in providing access services to supply 10Gb ULL connectivity and Limited Service MEI

Ports and will not result in the Exchange generating a supra-competitive profit.

The Guidance defines “supra-competitive profit” as “profits that exceed the profits that can be obtained in a competitive market.”<sup>38</sup> The Commission Staff further states in the Guidance that “the SRO should provide an analysis of the SRO's baseline revenues, costs, and profitability (before the proposed fee change) and the SRO's expected revenues, costs, and profitability (following the proposed fee change) for the product or service in question.”<sup>39</sup> The Exchange provides this analysis below.

The proposed fees are based on a cost-plus model. The Exchange believes that it is important to demonstrate that the proposed fees are based on its costs and reasonable business needs and believes the proposed fees will allow the Exchange to begin to offset expenses. However, as discussed more fully below, such fees may also result in the Exchange recouping less than, or more than, all of its costs of providing 10Gb ULL connectivity and Limited Service MEI Ports because of the uncertainty of forecasting subscriber decision making with respect to firms' access needs. The Exchange believes that the proposed fees will not result in excessive pricing or supra-competitive profit based on the total expenses the Exchange incurs versus the total revenue the Exchange projects to collect, and therefore meets the standards in the Act as interpreted by the Commission and the Commission Staff in the BOX Order and the Guidance.

The suspension orders sought additional information and comments on various aspects of the prior proposed fee changes. In many respects, the Commission's questions about the prior proposed fee changes raise broader questions around the factors the Commission should consider and the type of data and analysis an exchange should provide in considering whether market data, port fees, or connectivity fees are fair and reasonable under a cost-based methodology. The suspension orders also sought more specific information regarding the allocation of third-party expenses, such as the overall estimated cost for each category of external expenses or at minimum the total applicable third-party expenses and percentage allocation or statements regarding the Exchange's overall estimated costs for the internal expense categories and general shared expenses

figure. The Exchange added this additional information below.

In this filing, the Exchange offers a conceptual framework for further considering the Commission's questions that draws on the Exchange's own experience over several years of analyzing its own costs. The elements of that framework are as follows:

First, the Exchange proposes a flat, simple 10Gb ULL Fee that imposes a single monthly fee for Members and non-Members. The Exchange believes this relatively simple, flat fee structure is transparent and easy for users to apply, and also helps show that it meets the objectives of the Act. The Exchange also proposes a tiered-pricing structure for its Limited Service MEI Ports that continues to provide the first and second Limited Service MEI Ports free of charge. The Exchange believes the proposed tiered-pricing structure for Limited Service MEI Ports is also transparent and easy for users to apply, and is a common pricing method used by other options exchanges when charging for port connectivity.<sup>40</sup>

The Exchange then conducted an extensive cost review in which the Exchange analyzed nearly every expense item in the Exchange's general expense ledger to determine whether each such expense relates to providing 10Gb ULL connectivity and Limited Service MEI Ports. That methodology does not allow for “double-counting” of the same costs for different classes of exchange products—for example transaction services, market data, physical connectivity, “logical” port connections or regulatory resources. As a result of this review, the Exchange determined that it experienced an increase in costs since January and April 2021 as set forth above and determined to propose to increase select connectivity fees as described herein to attempt to recoup this increased expense.

The Exchange then sought to narrowly allocate specific costs to 10Gb ULL connectivity and Limited Service MEI Ports to which the proposed fees would apply. In this filing, the Exchange provided more detail about how that allocation was determined and included information about tangential cost items that were not included. In determining what portion (or percentage) to allocate to access services, each Exchange department head, in coordination with other Exchange personnel, determined the expenses that support access services and System Networks associated with 10Gb ULL connectivity and Limited

<sup>34</sup> See Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019), at <https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees> (the “Guidance”).

<sup>35</sup> See *id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> See *supra* notes 19 and 23.

Service MEI Ports. This included numerous meetings between the Exchange's Chief Information Officer, Chief Financial Officer, Head of Strategic Planning and Operations, Chief Technology Officer, various members of the Legal Department, and other group leaders. The analysis also included each department head meeting with the divisions of teams within each department to determine the amount of time and resources allocated by employees within each division towards the access services and System Networks associated with 10Gb ULL connectivity and Limited Service MEI Ports. The Exchange reviewed each individual expense to determine if such expense was related to 10Gb ULL connectivity and Limited Service MEI Ports. Once the expenses were identified, the Exchange department heads, with the assistance of the Exchange's internal finance department, reviewed such expenses holistically on an Exchange-wide level to determine what portion of that expense supports providing access services and the System Networks. The sum of all such portions of expenses represents the total cost to the Exchange to provide access services associated with 10Gb ULL connectivity and Limited Service MEI Ports. For the avoidance of doubt, no expense amount is allocated twice. Specifically, no expense amount is allocated to more than one expense category within this filing and no expense amount that is allocated as a cost to provide and maintain access to the 10Gb ULL connectivity and Limited Service MEI Ports in this filing have been or will be allocated as a cost to provide any other exchange product or service in any other fee filing. In the suspension orders, the Commission questioned whether further explanation of the Exchange's cost analysis was necessary. The Exchange provides further details concerning its cost analysis in response to this question.

The Exchange believes exchanges, like all businesses, should be provided flexibility when developing and applying a methodology to allocate costs and resources they deem necessary to operate their business, including providing market data and access services. The Exchange notes that costs and resource allocations may vary from business to business and, likewise, costs and resource allocations may differ from exchange to exchange when it comes to providing market data and access services. It is a business decision that must be evaluated by each exchange as to how to allocate internal resources and what costs to incur internally or via

third parties that it may deem necessary to support its business and its provision of market data and access services to market participants.

Finally, the Exchange acknowledges that it is difficult to predict how much revenue the Exchange will receive from the proposed fees with precision. The analysis conducted by the Exchange is designed to make a fair and reasonable assessment of costs and resources allocated to support the provision of access services associated with the proposed fees. The Exchange further acknowledges that this assessment can only capture a moment in time and that costs and resource allocations may change. That is why the Exchange historically, and on an ongoing basis, reviews its costs and resource allocations to ensure it appropriately allocates resources to properly provide services to the Exchange's constituents. As part of this proposed rule change, and as described further below, the Exchange is committing to conduct an annual cost review with respect to fees that are cost justified in this proposed rule change beginning one year from the date of this proposal, and annually thereafter. The Exchange expects that it may propose to adjust fees at that time, either to increase fees in the event that revenues fail to reasonably cover costs at the estimated margin set forth below, or to decrease fees in the event that revenue materially exceeds the Exchange's current projections. In the event that the Exchange determines to propose a fee change, updated cost estimates will be included in a rule filing proposing the fee change.

The Exchange believes applying this framework to the proposed fees shows that they are consistent with the requirements of the Act, leaving aside that the proposed fees are relatively similar to fees charged by other exchanges for connectivity and port access.

#### Exchange Costs and Cost Methodology

The Exchange notes that there are material costs associated with providing the infrastructure and headcount to fully support access to the Exchange via connectivity and ports. As described below, the Exchange incurs technology expense related to establishing and maintaining Information Security services, enhanced network monitoring and customer reporting, as well as Regulation SCI-mandated processes associated with its network technology. Both fixed and variable expenses have significant impact on the Exchange's overall costs to provide 10Gb ULL connectivity and Limited Service MEI Ports. For example, to accommodate

new Members, the Exchange may need to purchase additional hardware to support those Members and provide access through 10Gb ULL connectivity and Limited Service MEI Ports.<sup>41</sup> Further, as the total number of Members increases, the Exchange and its affiliates may need to increase their data center footprint and consume more power, resulting in increased costs charged by their third-party data center provider. Accordingly, the cost to the Exchange and its affiliates to provide access to its Members is not fixed. The Exchange believes the proposed fees are a reasonable attempt to offset those costs associated with providing access to and maintaining its System Networks' infrastructure.

The Exchange estimated its total annual expense to provide 10Gb ULL connectivity and Limited Service MEI Ports based on the following general expense categories: (1) External expenses, which include fees paid to third parties for certain products and services; (2) internal expenses relating to the internal costs to provide the services associated with 10Gb ULL connectivity and Limited Service MEI Ports; and (3) general shared expenses.<sup>42</sup> The below table details each of these individual external and internal annual costs considered by the Exchange to be directly related to offering 10Gb ULL connectivity and Limited Service MEI Ports, and not any other product or service offered by the Exchange. The below table also details the general shared expense allocated to this proposal. Each of these expenses are discussed in more detail further below.

For 2022, the total annual expense for providing the access services associated with providing 10Gb ULL connectivity for MIAx and MIAx Pearl Options combined, and Limited Service MEI Ports for MIAx only, is estimated to be \$21,407,728, or \$1,783,977 per month. The Exchange utilized its estimated 2022 revenue and costs, which utilize the same methodology set forth in the Exchange's previously-issued Audited Unconsolidated Financial Statements.<sup>43</sup>

<sup>41</sup> The Exchange is not considering future costs associated with accommodating new 10Gb ULL connectivity and Limited Service MEI Ports subscriptions.

<sup>42</sup> The percentage allocations used in this proposed rule change may differ from past filings from the Exchange or its affiliates due to adjustments to internal resource allocations, and different system architecture of the Exchange as compared to its affiliates.

<sup>43</sup> For example, the Exchange previously noted that all third-party expense described in its prior fee filing was contained in the information technology and communication costs line item under the section titled "Operating Expenses Incurred Directly or Allocated From Parent," in the

External expenses			
Category	Percentage of total expense amount allocated		
	10Gb ULL connectivity (MIAX)	10Gb ULL connectivity (MIAX pearl options)	Limited service MEI ports (MIAX only)
Data Center Provider .....	61% .....	61% .....	4.8%.
Fiber Connectivity Provider .....	61% .....	61% .....	2.6%.
Security Financial Transaction Infrastructure (“SFTI”), and Other Connectivity and Content Service Providers.	73.6% .....	73.6% .....	4.8%.
Hardware and Software Providers .....	50% .....	50% .....	4.8%.
Total of External Expenses .....			\$4,556,734. <sup>44</sup>
Internal expenses			
Category	Expense amount allocated		
	10Gb ULL connectivity (MIAX)	10Gb ULL connectivity (MIAX pearl options)	Limited service MEI ports (MIAX only)
Employee Compensation .....	\$4,108,382 .....	\$2,955,419 .....	\$1,057,907 .....
	(representing 27.5% of total \$14,957,861 expense).	(representing 27.5% of total \$10,760,135 expense).	(representing 7.1% of total \$14,957,861 expense).
Depreciation and Amortization .....	\$2,724,062 .....	\$1,460,789 .....	\$186,118 .....
	(representing 66% of total \$4,135,294 expense).	(representing 61.3% of total \$2,382,314 expense).	(representing 4.5% of total \$4,135,294 expense).
Occupancy .....	\$399,859 .....	\$301,578 .....	\$37,088 .....
	(representing 52% of total \$769,108 expense).	(representing 52% of total \$580,068 expense).	(representing 4.8% of total \$769,108 expense).
Total of Internal Expenses .....			\$13,231,202.
Allocated Shared Expenses .....	\$1,982,793 .....	\$1,351,081 .....	\$285,918 .....
	(representing 49% of total \$4,042,629 expense).	(representing 44% of total \$3,060,734 expense).	(representing 7.1% of total \$4,042,629 expense).
Total of Allocated Shared Expenses .....			\$3,619,792.
Total External + Internal + Allocated Shared Expenses.			\$21,407,728.

In its suspension orders, the Commission solicited commenters' views on whether the Exchange has provided sufficient detail on the identity and nature of services provided by third parties. The Commission further solicited commenters' views on whether the Exchange has provided sufficient detail on the elements that go into connectivity and port costs, including how shared costs are allocated and attributed to connectivity and port expenses, to permit an independent review and assessment of the reasonableness of purported cost-based fees and the corresponding profit margin thereon. In response, the Exchange provides additional detail regarding the identity and nature of

services provided by third parties, the elements that go into connectivity and port costs, and how expenses are allocated. The Exchange believes this additional detail is sufficient to support a finding that the proposed fees are consistent with the Exchange Act.

For clarity, the Exchange took a conservative approach in determining the expense and the percentage of that expense to be allocated to providing 10Gb ULL connectivity and Limited Service MEI Ports. The Exchange describes below the analysis conducted for each expense and the resources or determinations that were considered when determining the amount necessary to allocate to each expense. The Exchange notes that, without the

specific external and internal expense items, the Exchange would not be able to provide access to its System Networks through 10Gb ULL connectivity and Limited Service MEI Ports. Each of these expense items, including physical hardware, software, employee compensation and benefits, occupancy costs, and the depreciation and amortization of equipment, were identified through a line-by-line cost analysis and determined to be integral to providing access to its System Networks through 10Gb ULL connectivity and Limited Service MEI Ports for the reasons discussed below. Only a portion of all fees paid to such third parties are included in the third party expenses described herein, and,

Exchange's 2019 Form 1 Amendment containing its financial statements for 2018. See Securities Exchange Act Release No. 87875 (December 31, 2019), 85 FR 770 (January 7, 2020) (SR-MIAX-2019-51). Accordingly, the third-party expense described in this filing is attributed to the same line item for the Exchange's 2022 Form 1 Amendment, which will be filed in 2023. In its suspension

orders, the Commission also asked should the Exchange use cost projections or actual costs estimated for 2021 in a filing made in 2022, or make cost projections for 2022. The Exchange utilized expenses from its most recent audited financial statement as those numbers are more reliable than more recent unaudited numbers, which may be subject to change.

<sup>44</sup> The Exchange does not believe it is appropriate to disclose the actual amount it pays to each individual third party provider as those fee arrangements are competitive or the Exchange is contractually prohibited from disclosing that number.

again, no expense amount is allocated twice. For example, the Exchange does not allocate its entire information technology and communication costs to providing access to its System Networks through 10Gb ULL connectivity and Limited Service MEI Ports because it determined that a portion of those costs are attributable to other areas of the Exchange's operations, such as transaction services, market data, and other forms of connectivity offered by the Exchange. This may result in the Exchange under allocating an expense to provide access to its System Networks through 10Gb ULL connectivity and Limited Service MEI Ports, and such expenses may actually be higher than what the Exchange allocated as part of this proposal.<sup>45</sup>

Further, as part its ongoing assessment of costs and expenses, the Exchange recently conducted a periodic thorough review of its expenses and resource allocations, which resulted in revised percentage allocations in this filing as compared to prior versions of this proposed fee change that were previously withdrawn by the Exchange. The revised percentages are, among other things, the result of the shifting of internal resources in response to business objectives. Therefore, the percentage allocations used in this proposed rule change may differ from past filings from the Exchange or its affiliates due to adjustments to internal resource allocations, and different system architecture of the Exchange as compared to its affiliates.<sup>46</sup>

The Exchange believes it is reasonable to consider the expense and revenue for 10Gb ULL connectivity and Limited Service MEI Ports together because ports and connectivity are inextricably linked components of the network infrastructure, and that both are necessary for a market participant to access the Exchange. The various types of connectivity and port alternatives that the Exchange offers provide a wide array of access alternatives necessary for a market participant to conduct its business using the Exchange, which is a business decision to be made by each particular type of market participant. The different types of connectivity and port alternatives allows Members to conduct their different business strategies—some Members put an emphasis on speed, while others emphasize other strategies, such as

redundancy and certainty of execution. The Exchange does not require a Member to have a certain framework for accessing the Exchange, but provides various connectivity and port alternatives for each Member's distinct business lines.

#### External Expense Allocations

For 2022, annual expenses relating to fees paid by the Exchange to third parties for products and services necessary to provide 10Gb ULL connectivity and Limited Service MEI Ports are estimated to be \$4,556,734.<sup>47</sup> This includes a portion of the fees paid to: (1) A third party data center provider, including for the primary, secondary, and disaster recovery locations of the Exchange's trading system infrastructure; (2) a fiber connectivity provider for network services (fiber and bandwidth products and services) linking the Exchange's and its affiliates' office locations in Princeton, New Jersey and Miami, Florida, to all data center locations; (3) SFTI, which supports connectivity feeds for the entire U.S. options industry; (4) SFTI and various other content and connectivity service providers, which provide content, connectivity services, and infrastructure services for critical components of options connectivity and network services; and (5) hardware and software providers, which support the production environment in which Members and non-Members connect to the network to trade and receive market data.<sup>48</sup>

#### Data Center Space and Operations Provider

The Exchange does not own the primary data center or the secondary data center, but instead leases space in data centers operated by third parties where the Exchange houses servers, switches and related equipment. Data center costs include an allocation of the costs the Exchange incurs to provide physical connectivity in the third-party data centers where it maintains its equipment as well as related costs. The data center provider operates the data centers (primary, secondary, and disaster recovery) that host the Exchange's network infrastructure. Without the retention of a third party data center, the Exchange would not be able to operate its systems, provide a trading platform for market participants, and produce and distribute market data. The Exchange does not employ a separate fee to cover its data center expense and recoups that expense, in

part, by charging for 10Gb ULL connectivity and Limited Service MEI Ports.

The Exchange reviewed its data center footprint and space utilized, including its total rack space, cage usage, number of servers, switches, cabling within the data center, heating and cooling of physical space, storage space, and monitoring and divided its data center expenses among providing transaction services, market data, connectivity (10Gb ULL and 1Gb ULL separately), and ports based on space utilized by each area.<sup>49</sup> Based on this review, the Exchange and MIA X Pearl Options determined that 61% of the total applicable data center provider expense for each is applicable to providing 10Gb ULL connectivity and 4.8% for Limited Service MEI Ports for MIA X. The Exchange reviewed space utilized to house rack space, cage usage, servers, switches, cabling, storage space, heating and cooling of physical space, and monitoring, and identified that a small portion of that footprint is dedicated to equipment used to support 10Gb ULL connectivity and Limited Service MEI Ports.

The Exchange believes this allocation is reasonable because it represents the costs associated with housing the Exchange's equipment dedicated to supporting 10Gb ULL connectivity and Limited Service MEI Ports. 10Gb ULL connectivity and Limited Service MEI Ports are core means of access to the Exchange's network, providing several methods for market participants to send and receive order and trade messages, as well as receive market data. A large portion of the Exchange's data center expense is due to space utilized to provide and maintain connectivity and port access to the Exchange's System Networks, including providing cabling within the data center between market participants and the Exchange. The Exchange excluded from this allocation servers and space that are dedicated to market data. The Exchange also did not allocate the remainder of the data center expense because it pertains to space utilized by other areas of the Exchange's operations, such as 1Gb ULL connectivity, other types of ports, market data, and transaction services.

<sup>45</sup> The Exchange notes that expenses associated with its affiliates, Emerald and MIA X Pearl's equities trading platform, are accounted for separately and are not included within the scope of this filing.

<sup>46</sup> See *supra* notes 5, 6, and 8 and accompanying text.

<sup>47</sup> See *supra* note 44.

<sup>48</sup> *Id.*

<sup>49</sup> The Investors Exchange, Inc. ("IEX") also allocated data center costs to produce market data based on space utilized. See Securities Exchange Act Release No. 94630 (April 7, 2022), 87 FR 21945, at page 21949 (April 13, 2022) (SR-IEX-2022-02) ("IEX Market Data Fee Proposal") (noting that "[d]ata Center costs consist of the fees charged by the third-party data centers used by IEX and represent less than 10% the Exchange's total data center costs based on space utilized" (*emphasis added*)).

### Fiber Connectivity Provider

The Exchange engages a third-party service provider that provides the internet, fiber and bandwidth connections between the Exchange's networks, primary and secondary data center, and office locations in Princeton and Miami. Fiber connectivity is necessary for the Exchange to switch to its secondary data center in the case of an outage in its primary data center. Fiber connectivity also allows the Exchange's National Operations & Control Center ("NOCC") and Security Operations Center ("SOC") in Princeton to communicate with the Exchange's primary and secondary data centers. As such, all trade data, including the billions of messages each day, flow through this third party provider's infrastructure over the Exchange's network. Fiber connectivity is also necessary for personnel responsible for overseeing and providing customer service related to supporting 10Gb ULL connectivity and Limited Service MEI Ports, receiving relevant data and being able to communicate between the Exchange's various locations and data centers. Without these services, the Exchange would not be able to operate and support the network and provide and maintain access services and System Networks associated with the 10Gb ULL connectivity and Limited Service MEI Ports to its Members and their customers. Without the retention of a third party fiber connectivity provider, the Exchange would not be able to communicate between its data centers and office locations in a manner necessary to maintain and support 10Gb ULL connectivity and Limited Service MEI Ports. Fiber connectivity is a necessary integral means to disseminate information, including data related to supporting 10Gb ULL connectivity and Limited Service MEI Ports, from the Exchange's primary data center to other Exchange locations. It is necessary for Exchange employees located in various locations to be able to communicate and receive the necessary data to maintain and provide customer support related to 10Gb ULL connectivity and Limited Service MEI Ports. The Exchange would not be able to operate and support the network and provide and maintain access services and System Networks associated with 10Gb ULL connectivity and Limited Service MEI Ports without third party fiber connectivity. The Exchange does not employ a separate fee to cover its fiber connectivity expense and recoups that expense, in part, by charging for 10Gb ULL connectivity and Limited Service MEI Ports.

The Exchange reviewed its costs to retain fiber connectivity from a third party, including the ongoing costs to support fiber connectivity, ensuring adequate bandwidth and infrastructure maintenance to support exchange operations, and ongoing network monitoring and maintenance. Based on this review, the Exchange and MIAX Pearl Options determined that 61% of the total fiber connectivity expense for each was applicable to providing and maintaining access services and System Networks associated with 10Gb ULL connectivity and 2.6% for Limited Service MEI Ports for MIAX. The Exchange reviewed its total fiber connectivity expense and allocated it among transaction services, connectivity, ports, market data, and administrative operations, based on usage. The Exchange then further divided up its fiber connectivity costs related to connectivity and ports and identified the portion that is attributable to supporting 10Gb ULL connectivity and Limited Service MEI Ports, also based on usage. This allocation is, therefore, based on the amount of bandwidth and fiber connectivity the Exchange calculated is utilized to support exchange operations, and ongoing network monitoring and maintenance that are necessary to provide 10Gb ULL connectivity and Limited Service MEI Ports. The Exchange believes this allocation is reasonable because 10Gb ULL connectivity and Limited Service MEI Ports are core means of access to the Exchange's network, providing several methods for market participants to send and receive order and trade messages, as well as receive market data. A large portion of the Exchange's fiber connectivity expense is due to providing and maintaining connectivity between the Exchange's System Networks, data centers, and office locations and is core to the daily operation of the Exchange. The Exchange also excluded from this allocation fiber connectivity usage related to other business lines, such as transaction services, market data, and other forms of connectivity offered by the Exchange, or unrelated administrative services. The Exchange also did not allocate the remainder of this expense because it pertains to other areas of the Exchange's operations and does not directly relate to providing and maintaining access services and System Networks associated with 10Gb ULL connectivity and Limited Service MEI Ports. The Exchange believes this allocation is reasonable because it represents the Exchange's cost to

providing and maintaining access services and System Networks associated with 10Gb ULL connectivity and Limited Service MEI Ports.

### Connectivity and Content Services Provided by SFTI and Other Providers

The Exchange relies on SFTI and various other connectivity and content service providers for connectivity and data feeds for the entire U.S. options industry, as well as content, connectivity, and infrastructure services for critical components of the network that are necessary to provide and maintain its System Networks and access to its System Networks via 10Gb ULL connectivity and Limited Service MEI Ports. Specifically, the Exchange utilizes SFTI and other content service provider to connect to other national securities exchanges, the Options Price Reporting Authority ("OPRA"), and to receive market data from other exchanges and market data providers. SFTI is operated by the Intercontinental Exchange, the parent company of five registered exchanges, and has become integral to the U.S. markets. The Exchange understands SFTI provides services to most, if not all, of the other U.S. exchanges and other market participants. Connectivity and market data provided by SFTI and other service is critical to the Exchanges daily operations and performance of its System Networks to which market participants connect to via 10Gb ULL connectivity and Limited Service MEI Ports. Without services from SFTI and various other service providers, the Exchange would not be able to connect to other national securities exchanges, market data providers, or OPRA and, therefore, would not be able to operate and support its System Networks. The Exchange does not employ a separate fee to cover its SFTI and content service provider expense and recoups that expense, in part, by charging for 10Gb ULL connectivity and Limited Service MEI Ports.

The Exchange reviewed its costs to retain SFTI and other content service providers, including network monitoring and maintenance, remediation of connectivity related issues, and ongoing administrative activities related to connectivity management. Based on this review, the Exchange and MIAX Pearl determined that 73.6% of the total applicable SFTI and other service provider expense for each is allocated to providing and maintaining access services and System Networks associated with 10Gb ULL connectivity and 4.8% for Limited Service MEI Ports for MIAX. The Exchange reviewed its total SFTI and

other service provider expense and allocated it among transaction services, connectivity, ports, other market data products, and administrative operations, based on usage. The Exchange then further divided up its SFTI and other service provider costs related to connectivity and ports and identified the portion that is attributable to supporting 10Gb ULL connectivity and Limited Service MEI Ports, also based on usage. This allocation is, therefore, based on the amount of SFTI and other service provider resources utilized to support exchange operations, and ongoing network monitoring and maintenance that are necessary to provide 10Gb ULL connectivity and Limited Service MEI Ports. SFTI and other content service providers are key vendors and necessary components in providing access to the Exchange. The primary service SFTI provides for the Exchange is connectivity to other national securities exchanges and their disaster recovery facilities and, therefore, a vast portion of this expense is allocated to providing access to the System Networks via 10Gb ULL connectivity and Limited Service MEI Ports. Connectivity via SFTI is necessary for purposes of order routing and accessing disaster recovery facilities in the case of a system outage. Engaging SFTI and other like vendors provides purchasers of 10Gb ULL connectivity to other national securities exchanges for purposes of order routing and disaster recovery. The Exchange did not allocate a portion of this expense that relates to the receipt of market data from other national securities exchanges and OPRA. The Exchange also did not allocate the remainder of this expense because it pertains to other areas of the Exchange's operations and does not directly relate to providing and maintaining the System Networks or access to its System Networks via 10Gb ULL connectivity or Limited Service MEI Ports, such as transaction services, market data, other forms of connectivity offered by the Exchange, or unrelated administrative services. The Exchange believes this allocation is reasonable because it represents the Exchange's cost to provide and maintain its System Networks and access to its System Networks via 10Gb ULL connectivity and Limited Service MEI Ports, and not any other service, as supported by its cost review.

#### Hardware and Software Providers

The Exchange relies on dozens of third-party hardware and software providers for equipment necessary to operate its System Networks. This includes either the purchase or

licensing of physical equipment, such as servers, switches, cabling, and devices needed by Exchange personnel to monitor servers and the health 10Gb ULL connectivity and Limited Service MEI Ports. This consists of real-time monitoring of system performance, integrity, and latency of 10Gb ULL connectivity and Limited Service MEI Ports. It also includes the Exchange purchasing or licensing software necessary for security monitoring, data analysis and Exchange operations. Hardware and software providers are necessary to maintain its System Networks and provide access to its System Networks via a 10Gb ULL connectivity and Limited Service MEI Ports. Hardware and software equipment and licenses for that equipment are also necessary to operate and monitor physical assets necessary to offer physical connectivity to the Exchange. Hardware and software equipment and licenses are key to the operation of the Exchange and, without them, the Exchange would not be able to operate and support its System Networks and provide access to its Members and their customers. The Exchange does not employ a separate fee to cover its hardware and software expense and recoups that expense, in part, by charging for 10Gb ULL connectivity and Limited Service MEI Ports.

The Exchange reviewed its hardware and software related costs, including software patch management, vulnerability management, administrative activities related to equipment and software management, professional services for selection, installation and configuration of equipment and software supporting exchange operations. The Exchange then divided those costs among transaction services, ports, connectivity, market data, and other Exchange operations based on whether all of that hardware or software is based on usage. The Exchange then reviewed the amount allocated to connectivity and ports generally and what portion of that hardware and software equipment or license is used to support 10Gb ULL connectivity and Limited Service MEI Ports specifically. Based on this review, the Exchange and MIAX Pearl determined that 50% of the total applicable hardware and software expense for each is allocated to providing and maintaining access services and System Networks associated with 10Gb ULL connectivity and 4.8% for Limited Service MEI Ports for MIAX. These percentages reflect the amount of hardware and software

equipment and licenses dedicated to support 10Gb ULL connectivity and Limited Service MEI Ports.<sup>50</sup> Hardware and software equipment and licenses are key to the operation of the Exchange and its System Networks. Without them, the Exchange would not be able to provide and maintain access services and System Networks associated with 10Gb ULL connectivity and Limited Service MEI Ports. The Exchange only allocated the portion of this expense to the hardware and software that is related to 10Gb ULL connectivity and Limited Service MEI Ports, such as operating servers and equipment necessary to provide and maintain access services and System Networks associated with 10Gb ULL connectivity and Limited Service MEI Ports. The Exchange, therefore, did not allocate portions of its hardware and software expense that related to other areas of the Exchange's business, such as hardware and software used for market data or unrelated administrative services. The Exchange also did not allocate the remainder of this expense because it pertains to other areas of the Exchange's operations, such as transaction services, market data, and other forms of connectivity offered by the Exchange, and is not directly relate to providing 10Gb ULL connectivity or Limited Service MEI Ports. The Exchange believes this allocation is reasonable because it represents the Exchange's cost to provide and maintain access services and System Networks associated with 10Gb ULL connectivity and Limited Service MEI Ports, and not any other service, as supported by its cost review.

#### Internal Expense Allocations

For 2022, total combined internal annual expense relating to the Exchange and MIAX Pearl Options to provide and maintain their System Networks and access to their System Networks for 10Gb ULL connectivity, and for access via Limited Service MEI Ports for MIAX, is estimated to be \$13,231,202. This includes costs associated with: (1) Employee compensation and benefits for full-time employees that support the System Networks and access to System Networks via 10Gb ULL connectivity and Limited Service MEI Ports, including staff in network operations, trading operations, development, system operations, business, as well as staff in

<sup>50</sup> The Exchange notes that IEX used a similar methodology to allocate hardware costs to market data. See IEX Market Data Fee Proposal, *supra* note 49 at page 21950 (noting that "IEX only included hardware specifically dedicated to the market data feeds in calculating the costs of providing market data").

general corporate departments (such as legal, regulatory, and finance) that support those employees and functions as well as important system upgrades; (2) depreciation and amortization of hardware and software used to provide and maintain access services and System Networks associated with the 10Gb ULL connectivity and Limited Service MEI Ports, including equipment, servers, cabling, purchased software and internally developed software used in the production environment to support the network for trading; and (3) occupancy costs for leased office space for staff that provide and maintain the System Networks and access to System Networks via 10Gb ULL connectivity and Limited Service MEI Ports.

#### Employee Compensation and Benefits

Human personnel are key to exchange operations and supporting the Exchange's ongoing provision of 10Gb ULL connectivity and Limited Service MEI Ports. The Exchange reviewed its employee compensation and benefits expense and the portion of that expense allocated to providing 10Gb ULL connectivity and Limited Service MEI Ports. As part of this review, the Exchange considered employees whose functions include providing and maintaining access services and System Networks associated with 10Gb ULL connectivity and Limited Service MEI Ports and used a blended rate of compensation reflecting salary, stock and bonus compensation, bonuses, benefits, payroll taxes, and 401K matching contributions.<sup>51</sup>

In its suspension orders, the Commission asked the Exchange provide more detail about the methodology the Exchange used to determine how much of an employee's time is devoted to connectivity and port related activities. In considering the cost of personnel, the Exchange generally considered the time spent on various access service projects and initiatives through project management tracking tools and analysis of employee resource allocations, among its Technology Team in the following areas: Technical Operations, Software Engineering, Quality Assurance, and Infrastructure. The Exchange did not consider non-Technology Teams such as Market Operations, Project Management, Regulatory, Legal, and Accounting/Finance.<sup>52</sup>

<sup>51</sup> For purposes of this allocation, the Exchange did not consider expenses related to office space, supplies, or equipment use by employees who support 10Gb ULL connectivity and Limited Service MEI Ports.

<sup>52</sup> The Exchange notes that IEX used a similar methodology to allocate employee compensation

Based on this review, the Exchange and MIAAX Pearl Options determined to allocate a combined \$8,121,708 in combined employee compensation and benefits expense to provide and maintain access services and System Networks associated with 10Gb ULL connectivity and Limited Service MEI Ports. This is only a portion of the \$25,717,996 total projected combined expense for employee compensation and benefits for MIAAX and MIAAX Pearl Options. Of that total, the Exchange and MIAAX Pearl Options allocated approximately 27.5% of the total applicable employee compensation and benefits expense for each to providing and maintaining access services and System Networks associated with 10Gb ULL connectivity and 7.1% for Limited Service MEI Ports for MIAAX. The Exchange and MIAAX Pearl Options determined the cost allocations for employees who perform work in support of providing and maintaining access services and System Networks associated with 10Gb ULL connectivity and Limited Service MEI Ports to arrive at full time equivalents ("FTE") of 12.0 FTEs for MIAAX and 8.9 FTEs for MIAAX Pearl Options across all the identified personnel related to 10Gb ULL connectivity, and 3.1 FTEs across all the identified personnel related to Limited Service MEI Ports for MIAAX. The Exchange then multiplied the FTE times a blended compensation rate for all relevant Exchange personnel to determine the personnel costs associated with providing and maintaining access services and System Networks associated with 10Gb ULL connectivity and Limited Service MEI Ports. Senior staff also reviewed these time allocations with department heads and team leaders to determine whether those allocations were appropriate. These employees are critical to the Exchange to providing and maintaining access services and System Networks associated with 10Gb ULL connectivity and Limited Service MEI Ports. The Exchange determined the above allocation based on the personnel whose work focused on functions necessary to providing and maintaining access services and System Networks associated with 10Gb ULL connectivity and Limited Service MEI Ports. The

related costs to market data. See IEX Market Data Fee Proposal, *supra* note 49 at page 29150 (noting that "[f]or personnel costs, IEX calculated an allocation of employee time for employees whose functions include providing and maintaining IEX Data and/or the proprietary market data feeds used to transmit IEX Data, and used a blended rate of compensation reflecting salary, stock and bonus compensation, benefits, payroll taxes, and 401(k) matching contributions").

Exchange does not charge a separate fee regarding employees who support 10Gb ULL connectivity and Limited Service MEI Ports and the Exchange seeks to recoup those expenses, in part, by charging for 10Gb ULL connectivity and Limited Service MEI Ports.

The Exchange believes it is appropriate to include incentive compensation in the blended personnel compensation rate on the same basis as other personnel costs for in-scope employees because incentive compensation is a part of the total personnel costs associated with the Exchange's provision of 10Gb ULL connectivity and Limited Service MEI Ports. Moreover, the Exchange notes that it has taken a conservative approach in determining which employees to include in its cost analysis, in terms of function and percent allocation, so that the included personnel costs are directly and closely tied to the costs of providing 10Gb ULL connectivity and Limited Service MEI Ports. The FTE allocations represent just 31.5% of the Exchange's and MIAAX Pearl's overall personnel costs. Consistent with the Exchange's conservative methodology to limit costs allocated to 10Gb ULL connectivity and Limited Service MEI Ports, this approach includes only a de minimis personnel cost allocation for senior level executives and no allocation for members of the Exchange's board of directors. Accordingly, the Exchange believes that the allocated personnel expenses included are appropriately attributable to 10Gb ULL connectivity and Limited Service MEI Ports.

#### Depreciation and Amortization

A key expense incurred by the Exchange relates to the depreciation and amortization of equipment that the Exchange procured to provide and maintain access services and System Networks associated with 10Gb ULL connectivity and Limited Service MEI Ports. The Exchange reviewed all of its physical assets and software, owned and leased, and determined whether each asset is related to providing and maintaining the 10Gb ULL connectivity and Limited Service MEI Ports, and added up the depreciation of those assets. All physical assets and software, which includes assets used for testing and monitoring of Exchange infrastructure, were valued at cost and depreciated or leased over periods ranging from three to five years. Based on the Exchange's experience, this depreciation period equals the typical life expectancy of those assets. In determining the amount of depreciation and amortization to apply to providing

and maintaining access services and System Networks associated with 10Gb ULL connectivity and Limited Service MEI Ports, the Exchange considered the depreciation of hardware and software that are key to the operation of the Exchange and its provision of 10Gb ULL connectivity and Limited Service MEI Ports. This includes servers, computers, laptops, monitors, information security appliances and storage, and network switching infrastructure equipment, including switches and taps that were previously purchased to provide and maintain access services and System Networks associated with 10Gb ULL connectivity and Limited Service MEI Ports. Without them, market participants would not be able to access the Exchange. The Exchange seeks to recoup a portion of its depreciation expense by charging for 10Gb ULL connectivity and Limited Service MEI Ports.

Based on this review, the Exchange and MIAX Pearl Options determined to allocate a combined \$4,370,969 in combined depreciation and amortization expense to provide and maintain access services and System Networks associated with 10Gb ULL connectivity and Limited Service MEI Ports. This is only a portion of the \$6,517,608 total projected combined expense for depreciation and amortization for MIAX and MIAX Pearl Options. This allocation represents approximately 66% for MIAX and 61.3% for MIAX Pearl Options of the total applicable depreciation expenses to providing and maintaining access services and System Networks associated with 10Gb ULL connectivity and 4.5% for Limited Service MEI Ports for MIAX. For purposes of the allocation of these costs to 10Gb ULL connectivity and Limited Service MEI Ports, the Exchange allocates the annual depreciation (*i.e.*, one-third or one-fifth of the initial asset value based on the typical life expectancy of those assets). One-third or one-fifth of the cost of each asset is included in the annual costs allocated to 10Gb ULL connectivity and Limited Service MEI Ports. The Exchange only included assets specifically dedicated to 10Gb ULL connectivity and Limited Service MEI Ports in calculating the costs of providing 10Gb ULL connectivity and Limited Service MEI Ports. This means that physical assets used for such as transaction services, market data, other forms of connectivity offered by the Exchange, or other Exchange operations were excluded from the calculation.<sup>53</sup>

<sup>53</sup> The Exchange notes that IEX used a similar methodology to allocate hardware costs to market

The Exchange, therefore, did not allocate portions of depreciation expense that relates to other areas of the Exchange's business, such as the depreciation of hardware and software used for market data, unrelated administrative services, or other connectivity or ports offered by the Exchange. All of the expenses outlined in this proposed fee change refer to the operating expenses of the Exchange. In the suspension orders, the Commission asked for additional detail or explanation to ensure that no expense amount is allocated twice. The Exchange did not include any future capital expenditures within these costs ensuring that no cost is counted twice. Depreciation and amortization represent the expense of previously purchased hardware and internally developed software spread over the useful life of the assets. Due to the fact that the Exchange has only included operating expense and historical purchases, there is no double counting of expenses in the Exchange's cost estimates.

#### Occupancy

The Exchange rents and maintains multiple physical locations to house staff and equipment necessary to support access to System Networks via 10Gb ULL connectivity and Limited Service MEI Ports. The Exchange's occupancy expense is not limited to the housing of personnel and includes locations used to store equipment necessary for Exchange operations. In determining the amount of its occupancy related expense, the Exchange considered actual physical space used to house employees whose functions include providing and maintaining access services and System Networks associated with 10Gb ULL connectivity and Limited Service MEI Ports. Similarly, the Exchange also considered the actual physical space used to house hardware and other equipment necessary to provide and maintain the 10Gb ULL connectivity and Limited Service MEI Ports. The Exchange maintains staff that support 10Gb ULL connectivity and Limited Service MEI Ports in various locations and needs to provide workplaces for that staff as well as space to house

data. *See* IEX Market Data Fee Proposal at note 54, *supra* note 49 at page 21950 (noting that "[h]ardware is depreciated on a straight-line three-year period, which in IEX's experience, is equal to the typical life expectancy of those assets. As noted above, one-third of the cost of each hardware asset is included in the annual costs allocated to market data. IEX only included hardware specifically dedicated to the market data feeds in calculating the costs of providing market data. This means that physical assets used for both order entry and market data were excluded from the calculation").

hardware and equipment necessary for those employees to perform those functions.<sup>54</sup> This equipment includes computers, servers, and accessories necessary to support the access to the System Networks via 10Gb ULL connectivity and Limited Service MEI Ports. Based on this review, the Exchange and MIAX Pearl Options determined to allocate a combined \$738,525 in occupancy expense to providing and maintaining access services and System Networks associated with 10Gb ULL connectivity and Limited Service MEI Ports for MIAX. According to the Exchange's calculations, MIAX and MIAX Pearl Options each allocated approximately 52% of their total applicable occupancy expense to providing and maintaining access services and System Networks associated with 10Gb ULL connectivity and 4.8% for Limited Service MEI Ports for MIAX. This is only a portion of the \$1,349,176 total projected combined expense for occupancy for MIAX and MIAX Pearl Options. The Exchange believes this allocation is reasonable because it represents the Exchange's cost to rent and maintain a physical location for the Exchange's staff who operate and support 10Gb ULL connectivity and Limited Service MEI Ports. The Exchange considered the rent paid for the Exchange's Princeton and Miami offices, as well as various related costs, such as physical security, property management fees, property taxes, and utilities at each of those locations. The Exchange did not include occupancy expenses related to housing employees and equipment related to other Exchange operations, such as transaction and administrative services.

#### Allocated Shared Expense

Finally, a limited portion of general shared expenses was allocated to providing and maintaining access services and System Networks associated with 10Gb ULL connectivity and Limited Service MEI Ports as without these general shared costs, the Exchange would not be able to operate in the manner that it does. The costs included in general shared expenses include recruiting and training, marketing and advertising costs, professional fees for legal, tax and accounting services, and telecommunications costs. For 2022, the Exchange's and MIAX Pearl Options's

<sup>54</sup> For the avoidance of doubt, the Exchange did not include within this cost any portion of its costs related to third party fiber connectivity used by Exchange staff in different office locations to communicate as part of their role in supporting 10Gb ULL connectivity and Limited Service MEI Ports.

combined general shared expense allocated to 10Gb ULL connectivity and Limited Service MEI Ports for MIA X is estimated to be \$3,619,792. This represents approximately 49% for MIA X and 44% for MIA X Pearl Options for 10Gb ULL connectivity, and 7.1% for MIA X for Limited Service MEI Ports, of the \$7,103,363 total projected combined general shared expense for MIA X and MIA X Pearl Options. The Exchange used the weighted average of the above allocations to determine the amount of general shared expenses to allocate to the Exchange. Next, based on additional management and expense analysis, these fees are allocated to the proposal.

#### Revenue and Estimated Profit Margin

The Exchange only has four primary sources of revenue and cost recovery mechanisms to fund all of its operations: Transaction fees, access fees, regulatory fees, and market data fees. Accordingly, the Exchange must cover all of its expenses from these four primary sources of revenue and cost recovery mechanisms.

To determine the Exchange's and MIA X Pearl Option's estimated revenue associated with 10Gb ULL connectivity and Limited Service MEI Ports for MIA X, the Exchange and MIA X Pearl Options analyzed the number of subscribers currently utilizing 10Gb ULL connectivity (for both on the shared network) and Limited Service MEI Ports (for MIA X) and used a recent monthly billing cycle representative of current monthly revenue. The Exchange also provided its baseline by analyzing March 2022, the monthly billing cycle prior to the proposed fees, and compared this to its expenses for that month. As discussed below, the Exchange does not believe it is appropriate to factor into its analysis future revenue growth or decline into its estimates for purposes of these calculations, given the uncertainty of such estimates due to the continually changing access needs of market participants and potential changes in internal and external expenses, as well as because the Exchange is committing to review this cost analysis for these fees on an annual basis going forward.

For March 2022, prior to the proposed fees, the Exchange and MIA X Pearl Options had a combined 173 10Gb ULL connections and MIA X had 1,645 Limited Service MEI Ports purchased, for which the Exchange and MIA X Pearl Options charged a total of \$1,829,387 (including charges for connections that were dropped or added mid-month, resulting in pro-rated charges). This resulted in a profit of \$45,410 for that month (a profit margin of 2.5%). For

April 2022, the Exchange and MIA X Pearl Options anticipate that a combined 174 10Gb ULL connections and 1,677 Limited Service MEI Ports for MIA X will be charged for (as of the date of this filing).<sup>55</sup> Assuming the Exchange and MIA X Pearl Options charge the proposed monthly rate of \$12,000 per 10Gb ULL connection and the proposed tiered-pricing rates for Limited Service MEI Ports for MIA X, the Exchange and MIA X Pearl Options would generate revenue of \$2,329,450 for April 2022 (not including potential pro-rated connection charges for mid-month connections) for 10Gb ULL connectivity for both exchanges and Limited Service MEI Ports for MIA X combined. This would result in a profit of \$545,473 (\$2,329,450 minus \$1,783,977) for that month (a 23.4% profit margin). As discussed above, the Exchange believes it is reasonable to consider the expense and revenue for 10Gb ULL connectivity and Limited Service MEI Ports together because ports and connectivity are inextricably linked components of the network infrastructure, and that both are necessary for a market participant to access the Exchange.

The Exchange believes that conducting the above analysis on a per month basis is reasonable as the revenue generated from access services subject to the proposed fee generally remains static from month to month. The Exchange also conducted the above analysis on a per month basis to comply with the Commission Staff's Guidance, which requires a baseline analysis to assist in determining whether the proposal generates a supra-competitive profit. The Exchange cautions that this profit margin may also fluctuate from month to month based on the uncertainty of predicting how many connections and ports may be purchased from month to month as Members and non-Members are free to add and drop connections and ports at any time based on their own business decisions.

The Exchange believes the proposed profit margin is reasonable and will not result in a "supra-competitive" profit.

<sup>55</sup> The Exchange notes that the number of subscribers of 10Gb ULL connections and Limited Service MEI Ports may change over time. For example, from June 2021 to April 2022, MIA X and MIA X Pearl Options had the following number of combined subscribers of 10Gb ULL connectivity per month: June (152); July (156); August (154); September (154); October (154); November (152); December (159); January (174); February (171); March (173); April (174). From June 2021 to April 2022, MIA X had the following number of Limited Service MEI Ports utilized per month: June (1,246); July (1,248); August (1,720); September (1,729); October (1,681); November (1,674); December (1,628); January (1,670); February (1,638); March (1,645); April (1,677).

The Guidance defines "supra-competitive profit" as "profits that exceed the profits that can be obtained in a competitive market."<sup>56</sup> Until recently, the Exchange has operated at a cumulative net annual loss since it launched operations in 2008.<sup>57</sup> The Exchange has operated at a net loss due to a number of factors, one of which is choosing to forgo revenue by offering certain products, such as connectivity, at lower rates than other options exchanges to attract order flow and encourage market participants to experience the high determinism, low latency, and resiliency of the Exchange's trading systems. The Exchange should not now be penalized for seeking to raise its fees to near market rates after offering such products as discounted prices. Therefore, the Exchange believes the proposed fees are reasonable because they are based on both relative costs to the Exchange to provide 10Gb ULL connectivity and Limited Service MEI Ports, the extent to which the product drives the Exchange's overall costs and the relative value of the product, as well as the Exchange's objective to make access to its Systems broadly available to market participants. The Exchange also believes the proposed fees are reasonable because they are designed to generate annual revenue to recoup the Exchange's costs of providing 10Gb ULL connectivity and Limited Service MEI Ports.

The Exchange notes that its revenue estimate is based on projections and will only be realized to the extent such revenue actually produces the revenue estimated. As a competitor in the hyper-competitive exchange environment, and an exchange focused on driving competition, the Exchange does not yet know whether such expectations will be realized. For instance, in order to generate the revenue expected from 10Gb ULL connectivity and Limited Service MEI Ports, the Exchange will have to be successful in retaining existing clients that wish to utilize 10Gb ULL connectivity and Limited Service MEI Ports or obtaining new clients that will purchase such access. To the extent the Exchange is successful in encouraging new clients to utilize 10Gb ULL connectivity and Limited Service MEI Ports, the Exchange does not believe it should be penalized for such

<sup>56</sup> See *supra* note 34.

<sup>57</sup> The Exchange has incurred a cumulative loss of \$175 million since its inception in 2008 to 2020, the last year for which the Exchange's Form 1 data is available. See Exchange's Form 1/A, Application for Registration or Exemption from Registration as a National Securities Exchange, filed July 28, 2021, available at <https://www.sec.gov/Archives/edgar/vpr/2100/21000460.pdf>.

success. The Exchange, like other exchanges, is, after all, a for-profit business. While the Exchange believes in transparency around costs and potential margins, the Exchange does not believe that these estimates should form the sole basis of whether or not a proposed fee is reasonable or can be adopted. Instead, the Exchange believes that the information should be used solely to confirm that an Exchange is not earning supra-competitive profits, and the Exchange believes this proposal demonstrates this fact.

Further, the proposed profit margin reflects the Exchange's efforts to control its costs. A profit margin should not be judged alone based on its size, but whether the ultimate fee reflects the value of the services provided and is in line with other exchanges. A profit margin on one exchange should not be deemed excessive where that exchange has been successful in controlling costs, but not excessive where an exchange is charging the same fee but has a lower profit margin due to higher costs.

The expected profit margin is reasonable because the Exchange offers a premium System Network, System Networks connectivity, and a highly deterministic trading environment. The Exchange is recognized as a leader in network monitoring, determinism, risk protections, and network stability. For example, the Exchange experiences approximately a 95% determinism rate, system throughput of approximately 36 million quotes per second and average round trip latency rate of approximately 19 microseconds for a single quote. The Exchange provides extreme performance and radical scalability designed to match the unique needs of trading differing asset class/market model combinations. Exchange systems offer two customer interfaces, FIX gateway for orders, and ultra-low latency interfaces and data feeds with best-in-class wire order determinism. The

Exchange also offers automated continuous testing to ensure high reliability, advanced monitoring and systems security, and employs a software architecture that results in minimizing the demands on power, space, and cooling while allowing for rapid scalability, resiliency and fault isolation. The Exchange also provides latency equalized cross-connects in the primary data center ensures fair and cost efficient access to the Exchange's Systems. The Exchange, therefore, believes the anticipated profit margin is reasonable because it reflects the Exchange's cost controls and the quality of the Exchanges systems.

Finally, the Exchange believes that the proposed fees are reasonable because they will not impose onerous audit requirements on subscribers, because there will be no need to substantiate the number of users of 10Gb ULL connectivity and Limited Service MEI Ports or the manner in which it is being used.

#### Annual Review of Fees

In its suspension orders, the Commission asks whether exchanges should periodically reevaluate fees on an ongoing and periodic basis in order to assure that actual revenue aligns with a reasonable cost-plus model. As described above and as part of this proposed rule change, the Exchange is committing to conduct a one year review of the fees that are cost justified as part of this proposed rule change after the date of this proposal, and annually thereafter. The Exchange expects that it may propose to adjust fees at that time, either to increase fees in the event that revenues fail to reasonably cover costs at the estimated margin set forth below [sic], or to decrease fees in the event that revenue materially exceeds the Exchange's current projections. In the event that the Exchange determines to propose a fee change, updated cost estimates will be

included in a rule filing proposing the fee change. The Exchange believes this approach will further increase transparency around market data costs and help to ensure that Exchange fees continue to be reasonably related to costs.

#### The Proposed Fees Are Reasonable When Compared to the Fees of Other Options Exchanges With Similar Market Share

The Exchange does not have visibility into other options exchanges' costs to provide connectivity and port access or their fee markup over those costs, and therefore cannot use other exchange's connectivity and port fees as benchmarks to determine a reasonable markup over the costs of providing such access. Nevertheless, the Exchange believes the other exchanges' 10Gb connectivity and port fees are useful examples of alternative approaches to providing and charging for access notwithstanding that the competing exchanges may have different system architectures that may result in different cost structures for the provision of connectivity and ports. To that end, the Exchange believes the proposed fees are reasonable because the proposed fees are similar to or less than fees charged for similar connectivity and port access provided by other options exchanges with comparable market shares.

As described in the table below, the Exchange's proposed fees remain similar to or less than fees charged for similar connectivity and port access provided by other options exchanges with similar market share. In the each of the below cases, the Exchange's proposed fees are still significantly lower than that of competing options exchanges with similar market share. Each of the market data rates in place at competing options exchanges were filed with the Commission for immediate effectiveness and remain in place today.

Exchange	Type of connection or port	Monthly fee (per connection or per port)
MIAX (as proposed) (equity options market share of 5.67% as of April 29, 2022 for the month of April) <sup>58</sup> .	10Gb ULL connection ..... Limited Service MEI Port .....	\$12,000. 1–2 ports. FREE (not changed in this proposal). 3–4 ports. \$150. 5–6 ports. \$200. 7 or more ports. \$250.
NASDAQ <sup>59</sup> (equity options market share of 8.47% as of April 29, 2022 for the month of April) <sup>60</sup> .	10Gb Ultra fiber connection ..... SQF Port .....	\$15,000. 1–5 ports. \$1,500. 6–20 ports. \$1,000. 21 or more ports. \$500.
ISE <sup>61</sup> (equity options market share of 5.48% as of April 29, 2022 for the month of April) <sup>62</sup> .	10Gb Ultra fiber connection SQF Port.	\$15,000. \$1,100
NYSE American <sup>63</sup> (equity options market share of 8.13% as of April 29, 2022 for the month of April) <sup>64</sup> .	10Gb LX LCN connection Order/Quote Entry Port.	\$22,000. Ports 1–40. \$450. Ports 41 and greater. \$150.

Exchange	Type of connection or port	Monthly fee (per connection or per port)
GEMX <sup>65</sup> (equity options market share of 2.36% as of April 29, 2022 for the month of April) <sup>66</sup> .	10Gb Ultra connection SQF Port.	\$15,000. \$1,250.

### The Proposed Pricing Is Not Unfairly Discriminatory and Provides for the Equitable Allocation of Fees, Dues, and Other Charges

The Exchange believes that the proposed fees are reasonable, fair, equitable, and not unfairly discriminatory because they are designed to align fees with services provided and will apply equally to all subscribers.

#### 10Gb ULL Connectivity

The Exchange believes that the proposed fees are reasonable, equitably allocated and not unfairly discriminatory because, for one 10Gb ULL connection, the Exchange provides each Member or non-Member access to all twenty-four (24) matching engines on MIAx and a vast majority choose to connect to all twenty-four (24) matching engines. The Exchange believes that other exchanges require firms to connect to multiple matching engines.<sup>67</sup>

The Exchange believes that the proposed fees are equitably allocated among users of the network connectivity and port alternatives, as the users of 10Gb ULL connections consume the more bandwidth and network resources than users of 1Gb ULL connection. Specifically, the Exchange notes that 10Gb ULL connection users account for approximately more than 99% of message traffic over the network, while the users of the 1Gb ULL connections account for approximately less than 1% of message traffic over the network. In

the Exchange's experience, users of the 1Gb connections do not have a business need for the high performance network solutions required by 10Gb ULL users. The Exchange's high performance network solutions and supporting infrastructure (including employee support), provides unparalleled system throughput with the network ability to support access to several distinct options markets and the capacity to handle approximately 38 million quote messages per second. On an average day, the Exchange and MIAx Pearl handle over approximately 8,304,500,000 billion total messages. Of that total, users of the 10Gb ULL connections generate approximately 8.3 billion messages, and users of the 1Gb connections generate approximately 4.5 million messages. To achieve a consistent, premium network performance, the Exchange must build out and maintain a network that has the capacity to handle the message rate requirements of its most heavy network consumers. These billions of messages per day consume the Exchange's resources and significantly contribute to the overall network connectivity expense for storage and network transport capabilities. The Exchange must also purchase additional storage capacity on an ongoing basis to ensure it has sufficient capacity to store these messages as part of its surveillance program and to satisfy its record keeping requirements under the Exchange Act.<sup>68</sup> Thus, as the number of messages an entity increases, certain other costs incurred by the Exchange that are correlated to, though not directly affected by, connection costs (e.g., storage costs, surveillance costs, service expenses) also increase. Given this difference in network utilization rate, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory that the 10Gb ULL users pay for the vast majority of the shared network resources from which all market participants' benefit.

The Exchange also believes that the connectivity fees are equitably allocated amongst users of the network connectivity alternatives, when these fees are viewed in the context of the

overall trading volume on the Exchange. To illustrate, the purchasers of the 10Gb ULL connectivity account for approximately 94% of the volume on the Exchange. This overall volume percentage (94% of total Exchange volume) is in line with the amount of network connectivity revenue collected from 10Gb ULL purchasers (87% of total Exchange connectivity revenue). For example, utilizing a recent billing cycle, Exchange Members and non-Members that purchased 10Gb ULL connections accounted for approximately 87% of the total network connectivity revenue collected by the Exchange from all connectivity alternatives; and Members and non-Members that purchased 1Gb and 10Gb connections accounted for approximately 13% of the revenue collected by the Exchange from all connectivity alternatives.

#### Limited Service MEI Ports

The Exchange believes that the proposed fees are equitably allocated among users of the network connectivity alternatives, as the users of the Limited Service MEI Ports consume the most bandwidth and resources of the network. Specifically, like above for the 10Gb ULL connectivity, the Exchange notes that the Market Makers who take the maximum amount of Limited Service MEI Ports account for approximately greater than 99% of message traffic over the network, while Market Makers with fewer Limited Service MEI Ports account for approximately less than 1% of message traffic over the network. In the Exchange's experience, Market Makers who only utilize the two free Limited Service MEI Ports do not have a business need for the high performance network solutions required by Market Makers who take the maximum amount of Limited Service MEI Ports. The Exchange's high performance network solutions and supporting infrastructure (including employee support), provides unparalleled system throughput and the capacity to handle approximately 18 million quote messages per second. On an average day, the Exchange handles over approximately 9.1 billion total quotes. Of that total, Market Makers with the maximum amount of Limited Service MEI Ports generate approximately 6 billion messages, and Market Makers who utilize the two free Limited Service MEI Ports generate 1.5

<sup>58</sup> See *supra* note 18.

<sup>59</sup> See *supra* note 19.

<sup>60</sup> See *supra* note 18.

<sup>61</sup> See *supra* note 21.

<sup>62</sup> See *supra* note 18.

<sup>63</sup> See *supra* note 23.

<sup>64</sup> See *supra* note 18.

<sup>65</sup> See *supra* note 25.

<sup>66</sup> See *supra* note 18.

<sup>67</sup> See Specialized Quote Interface Specification, Nasdaq PHLX, Nasdaq Options Market, Nasdaq BX Options, Version 6.5a, Section 2, Architecture (revised August 16, 2019), available at <http://www.nasdaqtrader.com/content/technicalsupport/specifications/TradingProducts/SQIF6.5a-2019-Aug.pdf>. The Exchange notes that it is unclear whether the NASDAQ exchanges include connectivity to each matching engine for the single fee or charge per connection, per matching engine. See also NYSE Technology FAQ and Best Practices: Options, Section 5.1 (How many matching engines are used by each exchange?) (September 2020). The Exchange notes that NYSE provides a link to an Excel file detailing the number of matching engines per options exchange, with Arca and Amex having 19 and 17 matching engines, respectively.

<sup>68</sup> 17 CFR 240.17a-1 (recordkeeping rule for national securities exchanges, national securities associations, registered clearing agencies and the Municipal Securities Rulemaking Board).

billion messages. Specifically, Market Makers who receive 1 to 2 Limited Service MEI ports for free submitted an average of 312,274,040 quotes per day for the month of April 2022. Also for April 2022, Market Makers who purchased 3 to 4 Limited Service MEI ports submitted an average of 774,859,930 quotes per day and Market Makers who purchased 7 or more Limited Service MEI ports submitted an average of 1,198,621,664 quotes per day.<sup>69</sup> To achieve a consistent, premium network performance, the Exchange must build out and maintain a network that has the capacity to handle the message rate requirements of its most heavy network consumers. These billions of messages per day consume the Exchange's resources and significantly contribute to the overall network connectivity expense for storage and network transport capabilities. The Exchange must also purchase additional storage capacity on an ongoing basis to ensure it has sufficient capacity to store these messages as part of its surveillance program and to satisfy its record keeping requirements under the Exchange Act.<sup>70</sup> Thus, as the number of connections a Market Maker has increases, certain other costs incurred by the Exchange that are correlated to, though not directly affected by, connection costs (e.g., storage costs, surveillance costs, service expenses) also increase. The Exchange sought to design the proposed tiered-pricing structure to set the amount of the fees to relate to the number of connections a firm purchases. The more connections purchased by a Market Maker likely results in greater expenditure of Exchange resources and increased cost to the Exchange. With this in mind, the Exchange proposes no fee or lower fees for those Market Makers who receive fewer Limited Service MEI Ports since those Market Makers generally tend to send the least amount of orders and messages over those connections. Given this difference in network utilization rate, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory that Market Makers who take the most Limited Service MEI Ports pay for the vast majority of the shared network resources from which all Member and non-Member users benefit, but is designed and maintained from a capacity standpoint to specifically

handle the message rate and performance requirements of those Market Makers.

#### *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 believes the proposed fees will not result in any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed fees will allow the Exchange to recoup some of its costs in providing 10Gb ULL connectivity and Limited Service MEI Ports at below market rates to market participants since the Exchange launched operations. As described above, the Exchange has operated at a cumulative net annual loss since it launched operations in 2008<sup>71</sup> due to providing a low cost alternative to attract order flow and encourage market participants to experience the high determinism and resiliency of the Exchange's trading Systems. To do so, the Exchange chose to waive the fees for some non-transaction related services and Exchange products or provide them at a very marginal cost, which was not profitable to the Exchange. This resulted in the Exchange forgoing revenue it could have generated from assessing any fees or higher fees. The Exchange could have sought to charge higher fees at the outset, but that could have served to discourage participation on the Exchange. Instead, the Exchange chose to provide a low cost exchange alternative to the options industry, which resulted in lower initial revenues. Examples of this are 10Gb ULL connectivity and Limited Service MEI Ports, for which the Exchange only now seeks to adopt fees at a level similar to or lower than those of other options exchanges.

Further, the Exchange does not believe that the proposed fee increase for the 10Gb ULL connection change would place certain market participants at the Exchange at a relative disadvantage compared to other market participants or affect the ability of such market participants to compete. As is the case with the current proposed flat fee, the proposed fee would apply uniformly to all market participants regardless of the number of connections they choose to purchase. The proposed fee does not favor certain categories of

market participants in a manner that would impose an undue burden on competition.

#### *Inter-Market Competition*

The Exchange also does not believe that the proposed rule change will result in any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. As discussed above, options market participants are not forced to connect to all options exchanges. There is no reason to believe that our proposed price increase will harm another exchange's ability to compete. There are other options markets of which market participants may connect to trade options. There is also a possible range of alternative strategies, including routing to the exchange through another participant or market center or accessing the Exchange indirectly. Market participants are free to choose which exchange or reseller to use to satisfy their business needs. Accordingly, the Exchange does not believe its proposed fee 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. Suspension of the Proposed Rule Change**

Pursuant to Section 19(b)(3)(C) of the Act,<sup>72</sup> at any time within 60 days of the date of filing of a proposed rule change pursuant to Section 19(b)(1) of the Act,<sup>73</sup> the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization ("SRO") 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. As discussed below, the Commission believes a temporary suspension of the proposed rule change is necessary and appropriate to allow for additional analysis of the proposed rule change's consistency with the Act and the rules thereunder.

When exchanges file their proposed rule changes with the Commission, including fee filings like the Exchange's present proposal, they are required to provide a statement supporting the proposal's basis under the Act and the

<sup>69</sup> No one purchased 5 or 6 Limited Service Ports in April 2022.

<sup>70</sup> 17 CFR 240.17a-1 (recordkeeping rule for national securities exchanges, national securities associations, registered clearing agencies and the Municipal Securities Rulemaking Board).

<sup>71</sup> See *supra* note 57.

<sup>72</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>73</sup> 15 U.S.C. 78s(b)(1).

rules and regulations thereunder applicable to the exchange.<sup>74</sup> The instructions to Form 19b-4, on which exchanges file their proposed rule changes, specify that such statement “should be sufficiently detailed and specific to support a finding that the proposed rule change is consistent with [those] requirements.”<sup>75</sup>

Among other things, exchange proposed rule changes are subject to Section 6 of the Act, including Sections 6(b)(4), (5), and (8), which requires the rules of an exchange to: (1) Provide for the equitable allocation of reasonable fees among members, issuers, and other persons using the exchange’s facilities;<sup>76</sup> (2) perfect the mechanism of a free and open market and a national market system, protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers;<sup>77</sup> and (3) not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.<sup>78</sup>

In temporarily suspending the Exchange’s fee change, the Commission intends to further consider whether the proposed fees are consistent with the statutory requirements applicable to a national securities exchange under the Act. In particular, the Commission will consider whether the proposed rule change satisfies the standards under the Act and the rules thereunder requiring, among other things, that an exchange’s rules provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; and do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.<sup>79</sup>

Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to temporarily suspend the proposed rule change.<sup>80</sup>

<sup>74</sup> See 17 CFR 240.19b-4 (Item 3 entitled “Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change”).

<sup>75</sup> See *id.*

<sup>76</sup> 15 U.S.C. 78f(b)(4).

<sup>77</sup> 15 U.S.C. 78f(b)(5).

<sup>78</sup> 15 U.S.C. 78f(b)(8).

<sup>79</sup> See 15 U.S.C. 78f(b)(4), (5), and (8), respectively.

<sup>80</sup> For purposes of temporarily suspending the proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

#### IV. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

The Commission is instituting proceedings pursuant to Sections 19(b)(3)(C)<sup>81</sup> and 19(b)(2)(B)<sup>82</sup> of the Act to determine whether the Exchange’s proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change to inform the Commission’s analysis of whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,<sup>83</sup> the Commission is providing notice of the grounds for possible disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of whether the Exchange has sufficiently demonstrated how the proposed rule change is consistent with Sections 6(b)(4),<sup>84</sup> 6(b)(5),<sup>85</sup> and 6(b)(8)<sup>86</sup> of the Act. Section 6(b)(4) of the Act requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. Section 6(b)(5) of the Act requires that the rules of a national securities exchange be designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between

<sup>81</sup> 15 U.S.C. 78s(b)(3)(C). Once the Commission temporarily suspends a proposed rule change, Section 19(b)(3)(C) of the Act requires that the Commission institute proceedings under Section 19(b)(2)(B) to determine whether a proposed rule change should be approved or disapproved.

<sup>82</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>83</sup> 15 U.S.C. 78s(b)(2)(B). Section 19(b)(2)(B) of the Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. See *id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding, or if the exchange consents to the longer period. See *id.*

<sup>84</sup> 15 U.S.C. 78f(b)(4).

<sup>85</sup> 15 U.S.C. 78f(b)(5).

<sup>86</sup> 15 U.S.C. 78f(b)(8).

customers, issuers, brokers, or dealers. Section 6(b)(8) of the Act requires that the rules of a national securities exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Commission asks that commenters address the sufficiency of the Exchange’s statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the following aspects of the proposal and asks commenters to submit data where appropriate to support their views:

1. *Cost Estimates and Allocation.* The Exchange states that it is not asserting that the proposed fees are constrained by competitive forces.<sup>87</sup> Rather, the Exchange states that its proposed fees are based on a “cost-plus model,” employing a “conservative approach,” and that the expenses are “directly related” to 10Gb ULL connectivity and Limited Service MEI Ports, and not any other product or service offered by the Exchange.<sup>88</sup> In explaining its costs, should the Exchange identify more specifically which, if any, of its costs are incurred solely to provide 10Gb ULL connectivity and solely to provide Limited Service MEI Ports? Regarding the allocations provided by the Exchange as described in greater detail above, do commenters believe that the Exchange provided sufficient detail about how it determined these allocations and why they are reasonable?<sup>89</sup> Why or why not? Do commenters believe that the Exchange provided sufficient context to permit an independent review and assessment of the reasonableness of the allocations? Do commenters believe that the Exchange provided sufficient detail or explanation to support its claim that “no expense amount is allocated twice,”<sup>90</sup> whether among the sub-categories of expenses in this filing, across the Exchange’s fee filings for other products or services, or over time?

2. *Revenue Estimates and Profit Margin Range.* The Exchange uses a single monthly revenue figure (April 2022) as the basis for calculating its projected combined profit margin of 23.4%.<sup>91</sup> The Exchange argues that projecting revenues on a per month basis is reasonable “as the revenue generated from access services subject to

<sup>87</sup> See *supra* Section II.A.2.

<sup>88</sup> See *id.*

<sup>89</sup> See *id.*

<sup>90</sup> See *id.*

<sup>91</sup> See *id.*

the proposed fee generally remains static from month to month.”<sup>92</sup> Yet the Exchange also acknowledges that “profit margin may also fluctuate from month to month based on the uncertainty of predicting how many connections and ports may be purchased from month to month as Members and non-Members are free to add and drop connections and ports at any time based on their own business decisions.”<sup>93</sup> Do commenters believe a single month provides a reasonable basis for a revenue projection? If not, why not? Should the Exchange provide a range of profit margins that it believes are reasonably possible, and the reasons therefor? The Exchange also provided its baseline by analyzing March 2022.<sup>94</sup> Do commenters believe that March 2022 is an appropriate month for a baseline? What are commenters’ views on the Exchange providing a combined profit margin for both 10Gb ULL connectivity and Limited Service MEI Ports, rather than separate margins for each?

3. *Reasonableness.* The Exchange states that its proposed fees are “reasonable because they will permit recovery of the Exchange’s costs in providing access services to supply 10Gb ULL connectivity and Limited Service MEI Ports and will not result in the Exchange generating a supra-competitive profit.”<sup>95</sup> The Exchange offers several justifications for why its estimated profit margin (which is blended and not discussed separately for each service) is not a supra-competitive profit, including: (a) When it launched operations in 2008, it chose to forgo revenue by offering certain products at lower rates than other options exchanges to attract order flow; (b) the Exchange has been successful in controlling its costs; (c) a profit margin should not be judged alone based on its size, but on whether the ultimate fee reflects the value of the services provided, and (d) the Exchange’s proposed fees remain similar to or less than fees charged for access provided by other options exchanges with similar market share. Do commenters agree that these factors are relevant to assessment of whether the fees are reasonable for each service? Should such an assessment include consideration of any factors other than costs; and if so, what factors should be considered, and why?

4. *Periodic Reevaluation.* The Exchange has stated that it will conduct a review of the cost-based fees subject to this proposal one year after the date

of the proposal, and annually thereafter.<sup>96</sup> In light of the impact that the number of connections and ports purchased has on profit margins, and the potential for costs to decrease (or increase) over time, what are commenters’ views on the need for exchanges to commit to reevaluate, on an ongoing and periodic basis, their cost-based fees to ensure that the fees stay in line with their stated profitability projections and do not become unreasonable over time, for example, by failing to adjust for efficiency gains, cost increases or decreases, and changes in amounts purchased? How formal should that process be, how often should that reevaluation occur, and what metrics and thresholds should be considered? How soon after a new fee change is implemented should an exchange assess whether its revenue and/or cost estimates were accurate and at what threshold should an exchange commit to file a fee change if its estimates were inaccurate?

5. *Tiered Structure for Additional Limited Service MEI Ports.* The Exchange states that the proposed tiered fee structure is equitably allocated among users of the network connectivity alternatives, because users of Limited Service MEI Ports “consume the most bandwidth and resources of the network.”<sup>97</sup> The Exchange states that users of the “maximum amount of Limited Service MEI Ports” account for approximately greater than 99% of message traffic over the network, while users of “fewer Limited Service MEI Ports” account for approximately less than 1% of message traffic over the network.<sup>98</sup> Specifically, the Exchange states that Market Makers who utilize 1–2, 3–4, or 7 or more Limited Service MEI ports submit an average of 312,274,040 quotes per day, 774,859,930 quotes per day, and 1,198,621,664 quotes per day, respectively, for the month of April 2022.<sup>99</sup> According to the Exchange, these billions of messages per day consume the Exchange’s resources and significantly contribute to the overall network connectivity expense for storage and network transport capabilities.<sup>100</sup> Given this difference in network utilization rate, the Exchange believes that its tiered structure is reasonable, equitable, and not unfairly discriminatory.<sup>101</sup> Do commenters believe that the fees for each tier

(including the intermediary tiers), as well as the fee differences between the tiers, are supported by the Exchange’s assertions? If not, is there an alternative basis on which increased demand by a market-making firm on the Exchange’s resources would justify a tiered fee structure for additional Limited Service MEI Ports?

Under the Commission’s Rules of Practice, the “burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change.”<sup>102</sup> The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,<sup>103</sup> and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.<sup>104</sup> Moreover, “unquestioning reliance” on an SRO’s representations in a proposed rule change would not be sufficient to justify Commission approval of a proposed rule change.<sup>105</sup>

The Commission believes it is appropriate to institute proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposal is consistent with the Act, any potential comments or supplemental information provided by the Exchange, and any additional independent analysis by the Commission.

## V. Commission’s Solicitation of Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above as well as any other relevant concerns. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Sections 6(b)(4), 6(b)(5), and 6(b)(8), or any other provision of the Act, or the rules and regulations thereunder. The Commission asks that commenters address the sufficiency and merit of the Exchange’s statements in

<sup>102</sup> 17 CFR 201.700(b)(3).

<sup>103</sup> See *id.*

<sup>104</sup> See *id.*

<sup>105</sup> See *Susquehanna Int’l Group, LLP v. Securities and Exchange Commission*, 866 F.3d 442, 446–47 (D.C. Cir. 2017) (rejecting the Commission’s reliance on an SRO’s own determinations without sufficient evidence of the basis for such determinations).

<sup>92</sup> See *id.*

<sup>93</sup> See *id.*

<sup>94</sup> See *id.*

<sup>95</sup> See *id.*

<sup>96</sup> See *id.*

<sup>97</sup> See *id.*

<sup>98</sup> See *id.*

<sup>99</sup> See *id.*

<sup>100</sup> See *id.*

<sup>101</sup> See *id.*

support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.<sup>106</sup>

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by June 7, 2022. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by June 21, 2022.

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 No. SR-MIAX-2022-20 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 No. SR-MIAX-2022-20. 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 No. SR-MIAX-2022-20 and should be submitted on or before June 7, 2022. Rebuttal comments should be submitted by June 21, 2022.

#### **VI. Conclusion**

*It is therefore ordered*, pursuant to Section 19(b)(3)(C) of the Act,<sup>107</sup> that File No. SR-MIAX-2022-20 be, and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule change should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>108</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2022-10507 Filed 5-16-22; 8:45 am]

**BILLING CODE 8011-01-P**

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

**[Investment Company Act Release No. 34581; File No. 812-15317]**

#### **Blackstone Floating Rate Enhanced Income Fund, et al.**

**AGENCY:** Securities and Exchange Commission ("Commission" or "SEC").

**ACTION:** Notice.

Notice of application for an order ("Order") under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the "Act") and rule 17d-1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d-1 under the Act.

*Summary of Application:* Applicants request an order to amend a previous order granted by the Commission that permits certain business development companies ("BDCs") and closed-end management investment companies to co-invest in portfolio companies with each other and with certain affiliated investment entities.

*Applicants:* Blackstone Floating Rate Enhanced Income Fund, Blackstone Long-Short Credit Income Fund, Blackstone Private Credit Fund, Blackstone Senior Floating Rate Term Fund, Blackstone Strategic Credit Fund, Blackstone Secured Lending Fund, Blackstone Liquid Credit Strategies LLC, Blackstone Credit BDC Advisors LLC, Blackstone Alternative Credit Advisors LP, Blackstone Liquid Credit Advisors I LLC, Blackstone Liquid Credit Advisors II LLC, Blackstone Mezzanine Advisors L.P., Blackstone CLO Management LLC (Management Series), Blackstone Ireland Limited, Blackstone Ireland Fund Management Limited, G QCM SCSP, GSO Barre Des Ecrins Fund I SCSP, GSO Barre Des Ecrins Fund II SCSP, GSO Barre Des Ecrins Master Fund SCSP, BSOF Master Fund II L.P., BSOF Master Fund L.P., BSOF Parallel Master Fund L.P., Allegany Park CLO, Ltd., Beechwood Park CLO, Ltd., Blackstone European Senior Loan Fund, Blackstone/GSO Global Dynamic Credit Master Fund, Blackstone Secured Trust Ltd, Blackstone Securities Partners L.P., Blackstone HPPI CLO Fund FCP-RAIF, Blackstone Holdings I L.P., Blackstone Holdings II L.P., Blackstone Holdings III L.P., Blackstone Holdings IV L.P., Blackstone Holdings Finance Co, L.L.C., Blackstone Us Loan Master Fund, Blackstone Treasury Holdings II LLC, Blackstone CLO Opportunity Master Fund LP, Bowman Park CLO, Ltd., Bristol Park CLO, Ltd., Buckhorn Park CLO, Ltd., Burnham Park CLO, Ltd., Buttermilk Park CLO, Ltd., BCRED Twin Peaks LLC, BCRED Siris Peak Funding LLC, BCRED Denali Peak Funding LLC, BXC Jade Topco 1 LP, BXC Jade Topco 2 LP, BXC Jade Topco 3 LP, BXC Jade Topco 4 LP, Carysfort Park CLO DAC, Castle Park CLO Designated Activity Company, Catskill Park CLO, Ltd., Cayuga Park CLO, Ltd., Chenango Park CLO, Ltd., Cirrus Funding 2018-1, Ltd., Clarinda Park CLO Designated Activity Company, Clontarf Park CLO Designated Activity Company, Cole Park CLO Limited, Cook Park CLO, Ltd., Crosthwaite Park CLO Designated Activity Company, Cumberland Park CLO, Ltd., Dartry Park CLO Designated Activity Company, Deer Park CLO DAC, Dewolf Park CLO, Ltd., Diamond CLO 2018-1 Ltd., Diamond CLO 2019-1 Ltd., Dorchester Park CLO Designated Activity Company, Dunedin Park CLO Designated Activity Company, Elm Park CLO Designated Activity Company, Emerson Park CLO, Ltd., Fillmore Park CLO, Ltd., Fleet Street Auto 2020 LP, Gilbert Park CLO, Ltd., GN Loan Fund LP, Greenwood Park CLO, Ltd., Griffith Park CLO Designated Activity Company,

<sup>106</sup> 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by an SRO. See Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

<sup>107</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>108</sup> 17 CFR 200.30-3(a)(12), (57) and (58).