

more stringent criteria. The Exchange believes that this is not unfair discrimination among companies because applying additional and more stringent criteria may not be appropriate in all circumstances, for example if the company's auditor is able to demonstrate that it has sufficient PCAOB inspection history, quality controls, resources, geographic reach and experience to adequately perform the company's audit. Similarly, it may not be appropriate for Nasdaq to apply its discretionary authority in all cases where a company's business is principally administered in a Restrictive Market. For example, a company may be headquartered in Country A, which is a Restrictive Market, but have the majority of its employees, operations, senior management, assets and books and records in Country B, which is not a Restrictive Market. In such cases, Nasdaq would consider the company's business to be principally administered in Country B and Nasdaq would not use its discretionary authority to apply additional or more stringent criteria.

Nasdaq believes that the proposed changes recognize that one size does not fit all companies and clarify the scope of the Exchange's existing discretion to apply additional and more stringent criteria, including potentially prohibiting a company's listing, based on the qualifications of its auditor or the jurisdiction where the company principally administers its business, thereby protecting investors and the public interest.

Lastly, Nasdaq believes its proposal to identify certain paragraphs within IM-5101-1 as subparagraphs (a), (d) and (e), add headings to the subparagraphs, and to relocate text describing Nasdaq's review process to paragraph (e), will enhance readability of the rule. Similarly, Nasdaq believes its proposal to add and revise "listing qualifications panel" to "Hearings Panel (as defined in Rule 5805(d))" will enhance consistency within Nasdaq's rulebook. Nasdaq believes both proposals will promote investor protection and the public interest.

#### *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 not necessary or appropriate in furtherance of the purposes of the Act. Nasdaq is adopting this proposed rule change to enhance investor protection, which is a central purpose of the Act. Any impact on competition, either among listed companies or between exchanges, is incidental to that purpose.

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

No written comments were either solicited or received.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

#### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2020-028 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to File Number SR-NASDAQ-2020-028. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be

available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2020-028 and should be submitted on or before June 29, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2020-12271 Filed 6-5-20; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-88990; File No. SR-NYSECHX-2020-17]**

### **Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Fee Schedule of NYSE Chicago, Inc. Related to Co-Location Services**

June 2, 2020.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on May 18, 2020, the NYSE Chicago, Inc. ("NYSE Chicago" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend the Fee Schedule of NYSE Chicago, Inc. ("Fee Schedule") related to co-location

<sup>20</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

services with respect to connectivity to the ICE Data Global Index and to waive any change fees that a User would otherwise incur as a result of the proposed change. The proposed rule change is available on the Exchange's website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

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

#### 1. Purpose

The Exchange proposes to amend the Fee Schedule related to co-location<sup>4</sup> services offered by the Exchange with respect to connectivity to the ICE Data Global Index ("GIF") and to waive any change fees that a User would otherwise incur as a result of the proposed change.

#### Proposed Change

The Exchange offers Users<sup>5</sup> connectivity to data feeds from third party markets and other content service

providers ("Third Party Data Feeds").<sup>6</sup> The list of Third Party Data Feeds is set forth in the Fee Schedule, and includes connectivity to the GIF for a monthly connectivity fee of \$100.<sup>7</sup>

ICE, which publishes the GIF, announced to its customers that connect to the GIF that it will no longer offer the GIF as a stand-alone product. Accordingly, the Exchange proposes to cease offering connectivity to the GIF once it is no longer available. The Exchange has been informed by ICE that cessation is currently expected to occur before the end of 2020. The Exchange will announce the operative date through a customer notice.

Users are subject to a change fee if they request a change to one or more existing co-location services.<sup>8</sup> The Exchange proposes to waive any change fees that a User would otherwise incur as a result of the proposed change.

In order to implement the proposed change, the Exchange proposes to make the following changes to the section entitled "Connectivity to Third Party Data Feeds":

- In the first paragraph and in the table of Third Party Data Feeds, add an asterisk after "ICE Data Global Index."

- Following the table of Third Party Data Feeds, add the following text:

\* ICE will cease to offer the GIF as a stand-alone product, which the Exchange has been informed by ICE is currently expected to occur before the end of 2020. The Exchange will announce the operative date through a customer notice. Any change fees that a User would otherwise incur as a result of the proposed change will be waived.

The GIF includes the values of various indices and exchange traded product data.<sup>9</sup> Based on information published by ICE Data Services, all the data in the GIF was already available on the ICE Data Services Consolidated Feed ("Consolidated Feed").<sup>10</sup> The Exchange offers connectivity to the Consolidated Feed, and does not propose to change the price for such connectivity. In addition, the Exchange's connectivity to the GIF and the Consolidated Feed

should have approximately the same latency.

#### Application and Impact of the Proposed Change

The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally. As is currently the case, the purchase of any colocation service is completely voluntary and the Fee Schedule is applied uniformly to all Users.

Currently, there are seven Users that have connectivity to the GIF, and so would be affected by the change. If any of them wish to continue having connectivity to the information in the GIF, they could connect to the Consolidated Feed, which none of them do presently. The monthly cost for connectivity to the Consolidated Feed depends on the size of the bandwidth utilized. If a User opts to connect to the Consolidated Feed to connect to the information in the GIF, the monthly connectivity cost charged by the Exchange would be \$200.

ICE has informed the Exchange that currently there are various third parties that offer Users connectivity to the Consolidated Feed. To use such third party connectivity to the Consolidated Feed, a User may utilize the IDS network, a third party telecommunication network, a cross connect, or a combination thereof to access the Consolidated Feed through a connection to an access center outside the data center (which could be an IDS access center, a third-party access center, or both), another User, or a third party vendor.

#### Competitive Environment

The Exchange operates in a highly competitive market in which exchanges and other vendors (e.g., Hosting Users) offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its

<sup>4</sup> The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission ("Commission") in October 2019. See Securities Exchange Act Release No. 87408 (October 28, 2019), 84 FR 58778 (November 1, 2019) (SR-NYSECHX-2019-27[sic]). The Exchange is an indirect subsidiary of Intercontinental Exchange, Inc. ("ICE"). Through its ICE Data Services ("IDS") business, ICE operates a data center in Mahwah, New Jersey (the "data center"), from which the Exchange provides co-location services to Users.

<sup>5</sup> For purposes of the Exchange's co-location services, a "User" means any market participant that requests to receive co-location services directly from the Exchange. See *id.*, at note 6. As specified in the Fee Schedule, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates the New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., and NYSE National, Inc. (collectively, the "Affiliate SROs"). Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. See SR-NYSE-2020-46, SR-NYSEAmer-2020-40, SR-NYSEArca-2020-49, and SR-NYSENat-2020-19.

<sup>6</sup> See *id.*, at 58787-58788.

<sup>7</sup> The Exchange has an indirect interest in the GIF because ICE is the Exchange's ultimate parent. See *id.*, at note 5.

<sup>8</sup> See *id.*, at 58785.

<sup>9</sup> The Exchange understands that some of the indices may include Exchange or Affiliate SRO data as underlying components, but the GIF does not include those underlying components or other information directly from the Exchange and Affiliate SROs.

<sup>10</sup> See "Consolidated Data Feed Coverage List—Indices and Indicators" at <https://www.theice.com/market-data/connectivity-and-feeds/consolidated-feed/coverage-list>.

broader forms that are most important to investors and listed companies.”<sup>11</sup>

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>12</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>13</sup> in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. In addition, it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

### The Proposed Rule Change Is Reasonable and Equitable

The Exchange believes that the proposed rule change is reasonable and equitable for the following reasons.

The Exchange believes that it is reasonable and an equitable allocation of its fees and credits to add a note to its Fee Schedule stating that ICE will cease to offer the GIF as a stand-alone product, as the Exchange will no longer be able to offer the service once that occurs.

If a User wishes connectivity to the information in the GIF, the Users could connect to the Consolidated Feed through IDS or from a third party provider. A User may utilize the IDS network, a third party telecommunication network, a cross connect, or a combination thereof to access the Consolidated Feed, through a connection to an access center outside the data center (which could be an IDS access center, a third-party access center, or both), another User, or a third party vendor.

The Exchange believes that it is reasonable and equitable that it waive any change fees that a User would otherwise incur as a result of the proposed change, as Users would have no choice but to terminate connectivity to the GIF. The fee waiver would help to alleviate any burden related to the change.

### The Proposed Rule Change Would Protect Investors and the Public Interest

The Exchange believes that the proposed rule change would perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest for the following reasons.

It would be against the protection of investors and the public interest if the Exchange were to continue to offer something that it cannot provide because the relevant feed has been discontinued. Adding the proposed note to its Fee Schedule would reduce any potential ambiguity and provide clarification concerning the availability and the costs of connectivity to Third Party Data Feeds available to Users, because it would highlight that the GIF will become obsolete, provide a timeline for the change, and state that any change fees that a User would otherwise incur as a result of the proposed change would be waived.

### The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes that the proposed change is not unfairly discriminatory for the following reasons.

The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally. As a consequence of ICE's ceasing to offer the GIF as a stand-alone product, the Exchange will not be able to provide any Users with connectivity to the GIF.

If a User wishes connectivity to the information in the GIF, the Users could connect to the Consolidated Feed through the Exchange. If any of the seven Users that have connectivity to the GIF opt to connect to the Consolidated Feed, the monthly connectivity cost charged by the Exchange would be \$200.

ICE has informed the Exchange that currently there are various third parties that offer Users connectivity to the Consolidated Feed. To use such third party connectivity to the Consolidated Feed, a User may utilize the IDS network, a third party telecommunication network, a cross connect, or a combination thereof to access the Consolidated Feed, through a

connection to an access center outside the data center (which could be an IDS access center, a third-party access center, or both), another User, or a third party vendor.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

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

In accordance with Section 6(b)(8) of the Act,<sup>14</sup> the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### Intramarket Competition

The Exchange does not believe that the proposed change would place any burden on intramarket competition that is not necessary or appropriate. The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally: As a consequence of ICE's ceasing to offer the GIF as a stand-alone product, the Exchange will not be able to provide any Users with connectivity to the GIF. The Exchange proposes to waive any change fees that a User would otherwise incur as a result of the proposed change.

Adding the proposed note to the Fee Schedule would reduce any potential ambiguity and provide clarification concerning the availability and the costs of connectivity to Third Party Data Feeds available to Users, because it would highlight that the GIF will become obsolete, provide a timeline for the change, and state that any change fees that a User would otherwise incur as a result of the proposed change would be waived.

If a User wishes connectivity to the information in the GIF, the Users could connect to the Consolidated Feed through the Exchange. If any of the seven Users that have connectivity to the GIF opt to connect to the Consolidated Feed, the monthly connectivity cost charged by the Exchange would be \$200.

ICE has informed the Exchange that currently there are various third parties that offer Users connectivity to the Consolidated Feed. To use such third

<sup>11</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>14</sup> 15 U.S.C. 78f(b)(8).

party connectivity to the Consolidated Feed, a User may utilize the IDS network, a third party telecommunication network, a cross connect, or a combination thereof to access the Consolidated Feed, through a connection to an access center outside the data center (which could be an IDS access center, a third-party access center, or both), another User, or a third party vendor.

Use of any co-location service is completely voluntary, and each market participant is able to determine whether to use co-location services based on the requirements of its business operations.

#### Intermarket Competition

The Exchange does not believe that the proposed fee would impose any burden on intermarket competition that is not necessary or appropriate.

The Exchange operates in a highly competitive market in which exchanges and other vendors (*i.e.*, Hosting Users) offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>15</sup>

The Exchange believes that the proposed change is necessary and appropriate. Adding the proposed note to the Fee Schedule would reduce any potential ambiguity and provide clarification concerning the availability and the costs of connectivity to Third Party Data Feeds available to Users, because it would highlight that the GIF will become obsolete and provide a timeline for the change.

For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

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

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

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>16</sup> and Rule 19b-4(f)(6) thereunder.<sup>17</sup> Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>18</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>19</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange believes that such waiver would be consistent with the protection of investors and the public interest because it would allow the Exchange to waive the change fee sooner. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it would permit the Exchange, without undue delay, to cease offering the GIF when it becomes unavailable, provide notice to customers and waive the change fee. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.<sup>20</sup>

At any time within 60 days of the filing of such proposed rule change, the

Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>21</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

#### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSECHX-2020-17 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to File Number SR-NYSECHX-2020-17. 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

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>17</sup> 17 CFR 240.19b-4(f)(6).

<sup>18</sup> 17 CFR 240.19b-4(f)(6).

<sup>19</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>20</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>21</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>15</sup> See 70 FR 37496, *supra* note 11.

received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSECHX-2020-17 and should be submitted on or before June 29, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

[FR Doc. 2020-12274 Filed 6-5-20; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88992; File No. SR-PEARL-2020-06]

### Self-Regulatory Organizations; MIAx PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 404, Series of Option Contracts Open for Trading, and Rule 510, Minimum Price Variations and Minimum Trading Increments, To Conform the Rules to Section 3.1 of the Plan for the Purpose of Developing and Implementing Procedures Designed To Facilitate the Listing and Trading of Standardized Options

June 2, 2020.

Pursuant to the provisions of 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 29, 2020, MIAx PEARL, LLC (“MIAx PEARL” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange is filing a proposal to amend certain of the Exchange’s rules to conform to Section 3.1 of the Plan for the Purpose of Developing and Implementing Procedures Designed to Facilitate the Listing and Trading of

Standardized Options (the “OLPP”) and add new subparagraphs (a)(3)(i)–(iii) and (c) to Exchange Rule 510.

The text of the proposed rule change is available on the Exchange’s website at <http://www.miaxoptions.com/rule-filings/pearl> at MIAx PEARL’s principal office, and at the Commission’s Public Reference Room.

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

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

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

###### 1. Purpose

The purpose of this rule change is to amend Exchange Rule 404, Series of Option Contracts Open for Trading, and Exchange Rule 510, Minimum Price Variations and Minimum Trading Increments, to align the Exchange’s rules with the recently approved amendment to the OLPP.

###### Background

On January 23, 2007, the Commission approved on a limited basis a Penny Pilot in option classes in certain issues (“Penny Pilot”). The Penny Pilot was designed to determine whether investors would benefit from options being quoted in penny increments, and in which classes the benefits were most significant. The Penny Pilot was initiated at the then existing option exchanges in January 2007<sup>3</sup> and expanded and extended numerous times over the last 13 years.<sup>4</sup> In each instance,

these approvals relied upon the consideration of data periodically provided by the Exchanges that analyzed how quoting options in penny increments affects spreads, liquidity, quote traffic, and volume. Today, the Penny Pilot includes 363 option classes, which are among the most actively traded, multiply listed option classes. The Penny Pilot is scheduled to expire by its own terms on June 30, 2020.<sup>5</sup>

In light of the imminent expiration of the Penny Pilot, on June 30, 2020, the Exchange, together with other participating exchanges, filed on July 18, 2019, a proposal to amend the OLPP.<sup>6</sup> On April 1, 2020, the U.S. Securities and Exchange Commission (“Commission”) approved the amendment to the OLPP to make permanent the Pilot Program (the “OLPP Program”).<sup>7</sup>

The OLPP Program replaces the Penny Pilot by instituting a permanent program that would permit quoting in penny increments for certain option classes. Under the terms of the OLPP Program, designated option classes would continue to be quoted in \$0.01 and \$0.05 increments according to the same parameters for the Penny Pilot. In addition, the OLPP Program would: (i) Establish an annual review process to add option classes to, or to remove option classes from, the OLPP Program; (ii) allow an option class to be added to the OLPP Program if it is a newly listed option class and it meets certain criteria; (iii) allow an option class to be added to the OLPP Program if it is an option class that has seen significant growth in activity; (iv) provide that if a corporate action involves one or more option classes in the OLPP Program, all adjusted and unadjusted series and classes emerging as a result of the corporate action will be included in the OLPP Program; and (v) provide that any series in an option class participating in the OLPP Program that have been delisted, or are identified by OCC as ineligible for opening Customer transactions, will continue to trade pursuant to the OLPP Program until they expire.

<sup>3</sup> See Securities Exchange Act Release Nos. 55154 (January 23, 2007), 72 FR 4743 (February 1, 2007) (SR-CBOE-2006-92); 55161 (January 24, 2007), 72 FR 4754 (February 1, 2007) (SR-ISE-2006-62); 54886 (December 6, 2006), 71 FR 74979 (December 13, 2006) (SR-Phlx-2006-74); 54590 (October 12, 2006), 71 FR 61525 (October 18, 2006) (SR-NYSEArca-2006-73); and 54741 (November 9, 2006), 71 FR 67176 (November 20, 2006) (SR-Amex-2006-106).

<sup>4</sup> See Securities Exchange Act Release Nos. 87609 (November 25, 2019), 84 FR 66032 (December 2, 2019) (SR-PEARL-2019-34); 86049 (June 6, 2019), 84 FR 27381 (June 12, 2019) (SR-PEARL-2019-20); 84865 (December 19, 2018), 83 FR 66813 (December

27, 2018) (SR-PEARL-2018-26); 83517 (June 25, 2018), 83 FR 30792 (June 29, 2018) (SR-PEARL-2018-14); 82391 (December 22, 2017), 82 FR 61622 (December 28, 2017) (SR-PEARL-2017-39); 80758 (May 24, 2017), 82 FR 25022 (May 31, 2017) (SR-PEARL-2017-24); and 79778 (January 12, 2016), 82 FR 6662 (January 19, 2017) (SR-PEARL-2016-01).

<sup>5</sup> See Securities Exchange Act Release No. 87609 (November 25, 2019), 84 FR 66032 (December 2, 2019) (SR-PEARL-2019-34).

<sup>6</sup> See Securities Exchange Act Release No. 87681 (December 9, 2019), 84 FR 68960 (December 17, 2019) (“Notice”).

<sup>7</sup> See Securities Exchange Act Release No. 88532 (April 1, 2020), 85 FR 19545 (April 7, 2020) (File No. 4-443) (“Approval Order”).

<sup>22</sup> 17 CFR 200.30-3(a)(12).

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

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